

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3 CHARLES COSTANZO,
4 *Petitioner,*

5 vs.

6
7
8
9 CITY OF GRANTS PASS,
10 *Respondent,*

11 and

12
13
14 MAX HULL, RANDY HAGERMAN,
15 DORIS GENE WRIGHT and GREGORY WRIGHT,
16 *Intervenors-Respondent.*

17
18 LUBA No. 2001-080

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Grants Pass.

24
25 Charles Costanzo, Grants Pass, filed the petition for review and argued on his own
26 behalf.

27
28 No appearance by City of Grants Pass.

29
30 Duane Wm. Schultz, Grants Pass, filed a response brief and argued on behalf of
31 intervenors-respondent.

32
33 BRIGGS, Board Chair; BASSHAM, Board Member; HOLSTUN, Board Member,
34 participated in the decision.

35
36 AFFIRMED 10/12/2001

37
38 You are entitled to judicial review of this Order. Judicial review is governed by the
39 provisions of ORS 197.850.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NATURE OF THE DECISION

Petitioner appeals a city limited land use decision approving a residential subdivision.

MOTION TO INTERVENE

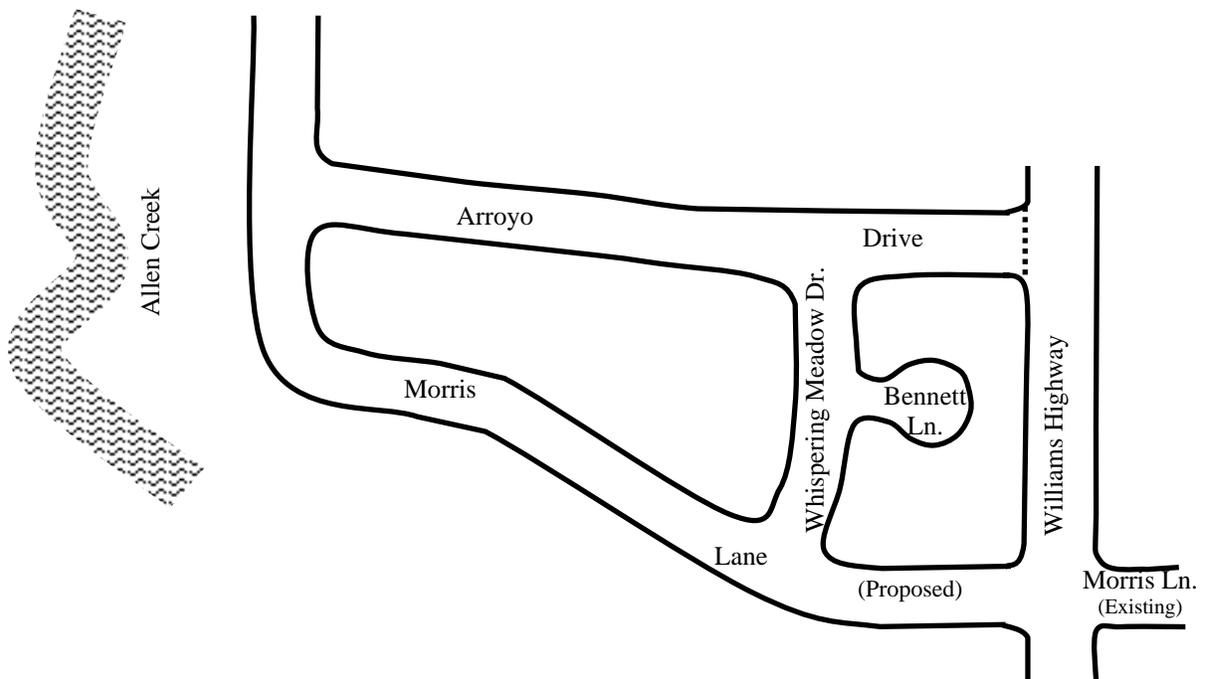
Max Hull, Randy Hagerman, Doris Gene Wright and Gregory Wright (intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property is located on the southwest edge of the urban growth boundary (UGB) of the City of Grants Pass. A small area on the western portion of the property lies outside the UGB and is zoned Rural Residential-5 (RR-5), as is other property to the west. The remaining property within the UGB is zoned Residential-Single Family (8,000 square-foot minimum lot size) (R-1-8). The subject property is bordered by Oregon Highway 238 (Williams Highway) to the east, the Grants Pass Golf Course to the south, and the Allen Creek Subdivision to the north.

Access to the proposed 36-lot subdivision is via Williams Highway. Internal subdivision roads are proposed. Arroyo Drive currently connects the Allen Creek Subdivision with the Williams Highway by traversing the northern boundary of the subject property. Arroyo Drive then curves northward and terminates in a cul-de-sac at the northern boundary of the Allen Creek Subdivision. Arroyo Drive is a county local access road with a 60-foot right-of-way and an oil mat surface. Arroyo Drive is not developed to city standards. Intervenors propose to improve the segment of Arroyo Drive that forms the north boundary of the subject property with one-half street improvements. The segment of Arroyo Drive that passes through the Allen Creek Subdivision will not be improved as a result of the challenged decision.

1 To comply with the Oregon Department of Transportation's (ODOT's) recommended
2 improvements for Williams Highway, intervenors propose to create a right deceleration lane
3 on the highway that terminates at the intersection of Williams Highway and Morris Lane.
4 The current Morris Lane right-of-way lies east of Williams Highway. Morris Lane would be
5 extended west through the proposed subdivision and then turn north to connect with Arroyo
6 Drive at the northwest corner of the property. To limit intersections on Williams Highway
7 and improve turning intervals from the highway, intervenors also propose to block vehicular
8 access from the Arroyo Drive/Williams Highway intersection. Only bicycle and pedestrian
9 traffic would be allowed to use the intersection. Vehicular traffic on Arroyo Drive would be
10 required to use Morris Lane to access Williams Highway. As proposed, Morris Lane will
11 provide the only vehicular connection to Williams Highway for both the proposed
12 subdivision and Allen Creek Subdivision. Below is a diagram, not to scale, of the proposed
13 road configuration.



1 Petitioner, a resident of the Allen Creek Subdivision, appeared before the city and
2 opposed the application. Specifically, petitioner contended that approval of the subdivision
3 would violate city standards that limit the length of cul-de-sacs to 400 feet. Petitioner also
4 argued that the proposed subdivision would not comply with city access criteria that require
5 that proposed new streets connect to “existing city standard paved streets” and require half-
6 street improvements in certain circumstances.

7 The city council approved the subdivision application, with conditions. Petitioner
8 appealed the decision to LUBA. The city and intervenors subsequently moved for a
9 voluntary remand, over petitioner’s objections. LUBA granted the voluntary remand. On
10 remand, the city held a hearing to receive new evidence and testimony to address the issues
11 petitioner assigned as error in his petition for review. The city adopted supplemental
12 findings, and again approved the application, with the same conditions. This appeal followed.

13 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

14 Petitioner argues that the city erred in concluding that the proposed subdivision street
15 layout satisfies Grants Pass Development Code (GPDC) 27.110(1).¹

16 **A. GPDC 27.110(1) (Half-Street Improvements)**

17 In the second assignment of error, petitioner argues that GPDC 27.110(1) requires
18 that the portions of *all* nonstandard streets that abut the subject property should be improved
19 to city standards. *See* n 1. The city did not require that intervenors improve Williams
20 Highway to the standards set out in the Grants Pass Urban Area Master Transportation Plan,

¹GPDC Article 27.110(1) “Provision of Street Improvements” provides, in relevant part:

“Where proposed development abuts an existing substandard street or a future street as shown on the Official Street Map, the applicant is obligated to improve one-half * * * the street width for the distance the property abuts the street to the full standards contained in this Code. The improvements must be constructed or secured either prior to Final Plat or Map, if subdividing or partitioning, or prior to final Use and Occupancy Permit.

“Proposed subdivisions * * * shall be connected to an existing City standard paved street.”

1 nor did the city require intervenors to contribute to the costs of highway improvements
2 outlined in that plan. Petitioner contends that the plain language of GPDC 27.110(1) includes
3 improvements to state transportation facilities that may be required as a result of using those
4 state facilities to provide access to the proposed subdivision. In addition, petitioner argues
5 that it is insufficient to require only that a southbound right-turn lane be constructed as a
6 condition of approval, when the Grants Pass Urban Area Master Transportation Plan calls for
7 four lanes, with bicycle lanes and sidewalks on both sides. At the very least, petitioner
8 argues, the city must require that the applicants agree to pay for the costs of the half-street
9 improvements to that segment of Williams Highway that fronts the subject property.

10 The city’s findings in response to petitioner’s argument state, in relevant part:

11 “The property abuts [Williams Highway] to the east. [Williams Highway] is a
12 state highway under [ODOT’s] jurisdiction * * *. The Master Transportation
13 Plan identifies planned improvements to address capacity and safety needs for
14 the projected traffic on [Williams Highway]. [Williams Highway] currently
15 operates at a level of service for existing traffic plus the traffic associated with
16 the proposed development, meeting the acceptable standard identified in the
17 Master Transportation Plan.

18 “[Williams Highway] is currently improved with lane widths and pavement
19 meeting state standards. The Master Transportation Plan calls for future
20 widening and improvements to [Williams Highway]. The Master
21 Transportation Plan provides general guidance for corridor improvements. It
22 does not provide specific guidance for specific intersection improvements,
23 which must be analyzed on a case-by-case basis. The [GPDC] does not
24 provide design standards for state highways.

25 “Out of necessity relating to jurisdictional issues, the City must make a
26 distinction in interpreting this section of the [GPDC] between streets that are
27 entirely under City jurisdiction and those that are not.

28 “* * * * *

29 “For a project with frontage on a state highway under ODOT’s jurisdiction,
30 the City interprets this criterion to be satisfied when the developer has either
31 constructed or secured for improvements to a state facility when authorized by
32 the agency having jurisdiction in accordance with the requirements of that
33 agency. ODOT has jurisdiction and has found that the southbound right-turn
34 lane satisfied their requirements without need for additional improvements or
35 security. * * *

1 “* * * The City and ODOT found [the construction of a southbound right-turn
2 lane on Williams Highway] to be related to the proposed subdivision and
3 proportional to the impacts of the subdivision on the state highway.” Record
4 23-24.

5 As the city’s findings show, the city concluded that the vehicular trips generated by
6 the proposed subdivision will not reduce the capacity of Williams Highway. In addition, the
7 city found that, while the Grants Pass Urban Area Master Transportation Plan recommends
8 certain improvements to Williams Highway to improve traffic safety and efficiency, those
9 recommended improvements are not road design standards that apply to this application.
10 Finally, the city found the relevant portion of GPDC 27.110(1) to be satisfied by a
11 demonstration that the applicants have complied or will comply with the development
12 conditions imposed by the jurisdiction having authority over Williams Highway, namely
13 ODOT.

14 This Board is required to defer to a local governing body’s interpretation of its own
15 enactment, unless that interpretation is contrary to the express words, purpose or policy of
16 the local enactment or to a state statute, statewide planning goal or administrative rule that
17 the local enactment implements. ORS 197.829(1); *Gage v. City of Portland*, 319 Or 308,
18 316-17, 877 P2d 1187 (1994); *Clark v. Jackson County*, 313 Or 508, 514-15, 836 P2d 710
19 (1992). We must defer to a local government’s interpretation of its own enactments, unless
20 that interpretation is “clearly wrong.” *Reeves v. Yamhill County*, 132 Or App 263, 269, 888
21 P2d 79 (1995); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 217,
22 843 P2d 992 (1992); *West v. Clackamas County*, 116 Or App 89, 93, 840 P2d 1354 (1992).
23 We believe that the city could interpret GPDC 27.110(1) not to require improvements to a
24 different jurisdiction’s transportation facility, and that the city’s interpretation in this case is
25 not “clearly wrong.”

26 The second assignment of error is denied.

1 **B. GPDC 27.110(1) (Existing City Standard Paved Streets)**

2 The second paragraph of GPDC 27.110(1) requires that the proposed subdivision
3 “shall be connected to an existing City standard paved street.” *See* n 1. In the first assignment
4 of error, petitioner argues that neither Arroyo Drive nor Williams Highway can satisfy that
5 standard. With respect to Arroyo Drive, petitioner argues that it is not an “existing City
6 standard paved street” as that term is used in GPDC 27.110(1) because it is a *county* public
7 access road. In addition, petitioner argues that Arroyo Drive is an excessively long cul-de-sac
8 that does not conform to city standards because the road is not constructed to city road design
9 standards. *See* n 2. With regard to Williams Highway, petitioner contends that the highway is
10 not improved to city standards and needs improvements to address current traffic safety
11 problems. Petitioner also argues that whatever improvements may be made to internal
12 subdivision streets as a result of the city’s approval of the subdivision will not satisfy GPDC
13 27.110(1) because those roads are not “existing.”

14 The city’s findings state, in relevant part:

15 “The proposed subdivision will be connected to a City standard paved street.
16 The proposed subdivision provides for [the] extension of Arroyo Drive from
17 the northeastern corner of the property to the intersection of [Williams
18 Highway] and [to the segment of] Morris Lane [lying directly to the east of
19 Williams Highway]. This extension will be constructed to urban local street
20 standards. The intersection at [Williams Highway] provides the outlet for the
21 subdivision, which connects to the remainder of the urban street network.
22 While the realigned portion of Arroyo Drive to be constructed is not presently
23 existing, it will be improved to city standards upon completion of the
24 subdivision.

25 “* * * * *

26 “The proposal exceeds the requirements related to this criterion.” Record 25.

27 The city does not rely on Arroyo Drive to satisfy the second paragraph of GPDC
28 27.110(1). We understand the city to conclude that the challenged portion of GPDC
29 27.110(1) is satisfied if the proposed subdivision is connected to the city’s paved street
30 system via a state highway. The city’s findings do not explain that conclusion, or offer a

1 reviewable interpretation of GPDC 27.110(1) that is sufficient to resolve this assignment of
2 error. We understand petitioner to argue that Williams Highway cannot constitute the
3 requisite connection, because (1) it is not a city-owned street and (2) it is not paved to city
4 standards, because it has not yet been improved to meet the recommendations in the city's
5 Master Transportation Plan. The issue as framed is primarily one of interpretation. In the
6 absence of a necessary interpretation, LUBA may remand the decision for interpretation or
7 interpret the relevant local provisions in the first instance. ORS 197.829(2); *Opp v. City of*
8 *Portland*, 153 Or App 10, 955 P2d 768 (1998). Because the interpretational issue is relatively
9 straightforward, and remand is not required for other reasons, we see no purpose in
10 remanding for an interpretation.

11 Contrary to petitioner's views, the second paragraph of GPDC 27.110(1) is concerned
12 with whether roads providing access to the subdivision are paved to city standards, not
13 whether those roads are owned by the city, county or state. With respect to whether Williams
14 Highway is paved to city standards, the city found that the Master Transportation Plan's
15 recommendations are not city street design standards. Petitioner does not identify any city
16 paving standards that are applicable to Williams Highway. As discussed above, the city
17 found that Williams Highway currently meets all applicable state width and pavement
18 standards. In short, petitioner is incorrect that GPDC 27.110(1) requires city ownership of
19 access, and is also incorrect that the city's Master Transportation Plan provides applicable
20 pavement standards for Williams Highway. The fact that no city pavement standards apply to
21 Williams Highway does not prevent the city from concluding, as it did, that GPDC 27.110(1)
22 is satisfied in this case, given that Williams Highway conforms to applicable state standards
23 and is connected to the city's street system.

24 The first assignment of error is denied.

1 **THIRD ASSIGNMENT OF ERROR**

2 Arroyo Drive is currently a 1,650-foot-long cul-de-sac. The proposed Morris Lane
3 connection with Arroyo Drive will create a cul-de-sac that is 170 feet longer. Petitioner
4 contends that the city cannot approve the extension of Morris Lane because the existing
5 length of the cul-de-sac exceeds the 400-foot limit established by GPDC 27.121(3).²
6 Petitioner also argues that safety concerns regarding access during emergencies will be
7 exacerbated rather than alleviated by the proposed Morris Lane/Arroyo Drive cul-de-sac. In
8 addition, petitioner disputes the city’s findings that the proposed Morris Lane/Williams
9 Highway intersection is the only access available to the property. According to petitioner,
10 Arroyo Drive could be extended to the north to connect with another city street and thus
11 permit two accesses to the property.

12 The city found that the proposed Morris Lane/Williams Highway intersection is the
13 only means of access from this subdivision to Williams Highway and, therefore, an extension
14 of the cul-de-sac length is permissible under the last sentence of GPDC 27.121(3). In
15 reaching that conclusion, the city found that the topography and types of development
16 surrounding the subject property limited street layout options. A golf course lies to the south,
17 a riparian area to the west, and wetlands to the north of the current terminus of Arroyo Drive.
18 In addition, the city found that traffic safety concerns could be lessened if only one access
19 point is directly opposite the existing Morris Lane right-of-way to the east. Finally, the city
20 found that it did not have to consider speculative alternatives in deciding whether the
21 proposed Morris Lane/Arroyo Drive cul-de-sac is the only available access.

²GPDC 27.121(3) provides:

“A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet. The cul-de-sac shall terminate with a circular turnaround. Longer cul-de-sacs may be approved if the review body determines that no other means of access is available.”

1 The city’s finding adequately articulates what it believes GPDC 27.121(3) to require,
2 and that finding is supported by substantial evidence.

3 The third assignment of error is denied.

4 **FOURTH ASSIGNMENT OF ERROR**

5 GPDC 17.413(3) provides:

6 “When one is required or proposed, the street layout [of a proposed
7 subdivision] conforms to the applicable requirements of the adopted street
8 plans, meets the requirements of [GPDC] Article 27 and other applicable
9 laws, *and best balances needs for economy, safety, efficiency, and*
10 *environmental compatibility.*” (Emphasis added.)

11 Petitioner contends that, for the reasons stated in the first three assignments of error,
12 the city cannot demonstrate that GPDC 17.413(3) is satisfied. In addition, petitioner contends
13 that the city’s decision should be reversed or remanded because the city failed to adopt
14 findings to address issues petitioner and others raised below with regard to the safety and
15 efficiency of the proposed street layout.

16 During the proceedings before the city, petitioner and others testified that traffic on
17 the segment of Williams Highway adjacent to the subject property travels much faster than
18 the posted speed limit. Opponents also cited accident statistics from the vicinity to show that
19 additional vehicles accessing Williams Highway from the proposed subdivision will
20 exacerbate an existing traffic safety problem caused by multiple turning movements on a
21 busy stretch of road. There was testimony that the existing unsignalized intersection at
22 Arroyo Drive and Williams Highway is inefficient because during peak hours vehicles are
23 queued on Arroyo Drive, waiting for an opportunity to turn onto the highway. Petitioner
24 contends that this testimony leads to the conclusion that the proposed subdivision will be *less*
25 *efficient* than the existing street layout and that improvements to Williams Highway are
26 necessary before the subdivision may be approved.

27 With regard to safety concerns, petitioner cites to testimony where opponents stated
28 that excessively long cul-de-sacs can be dangerous, as an emergency such as a fire or traffic

1 accident located at the entrance of the cul-de-sac will trap the interior residents for the
2 duration of the emergency. Petitioner contends that the greater the length of the cul-de-sac,
3 the greater the number of people who could be affected by the lack of access during the
4 emergency.

5 The city's findings explain that the city interprets GPDC 17.413(3) to require an
6 examination of alternative access designs, and a determination that of the designs examined,
7 the selected design "best balances needs for economy, safety, efficiency, and environmental
8 compatibility." In one alternative, intervenors proposed to access Williams Highway from
9 both Arroyo Drive and the Morris Lane extension and to add a short cul-de-sac off of Morris
10 Lane that extended west onto the riparian area to the west of the subject property. In the
11 second alternative, intervenors proposed to retain the entrance to the subdivision at Arroyo
12 Drive, but the proposed internal roads retained the cul-de-sac that impacts the western
13 riparian area. The third alternative connects Arroyo Drive with Morris Lane, provides for
14 access to Williams Highway from Morris Lane, and eliminates the western cul-de-sac
15 terminus of Morris Lane. The city relies on the closure of the Arroyo Drive/Williams
16 Highway intersection to vehicular traffic to alleviate some of the traffic safety problems
17 associated with a secondary access road being located at the bottom of a relatively steep
18 grade, with limited sight visibility and braking distances. The city also relies on the
19 establishment of a four-way intersection at Morris Lane and Williams Highway to minimize
20 conflicting turning movements. The findings also point to a new pedestrian/bicycle access to
21 the subdivision that will separate those forms of transportation from vehicular traffic for a
22 short distance. With regard to the length of the cul-de-sac and the effect the single access
23 would have on residents of the cul-de-sac, the city concluded that the location of the subject
24 property limited the number of available accesses to Williams Highway to one access and,
25 therefore, there is no other access to the subdivision. In addition, the city concluded that the
26 safety concerns arising out of an extended cul-de-sac were not as great as those associated

1 with having more than one access onto Williams Highway. For all of these reasons, the city
2 concluded that the third alternative is the safest alternative.

3 The city's findings cite many of the same facts stated above in concluding that the
4 proposed street layout is the most efficient of the three alternatives. The elimination of the
5 western short cul-de-sac results in a continuous road through the proposed subdivision and
6 the Allen Creek Subdivision and eliminates intersection conflicts that existed in two of the
7 three alternatives. The intersection at Morris Lane and Williams Highway will provide a
8 four-way intersection that reduces traffic conflicts and provides greater intervals between
9 nearby intersections on Williams Highway. The city also concluded that more efficient
10 pedestrian and bicycle travel could be achieved by shortening travel distances.

11 The findings set out the standard, identify the facts, and conclude from those facts
12 that the proposed street layout "best balances the need for economy, safety, efficiency and
13 environmental capability." *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). The
14 findings also respond to the issues raised in the testimony before the city. Those findings are
15 supported by substantial evidence. The city is not required to do more.

16 The fourth assignment of error is denied.

17 The city's decision is affirmed.