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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

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3 BRUCE M. PHILIPPI and)
RON BOCHSLER,)
4)
Petitioners,)
5)
vs.)
6 THE CITY OF SUBLIMITY,)
7)
Respondents.)

LUBA No. 82-050
FINAL OPINION
AND ORDER

8
9 Appeal from the City of Sublimity.

10 M. Chapin Milbank, Salem, filed the Petition for Review and
11 argued the cause on behalf of Petitioners. With him on the
brief were Schlegel, Milbank, Jarman & Hilgemann.

12 James D. Tiger, Stayton, filed the brief and argued the
13 cause on behalf of Respondent. With him on the brief were
Duncan & Tiger.

14 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
15 participated in this decision.

16 REMANDED 11/01/82

17 You are entitled to judicial review of this Order.
18 Judicial review is governed by the provisions of Oregon Laws
19 1979, ch 772, sec 6(a).
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1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioners appeal the City of Sublimity's denial of their
4 request to subdivide a ten acre tract into 34 parcels.¹

5 Petitioners contend the city's decision should be reversed
6 for two reasons:

- 7 1. "The City of Sublimity has no plan or standard by
8 which open, unused land, zoned residential may be
9 converted to subdivision use. Any denial of a
10 request which otherwise meets all published
11 criteria is therefore required to be approved."
12 2. "The findings of fact are inadequate to support a
13 denial based on non-compliance with the
14 comprehensive plan."

15 FACTS

16 Petitioners requested to subdivide a ten acre parcel
17 situated in the northeast corner of the City of Sublimity in an
18 area designated in the comprehensive plan and zoned SFR (single
19 family residential). The city's comprehensive plan, zoning
20 ordinance and subdivision ordinance have been acknowledged by
21 LCDC as in compliance with the goals.

22 The city's order of denial is premised on the assumption
23 that numerous statements contained in the comprehensive plan
24 constituted the standards by which the applicants' request
25 should be reviewed. The requirement that subdivisions be
26 reviewed for conformance to the city's comprehensive plan is
27 contained in the city's subdivision ordinance. The subdivision
28 ordinance provides that if an application is not consistent

1 with the provisions and intent of the comprehensive plan, or if
2 it is not necessary and proper for the orderly growth of the
3 city, the application may be denied. City of Sublimity
4 Subdivision Ordinance, Section 6.01. The city's findings cite
5 the following statements from the comprehensive plan (CP) as
6 relevant to its review of the applicants' subdivision request:

7 "Encourage the location of housing to minimize the
8 consumption of prime agricultural land and other areas
9 of natural resource that contribute to the community's
10 rural character." CP at 34, Finding 24.

11 "Land which is inside the city limits and urban growth
12 boundary that is in agricultural use shall remain in
13 agricultural use until it is needed for urbanization
14 and can be provided with urban facilities." CP at 11,
15 Finding 25.

16 "The city shall encourage development plans that
17 provide for preservation of open space areas." CP at
18 12, Finding 26.

19 "'Leap-frog' development passes over vacant land to
20 use outlying parcels that may be less expensive to
21 acquire but creates a situation that prematurely takes
22 agricultural land and open space out of production.
23 Not only is this an inefficient use of land but an
24 unattractive use as well. Therefore, the following
25 policy was adopted:

26 "Residential development shall be encouraged to
utilize vacant parcels of bypassed land in order
to achieve a more compact community." CP at 34,
Finding 27.

"Locate residential development only where adequate
public services and facilities can be economically
provided." CP at 35, Finding 28.

"Preserve open space area to enhance the quality of
life and protect natural resources." CP at 38,
Finding 29.

"Discourage the premature, unnecessary and wasteful
conversion of valuable agricultural land to city
uses." CP at 38, Finding 30.

1 "Ensure available space for varying land uses through
2 the provision of agricultural uses and interim open
spaces." CP at 38, Finding 31.

3 "Encourage development of land within the gravity flow
4 areas." CP at 50, Finding 32.

5 "Establish a street system which is consistent with
6 orderly growth and minimizes conflicts with adjacent
land uses." CP at 63, Finding 33.

7 "Provide a circulation system which is safe and
8 efficient for both vehicle users and pedestrians." CP
at 63, Finding 34.

9 The city found, based on its comprehensive plan, that 287
10 single family residential units would be required within the
11 City of Sublimity between 1979 and the year 2000 in order to
12 meet 43% of the city's projected growth. The remaining 50% of
13 the projected growth is, according to the city's comprehensive
14 plan, to be met by multi-family housing. The city found that
15 it has an inventory of 136 approved building lots available for
16 development and home construction. The city found these lots
17 were closer to the core of the city than the proposed lots and
18 that this inventory was sufficient to meet the city's housing
19 needs through 1985 - 1990.

20 The city found the applicants' request would require
21 utilization of "prime agricultural land" which has been farmed
22 for "not less than 25 years."

23 The city found that the subdivision's sewer needs would
24 have to be served by a pump station. The city found that Berry
25 Street, the primary access street into downtown Sublimity, was
26 paved to a width of 18 feet, served daily foot, bicycle and

1 truck traffic, and had neither curbs or sidewalks. The city
2 found no improvements to Berry Street were scheduled and that
3 the street has curved, hilly terrain and is adjacent to school
4 playgrounds.

5 The city addressed school facilities and found that it had
6 a current enrollment of 207 elementary school pupils (grades 1
7 through 8). The school district owns a building which can
8 accommodate 150 students with the remaining students housed in
9 buildings leased on a year to year basis. The city found that
10 obtaining voter approval for funds to provide additional space
11 for students was "currently impossible in view of the present
12 economy." The city disagreed with the applicants' statement of
13 impact on the school system (8 students for 34 units), because
14 the applicants' statement was based on a city wide average of
15 students per household (roughly .25), rather than on
16 "demographic data such as ages, sizes and growth of families
17 residing in new subdivision areas."

18 From the foregoing findings of fact, the city made the
19 following "Conclusions Of Law:"

20 "1. The comprehensive plan calls for the
21 encouragement of residential development on vacant
22 parcels of bypassed land in order to achieve a more
23 compact community and avoid 'leap-frog' development.
24 This policy is designed to create a community of
25 ordered growth and prevent the premature taking of
26 productive agricultural land. Public testimony
indicated that this subdivision is located at the far
northeast end of the City; that 136 subdivided lots
are currently available for development closer to the
core of the City; that other buildable lots would be
bypassed; that the current approved subdivisions are
creating random 'island' residential development

1 throughout the City; that the land in question has
2 been actively farmed for 25 years with the last crop
3 being harvested in 1981. Therefore, the application
4 does not comply with the aforementioned policy of the
5 Comprehensive Plan.

6 "2. The Comprehensive Plan also directs that
7 consumption of prime agricultural land shall be
8 minimized to maintain the community's rural
9 character. As noted above, the land is good farm land
10 and has been actively farmed for years. This combined
11 with the fact that there is currently a sufficient
12 inventory of available lots indicates that this land
13 is not needed and its premature development would be
14 contrary to the stated policies of the City. That the
15 development would be incompatible with the existing
16 area. The James M. Heater letter of March 8, 1982,
17 states that 'it is highly unlikely that we (Heater)
18 would be able to summer fallow or carry on the normal
19 ground preparation necessary for agricultural crops
20 without severe complaints and problems with adjoining
21 land owners. The same is true for pesticide and
22 herbicide application by helicopter.' This is
23 precisely what was alluded to in the previous
24 testimony of Robert Schumacher concerning the
25 incompatibility of the proposed subdivision with the
26 farm zone directly across the road which would require
at least a sound barrier.

"3. Testimony of the school district superintendent
indicates that the school currently has a rapidly
rising enrollment of 207 students in grades 1-8 and
that the school has district owned space for only 150
students. Any significant development would place the
school over capacity since the leased facilities are
tenuous. The Council concludes that with the present
inventory of lots available that the school is without
sufficient resources to provide proper facilities for
educating the young people. The impact of the
proposed subdivision cannot be considered in
isolation. The projected impact of both the present
inventory of lots and proposed subdivision upon the
school must be considered as well. That school
district enrollment is impacted by student increase
outside as well as within the City.

4. It is a goal of the City to 'provide a circulation
system which is safe and efficient for both vehicle
users and pedestrians.' The proposed subdivision
calls for four to six driveways on 135th Avenue (also
known as Berry Street). Testimony indicated that the

1 street has a 18 [sic] paved width and is heavily used
2 by residential, commercial and industrial vehicles.
3 The hilly terrain and sharp curves of the road make
4 safety a problem unless the road could be widened and
5 properly maintained. As noted in the Comprehensive
6 Plan, Berry Street is a county owned and maintained
7 road. The road experiences moderate levels of truck
8 traffic and needs to be designed and improved to
9 accomodate [sic] this mode of traffic. The street
10 commissioner noted that the county has no plans for
11 widening or maintaining the road because of monetary
restraints. The City also does not have the financial
capability to improve the street. The applicants'
planning report traffic count is inaccurate since it
was taken at a northern point and not within the main
flow of traffic. Despite the engineering data
submitted by applicants, Council finds that as a
practical matter the current condition, location,
maintenance, terrain, and traffic patterns of 135th
Avenue make it a traffic hazard and make it neither
efficient nor safe.

12 "5. Although mere public remonstrance is not
13 sufficient to base a land use decision on, it should
14 be noted that all public testimony was in opposition
to the application. The public voiced many factual
reasons such as:

- 15 "a) School overcrowding
- 16 "b) Street safety
- 17 "c) Water service problems
- 18 "d) 'Leap-frog' development
- 19 "e) Growth impact on the City
- 20 "f) Noise problems with adjacent farming
21 operation.

22 "6. The Comprehensive Plan calls for encouraging
23 development with [sic] the gravity flow areas of the
24 City for more efficient sewage disposal. This area
would require the use of a pump station for sewage
purposes.

25 "7. Section 6.01 of the City Subdivision Ordinance
26 provides that if the application is not consistent with
the provisions and intent of the Comprehensive Plan or
if it is not necessary and proper for the orderly

1 growth of the City the application may be denied. As
2 mentioned above several elements conflict with the
3 intent of the Comprehensive Plan in prematurely taking
4 farmland out of development, evidencing 'leap-frog'
5 development, and in not providing safe streets.
6 Therefore, the application fails to meet Section 6.01
7 of the Subdivision Ordinance."

8
9 OPINION

10 1. First Assignment of Error

11 Petitioners' first assignment of error raises two issues:

12 (1) what are the applicable standards for approval of a
13 subdivision request within the City of Sublimity where the
14 request conforms to the zone designation for a particular
15 parcel of land, and (2) are those standards adequate to apprise
16 an individual of what is required in order to obtain tentative
17 plat approval?

18 To answer the first issue, we start with the Court of
19 Appeals opinion in Philippi v City of Sublimity, supra,
20 (Philippi I). The Court enunciated the following test:

21 "Only those general policies contained in the
22 comprehensive plan that are consistent with the plan
23 designation and zoning classification⁷ may be used
24 at the subdivision approval stage to regulate
25 development of urbanizable land. It must be
26 conclusively presumed that general policies stated in
the comprehensive plan have been considered and found
inapplicable by the time property is zoned for a use
that is inconsistent with the general policy. That is
to say, the general policy to preserve land presently
in agricultural use for that use must have been
considered and found inapplicable when it was zoned
for single family residential use. It may be that
there are other impediments to approval of this
subdivision that are properly governed by specific
requirements contained in the subdivision ordinance,
or that other general policies can be validly applied
in such a way as to require modification of the

1 proposed development or to postpone it.***" Slip Op
2 at 5. (Footnote omitted).

3 Applying the above enunciated test, the Court of Appeals held
4 as follows:

5 "We hold only that a general policy in a comprehensive
6 plan favoring retention of agricultural land within an
7 acknowledged UGB may not be applied to preclude
8 development on land designated and zoned for
9 residential use." Slip Op at 7.

8 The Court specifically reserved the question of whether
9 policies such as those favoring retention of open space or
10 concentration of development near the city core, could be
11 validly applied by the City of Sublimity.

12 We interpret the foregoing language from the Court of
13 Appeals opinion in Philippi I as saying that general policies
14 in the city's plan which, if applied, would "favor" a different
15 use of the property than allowed within the zone may not be
16 applied in review of a specific subdivision request which
17 conforms to the zoning designation on the property. Plan
18 policies which would not require a different use, but which may
19 delay or modify the use allowed by the zoning ordinance, may be
20 applied. Using this rule, and the holding in Philippi I, we
21 conclude that those policies in the comprehensive plan
22 identified in the city's findings number 24, 25, 26, 29, 30 and
23 31 are not applicable in a subdivision review because those
24 policies favor a use other than the residential use for which
25 the property was zoned.
26

1 Having decided that some policies of the plan cannot, under
2 the reasoning in Philippi I, be applied to a subdivision
3 request does not fully solve the question of which of the
4 remaining policies identified by the city are the applicable
5 standards. Ultimately, what standards are applicable depends
6 upon what the drafters of the comprehensive plan intended. The
7 city, in this subdivision review, has said the statements
8 identified in findings 27, 28, 31, 33 and 34 (see pages 3-4,
9 supra) are applicable to a specific land use decision such as a
10 subdivision request. The statements expressed in findings 27,
11 28, and 32 are described in the comprehensive plan as
12 "policies" while the statements set forth in findings 33 and 34
13 of the city's order are described in the comprehensive plan as
14 "goals." The city's comprehensive plan distinguishes between
15 "goals" and "policies" as follows:

16 **"Goals:** Are broad statements of conditions to be
17 achieved. They are means to safeguard health and
18 welfare, protect the environment and enhance the
economy. They are generally independent of changing
technology.

19 **"Policies:** Are specific guidelines for action
20 directed toward the achievement of the goals in this
21 comprehensive plan. Land use decisions made by the
city shall be based on the policies of the plan." CP
at 11. (Emphasis added).

22
23 The proper interpretation of the City of Sublimity's
24 comprehensive plan, given the above, is that "goals" are to be
25 used in refining policy, such as in adopting guidelines or even
26 deciding what provisions should be contained within a

1 subdivision or zoning ordinance. "Policies," on the other
2 hand, are the standards by which individual land use decisions,
3 such as a subdivision request, are to be reviewed. Findings 33
4 and 34 of the city's order in this case are not restatements of
5 "policy" contained in the city's comprehensive plan but are
6 restatements of "goals" contained in the city's plan. We do
7 not believe the plan intended that these goals, calling for
8 establishment of a safe and efficient circulation system and a
9 street system consistent with orderly growth, were to be
10 applied when reviewing a specific subdivision request.

11 We are left, then, with three "policies" which we conclude
12 are the plan standards for this subdivision request. Those
13 policies are the following:

14 "Residential development shall be encouraged to
15 utilize vacant parcels of bypassed land in order to
16 achieve a more compact community." CP at 34, Finding
17 27.

18 "Locate residential development only where adequate
19 public services and facilities can be economically
20 provided." CP at 35, Finding 28.

21 "Encourage development of land within the gravity flow
22 areas." CP at 50, Finding 32.

23 Having decided which policies are applicable to approval of
24 a subdivision request, we focus our attention now on whether
25 those standards are adequate to apprise an individual of what
26 is required in order to obtain tentative plat approval. The
standards are general, to be sure, but general standards are
not necessarily defective. In Commonwealth Properties v

1 Washington County, 35 Or App 387, 582 P2d 1384 (1978), the
2 Court of Appeals said that it is not improper for a governing
3 body, in review of a subdivision request, to apply general
4 policies contained in the comprehensive plan. The Court
5 recognized that policies in a comprehensive plan will be
6 general in nature. The Court cautioned, however, that a denial
7 of a request for tentative subdivision approval cannot be
8 couched in language as broad as the plan itself. Rather, the
9 responsibility on the part of a governing body in denying a
10 request for tentative subdivision approval is to explain to the
11 applicant not only why the subdivision request did not meet the
12 applicable plan policies but also to inform the applicant as to
13 what, if anything, the applicant could do to make the request
14 conform to the policies. Thus, the Court concluded:

15 . "****Because the considerations involved in the
16 approval of a proposed subdivision plat are complex
17 and are inextricably intertwined with the broadly
18 worded policies enunciated in the county comprehensive
19 plan, it is necessary for the county, at some time, to
20 announce to a subdivider both which plan policies will
21 govern the granting of such approval and specifically
22 how those policies will be applicable to the project
23 in question. We assume that in many instances
24 planning authorities will communicate, at least
25 preliminarily, much of this information to subdividers
26 on an informal basis prior to the hearing on tentative
approval. In any event, such information must be
provided to a subdivider at the time at which the
county acts on the request for tentative approval of
the proposed plat. The grounds for the decision at
that time will serve as the standards by which the
planning authority later acts to grant or to deny
final approval of a proposed subdivision. In the case
of a denial of tentative approval, these grounds must
be articulated in a manner sufficiently detailed to
give a subdivider reasonably definite guides as to
what it must do to obtain final plat approval, or

1 inform the subdivider that it is unlikely that a
subdivision will be approved." 35 Or App 387 at 400.

2
3 Our job, under the reasoning in Commonwealth, is to
4 determine whether the reasons expressed in the city's decision
5 are adequate to inform the applicant what it must do to obtain
6 tentative subdivision approval. We have already concluded that
7 certain of the statements in the plan applied by the city were
8 inapplicable. As a result, Conclusions Of Law, No. 1 (in
9 part), 2 and 4 which relate to inapplicable policies or "goals"
10 of the city's plan cannot be relied upon to support a denial of
11 this subdivision request. We find that the remaining
12 conclusions of law which relate to applicable policies of the
13 comprehensive plan are inadequate to inform the applicants for
14 the subdivision request of what is required or expected of them
15 in order to obtain tentative subdivision plat approval.
16 Conclusion Of Law No. 1 in the city's order addresses the
17 comprehensive plan policy which provides:

18 "Residential development shall be encouraged to
19 utilize vacant parcels of bypassed land in order to
achieve a more compact community." CP at 34.

20
21 In its conclusion, the city noted this policy has a twofold
22 purpose: (1) to create a community of ordered growth, and (2)
23 to prevent the premature taking of productive agricultural
24 land. Based upon the Court of Appeals holding in Philippi I,
25 we conclude that portion of the policy designed to prevent the
26 premature taking of productive agricultural land is

1 inapplicable. The city erred to the extent its denial was
2 based on a conclusion that approval of this subdivision would
3 result in the premature taking of productive agricultural
4 land. However, independent of the premature taking of
5 agricultural land, the city concluded that if it were to
6 approve the subdivision the city would not be encouraging
7 residential development on vacant parcels of bypassed land and,
8 thus, not achieving a more compact community and avoiding
9 leap-frog development.² The conclusion does not tell the
10 applicants, however, what the applicants must do or what facts
11 must exist in order for the applicants to satisfy this policy
12 in the plan. In other words, the city does not tell the
13 applicants when, if ever, approval of this subdivision request
14 will be consistent with the policy of achieving a compact
15 community. The city was required to so inform the applicants
16 as the Court of Appeals stated in Commonwealth Properties v
17 Washington County, supra:

18 "***An applicant, be he seeking a liquor license or a
19 subdivision, should not be put in a position of having
20 his success or failure determined by guessing under
which shell lies the pea.***" 35 Or App 387 at 399.

21 We hold, therefore, that Conclusion Of Law No. 1 is inadequate,
22 as written, to support denial of the applicants' subdivision
23 request.

24 Conclusion Of Law No. 3 addresses the impact of this
25 subdivision, if approved, on school facilities within the City
26 of Sublimity. We presume this conclusion was intended to

1 address the policy that residential development be located only
2 where adequate public facilities and services can be
3 economically provided. We do not believe conclusion number 3
4 shows this policy would be violated by approval of the
5 subdivision request. First, we seriously question whether the
6 policy that residential development be located only where
7 adequate public facilities and services can be economically
8 provided was intended to require an analysis of school
9 facilities. This policy speaks not to the timing of
10 residential development but the location of that development.
11 Provision of schools within the City of Sublimity, however, is
12 not a "location" issue because regardless of where development
13 is located within the city, students in grades 1 - 8 who will
14 come from such development and who wish to attend public
15 schools will attend Sublimity's one elementary school. Thus,
16 the impact on schools from development within the City of
17 Sublimity will be the same regardless of where that development
18 is located.

19 Our second concern with the city's conclusion is that it
20 tells the applicant nothing about what, specifically, must be
21 done in order for the subdivision to be favorably reviewed by
22 the city. Under the reasoning in Commonwealth v Washington
23 County, supra, the city has a duty to do more than simply say
24 that school overcrowding is a potential problem. See also:
25 Holmstrom v Marion County, 3 Or LUBA 309 (1981). For these
26 reasons, the city's third conclusion of law is not adequate to

1 form a basis for denial.

2 The city's fifth conclusion of law is a statement that all
3 public testimony was in opposition to the request for
4 subdivision approval and a statement as to the issues to which
5 the public opposition was addressed. As such, this is not a
6 conclusion which can support denial of the subdivision request.

7 The city's sixth conclusion of law states that the
8 comprehensive plan "encourages development within the gravity
9 flow areas of the city for more efficient sewage disposal" and
10 that the subdivision "would require the use of a pump station
11 for sewage purposes." If the city is saying in this conclusion
12 that no development can be allowed because development will
13 require a pump station, then we believe the city has either
14 improperly construed this plan policy or the policy must be
15 said to be inapplicable. The property is zoned for single
16 family residential development and designated for residential
17 development in the plan. In Philippi I, the Court of Appeals
18 said only those general plan policies which are consistent with
19 the plan designation and zoning classification may be used at
20 the subdivision stage to control development. If the plan
21 policy to encourage residential development within the gravity
22 flow area means no development outside the gravity flow area,
23 this policy is inapplicable to this subdivision request because
24 the policy would preclude development. Precluding development
25 is inconsistent with the plan and zone designation. If the
26 plan policy does not mean development is precluded outside the

1 gravity flow area, then the city, under Commonwealth v
2 Washington County, supra, has a duty to inform the applicant
3 why his subdivision request does not comply with this policy
4 and what, if anything, the applicant can do to make the request
5 comply.

6 Petitioners' first assignment of error is sustained.

7 2.. Second Assignment of Error

8 The heading under petitioners' second assignment of error
9 is:

10 "The findings of fact are inadequate to support a
11 denial based on non-compliance with the city's
12 comprehensive plan."

13 The "argument" section underneath the statement of petitioners'
14 second assignment of error is, to say the least, jumbled.
15 Petitioners state that some findings are lacking in substantial
16 evidence and list the findings. Petitioners state that some
17 findings are "redundant, repetitive or conclusory" and list the
18 findings which fit this category. Petitioners argue that the
19 findings of fact are inadequate because they fail to set forth
20 the reasons why certain evidence was believed over other,
21 conflicting evidence and that this is error as we pointed out
22 in our opinion in Philippi v City of Sublimity, 4 Or LUBA 291
23 (1982).

24 With the exception of the question of substantial evidence,
25 we believe our discussion under petitioners' first assignment
26 of error should answer the concerns raised by petitioners in

1 their second assignment of error. Findings for which the
2 petitioners believe there is no substantial evidence are
3 addressed to agricultural lands, schools, and traffic safety.
4 We need not address whether substantial evidence exists in the
5 findings about agricultural lands and traffic safety because,
6 as explained earlier, these findings cannot form the basis for
7 denial of petitioners subdivision request.

8 We have reviewed the city's finding of fact concerning
9 school facilities and conclude that those findings of fact are
10 supported by substantial evidence in the record. The city's
11 conclusion that "any significant development would place the
12 school over capacity since the leased facilities are tenuous"
13 is certainly a reasonable conclusion. The city presently has
14 57 students more than it can accommodate with the facilities
15 which the school district "owns." In addition, school
16 facilities needed to house additional students are leased on a
17 year to year basis. That school overcrowding in Sublimity's
18 elementary school is a potential problem is supported by the
19 evidence in the record as well as the city's findings of fact.
20 However, as explained in answer to petitioners' first
21 assignment of error, the city's duty does not end by merely
22 concluding that school overcrowding is a potential problem.
23 Petitioners' second assignment of error is allowed in part and
24 denied in part.

25 Petitioners have requested that we reverse the city's
26 denial of their subdivision request and that we grant the

1 subdivision. We have no authority to grant petitioners'
2 subdivision request. That authority rests with the City of
3 Sublimity. Our authority is limited to reviewing the adequacy
4 of the city's decision. We have concluded that the city's
5 denial of petitioners' request for a subdivision approval is
6 inadequate because it fails to explain to the applicants under
7 what circumstances, if any, their request for tentative
8 subdivision approval will be granted. Under these
9 circumstances, our authority is limited to remanding this
10 decision to the City of Sublimity for adequate findings and
11 conclusions. We so rule.

12 Remanded.

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FOOTNOTES

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The city's first decision denying the request was appealed to this Board and remanded for inadequate findings. Philippi v City of Sublimity, 4 Or LUBA 291 (LUBA No. 81-078, 1982). Our decision was appealed to the Court of Appeals. The Court reversed and remanded the case to us, although for a reason other than that we erred in concluding the city's findings were inadequate. Philippi v City of Sublimity, ___ Or App ___ (CA A23238, Slip Op 9/15/82). This case is discussed more fully, infra, as the holding in the case has a significant bearing on our disposition of this appeal.

2
We note no issue has been raised as to whether the city can refuse residential development based upon a policy which encourages rather than mandates the utilization of vacant parcels of bypassed land.