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

SOUTHWOOD HOMEOWNERS ASSOCIATION)
and WILLIAM GATES,)
)
Petitioners,)
)
vs.)
)
CITY OF PHILOMATH,)
)
Respondent,)
)
and)
)
BETTY ELLIS and GARY REMINGTON,)
)
Intervenors-Respondent.)

LUBA No. 90-103
FINAL OPINION
AND ORDER

Appeal from City of Philomath.

Bill Kloos, Eugene, and George B. Heilig, Corvallis, filed the petition for review. With them on the brief was Johnson and Kloos. Bill Kloos argued on behalf of petitioners.

Scott A. Fewell, Corvallis, filed the response brief and argued on behalf of respondent.

Edward Schultz, Albany, represented intervenors-respondent.

HOLSTUN, Referee; Kellington, Chief Referee; Sherton, Referee, participated in the decision.

REMANDED 06/12/91

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

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city council decision approving a
4 tentative plan for a 41 lot subdivision located within the
5 city's urban growth boundary.

6 **JURISDICTION**

7 This appeal is before the Board on remand from the
8 Court of Appeals. Southwood Homeowners v. City Council of
9 Philomath, 106 Or App 21, ___ P2d ___ (1991). In Southwood
10 Homeowners Assoc. v. City of Philomath, ___ Or LUBA ___
11 (LUBA No. 90-103, November 15, 1990), we determined that we
12 lacked jurisdiction over this matter and transferred this
13 appeal to the Benton County Circuit Court. In reversing and
14 remanding our decision, the Court of Appeals determined we
15 incorrectly interpreted and applied the exception to our
16 review jurisdiction provided by ORS 197.015(10)(b)(B).¹
17 The Court of Appeals held that under ORS 197.015(10)(b)(B),
18 we must consider the merits of petitioners' allegations that
19 the challenged subdivision violates applicable land use
20 standards in determining whether the exception to our

¹ORS 197.015(10)(b)(B) provides that land use decisions do not include a local government decision:

"Which approves, approves with conditions or denies a subdivision or partition, as described in ORS chapter 92, located within an urban growth boundary where the decision is consistent with land use standards[.]"

1 jurisdiction provided by that section applies.² Because we
2 conclude below that the challenged decision violates
3 applicable land use standards, the challenged decision is
4 not exempt from our review jurisdiction under ORS
5 197.015(10)(b)(B).

6 **FACTS**

7 Southwood Park Addition was platted in 1960. The First
8 Addition to Southwood Park was platted in 1978. The Second
9 Addition to Southwood Park, containing all remaining lots,
10 was granted tentative plan approval in 1978. However, the
11 subject property was not included in the portion of the
12 Second Addition that was platted in 1981, and under City of
13 Philomath Subdivision Ordinance (PSO) § 2.070 the tentative
14 plan for the subject property must be resubmitted to the
15 planning commission for approval. The tentative plan
16 approved by the city "is of the same design and
17 configuration as initially proposed in 1978." Record 1.

18 The City of Philomath Planning Commission approved the
19 subject tentative plan with conditions. The planning
20 commission's decision was appealed to the city council; and,
21 following a de novo public hearing, the city council denied
22 the appeal and affirmed the planning commission's decision.

²In Southwood, supra, we interpreted ORS 197.015(10)(b)(B) to apply where the challenged partition or subdivision decision simply applies existing land use standards and no amendments to existing land use standards are required. See also Meadowbrook Development v. City of Seaside, ___ Or LUBA ___ (LUBA No. 90-060, September 18, 1990); Parmenter v. Wallowa County, ___ Or LUBA ___ (LUBA No. 90-034, June 11, 1990).

1 This appeal followed.

2 **FIRST ASSIGNMENT OF ERROR**

3 "The tentative plat fails to meet the design
4 standards of the code for blocks; the City has
5 misapplied the law and made a decision that is
6 contrary to law."

7 PSO § 7.030 regulates the length, width and shape of
8 lots. PSO § 7.030(2) provides, in part, as follows:

9 "Size. No block shall be less than 600 feet in
10 length. No block shall be more than 1,000 feet in
11 length between street corner lines unless it is
12 adjacent to an arterial street or unless the
13 topography or the location of adjoining streets
14 justified an exception. * * *" (Emphasis added.)

15 There is no dispute that the block including lots 1
16 through 20 shown on the tentative plan approved by the
17 planning commission and city council exceeds 1,000 feet.³
18 The city council adopted the same conditions of approval
19 that were imposed by the planning commission, including the
20 following:

21 "4. The layout for the subdivision shall be
22 substantially the same as shown on the
23 tentative plan. Major deviations shall be
24 reviewed by the Planning Commission in a
25 public hearing." Record 62.

26 "14. Blocks shall conform to the standards in
27 Section 7.030 of the [PSO]:

³Petitioners contend lots 1 through 20 have a total uninterrupted frontage of 1,900 feet. Petition for Review 3. Petitioners argue the requirement of PSO § 7.030(2) could be met by extending 34th Place to Benton View Drive so that it would provide a connecting roadway between Benton View Drive and Southwood Drive. As approved by the city, 34th Place terminates in a cul de sac a short distance south of lot 9.

1 "No block shall be less than 600 feet in
2 length.

3 "No block shall be more than 1000 feet in
4 length." Id.

5 Petitioners contend the city failed to adopt any
6 findings explaining why the approved block in excess of
7 1,000 feet shown on the tentative plan complies with PSO §
8 7.030(2). Although PSO § 7.030(2) provides that blocks in
9 excess of 1000 feet may be approved where "topography or the
10 location of adjoining streets justifies an exception,"
11 petitioners contend the required justification is not
12 presented in the city's findings. Petitioners contend the
13 decision must be remanded so the city can either adopt
14 findings explaining why a block in excess of 1,000 feet is
15 justified under PSO § 7.030(2) or require that the tentative
16 plan be revised to propose a block falling within the
17 dimensions specified by that section of the PSO.

18 Citing Storey v. City of Stayton, 15 Or LUBA 165
19 (1986), respondent first contends that because petitioners
20 argue the city council adopted no findings addressing PSO §
21 7.030(2), and the city did conclude that all relevant
22 approval criteria are met, the first assignment of error
23 should be rejected.

24 In Storey, unlike the present appeal, the city adopted
25 findings specifically addressing the disputed criteria.
26 Here, the only findings identified by respondent are general
27 conclusions.

1 "* * * In this case, there was substantial
2 evidence in the record for the Planning
3 Commission, and now for this Council, to determine
4 that the proposal meets the subdivision and zoning
5 ordinances." Record 4.

6 Because the city adopted no findings specifically addressing
7 PSO § 7.030(2), we have no way to determine why the planning
8 commission or city council believed a block in excess of
9 1,000 feet is justified.⁴ Petitioners specifically raised
10 the issue of compliance with the 1,000 foot block
11 requirement of PSO § 7.030(2) below. Therefore, findings
12 addressing that issue were required, and the city erred by
13 failing to adopt such findings. City of Wood Village v.
14 Portland Metro Area LGBC, 48 Or App 79, 87, 616 P2d 528
15 (1980); Hillcrest Vineyard v. Bd. of Comm. Douglas County,
16 45 Or App 285, 293, 608 P2d 201 (1980); McConnell v. City of
17 West Linn, 17 Or LUBA 502, 519 (1989).

18 Finally, respondent contends we may overlook the city's

⁴The planning staff report submitted to the planning commission states as follows:

"The general design for the blocks is acceptable. In regards to the size of the blocks, Section 7.030(2) allows an exception to the 1,000 feet length when the topography or location of adjoining streets warrants an exception. In this case, the block created to include Lots 1 through 20 exceeds 1,000 feet due to the previously constructed roads." Record 81.

As far as we can tell, the staff report was not adopted by either the planning commission or the city council as findings in support of its decision. However, even if the above quoted portion of the staff report had been adopted as findings, it does not explain what it is about the previously constructed roads that justifies a block in excess of 1,000 feet.

1 failure to adopt findings justifying the block in excess of
2 1,000 feet under ORS 197.835(9)(b), because the record
3 contains evidence clearly showing the standard is met.⁵ We
4 do not agree. Although the city may well be able to adopt
5 findings that justify a decision to allow approval of a
6 block in excess of 1000 feet under PSO § 7.030(2), there is
7 nothing in the portions of the record cited by the parties
8 that clearly supports such a decision.

9 The first assignment of error is sustained.

10 **SECOND ASSIGNMENT OF ERROR**

11 "The city's approval of the tentative plat
12 violates the code's standards for street width;
13 the City has, therefore, misapplied the law and
14 made a decision that is contrary to law."

15 Under this assignment of error, petitioners contend the
16 city's decision violates PSO § 7.020, which establishes
17 right-of-way width and street pavement width requirements.

18 **A. Waiver**

19 Respondent contends the issue petitioners assert under
20 this assignment of error was not raised below and may not be
21 considered by this Board.⁶

⁵ORS 197.835(9)(b) provides that we may overlook defective findings where "the parties identify relevant evidence in the record which clearly supports the decision * * *."

⁶ORS 197.835(2) limits the issues we may consider in reviewing a land use decision as follows:

"Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.763. A petitioner may raise new issues to the board if:

1 Although petitioners contend the issue they assert
2 under this assignment of error was raised below, we do not
3 agree. Only general concerns about the safety of the
4 proposed street system were raised. Petitioners' concerns
5 about the proposed pavement width were not "raised with
6 sufficient specificity so as to afford the [city] and the
7 parties an adequate opportunity to respond to [the] issue,"
8 as ORS 197.763(1) requires. Boldt v. Clackamas County, ___
9 Or LUBA ___ (LUBA No. 90-147, March 12, 1990), slip op 9.

10 However, petitioners also argue that the record in this
11 proceeding does not show that the city complied with the
12 requirements of ORS 197.763. Therefore, petitioners
13 contend, they are not precluded from arguing that the street
14 pavement width for Benton View Drive approved by the city
15 violates applicable PSO requirements.

16 We agree with petitioners that the local record does
17 not demonstrate the requirements of ORS 197.763 were met.
18 PSO § 7.020, which petitioners contend under this assignment
19 of error is violated by the city's decision, is not listed
20 as an applicable criterion in the notice of the city council
21 hearing.⁷ We conclude petitioners are not barred from

(a) The local government failed to follow the requirements of
 ORS 197.763 * * *

"* * * * *."

⁷ORS 197.763(3)(b) requires that notices of hearings under that section
"[[l]ist the applicable criteria from the ordinance and the plan that apply
to the application * * * [.]" PSO § 7.020 is contained in Article VII of

1 arguing that the city's decision violates the street width
2 requirement of PSO § 7.020.⁸ Neuenschwander v. City of
3 Ashland, ___ Or LUBA ___ (LUBA No. 90-068, October 19,
4 1990), slip op 18.

5 **B. PSO § 7.020 Street Width Requirements**

6 Benton View Drive is an existing improved right-of-way
7 adjoining the subject subdivision on the north. It appears
8 from the tentative plan that Benton View Drive provides
9 access to lots 1 through 12 of the proposed subdivision.
10 Mount Union Avenue adjoins the subject subdivision on the
11 east, and provides access to lots 13 through 20. PSO §
12 7.020(2) provides in relevant part:

13 "Minimum street widths. Street right-of-way and
14 roadway (curb-to-curb) widths shall be adequate to
15 fulfill city specifications * * * and, unless
16 otherwise indicated on the comprehensive plan or a
17 neighborhood plan adopted by the planning
18 commission, shall not be less than the minimum
19 widths shown in the following table * * *

20 "* * * * *." (Emphasis added.)

21 The table provided in PSO § 7.020(2) requires that minor
22 streets have a right-of-way width of 60 feet and that a 36
23 foot wide paved roadway be provided within that right-of-
24 way.

the PSO. The notice of the city council hearing only lists Articles II, III, IV and V of the PSO as applicable criteria. The record does not include the notice of the planning commission hearing in this matter.

⁸At oral argument petitioners made a variety of arguments concerning other requirements of ORS 197.763 which they believe the city failed to satisfy. We do not consider those additional arguments.

1 There is no dispute that the tentative plan as approved
2 provides adequate right-of-way width for both Benton View
3 Drive and Mount Union Avenue. However, petitioners contend
4 the decision does not impose the 36 foot paved roadway
5 requirement of PSO § 7.020(2). Instead, petitioners argue,
6 the city improperly applied the provisions of PSO § 7.020(8)
7 for half streets to allow the applicant to provide less than
8 the required 36 foot paved roadway required by PSO §
9 7.020(2).⁹

10 Benton View Drive is presently improved with a 28 foot
11 paved roadway. Mount Union Avenue is also improved with a
12 paved roadway, but we are unable to determine from the
13 record or the briefs precisely how wide the Mount Union
14 Avenue paved roadway is. Instead of requiring that the
15 pavement width of these roads be widened to 36 feet, we
16 understand the city's decision to require only 1/2 of the
17 widening to the existing pavement that would be required to
18 make the roadways 36 feet wide.¹⁰ The city's findings

⁹PSO § 7.020(8) provides, as relevant:

"Half Streets. Half streets, while generally not acceptable, may be approved where essential to the reasonable development of the subdivision or partition when in conformity with the other requirements of these regulations, and when the planning commission finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever [an existing] half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract. * * *"

¹⁰Where, as is the case with Benton View Drive and Mount Union Avenue, "public streets [are] adjacent [to] but only partially within the

1 explain the half street improvement will provide adequate
2 space for on-street parking and that such parking is not
3 needed along the largely undeveloped area on the other side
4 of these roadways from the approved subdivision.

5 We have some question whether the half street
6 provisions of PSO § 7.020(8) are intended to apply where a
7 proposed subdivision adjoins an existing improved right-of-
8 way that is substandard in some way. Assuming PSO §
9 7.020(8) may be applicable in such circumstances, the city
10 did not explain why accepting only half the roadway
11 expansion that would otherwise be required by PSO § 7.020(8)
12 is "essential to the reasonable development of the
13 subdivision" or that "it will be practical to require the
14 dedication of the other half when the adjoining property is
15 divided."¹¹ See n 9, supra.

16 However, as the above emphasized portion of PSO §
17 7.020(2) makes clear, the rights-of-way and pavement widths
18 requirements specified in the PSO § 7.020(2) table do not
19 apply if different rights-of-way or pavement widths are
20 "indicated on the comprehensive plan or a neighborhood plan

subdivision," PSO § 8.030(4) requires that such streets "shall be improved." The city apparently interprets this provision as allowing it, in appropriate circumstances, to require that a subdivider improve existing adjoining substandard streets to city standards. Record 4-5, finding 6.

¹¹PSO § 7.020(8) allows the city to divide responsibility for dedicating and improving streets between adjoining subdivisions where the circumstances described in that section exist. However, the clear intent of that section is that upon approval of the subdivisions on both sides of the right-of-way, a right-of-way and improved roadway fully complying with city standards be required.

1 adopted by the planning commission." The city adopted the
2 following finding in approving the subject tentative plan:

3 "It is a Finding of Fact that the proposed street
4 plan conforms to a plan for the neighborhood
5 previously adopted by the City Planning Commission
6 in 1978 when the tentative plat for this area and
7 the other adjoining area was approved. The
8 adopted plan, while not reflected in the
9 Comprehensive Plan represents the adopted
10 transportation plan for the area in accordance
11 with the requirements of Section 7.020[1]b of the
12 subdivision ordinance."¹² Record 5.

13 Respondent argues the above quoted finding determines
14 the previously approved plans for nearby subdivisions and
15 the tentative plan for the subject property approved in 1978
16 establish the "neighborhood plan adopted by the planning
17 commission" for purposes of PSO § 7.020(2). Respondent
18 further argues that the pavement width required by the city
19 in the challenged decision is consistent with that
20 neighborhood plan. Respondent's Brief 5.

21 Respondent cites nothing in the City of Philomath
22 Comprehensive Plan or the PSO specifically providing that

¹²PSO § 7.020(1) provides in pertinent part:

"The location, width and grade of streets shall be considered
in their relation to existing and planned streets * * *. Where
location is not shown on the comprehensive plan, the location
of streets shall * * *:

* * * * *

"(b) Conform to a plan for the neighborhood adopted by the
planning commission to meet a particular situation where
physical conditions make continuance or conformance to
existing streets impractical."

1 tentative plans or final subdivision plats, once approved by
2 the planning commission, become a "neighborhood plan adopted
3 by the planning commission" for the purposes of PSO §
4 7.020(2). However, petitioners neither challenge the above
5 quoted finding nor dispute respondent's argument.¹³ Without
6 some argument that the above quoted finding is inadequate to
7 properly explain why the city determined under PSO §
8 7.020(2) the tentative plan could be approved without
9 requiring that Benton View Drive and Mount Union Avenue be
10 widened to 36 foot paved roadways, this assignment of error
11 cannot be sustained.

12 The second assignment of error is denied.

13 **THIRD ASSIGNMENT OF ERROR**

14 "With respect to the lot grading standard and
15 storm drainage facilities, the city failed to find
16 the applicable standards were met based on
17 substantial evidence in the record and improperly
18 deferred [the] decision with respect to these
19 standards through imposition of conditions on
20 approval."

21 As required by statute, the city employs a two stage
22 subdivision approval process whereby final approval for a
23 subdivision first requires approval of a tentative plan.¹⁴

¹³This argument appears in respondent's brief. Petitioners did not dispute the argument in a reply brief or during oral argument in this appeal.

¹⁴Under ORS 92.040, applicants for subdivision approval must first obtain tentative plan approval.

"* * * No plat for any proposed subdivision or partition may be considered for approval by a city or county until the tentative

1 See Bienz v. City of Dayton, 29 Or App 761, 767, 566 P2d 904
2 (1977). Because the parties' arguments under this
3 assignment of error adopt significantly different views of
4 what the city must decide in granting tentative plan
5 approval and what it may defer to later approval stages, we
6 address that question generally before turning to the
7 parties' arguments.

8 **A. Introduction**

9 Under PSO § 2.030 the subdivision tentative plan and
10 required supplementary materials must "indicate the general
11 program and objectives of the project."

12 Article III sets out detailed informational
13 requirements for a tentative plan. PSO § 3.050 requires
14 that the following types of information be provided with the
15 tentative plan:

16 * * * * *

17 "(3) The location within the subdivision and in
18 the adjoining streets and property of

plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition."

ORS 92.044 requires that cities and counties adopt standards and procedures for approval of tentative plans and specifies a broad range of concerns that subdivision approval standards may address.

1 existing sewers, water mains, culverts, drain
2 pipes and electric lines.

3 "(4) General utility plans for domestic water
4 supply, sewage disposal, storm water drainage
5 and street lighting, indicating how these
6 utilities shall be provided.

7 "(5) Supplemental information, which shall be
8 provided upon request by the planning
9 commission, including street center line
10 profiles, water line profiles, sewer line
11 profiles and storm drainage system profiles."

12 The tentative plan is circulated for comments by a number of
13 agencies and a public hearing is held. PSO § 2.060 provides
14 in part:

15 * * * * *

16 "(3) The planning commission may approve the
17 tentative plan as submitted, or as it may be
18 modified. If the planning commission does
19 not approve the plan, it shall express its
20 disapproval and its reason therefor.

21 "(4) Approval of the tentative plan shall indicate
22 approval of the final plat if there is no
23 change in the plan of the subdivision and if
24 the subdivider complies with the requirements
25 of this ordinance and of the provisions of
26 ORS 92.010 to 92.160."

27 Although the PSO does not specifically identify the
28 standards that govern tentative plan approval under the PSO,
29 a variety of standards must be satisfied prior to or as a
30 condition of approval of the final plat. Some of these
31 standards, such as the street standards and lot grading
32 requirements are very specific. Other standards, such as
33 drainage requirements, are less specific.

1 Although a public hearing is required prior to a
2 decision to approve the tentative plan, thereafter no public
3 hearings are required to approve a final plat. The
4 tentative plan approval decision is the only part of the
5 subdivision approval process in which the public is entitled
6 to participate. Therefore, it is the tentative plan
7 approval stage where the city must find all relevant
8 approval standards are met. This does not mean that all
9 technical studies and design solutions necessarily must be
10 completed prior to tentative plan approval. Where final
11 technical solutions to particular requirements will require
12 detailed engineering, such technical solutions need not be
13 required for tentative plan approval, provided the city has
14 sufficient information at the tentative plan approval stage
15 to allow it to conclude that it is feasible to comply with
16 all mandatory approval standards. Meyer v. City of
17 Portland, 67 Or App 274, 280 n 3, 678 P2d 741 (1984);
18 Bartles v. City of Portland, ___ Or LUBA ___ (LUBA No. 90-
19 111, December 3, 1990), slip op 9; Margulis v. City of
20 Portland, 4 Or LUBA 89, 98 (1981)

21 Although the cases cited immediately above all
22 concerned the City of Portland's two stage planned unit
23 development approval process, the same principle applies
24 equally to the City of Philomath's two stage subdivision
25 approval process. The information the city requires in
26 support of a request for tentative plan approval presumably

1 is required for a purpose. The information is to allow the
2 city to find (1) the applicable standards are met, or (2) it
3 is feasible to meet such standards. Where the latter
4 approach is appropriate, final technical solutions may be
5 arrived at later without additional public hearings. Meyer
6 v. City of Portland, supra, 67 Or App at 282 n 6.

7 Admittedly, an approach that permits a city to
8 demonstrate compliance with an approval standard by (1)
9 finding it is feasible to meet that standard, and (2)
10 deferring the actual adoption of technical solutions to meet
11 the standard to a later stage with no opportunity for public
12 participation, presents some difficulties for all parties.
13 The lack of a requirement for a complete technical solution
14 at the tentative plan approval stage will likely not satisfy
15 opponents who believe a satisfactory technical solution is
16 not possible. On the other hand, the applicant frequently
17 will be motivated to keep costs as low as possible until
18 tentative plan approval is assured, and may not want to
19 incur the costs of providing additional information where
20 questions are raised concerning particular approval
21 standards or site conditions. The city's obligation is to
22 require sufficient information at the tentative plan
23 approval stage to make the initial determination of
24 feasibility. As long as the determination of feasibility is
25 adequately explained and supported by substantial evidence,
26 i.e. evidence a reasonable person would accept as adequate

1 to support the decision, the city may properly defer final
2 engineering review to its staff.

3 We turn to petitioners' specific arguments.

4 **B. Lot Grading**

5 PSO § 7.050 provides as follows:

6 "Lot Grading. Lot grading shall conform to the
7 following standards unless physical conditions
8 demonstrate the propriety of other standards:

9 "(1) Cut slopes shall not be steeper than one foot
10 vertically to two feet horizontally.

11 "(2) Fill slopes shall not exceed two feet
12 horizontally to one foot vertically.

13 "(3) The character of soil for fill and the
14 characteristics of lots made usable by fill
15 shall be suitable for the purpose intended."

16 During the local proceedings, petitioners argued the
17 tentative plan was based on drawings that show construction
18 on the steeper slopes would require fills in excess of those
19 allowed by PSO § 7.050.

20 The city's findings appear to concede that the
21 tentative plan, as submitted and approved, does not comply
22 with the standards specified in PSO § 7.050. The findings
23 go on to explain that more detailed engineering will be
24 required later and the requirements of PSO § 7.050 must be
25 met in any event, notwithstanding what is shown on the
26 tentative plan.¹⁵

¹⁵There are suggestions throughout the challenged decision and the response brief that because final plat approval need only be given if the

1 The standard of PSO § 7.050 is very flexible. Lots
2 must not exceed the specified cut and fill limits "unless
3 physical conditions demonstrate the propriety of other
4 standards." The city could have properly responded to
5 petitioners in one of two ways. First the city could have
6 required that the tentative plan be revised so that the cut
7 and fill limits specified in PSO § 7.050(1) through (3)
8 would not be exceeded. Alternatively, the city could
9 explain in its findings why physical conditions make cuts
10 and fills in excess of the specified standards proper. The
11 city did neither. Instead, the city improperly deferred the
12 issue petitioners raise to subsequent development approval
13 stages.

14 This subassignment of error is sustained.

15 **C. Storm Drainage Facilities**

16 As noted earlier in this opinion, PSO § 3.050(4)
17 requires that a tentative plan include a general utility
18 plan for storm water drainage. PSO Article VIII establishes
19 specifications for subdivision improvements. PSO § 8.030(3)
20 provides as follows:

21 "Surface drainage and storm sewer facilities.
22 Grading shall be performed and drainage facilities
23 shall be provided within the subdivision * * * and
24 to connect the area drainage to drainage ways or
25 storm sewers outside the subdivision or partition.

final plat "conforms with the * * * [PSO]," compliance with any provision of the PSO may be determined at that stage rather than at the tentative plan approval stage. For the reasons explained above in the introduction to this assignment of error, we do not agree.

1 Design of drainage systems within the subdivision
2 or partition, as reviewed and approved by the city
3 engineer, shall take into account the capacity and
4 grade necessary to maintain unrestricted flow from
5 areas draining through the subdivision or
6 partition and to allow extension of the system to
7 serve such areas. If necessary, provision shall
8 be made for retention storage areas designed and
9 constructed to standards as provided by the city
10 engineer."

11 Petitioners submitted evidence during the local
12 proceedings that the storm drainage plan included with the
13 tentative plan is inadequate to provide for discharge of
14 storm water in an acceptable manner.

15 As with the grading issues discussed above, the city's
16 findings merely impose a requirement for detailed studies
17 and defer the issue of adequacy of storm drainage facilities
18 to be worked out between the city's engineer and the
19 applicant. As we have previously explained, the city may
20 properly defer resolution of the technical details, but it
21 may not defer the decision of whether the manner in which
22 the tentative plan proposes to discharge storm water is
23 feasible. Again, we do not mean to suggest that a complete
24 hydrologic analysis and storm water discharge plan
25 necessarily is needed to respond to the issues petitioners
26 raise and to make the required findings. All that is
27 required are findings explaining that the drainage plan
28 proposed by the applicant is feasible, i.e. that it will be
29 sufficient to comply with the requirements of PSO §
30 8.030(3), and that such findings be supported by substantial

1 evidence.¹⁶

2 This subassignment of error is sustained.

3 The third assignment of error is sustained.

4 **FOURTH ASSIGNMENT OF ERROR**

5 "The city's decision is not supported by
6 substantial evidence in the whole record and the
7 findings are inadequate in several respects."

8 Under this assignment of error, petitioners argue
9 particular city findings are inadequate or not supported by
10 substantial evidence. With the exception of petitioners'
11 allegations concerning the findings related to school
12 facility adequacy and school bus operating costs,
13 petitioners make no attempt to explain why the challenged
14 findings are critical to the city's decision. As we have
15 explained on numerous occasions, inadequate findings which
16 are not critical to the challenged decision (i.e. findings
17 which are not necessary to show compliance with applicable
18 approval standards) provide no basis for reversal or remand.
19 Bennett v. Linn Co. Board of Commissioners, 14 Or LUBA 217
20 (1986); Chemeketa Industries Corp. v. City of Salem, 14 Or
21 LUBA 159, 163, (1985); Bonner v. City of Portland, 11 Or

¹⁶Where an applicant's initial submittal contains relatively little detail, and opponents submit detailed information questioning the feasibility of the initial submittal to satisfy applicable standards, the applicant may be required to submit additional information in support of the application before the city can determine the feasibility of the proposal to comply with the disputed standard. Such may be the case with petitioners' contentions regarding the feasibility of the proposed drainage plan.

1 LUBA 40, 52 (1984).

2 General Policy 5 of the City of Philomath Comprehensive
3 Plan provides as follows:

4 "Prior to or concurrent with the development of
5 subdivisions or planned unit developments within
6 the Urban Growth Boundary, provision for urban
7 services shall be provided to the development
8 site."¹⁷

9 In Axon v. City of Lake Oswego, ___ Or LUBA ___ (LUBA No.
10 90-071, October 15, 1990), we interpreted nearly identical
11 plan language as imposing a mandatory approval criterion
12 applicable to subdivision approval decisions. This policy
13 requires that the city find that school services will be
14 provided to the subdivision prior to or concurrent with
15 development.

16 In response to petitioners' concerns regarding impacts
17 of the proposed subdivision on school facilities and school
18 bus transportation, the city first noted that an additional
19 classroom and teacher recently were added to the elementary
20 school to alleviate overcrowding. The city then found:

21 "* * * Assuming that 1.7 children per household
22 may be added [by the proposed subdivision] to the
23 schools, an additional 70 children may be spread
24 among schools. Unless the children are
25 concentrated in one age group, the effects of the
26 development alone will probably not be enough to
27 cause the school district to increase the number
28 of classrooms and teachers. The school district

¹⁷Although the plan does not define "urban services," the introductory paragraphs of the Public Facilities and Services chapter of the plan list schools among the public facilities and services addressed by that chapter.

1 provides bus service by contract for a fixed-sum
2 amount. The Olsen Bus Company operates a bus in
3 town to transport those school children which are
4 within the bus service area. The additional
5 operating cost for transportation would be offset
6 by State Support. The costs of transportation
7 from the subject area is less than other, more
8 remote areas of the school district." Record 7.

9 Petitioners contend the city's findings regarding
10 facility adequacy are expressed in terms of probabilities,
11 not as affirmative findings of compliance with the plan
12 requirement. Petitioners further contend that the
13 availability of state support for school bus costs is not
14 supported by substantial evidence.

15 Because we must remand this decision on other grounds
16 in any event, and the city's findings concerning school
17 facilities and school bus service are unclear, we sustain
18 this assignment of error. The city may have meant to say
19 that, without some reason to believe differently, the city
20 assumed the expected 1.7 children per household would be
21 spread evenly across age groups and would not require an
22 increase in the number of classrooms and teachers. Further,
23 it is not clear to us that a need to increase the number of
24 classrooms and teachers necessarily would violate a plan
25 policy that simply requires that school services be provided
26 prior to or at the time of development. Finally, we cannot
27 tell what bearing the city's findings concerning the
28 availability of state support to pay the costs of school bus
29 service have on compliance with the plan standard. The

1 findings simply state such funding is available, and we
2 cannot tell from the findings whether provision of school
3 bus service depends on such state support. On remand the
4 city may adopt findings focusing more directly on the plan
5 standard and clarifying these points.

6 The fourth assignment of error is sustained in part.

7 The city's decision is remanded.