

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

3
4 ROBERT PATERSON
5 *Petitioner,*

6
7 vs.

8
9 CITY OF BEND
10 *Respondent,*

11
12 and

13
14 BRIAN DRAMEN, MARK DRAMEN
15 and GORDON DRAMEN
16 *Intervenors-Respondent.*

17
18 LUBA No. 2004-155

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Bend.

24
25 William H. Sherlock, Eugene, filed the petition for review and argued on behalf of petitioner.
26 With him on the brief was Hutchinson, Cox Coons, DuPriest, Orr, and Sherlock P.C.

27
28 No appearance by the City of Bend.

29
30 Elizabeth A. Dickson, Bend, filed the response brief and argued on behalf of intervenors-
31 respondent. With her on the brief was Hurley, Lynch and Re, P.C.

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

35
36 REMANDED

04/05/2005

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

NATURE OF THE DECISION

Petitioner appeals city approval of a tentative subdivision plan authorizing a private road terminating in a cul-de-sac.

FACTS

The subject property is a narrow, rectangular 5-acre parcel zoned RS, Urban Standard Density Residential. The subject parcel is 165 feet wide from north to south, and 1,100 feet deep east to west. The property includes an existing single family dwelling at its east end, adjacent to Eagle Road. To the north the property abuts land owned by petitioner that has recently been approved for development as a residential subdivision. Petitioner’s subdivision includes Yellow Ribbon Drive, an east-west street that connects to Eagle Road. A short street, known only as “Future Street,” is stubbed from Yellow Ribbon Drive to the subject property’s northern property line, in the approximate middle of the subject property. The west end of the subject property adjoins a developed subdivision, where Red Oak Drive is stubbed to the property line. Red Oak Drive is a city-standard 60-foot wide right of way, with parking, curbs, planting strips and sidewalks. To the south the property abuts a large parcel for which a subdivision application (the Conners Park subdivision) has been approved.¹

Intervenors-respondent (intervenors) seek to develop the subject property with 31 residential lots in three phases. Intervenors initially proposed that Red Oak Drive extend the length of the subject property, curve north around the existing dwelling, and connect to Eagle Road. However, to address neighbors’ concerns about through traffic, and to reduce impacts on the existing single family dwelling, intervenors modified the tentative plan to propose that Red Oak Drive end in a cul-de-sac just west of the existing dwelling, rather than extend all the way to Eagle Road. Additional access to the subdivision would be provided by connecting northward to Yellow

¹ We understand that the Conners Park subdivision approval was withdrawn sometime after the decision in the present case.

1 Ribbon Drive via Future Street, and through two proposed connecting streets (“A” and “C”) to the
2 Conners Park subdivision to the south. To maximize the number of lots on the narrow subject
3 property, intervenors also proposed that after entering the property at the west end, Red Oak Drive
4 would become a private street, with a reduced paved width and sidewalks flush with the road
5 surface.

6 A city hearings officer approved the tentative plan on July 14, 2004. Petitioner, concerned
7 that the design of Red Oak Drive directed traffic through his subdivision, appealed the hearings
8 officer’s decision to the city council. The city council declined to hear petitioner’s appeal. This
9 appeal followed.

10 **FIRST ASSIGNMENT OF ERROR**

11 Petitioner argues that the hearings officer erred in (1) approving the subdivision without
12 ensuring street access for the first phase and without an adequate facility development plan, under
13 Bend Subdivision Ordinance (BSO) 3.040, and (2) finding that the applicant need not demonstrate
14 compliance with the Bend Area General Plan (General Plan), contrary to BSO 3.040(2).²

² BSO 3.040 provides, in relevant part:

“**PHASED TENTATIVE PLAN.** An overall development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The Review Authority shall review a master development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased tentative plan shall include * * * the following elements:

- “1. Overall development plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.
- “2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.
- “3. Overall facility development plan, including transportation and utility facilities plans, that specify the traffic pattern plan for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans.”

1 **A. BSO 3.040(1) and (3)**

2 BSO 3.040(1) and (3) require that the development plan include a “schedule for initiation of
3 improvements,” and “transportation and utility facilities plans.” See n 2. The application proposed
4 development in three phases, with facilities development and final plan approval issuing for each
5 phase before commencing with the next phase. The first phase is at the east end of the property,
6 and includes the existing dwelling, cul-de-sac and surrounding lots. Noting that access to the phase
7 1 area currently does not exist, the hearings officer stated:

8 “It is unclear from the information provided where street access during phase 1 is
9 located. It will be a requirement of approval that the applicant demonstrate that
10 there will be street access for each phase of development in accordance with City
11 Standards prior to final plat approval. Based on the information provided by the
12 applicant and this condition of approval the hearings officer finds the proposal
13 satisfies [BSO 3.040(1)].” Record 30.

14 Petitioner argues that the hearings officer substituted a condition of approval for a finding of
15 compliance with BSO 3.040(1). However, the hearings officer clearly found compliance with
16 BSO 3.040(1), based on the submitted development plan and the condition of approval. Generally,
17 where there is conflicting evidence regarding whether compliance with an approval criterion is
18 feasible, the local government may determine that compliance is feasible and impose conditions of
19 approval as necessary to ensure compliance. *Rhyne v. Multnomah County*, 23 Or LUBA 442,
20 447-48 (1992). Although the application did not propose a specific plan for providing access to
21 phase 1, the hearings officer obviously believed that providing such access was feasible, and
22 imposed a condition requiring intervenors to specify how access would be provided. Petitioner
23 does not argue that there is any reason to believe that providing access to phase 1 from Red Oak
24 Drive or from one or more of the three connecting streets to the north and south is infeasible, prior
25 to development of phases 2 and 3. Under these circumstances, we see no error in finding that the
26 development plan complies with BSO 3.040(1), as conditioned.

27 With respect to BSO 3.040(3), petitioner argues that the hearings officer failed to find that
28 the “overall facility plan” includes a transportation plan that specifies the “traffic pattern plan for

1 motor vehicles, bicycles, and pedestrians,” with respect to phase 1 development. *See* n 2. Instead,
2 petitioner argues, the hearings officer’s finding regarding BSO 3.040(3) discusses only utility
3 facilities and does not mention a transportation plan, other than a reference to a traffic study:

4 “The applicant has submitted an overall facility plan showing all existing and
5 proposed utility extensions for the proposal. This data is shown on the face of the
6 tentative plat and will be supplemented by engineered drawings for utility
7 construction. A traffic study is included in the supporting materials for the tentative
8 plan application.” Record 31.

9 It is not clear what BSO 3.043(3) requires in terms of a “transportation plan.” The above-
10 quoted finding appears to view the tentative plan itself as being the “overall facility plan,” at least
11 with respect to utilities. The finding does not expressly reference transportation facilities, but the
12 same approach seems equally applicable. As with utilities, the approved tentative plan depicts the
13 proposed street network and pedestrian pathways, with road and sidewalk cross-sections and
14 details. The finding refers to the transportation impact analysis at Record 601 to 664, which
15 includes a detailed analysis of the proposed and existing street network. It seems reasonably clear
16 that the hearings officer believed that the tentative plan itself, as supplemented by engineered utility
17 drawings and the transportation impact analysis, constituted the “transportation and utility facilities
18 plans” required by BSO 3.043(3). While the finding could have stated that more clearly, petitioner
19 identifies no error in that approach, and we see none. This subassignment of error is denied.

20 **B. BSO 3.040(3)**

21 BSO 3.040(3) requires that the tentative plan shall “[s]how compliance with the Bend Area
22 General Plan and implementing land use ordinances and policies.” Intervenor argued, and the
23 hearings officer agreed, that compliance with the General Plan is demonstrated by compliance with
24 its implementing land use regulations, and that intervenors were not required to demonstrate that the
25 plan complied with General Plan policies or provisions:

26 “The applicant states that it will comply with the General Plan and the implementing
27 land use ordinances and policies by meeting the requirements of the regulations
28 governing the tentative plan review process. While multiple decisions of the City
29 have found that certain plan policies under specific circumstances constitute

1 mandatory criteria, the applicant is not required to demonstrate compliance with the
2 provisions of the comprehensive plan inasmuch as the plan does not establish these
3 mandatory approval criteria for land divisions. This is supported by two facts: (1)
4 ORS 197.195(1) provides that comprehensive plan provisions do not apply to the
5 review of limited land use decisions, such as subdivisions, unless the provisions are
6 adopted as part of the City’s zoning or subdivision ordinances. A review of
7 discrete Plan policies is therefore not appropriate; (2) the [General] Plan states that
8 ‘[t]he policies in the General Plan are statements of public policy, and are used to
9 evaluate any proposed changes to the General Plan. * * *’ Record 30-31.

10 ORS 197.195(1) provides in relevant part that in order to apply comprehensive plan
11 policies directly to a limited land use decision as approval criteria, the local government must
12 “incorporate all comprehensive plan standards applicable to limited land use decisions into their land
13 use regulations” within two years of September 29, 1991.³ A limited land use decision includes a
14 decision that approves or denies a subdivision application within an urban growth boundary.
15 ORS 197.015(12).

16 Petitioner contends that the city has “incorporated” all comprehensive plan standards
17 applicable to subdivision approvals within the meaning of ORS 197.195(1), by requiring at
18 BSO 3.040(3) that the applicant for a tentative subdivision plan approval demonstrate “compliance
19 with the Bend Area General Plan.” Petitioner then identifies several comprehensive plan policies
20 relating to transportation that petitioner believes are applicable to the proposed subdivision.

21 However, in our view ORS 197.195(1) contemplates more than a broad injunction to
22 comply with unspecified portions of the comprehensive plan. In order to “incorporate” a

³ ORS 197.195(1) provides:

“A ‘limited land use decision’ shall be consistent with applicable provisions of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.”

1 comprehensive plan standard into a local government’s land use regulations within the meaning of
2 ORS 197.195(1), the local government must at least amend its land use regulations to make clear
3 what specific policies or other provisions of the comprehensive plan apply to a limited land use
4 decision as approval criteria. Under that standard, BSO 3.040(3) falls far short of incorporating
5 any comprehensive plan provisions. The hearings officer did not err in concluding that the applicant
6 was not required to demonstrate compliance with the comprehensive plan policies cited by
7 petitioner. Because we sustain the hearings officer’s conclusion under ORS 197.195(1), we need
8 not address petitioner’s challenges to the hearings officer’s alternative conclusion under the
9 comprehensive plan.

10 The first assignment of error is denied.

11 **SECOND ASSIGNMENT OF ERROR**

12 BSO 3.060(1)(A) and (C) require in relevant part that the proposed land division contribute
13 to the “orderly development” of the area.⁴ Petitioner contends that the hearings officer erred in
14 concluding that the proposed private street, ending in a cul-de-sac, contributes to “orderly
15 development.” According to petitioner, the hearings officer’s determination on this point is

⁴ There are actually two separate “orderly development” standards, at BSO 3.060(1)(A) and (C). We follow petitioner in discussing them together as a single standard. BSO 3.060(1) provides, in relevant part:

“No application for subdivision or partition shall be approved unless the following requirements are met:

“A. The land division contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources and other natural resources to the maximum degree practicable as determined by the City of Bend.

“* * * * *

“C. The land division contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and does not conflict with existing public access easements within or adjacent to the land division.”

1 inconsistent with another hearings officer’s decision regarding a similar proposal for a private street
2 in a different development application, known as the “Wolfe” decision.

3 The hearings officer rejected that argument, finding:

4 “* * * The applicant proposes to extend Red Oak Drive as a private street through
5 the subdivision culminating in a cul-de-sac at the [east] end of the property. Staff
6 questioned whether this design constitutes orderly development within the meaning
7 of [BSO 3.060(1)(A)]. It did because of a City hearings officer’s decision in file
8 numbers PZ 03-651 and 03-652 (the ‘Wolfe Application’). There the hearings
9 officer found that the proposed connection between public streets and private
10 streets would not be orderly for the reason that the private street was found by the
11 hearings officer to be an ‘integral link in the city’s street grid system’ and for the
12 reason that the private street would also largely serve persons accessing land and
13 subdivisions outside of the subdivision proposed in that application. It is noted that
14 the same hearings officer has considered different facts (the Coulter subdivision) and
15 allowed the use of a private street system, provided that certain factors or
16 conditions were met, such as demonstrating a permanent maintenance source, lot
17 configuration, etc. * * * Other decisions of the City have also allowed private
18 street connections under certain circumstances. * * * In point of fact there are
19 many private streets with public overlays that connect to publicly owned streets
20 within the City. I agree with the applicant in that here the private street would not
21 be an integral link to the City grid system given the number of existing and proposed
22 connections to Eagle Road from other areas. Further, the private street will have
23 public overlay, be permanently maintained by a homeowner’s association and
24 would terminate before Eagle Road, thus serving mostly subdivision residents, at
25 least from the connection with the ‘Future Road’ [to Yellow Ribbon Drive] to the
26 north. The code provides for private streets in certain cases and sets standards for
27 their construction. *See* table ‘B,’ Land Division Ordinance. * * * I find that under
28 the present circumstances, including the shape of the lot at issue, the density goal of
29 the zone and the connections to the surrounding developments, the proposed
30 private street would constitute orderly development. The traffic engineer does not
31 object, but has commented that construction should be in accordance with Table B.
32 These standards require a street that is 24 feet in width and bordered by sidewalks.
33 The applicant intends to comply with such standards. Compliance with Table ‘B’
34 shall be a condition of approval and this will promote safety, continuity and
35 compatibility with street connections and the established density of surrounding
36 development.” Record 33-34.

37 Petitioner quotes long passages from the Wolfe decision, and argues that for the same
38 reasons expressed by the hearings officer in the Wolfe decision the hearings officer in the present

1 case should also conclude that the proposed private street and cul-de-sac do not constitute “orderly
2 development.”

3 Even if the reasoning in the Wolfe decision is not persuasive, petitioner contends, the facts in
4 the present case demonstrate that the proposed private street and cul-de-sac are not “orderly
5 development.” With respect to the cul-de-sac, petitioner argues that it forces traffic to and from the
6 subdivision to access Eagle Road through adjoining subdivisions. With respect to the private street,
7 petitioner argues that it is unsafe to have public streets with 60-foot wide rights of way, parking,
8 curbs, planting strips and sidewalks transition abruptly to a private street with 20-foot paved width,
9 no parking, curbs or dividers and with sidewalks flush with the road pavement. Further, petitioner
10 questions the ability of the homeowner’s association to enforce the no parking prohibition on the
11 private street, or adequately maintain the private street.

12 Given the imprecision of the “orderly development” standard, the city has significant latitude
13 in determining whether development complies with that standard.⁵ As the hearings officer noted,
14 there are significant factual distinctions between the circumstances in the Wolfe decision and the
15 present case. In any case, petitioner does not explain why the present hearings officer is required to
16 apply the same understanding of “orderly development” that was applied in the Wolfe case.

17 With respect to the cul-de-sac, it is often the case that traffic from a cul-de-sac will travel
18 across local streets to reach collector or arterial streets. Petitioner does not explain why the

⁵ Elsewhere in the decision, the hearings officer notes in addressing the “orderly development” standard in BSO 3.060(1)(C):

“In other City land use decisions, and based upon the purpose statements contained in the land use ordinances, the term ‘orderly’ as applied to the above criteria has been found to mean a system or order that is a logical extension of the transportation system, that does not overtax the system, provides for maintenance thereof, that recognizes the limitations that the shape of the parcel and the topography have on the development, does not have internal conflicts with the very development being proposed, meets code layout and design requirements and does not foreclose future development.” Record 36.

Petitioner does not challenge that view of the “orderly development” standard, or explain why the hearings officer’s application of the standard under that view is erroneous.

1 “orderly development” standard requires the city to connect Red Oak Drive directly to Eagle Road,
2 or prohibits the city from directing some traffic onto Yellow Ribbon Drive or other adjoining streets.

3 With respect to the safety of transitioning between a public street and a private street, the
4 code allows private streets to be built to different standards than public streets, and the two must
5 meet somewhere. The fact that private streets may be built to lesser standards, and need not
6 include such amenities as curbs, planting strips, and parking lanes does not mean that such streets
7 do not comply with the orderly development standard. Similarly, that private streets are maintained
8 by homeowners’ associations rather than the city does not indicate disorderly development.
9 Petitioner has not demonstrated that the hearings officer erred in concluding that the proposed
10 private street complies with the orderly development standard.

11 Finally, petitioner argues that at several points in the decision the hearings officer indicated
12 that he understood the proposed private street to have a paved width of 24 or perhaps 28 feet with
13 curbs, whereas the approved tentative plan clearly provides for a private street with paved width of
14 20 feet and no curbs. *See* above-quoted finding (“These standards require a street that is 24 feet in
15 width and bordered by sidewalks. The applicant intends to comply with such standards”); Record
16 44 (“The private street will be bounded by curbed sidewalks directing water to catch basins”); and
17 Record 58 (condition of approval stating that “‘No Parking’ signs on 28-foot wide streets are
18 required”). Petitioner speculates that the hearings officer’s confusion on these points may have
19 erroneously led him to conclude that the private street complies with the orderly development
20 standard, and that remand is necessary to allow the hearings officer to apply the standard under a
21 correct appreciation of the facts.

22 It is not clear to us why the hearings officer referred to the private street as being 24 feet in
23 width and bounded by curbs, in the above-quoted findings. The approved tentative plan, the
24 application materials, the staff report, and everything cited to us in the record indicate that the
25 private street was and always had been proposed as 20 feet in width, with no curbs, a design that is
26 apparently allowed under Table B. Elsewhere in the hearings officer’s decision he indicates that he

1 understood that the private street will have a paved width of 20 feet. Record 47 (“Since the
2 applicant is proposing a private street with a width of 20 feet, as a condition of approval, ‘No
3 Parking’ signs shall be placed on both sides of the road * * *”). Almost certainly the reference to
4 the width of the street as 24 feet at Record 34 was simply a typographic error. Likewise, the
5 reference to a requirement for “No Parking” signs for 28-foot wide streets is almost certainly a
6 misstatement, since the hearings officer elsewhere indicates his understanding that “No Parking”
7 signs are required for a 20-foot wide street. Record 47.

8 The reference to curbs at Record 44 may also be a misstatement, although that is less clear.
9 That reference to curbs is part of the findings under BSO 6.020(7), which we discuss below, not
10 part of the findings addressing the orderly development standard at BSO 3.040(1) or (3). As
11 discussed below, we remand the hearings officer’s finding under BSO 6.020(7) for clarification with
12 respect to curbs. For present purposes, however, it seems unlikely that the hearings officer relied
13 upon the presence or absence of curbs in finding compliance with BSO 3.040(1) or (3). The
14 findings addressing the orderly development do not mention curbs. Petitioner has not established
15 that any misstatement with respect to curbs provides an independent basis for reversal or remand
16 with respect to the orderly development standard.

17 The second assignment of error is denied.

18 **THIRD ASSIGNMENT OF ERROR**

19 Petitioner contends that the hearings officer misconstrued street and sidewalk design
20 requirements of BSO 6.020 and failed to make adequate findings supported by substantial evidence
21 in concluding that the proposed cul-de-sac and private street comply with those requirements.

22 **A. BSO 6.020(1)**

23 As relevant here, BSO 6.020(1) requires that “[f]acilities providing safe and convenient
24 motor vehicle, pedestrian and bicycle access shall be provided within new subdivisions.” Petitioner
25 repeats his arguments under the BSO 3.060(1) “orderly development” standard, but does not

1 explain why those arguments establish a basis for reversal or remand under BSO 6.020(1). This
2 subassignment of error is denied.

3 **B. BSO 6.020(2)**

4 BSO 6.020(2) requires in relevant part that “[a]ll streets shall be improved to City
5 standards with curbs, paving, drainage facilities and medians if required.”⁶ Petitioner argues that the
6 hearings officer’s finding under BSO 6.020(2) does not explain why that standard does not require
7 curbs on the proposed private street.

8 The hearings officer finds that the private street will be constructed under standards for
9 private streets set out in Table B. There is no dispute that Table B does not require curbs for a 20-
10 foot wide private street. Petitioner’s quotation of BSO 6.020(2) in the petition for review omits the
11 last two words, “if required.” That phrase is somewhat ambiguous, as it could modify only the
12 preceding word “medians” or the entire list of design features including curbs. Petitioner apparently
13 reads BSO 6.020(2) to require curbs on all streets, even if the applicable standards for certain
14 streets do not require curbs. Petitioner’s interpretation brings the last sentence of BSO 6.020(2)
15 and Table B into conflict. Although the hearings officer’s findings under BSO 6.020(2) do not
16 address this issue, it seems to us that the better reading of the last sentence of BSO 6.020(2) is one
17 that does not bring it into conflict with Table B. In other words, “[a]ll streets” must have curbs and
18 other listed design features only “if required.” If other, more specific standards explicitly do not

⁶ BSO 6.020(2) provides, in full:

“New Streets. The location, width, and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. The subdivision shall provide for the continuation of the principal streets existing in the adjoining subdivision or of their proper projection. Where, in the opinion of the Hearings Body, topographic conditions make such continuation or conformity impractical, exception may be made. In cases where the City may adopt a plan or plat of a neighborhood or area of which the subdivision is a part, the subdivision shall conform to such adopted neighborhood or area plan. All streets shall be improved to City standards with curbs, paving, drainage facilities and medians if required.”

1 require curbs for a particular type of street, neither does BSO 6.020(2). With that understanding,
2 we see no reversible error in the hearings officer's findings under BSO 6.020(2). This
3 subassignment of error is denied.

4 **C. BSO 6.020(3)**

5 BSO 6.020(3) permits a cul-de-sac only when certain circumstances are present, including
6 where "existing development on adjacent property prevents a street connection."⁷ The hearings
7 officer approved the cul-de-sac because "the applicant's property contains a large established
8 family home and any such connection [of Red Oak Drive to Eagle Road] would require its
9 removal." Record 43.⁸

⁷ BSO 6.020(3) provides:

"Street Layout and Cul-de-sacs. The street layout shall be generally in a rectangular grid pattern to provide or continue a network of inter-connecting streets. The subdivision streets shall be oriented on an east/west axis to the greatest extent possible to ensure solar access for lots within the subdivision. The grid pattern may be modified to adapt to topography and natural conditions. Cul-de-sacs and dead end streets shall only be permitted when the following conditions are met:

"A. One or more of the following conditions prevent a required street connection:

- natural slopes of 18% or more where it is not practical to construct streets with grades of 12%; or
- presence of a wetland or water body which cannot be crossed; or existing development on adjacent property prevents a street connection; and

"B. A street pattern which either meets standards for connections and spacing or requires less deviation from standards is not possible; * * *"

⁸ The decision states, in relevant part:

"The applicant has modified the subdivision proposal to include a cul-de-sac instead of another road connection to Eagle Road. The hearings officer finds that this connection is unnecessary given the number of already approved or planned connections. As described above the applicant's property contains a large established family home and any such connection would require its removal. The cul-de-sac includes a pedestrian access corridor at its terminus. While private streets are reviewed on case by case bases, the existing home, shape of the lot, requirements to create compatible infill and reduce neighborhood cut-through, makes the private road extension of Red Oak Drive appropriate in this case. The 'Future Street' and 'C' Street connections are proposed as a way to address block length and continue the street grid to adjoining properties where appropriate." Record 43.

1 Petitioner points out that BSO 6.020(3)(A) allows a cul-de-sac based on “existing
2 development” only where the development is on “adjacent property.” The existing dwelling at the
3 east end of the subject property is part of the property, petitioner argues, not on “adjacent
4 property.” Even if the dwelling were on adjacent property, petitioner contends, there is no finding
5 or explanation that a street pattern that either meets the standards for connections or requires less
6 deviation from those standards is not possible, under BSO 6.020(3)(B). Petitioner notes, as do the
7 findings, that the original tentative plan proposed that Red Oak Drive connect to Eagle Road, by
8 going north of the existing dwelling. That proposed street pattern was changed, apparently at the
9 request of neighbors to the west of the subject property, who did not want Red Oak Drive to
10 become a through-street to Eagle Road. Petitioner argues that a street pattern without a cul-de-sac
11 and without removing the existing dwelling is obviously possible. Even if moving or removing the
12 existing dwelling were necessary to connect Red Oak Drive to Eagle Road, petitioner contends,
13 there is no reason why the city could not require that the dwelling be moved or removed.

14 Intervenors do not respond to this argument. The hearings officer’s finding that “any
15 connection” of Red Oak Drive to Eagle Road would require removing the existing dwelling is not
16 supported by the record, as evidenced by the originally submitted tentative plan, which proposed
17 just such a connection without removing the house. Further, petitioner is correct that under
18 BSO 6.020(3)(A) “existing development” is only a basis for allowing a cul-de-sac where that
19 development is on “adjacent property.” One could presumably avoid that restriction in the present
20 case, by simply partitioning the parcel including the dwelling from the rest of the subject property,
21 and then seeking subdivision plan approval for that remainder parcel. However, even if we assume
22 that the restriction can be avoided in that manner, petitioner is correct that BSO 6.020(3)(A) and

1 (B) are conjunctive, and the decision does not explain why a cul-de-sac is warranted under
2 BSO 6.020(3)(B).⁹ This subassignment of error is sustained.

3 **D. BSO 6.020(7)**

4 BSO 6.020(7) requires that “street right-of-way and roadway surfacing widths shall be in
5 conformance with the standards and specifications” set forth in Table A for public streets and Table
6 B for private streets. As noted, Table B allows a private street with 20 feet of paved width if no
7 curbs are proposed, but requires 24 feet of paved width if curbs are proposed. The hearings
8 officer’s finding under BSO 6.020(7) states, in full:

9 “According to the latest revised tentative plan all existing and proposed streets will
10 meet the City of Bend standards for both public and private streets. The private
11 street will be bounded by curbed sidewalks directing water to catch basins. This
12 criterion is met.” Record 44.

13 Petitioner argued below that without curbs there is nothing that will direct storm drainage to
14 catch basins, and that water will simply flow over the flush sidewalks onto the adjoining lots, given
15 the slope depicted on the street cross-sections. *See* Record 182 (letter from engineer opining that
16 curbs are necessary to direct water to catch basins); Record 195. Petitioner also argued that
17 adding curbs would require an additional four feet of right-of-way, in order to comply with the
18 standards in Table B, which may affect lot configuration and minimum lot sizes. Petitioner notes the
19 additional complication that the hearings officer found that the private street “will be bounded by
20 curbed sidewalks directing water to catch basins,” notwithstanding that the approved tentative plan
21 does not appear to propose curbs on the private street.¹⁰ According to petitioner, remand is
22 necessary to address the following issues: (1) whether the decision requires curbs; (2) if so,

⁹ It was suggested at oral argument that there may be access spacing or sight line reasons why a connection between Red Oak Drive and Eagle Road would be inconsistent with applicable standards. The hearings officer should address such matters on remand.

¹⁰ At oral argument, intervenors’ attorney first asserted that the tentative plan did propose curbs, but later seemed to withdraw that assertion. As far as we can tell from the approved plan, no curbs are proposed on the private street portion of Red Oak Drive.

1 whether the plan needs to be revised to reflect a 24-foot paved width and a 34-foot right of way to
2 comply with Table B; (3) if not, how storm drainage will be directed to the catch basins absent
3 curbs.

4 Intervenor again do not provide any meaningful response to this subassignment of error.
5 We agree with petitioner that remand is necessary to address the foregoing issues. This
6 subassignment of error is sustained.

7 **E. BSO 6.020(14)**

8 BSO 6.020(14) requires that sidewalks shall be installed at the property line. Petitioner
9 cites language from the Wolfe decision in which the hearings officer opines that sidewalks on private
10 streets must include planting strips just like public streets, and therefore that sidewalks on private
11 streets cannot be street tight. Petitioner adopts that language as his argument that, in the present
12 case, BSO 6.020(14) and Table B effectively require planting strips on all streets and effectively
13 prohibit street-tight sidewalks.

14 The hearings officer in the present case found that the applicant proposes sidewalks installed
15 at the property line, which is all that BSO 6.020(14) requires. BSO 6.020(14) says nothing about
16 planting strips, and nothing about street-tight sidewalks. Unlike Table A, governing public streets,
17 Table B requires no planting strip at all for any private street.¹¹ We do not understand petitioner’s
18 adopted argument from the Wolfe decision. This subassignment of error is denied.

19 **F. BSO 6.020(16)**

20 BSO 6.020(16) requires in relevant part that “[t]he street is connected to a grid pattern at
21 both ends” and that “[b]locks shall have dedicated public alley access constructed to City
22 standards.”¹² The hearings officer’s finding under BSO 6.020(16) states, in full: “Since the

¹¹ Table B indicates “N/A” for all private streets under the column for “Minimum Planter Strip Width.”

¹² BSO 6.020(16) provides:

“Performance Standards for Local Residential Streets.

1 applicant is proposing a private street with a width of 20-feet, as a condition of approval, ‘No
2 Parking’ signs shall be placed on both sides of the road and spaced to City of Bend Standards and
3 Specifications.” Record 47.

4 Petitioner argues that while the above-quoted finding may be responsive to
5 BSO 6.020(16)(D) and (E), it does not address the requirements at BSO 6.020(16)(B) and (C)
6 that “the street is connected to a grid pattern at both ends” and that blocks “shall have dedicated
7 public alley access.”

8 Intervenor again does not respond to this argument. Although it is not clear to us that
9 BSO 6.020(16)(B) and (C) apply to a private street ending in a cul-de-sac, or what they would
10 require if they do apply, absent some finding or response on this point we agree with petitioner that
11 remand is necessary to adopt findings addressing the applicability of and compliance with
12 BSO 6.020(16)(B) and (C). This subassignment of error is sustained.

13 The third assignment of error is sustained, in part.

14 **FOURTH ASSIGNMENT OF ERROR**

15 BSO 6.030(2) requires in relevant part that

16 “No block shall be longer than 1,200 feet between the centerline of through cross
17 streets *except in residential subdivisions where no block shall be longer than*
18 *600 feet between the centerline of through cross streets* and where street
19 location is restricted by natural topography, wetlands, or other bodies of water.”
20 (Emphasis added.)

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- “A. Average daily traffic volumes on the local street does not exceed 300 ADT.
 - “B. The street is connected to a grid street pattern at both ends.
 - “C. Blocks shall have dedicated public alley access constructed to City standards.
 - “D. ‘No Parking’ zones are established 55 feet from the centerline of intersecting local streets.
 - “E. For block lengths exceeding 300 feet, ‘No Parking’ zones shall be established on either sides of the street spaced no greater than 250 feet apart. The ‘No Parking’ zones shall be a minimum of 30 feet in length.”

1 The hearings officer found that “[a]s shown on the tentative plan block, the proposed block
2 lengths meet this proposal.” Record 47. Petitioner argues that in order to comply with the 600-foot
3 block length requirement, the city must require a new street somewhere east of the “Future Street”
4 connecting Red Oak Drive and Yellow Ribbon Drive.

5 We do not understand petitioner’s argument or the hearings officer’s terse finding. For that
6 matter, we are unclear what BSO 6.030(2) requires. It appears to require in residential
7 subdivisions that a block be no longer than 600 feet between the centerline of “through cross-
8 streets.” As far as we can tell there are no “through cross-streets” depicted anywhere on the
9 approved tentative plan: only T-intersections where Future, A and C streets intersect Red Oak
10 Drive. It is not clear how one applies BSO 6.030(2) to a residential subdivision with a cul-de-sac
11 and T-intersections. Given the lack of alternatives, it may be appropriate to determine block length
12 for purposes of BSO 6.030(2) on some other basis than “through cross-streets.” However, the
13 hearings officer needs to explain how block length is determined under BSO 6.030(2). Petitioner
14 appears to be correct that, depending on where the “block” begins and ends, it is possible that at
15 least the “block” that runs eastward from Future Street toward the end of the cul-de-sac is longer
16 than 600 feet. Given the lack of assistance from the decision and intervenor on these issues, we
17 agree with petitioner that remand is necessary to adopt more adequate findings addressing
18 BSO 6.030(2).

19 The fourth assignment of error is sustained.

20 The city’s decision is remanded.