

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 This case is before the Board on remand from the Court of
4 Appeals. In the original proceeding, petitioner appealed
5 denial of his "Butler Ridge" subdivision proposal by the City
6 of Gresham. The proposal was to divide 35.6 acres to provide
7 18 acres of open space, 54 condominiums and 13 detached
8 dwellings. We remanded the decision, in part, because we
9 believed the city had improperly employed a "Trafficways
10 Policy" in the comprehensive plan to deny the development. We
11 held that the policy could not bar a subdivision which
12 otherwise met all the requirements of the city's development
13 code. Liles v Gresham, 7 Or LUBA 87 (1982). We based our
14 decision in part on Philippi v Sublimity, 59 Or App 295, 650
15 P2d 1038 (1982). However, the Court of Appeals' decision in
16 that case was later reversed in Philippi v City of Sublimity,
17 294 Or 730, 662 P2d 325 (1983). In light of the Supreme
18 Court's reversal in Philippi, the Court of Appeals then
19 reversed our decision in the present case and remanded it to us
20 for reconsideration. Given the decision by the Supreme Court
21 in Philippi, supra, we conclude the city was justified in
22 denying the proposal under its "Trafficways Policy."

23 The facts on remand remain unchanged from those stated in
24 Liles v Gresham, supra.

25 ASSIGNMENTS OF ERROR I - III, V

26 Petitioner's first three assignments of error are as

1 follows:

- 2 1. "The city erred in applying standards for other
3 future developments to this subdivision."
- 4 2. "The city erred in interpreting the Trafficways
5 Policy."
- 6 3. "The city erred in applying vague standards."

7 The Fifth Assignment of Error alleges:

8 "The city erred in requiring this applicant to plan
9 for connection to a street plan that does not exist."

10 In these claims, petitioner attacks the city's conclusion
11 (1) on how the possible future development of Gabbert Hill may
12 effect a "safe and efficient" future street system for the
13 hill; (2) that the "Trafficways Policy" in the comprehensive
14 plan, Section 10.320, may be applied to individual land use
15 actions; (3) that the terms "safe and efficient" as they appear
16 in city ordinances may be used as standards to deny
17 developments; and (4) that petitioner's development may be
18 denied because it does not provide access through a
19 non-existent route. Petitioner's arguments and our former
20 opinion relied on the view that the city is not free to rely on
21 a comprehensive plan policy where the specific standards in the
22 city's development ordinance have all been met. The purpose of
23 the plan, according to petitioner, is to outline broad policy
24 decisions with development ordinances setting specific
25 standards. Petitioner believes that he has met all specific
26 applicable standards, and the city may not now use the
"Trafficways Policy" with its vague safety standard to deny

1 petitioner the development.

2 Respondent counters that the city was correct in testing
3 this development against future development in the area.
4 Respondent argues that Gresham Development Code, Section
5 10.1050 requires all developments be consistent with the
6 comprehensive plan and therefore the city was correct in
7 testing this development against the city's "Trafficways
8 Policy." According to respondent, this subdivision would
9 establish the pattern of development for the area, and the
10 traffic pattern proposed for the subdivision could adversely
11 impact the existing Seven Oaks Subdivision and remainder of
12 undeveloped property on Gabbert Hill. The applicant, according
13 to the city, knew he had to address all the policies in the
14 plan including the city's "Trafficways Policy."

15 The "Trafficways Policy" found at Section 10.321 of the
16 Gresham Development Plan, Vol. II states:

17 "It is the policy of the city to provide a safe and
18 efficient street and roadway system that meets current
needs and anticipated future growth and development."

19 Under this policy, there are six implementation strategies
20 which direct the city to take action on a broad basis to ensure
21 a safe and efficient street system.¹ Presumably,
22 implementation of these strategies will provide a safe and
23 efficient street system as required by the plan. The
24 requirement for safe streets is carried over in Volume IV of
25 the Gresham Community Development Plan. Volume IV is a
26 "standards" document which we believe serves as an implementing

1 ordinance under the comprehensive plan. Volume IV includes
2 standards for individual development, and at Section 6.0410,
3 "General Provisions," the ordinance provides

4 "[n]o development will be permitted where it will
5 cause traffic generation beyond the street's [sic]
6 current carrying capacity including pavement width and
7 signalization. No development permits will be granted
8 where such development will create dangerous or
9 hazardous traffic conditions."

10 In relevant part, the city's findings about the street
11 system are as follows:

12 "IT IS THE POLICY OF THE CITY TO PROVIDE A SAFE AND
13 EFFICIENT STREET AND ROADWAY SYSTEM THAT MEETS CURRENT
14 NEEDS AND ANTICIPATED FUTURE GROWTH AND DEVELOPMENT.

15 "Gabbert's [sic] Hill is one of the City's major
16 undeveloped Low Density Residential areas. No public
17 street system or urban development exists on the upper
18 level of Gabbert's [sic] Hill, 650-990 ft. elevation.
19 Outside of scattered dwellings along Regner Road, only
20 three residences exist on the upper level of the hill
21 served by a 1200 ft. private driveway off the East end
22 of S.W. 27th, an unimproved City street. The terrain
23 of the hill limits future public street access to 3 to
24 4 points, probably off Towle Rd. and Regner. (Exhibit
25 "F" - Potential Access Points). Extreme slopes
26 (35-50%) make street connection to the North (S.W.
19th) or South (Butler Rd.) unlikely.

17 "As the first major development on upper Gabbert Hill,
18 Butler's Ridge raises major concern for development of
19 a 'safe and efficient' street system to meet current
20 needs and future growth. Butler's Ridge proposes to
21 extend S.W. 33rd for 1925 ft. from the West plat
22 boundary, providing two future street connections to
23 the South (to Towle Rd.) and East (to Gabbert Rd.) and
24 a potential access to the North (Tract A). Butler
25 Ridge could trigger other development on Gabbert Hill
26 utilizing the Hill's single improved public street,
S.W. 33rd., which is classified as a local street.

24 "Butler's Ridge is estimated to add 450-500 trips per
25 day to the West end of S.W. 33rd, bringing traffic
26 levels to 650 trips per day. In addition to the
Butler's Ridge site, the upper level of Gabbert Hill

1 has a development potential of 150-200 dwellings,
2 which could generate an additional 1100-1600 trips per
3 day. According to the Gresham Year 2000 Travel Demand
4 Analysis (1979, Straam Engineers) about 60% of future
5 traffic from the Gabbert Hill area will be attracted
6 to destinations accessible by Towle Rd/221st and 40%
7 to destinations accessible by Regner Rd.

8 "Assuming that S.W. 33rd becomes the East-West
9 collector street across Gabbert Hill, the West end of
10 S.W. 33rd near Towle will have a year 2000 traffic of
11 up to 1400 trips per day. If other upper Gabbert Hill
12 properties develop without access to Regner Rd, this
13 traffic level could be exceeded. This traffic would
14 exceed the capacity and design of S.W. 33rd, a local
15 street, especially considering the sustained 16% grade
16 proposed through most of the Butler's Ridge site.
17 (Exhibit "E" - Engineering Comments).

18 "Since no 'safe and efficient' street system has been
19 planned or established for the future development of
20 Gabbert Hill, Butler's Ridge would set the pattern for
21 future development and traffic circulation. By
22 utilizing S.W. 33rd as its primary access, Butler's
23 Ridge could funnel future Gabbert Hill traffic via
24 33rd St. at potentially unacceptable levels.

25 "This proposal is not consistent with the Trafficways
26 Policy."

27 The city also discussed a requirement for a future street
28 plan. A future street plan was required here because of the
29 nature of the applicant's subdivision proposal.² Because one
30 of the requirements for approval of the future street plan is
31 compliance with the city's comprehensive plan, we conclude the
32 city was correct in rejecting the applicant's future street
33 plan as lacking safety and efficiency, or, in other words, for
34 non-compliance with the "Trafficways Policy."

35 The county's findings relevant to the future street plan
36 issue are as follows:

1 "Gabbert Hill - Future Streets

2 "In addition to future street plans limited to one
3 subdivision, the Planning Commission may adopt a
4 future street plan in any area where there is a need
5 to define future street alignments. A future street
6 plan for upper Gabbert Hill is needed although this
7 cannot be provided by the Butler's Ridge applicant
8 alone. (Exhibit "D", Narrative). Planning Staff met
9 with upper Gabbert Hill property owners in January to
10 explore options for developing future streets and
11 access. Most property owners are interested in a
12 common effort to set future street alignments but it
13 was not clearly established who should lead such an
14 effort, the City or property owners.

15 "A future street system should connect to existing or
16 planned collector streets, disperse future traffic via
17 multiple access points, provide safe grade, serve
18 buildable portions of the hill and meet future public
19 circulation needs. See Exhibit "F" - Potential Access
20 Points - Gabbert Hill. Public safety and circulation
21 can best be served by an East/West connecting street
22 across Gabbert Hill through Butler's Ridge with
23 multiple access points to Towle and Regner Roads.

24 "The applicant has claimed that S.W. 33rd is the only
25 available primary access to Butler's Ridge (Exhibit
26 "D", P. 9). Other access possibilities to Towle Rd.
27 may be available through property to the South at
28 grades of below 10%. This access could only be
29 established by cooperation of Gabbert Hill properties
30 in a safe and efficient future street plan."

31 Also relevant are the comments of the Gresham City
32 Engineering Division which does not recommend approval of S.W.
33 33rd Street as primary access.

34 "This continuously steep grade over such a long
35 stretch of this street increases the potential hazards
36 associated with streets at steep grades. These
37 include hazards to traffic using this street in
38 adverse weather conditions, hazards to maintenance
39 crews and equipment trying to keep the street open in
40 icy or snow conditions and hazards to residents along
41 S.W. 33rd Street. If this proposed street is
42 approved, it may not be possible for maintenance crews
43 to keep it open during severe winter conditions.

1 Considering the potential traffic this street may
2 carry, it creates a less than desirable situation for
3 the residents along S.W. 33rd Street, which is
4 classified as a Local Street...If Butler's Ridge is
5 allowed to develop without participating in the
6 construction of the primary access to Gabbert Hill,
7 the other properties on the Upper Gabbert Hill may not
8 be able to economically support that construction. If
9 this happens some properties will not have access and
10 will not be able to develop in the future. (Exhibit
11 "E" - Engineering Comments." Record, p. 11.

12 * * *

13 "This proposed street design and access may cause
14 traffic on S.W. 33rd in excess of its capacity. This
15 traffic on a sustained 2000 ft. grade will create
16 dangerous traffic conditions."³

17 The city then sums up its concerns that the proposed
18 development does not meet the requirement for safe and
19 efficient streets.

20 "This proposal has been extensively revised by the
21 applicant since October to resolve most major staff
22 concerns with the original submittal, especially
23 private streets and drainage concerns. The only major
24 issue still unresolved is the sustained 16% grade and
25 future traffic conditions on Gabbert Hill. The
26 pattern of ownership on Gabbert Hill and unavoidable
topographic constraints make establishment of a 'safe
and efficient street system' difficult at best for all
properties on the upper hill. Alternate access at
lesser grades is feasible to the Butler Ridge site
only through adjoining properties.

"This proposal is consistent with all applicable
Community Development Policies, Procedures and
Standards except the Trafficways Policy and Streets
Standards. The Future Street Plan meets the criteria
for approval but does not resolve City concerns for a
'safe and efficient' future street system on Gabbert
Hill. The proposed development pattern complies with
the Hillside Physical Constraint District Standards.
Field topography is needed to confirm the buildability
of Lots 1, 2, and 7-11. Acceptance of the 18 acre
public open space needs further analysis during Design
Review on the condominiums." Record, p. 11a
(Supplement).

1 These findings illustrate the city's concern about traffic
2 patterns in the area and the effect of this development on
3 those traffic patterns. In sum, the city views this
4 development to set the stage for future development in the
5 area, and that future development will result in subjecting
6 S.W. 33rd Street to traffic beyond its present capacity. In
7 other words, the potential unacceptable levels of traffic
8 mentioned in the findings is the basis for the city's
9 conclusion that the proposal is not consistent with the
10 "Trafficways Policy."

11 The findings are sufficient to establish that the proposal
12 does not meet the city's "Trafficways Policy" and Section
13 6.0410 of the Development Code prohibiting development permits
14 where the development "will create dangerous or hazardous
15 traffic conditions." Failure to meet either of those two
16 criteria is sufficient to sustain a denial. Heilman v City of
17 Roseburg, 39 Or App 71,591 P2d 390 (1979).

18 In our first review of Liles, we concluded that the city
19 may not use its plan to prohibit a development where the
20 development meets specific development standards. However, the
21 Supreme Court's decision in Philippi, supra, makes it clear
22 that the plan policy in question is an appropriate measuring
23 standard in this case. Also supporting this conclusion is the
24 fact that the city's development ordinance calls for compliance
25 with the comprehensive plan. See Footnote 2, supra.

26 There remains, however, the issue of whether a safety

1 standard such as the one in the "Trafficways Policy" is
2 impermissibly vague. We find it is not. The city is free to
3 measure a proposal against a broad safety standard such as the
4 one here. The city's analysis of the safety issue is fully
5 stated and explained, and we do not believe the law requires
6 more. See Lee v City of Portland, 3 Or LUBA 31, aff'd 57 Or
7 App 798, 646 P2d 662 (1982).

8 The decision of the City of Gresham is affirmed.

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FOOTNOTES

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"(1) The City shall develop, adopt and implement an Official Streets Master Plan.

"(2) The City shall work with other East Multnomah County jurisdictions to adopt and maintain a functional street classification system designating the arterial and collector street network and to designate major routes for through traffic.

"(3) The Community Development Standards shall specify street design standards.

"(4) The City shall adopt and implement a uniform street naming and addressing system.

"(5) The City shall maintain the traffic flow and carrying capacity of major arterials and other major streets by restricting or reducing curb cuts and other direct means of access and requiring adequate right-of-way and setback lines as part of the development process.

"(6) The City shall make every effort to design municipal streets and roadways and to establish traffic flow patterns which minimize or reduce vehicular emissions."

2

The Gresham Development Code at Section 10.4200 calls for a future street plan for a land revision requiring "Type III" procedure. A "Type III" land division, under Development Code Section 10.4116 is a

"land division proposal of major significance...a land division of major significance is one of the following:

"(1) A land division that will create a street that does not meet the conditions of Section 10.4114.

"(2) A land division that may either eliminate or make impractical the establishment of a planned street.

We do not understand petitioner to challenge that this request qualifies under the "Type III" land division designation.

1 The criteria for approval of the future street plan are
2 found at Section 10.1014 and 10.1050. Under these two
3 provisions, compliance with the comprehensive plan is required.

3

3

4 Note also the findings on sidewalks as follows:

5 "A street width of 28 ft. has been proposed by the
6 applicant for S.W. 33rd. This is acceptable to the
7 Engineering Division. A ban on parking on both sides
8 of the street would add capacity to this street if it
9 is to be used for a main access over Gabbert Hill to
10 Regner Road. The Engineering Division recommends that
11 no parking be allowed on S.W. 33rd.

12 "The proposed sidewalk location is not acceptable for
13 three reasons. The possible grades on the sidewalk
14 will be hazardous in bad weather unless measures are
15 taken such as steps to alleviate this problem. The
16 sidewalk is too far from the right-of-way making
17 maintenance and security difficult. The location will
18 disturb the privacy of the single family lots.
19 (Exhibit "E").