

## PLANNING COMMISSION

### Meeting Agenda

Monday July 8, 2013

7:00 PM

City Council Chambers – 155 NW 2<sup>nd</sup> Avenue

Commissioner Tyler Smith (Chair)

Commissioner Sean Joyce (Vice Chair)

Commissioner Charles Kocher

Commissioner John Proctor

Commissioner Shawn Hensley

Commissioner John Savory

Commissioner (Vacant)

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1. CALL TO ORDER

2. CITIZEN INPUT ON NON-AGENDA ITEMS

3. PUBLIC HEARINGS

- a. *The applicant is proposing a 6 unit fuel-dispenser station which includes a canopy, underground fuel storage tanks, an attendant kiosk, equipment kiosk, restroom, dumpster, storage shed, propane fueling area, and an air/water pad.  
(Fred Meyer DR 12-03/TA 12-01/ZC 12-02)*

4. NEW BUSINESS

5. FINAL DECISIONS

*(Note: These are final, written versions of previous oral decisions. No public testimony.)*

6. MINUTES

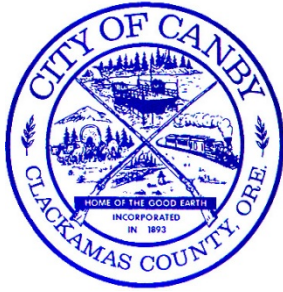
7. ITEMS OF INTEREST/REPORT FROM STAFF

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION

9. ADJOURNMENT

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting at 503-266-7001.*

*A copy of this agenda can be found on the City's web page at [www.ci.canby.or.us](http://www.ci.canby.or.us)  
City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV5.  
For a schedule of the playback times, please call 503-263-6287.*



# City of Canby

**Date: July 8, 2013**

**From: Bryan Brown, Planning Director/Angie Lehnert, Associate Planner**

**RE: Fred Meyer Fuel Facility revised designs/Appeal/LUBA remand**

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This memo is the third memo in response to Save Downtown Canby's appeal, file # APP13-01, of the Planning Commission's approval of the Site and Design Review file #DR 12-03 for a Fred Meyer Fuel Facility. This memo is also in response to the Oregon Land Use Board of Appeals (LUBA) remand of TA 12-01 and ZC 12-02 (adopted by Ordinance 1365) to the City (*Save Downtown Canby v. City of Canby*, LUBA No. 2012-097). A copy of the LUBA findings are in your packet.

Council was originally scheduled to hear the appeal application on April 3, 2013. At the request of Fred Meyer representatives, the hearing before Council was delayed until April 19, 2013 so that Fred Meyer representatives could submit revised designs. At the April 19, 2013 meeting, the Council remanded the application back to the Planning Commission because the application contained revised designs that the Planning Commission had not yet reviewed.

Since the April 19, 2013 Council meeting for APP 13-01 of File DR 12 -03, LUBA has remanded files TA 12-01 and ZC 12-02 back to the city with instructions for the city to consider whether the amendments resulting from Council's final approval of TA 12-01/ZC 12-02 significantly affect any transportation facility under the Transportation Planning Rule and 16.08.150 Traffic Impact Study of the Canby Municipal Code or conflict with a future pedestrian crossing of OR 99E in the vicinity of the site.

Therefore, the land use files associated with the proposed Fred Meyer Fuel Facility—DR 12-03, TA 12-01, and ZC 12-02 —have been re-consolidated for Planning Commission consideration and final consideration by Council. The issues raised in the appeal application APP 13-01 will be addressed in the re-consolidated hearings and all appeal proceedings are still part of the record. If necessary, future Final Findings will reflect a final decision of the appeal file #APP 13-01.

Staff prepared and sent public notices for a July 8, 2013 Public Hearing on these issues. After the notices were sent, it came to staff's attention that Council must first give the Planning Commission direction to review the LUBA items (because the LUBA appeal concerned the Council's final decision, not a Planning Commission final decision). An agenda item asking the Council to direct the Planning Commission to review the re-consolidated DR 12-03/TA 12-01/ZC 12-02 files and recommend a final decision has been made for the July 17, 2013 Council meeting. In addition, staff anticipates receiving additional information from Fred Meyer representatives in response to the LUBA remand issues. Therefore, staff recommends that the Public Hearing scheduled for July 8, 2013 be continued to the July 22, 2013 meeting.

**Sample Motion:**

I move to continue to the Public Hearing for DR 12-03/TA 12-01/ZC 12-02 to the regularly scheduled July 22, 2013 Planning Commission meeting date.

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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

SAVE DOWNTOWN CANBY,  
*Petitioner,*

vs.

CITY OF CANBY,  
*Respondent,*

and

GREAT BASIN ENGINEERING,  
*Intervenor-Respondent.*

LUBA No. 2012-097

FINAL OPINION  
AND ORDER

Appeal from City of Canby.

E. Michael Connors, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was Hathaway Koback Connors LLP.

Joseph Lindsay, City Attorney, Canby, filed a joint response brief on behalf of respondent.

Steven W. Abel and Elaine R. Albrich, Portland, filed a joint response brief, and Steven W. Abel argued on behalf of intervenor-respondent. With them on the brief was Stoel Rives LLP.

BASSHAM, Board Member; HOLSTUN, Board Chair; RYAN, Board Member, participated in the decision.

REMANDED 06/04/2013

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

**NATURE OF THE DECISION**

Petitioner appeals an ordinance approving a text and zoning map amendment from one commercial zone to another commercial zone with different site design standards, to facilitate approval of a fuel station.

**FACTS**

The subject property is a .75 acre tract located at the corner of Highway 99E and S Locust Street in the City of Canby. The property's base zone is Highway Commercial (C-2). The property and most of the surrounding land are also subject to the Downtown Canby Overlay (DCO) zone, which has several sub-areas. Each of the DCO sub-areas allow the same uses, which are determined by the base C-2 zone, but each DCO sub-area has slightly different site design review standards.

The DCO sub-area that applies to the subject property is the Core Commercial (CC) sub-area. The CC sub-area is intended to foster pedestrian-oriented development, and its design criteria generally reflect that intent. The subject property is the north-easternmost property from the city center that is zoned CC. Properties farther to the northeast are also within the DCO, but subject to the Outer Highway Commercial (OHC) sub-area, which is generally intended to foster more automobile-oriented development.

On February 28, 2012, intervenor-respondent (intervenor) had a pre-application conference with city staff concerning a site design review application for a proposed Fred Meyer fuel station on the subject property. City staff advised intervenor that placing a fuel station within the CC sub-area would pose problems in demonstrating consistency with the intent of the CC sub-area. City staff suggested that intervenor first apply to rezone the property from CC to OHC, which would basically involve a minor text amendment to the geographic descriptions of the DCO sub-areas, and a map amendment to shift the boundary

1 between the CC and OHC sub-areas approximately 150 feet southwestward to include the  
2 subject property in the OHC sub-area.

3 Intervenor applied to rezone the property from CC to OHC, and for site design review  
4 approval of a six-unit fuel station under the OHC design review criteria. The city planning  
5 commission held a hearing on the proposed text and map amendments, and recommended  
6 denial. Because the site design review application followed a different procedure, and was  
7 dependent on the text and zoning amendments, the planning commission deferred hearings  
8 on the site design review application until the city council reviewed its recommendation on  
9 the text and zoning amendments. The city council held a hearing on the text and map  
10 amendments, and on December 5, 2012, adopted Ordinance No. 1365, which approved the  
11 text and map amendments. This appeal followed.

12 **MOTION TO DISMISS**

13 Intervenor moves to dismiss this appeal, arguing that Ordinance No. 1365 is not a  
14 “final” decision and therefore not subject to LUBA’s jurisdiction.

15 ORS 197.015(10)(a) defines a “land use decision” as a final decision that concerns  
16 the adoption, amendment or application of comprehensive plan provisions or land use  
17 regulations. As noted, the planning commission deferred consideration of the site design  
18 review application. Intervenor contends that the three applications for a text amendment,  
19 map amendment, and site design review approval were consolidated pursuant to ORS  
20 227.175(2), which requires the city to establish a consolidated procedure by which an  
21 applicant may, at its option, seek approval for all permits or zone changes needed for  
22 development approval. Because the three applications were consolidated, intervenor argues,  
23 the adoption of Ordinance No. 1365 approving the text and map amendments was not a final  
24 decision, but rather an interlocutory decision issued in the middle of a consolidated  
25 proceeding on the three applications that has yet to be completed.

1           Petitioner responds, and we agree, that Ordinance No. 1365 is unquestionably a final  
2 decision. The consolidation procedure at ORS 227.175(2) is available at the option of the  
3 applicant, and intervenor consented to the planning commission’s intent to process the text  
4 and map amendment applications separately from the site design review application. In any  
5 case, nothing in ORS 227.175(2) or elsewhere cited to our attention suggests that an  
6 otherwise final decision is not final until all consolidated applications are finally decided.<sup>1</sup>  
7 The motion to dismiss is denied.

8           **FIRST ASSIGNMENT OF ERROR**

9           The Transportation Planning Rule (TPR) at OAR 660-012-0060(1) requires local  
10 governments to determine if plan or land use regulation amendments would “significantly  
11 affect” an existing or planned transportation facility. If so, the local government must adopt  
12 one or more measures to prevent or offset impacts on the facility.<sup>2</sup> Canby Municipal Code

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<sup>1</sup> We see no reason under state law why the city could not have issued an interlocutory decision on the text and map amendments and provided that the ordinance approving the text and map amendments would not become final until the city adopted a final decision on the application for site plan approval. But the city did not do so in this case.

<sup>2</sup> OAR 660-012-0060(1) provides, in relevant part:

“If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule\* \* \*. A plan or land use regulation amendment significantly affects a transportation facility if it would:

“\* \* \* \* \*

“(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

“\* \* \* \* \*

1 (CMC) 16.08.150(A) implements the TPR, and sets out a process and standards for  
2 determining whether an amendment significantly affects a transportation facility.

3 In its findings, the city council concluded that CMC 16.08.150 has been satisfied and  
4 the amendments will not significantly affect any transportation facility within the meaning of  
5 the TPR. The city's primary basis for that conclusion is that the "amendments do not change  
6 the underlying base zone or the overlay zone, but rather simply adjust the boundaries  
7 between two design subareas of the [DCO] overlay zone." Record 21. According to the city,  
8 the CC and OHC sub-areas of the DCO overlay zone "simply regulate[] the design of the  
9 uses that are already allowed within the Property's base zone designation." *Id.* The city  
10 concluded that the amendments "would not change the trip generation potential in the C-2  
11 zone (the underlying base zone), so it would not cause any change in the performance of  
12 existing or proposed facilities." *Id.* The city's reasoning on these points was based on a  
13 September 4, 2012 letter from intervenor's attorney, which the city council adopted by  
14 incorporation as additional findings. Record 19, 265-83.

15 Petitioner argues that the findings and record are insufficient to conclude that the  
16 change from CC to OHC sub-areas of the DCO does not "significantly affect" any  
17 transportation facility.

18 Where an amendment is a zoning map amendment, one option a local government has  
19 to determine whether the amendment significantly affects a transportation facility within the  
20 meaning of OAR 660-012-0060(1)(c) is to first evaluate whether the new zone authorizes

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"(B) Degrade the performance of an existing or planned transportation facility  
such that it would not meet the performance standards identified in the TSP  
or comprehensive plan; or

"(C) Degrade the performance of an existing or planned transportation facility  
that is otherwise projected to not meet the performance standards identified  
in the TSP or comprehensive plan."

1 more traffic-intensive uses, compared to the old zone. *Barnes v. City of Hillsboro*, 61 Or  
2 LUBA 375, 399, *aff'd* 239 Or App 73, 243 P3d 139 (2010); *Mason v. City of Corvallis*, 46  
3 Or LUBA 199, 222 (2005). This initial, somewhat hypothetical, inquiry typically involves  
4 comparing the most traffic-generative uses allowed in the two zones that could reasonably be  
5 developed on the property in question. If those most traffic-generative uses allowed in the  
6 two zones are the same, then the local government could easily conclude that new zone will  
7 not generate any more traffic than the old zone and therefore no further inquiry is necessary  
8 under the TPR. However, if the most traffic-generative uses are different, which is typically  
9 the case, and the most traffic-generative use under the new zone would generate more traffic  
10 than under the old zone, then further and more technical analysis is usually necessary to  
11 determine if the amendment significantly affects a transportation facility and, if so, whether  
12 and what measures may be required.

13 In the present case, we understand the city to have concluded that, based on the fact  
14 that the uses allowed in the base C-2 zone are precisely the same both before and after the  
15 change from the CC to OHC sub-area of the DCO overlay zone, the amendment does not  
16 change the traffic-generative capacity of the uses allowed. Therefore, the city found, no  
17 further analysis was necessary under the TPR, in order to conclude that the change did not  
18 “significantly affect” any transportation facility. The only change, the city found, was to the  
19 site design review standards, which differ slightly between the CC and OHC sub-areas, and  
20 which do not affect traffic generative capacity of the uses allowed in the base C-2 zone under  
21 any of the DCO sub-areas. Based on that finding, the city found that the TPR is satisfied,  
22 without the need for further inquiry.

23 However, petitioner disputes that the different site design standards particular to the  
24 OHC sub-area do not increase the traffic generative capacity of the uses allowed, compared  
25 to the CC sub-area. Petitioner notes that under the design standards applicable in the CC  
26 sub-area, the maximum building footprint size is 30,000 square feet, while the maximum



1 building footprint size in the OHC sub-area is 80,000 to 100,000 square feet. CMC  
2 16.41.050(A)(2) (Table 3). According to petitioner, the footprint size of a commercial use  
3 such as the retail uses allowed as permitted uses in the C-2 zone could easily increase its  
4 traffic-generating capacity, compared to the same commercial use with a smaller footprint.

5 Further, petitioner argues, the differential maximum building footprint size in Table 3  
6 is intended to affect the *types* of commercial uses allowed in each sub-area of the DCO.  
7 CMC 16.41.010(C) states that one of the purposes of the different sub-areas in the DCO zone  
8 is to:

9 “Ensure that building sizes reflect desired uses in the Core Commercial and  
10 Transitional Commercial areas. Requirements limit the size of the building  
11 footprint to 40,000 [*sic*] square feet in these areas. For the purpose of  
12 understanding the scale of development, the proposed maximum allows for  
13 the creation of a high end grocery store (e.g. New Seasons, Whole Foods or  
14 Zupans). The proposed maximum differentiates development in this area  
15 from those in the Outer Highway Commercial area. Maximum building  
16 footprints are much larger in the [OHC] area.”

17 The differences in the site design standards between the CC sub-area and the OHC  
18 sub-area almost entirely relate to the appearance of structures, which would seem to have no  
19 apparent effect on traffic-generating capacity. Nonetheless, petitioner is correct that the two  
20 sub-areas have different maximum building footprint sizes, with 30,000 square feet the  
21 maximum in the CC sub-area, while the OHC sub-area allows a maximum building footprint  
22 of between 80,000 to 100,000 square feet. The apparent intent of this difference is to foster  
23 particular types of smaller scale commercial development in the CC sub-area, and allow  
24 larger scale commercial uses in the OHC sub-area. The base C-2 zone allows various  
25 commercial uses in all DCO sub-areas, such as a retail store, but the different maximum  
26 building footprint standards means that in the OHC sub-area building footprints for a retail  
27 store could be up to three times larger than an otherwise identical retail store located in the  
28 CC sub-area.

1           That said, a building footprint size differential does not automatically translate into an  
2 increase in traffic generating capacity. A maximum building footprint does not limit the total  
3 square footage of the building, only its footprint. Multiple buildings, in the CC sub-area  
4 could occupy the same footprint as a larger building in the OHC sub-area. But we note that  
5 the CC sub-area has a maximum building height of 60 feet, while the OHC sub-area has a  
6 maximum building height of 45 feet. The extra height allowed in the CC sub-area could  
7 presumably increase the total square footage for a given footprint size. In addition, there are  
8 different floor area ratio and setback standards between the two sub-areas, which would  
9 presumably affect both the maximum footprint and total square footage practicable on the  
10 subject property.

11           Most traffic engineers and local governments use the Institute of Transportation  
12 Engineers (ITE) *Trip Generation Manual* to calculate the trip generation potential of various  
13 types of uses. In the present case, the applicant's and city's engineers used the ITE Manual  
14 to estimate the trip generation potential of the proposed fuel station. We note that, under the  
15 ITE Manual, trip generation for most commercial use categories is calculated by multiplying  
16 a certain trip rate per square footage. Thus, the total square footage of a building or use  
17 seems to be a critical element in estimating trip generation for present purposes. In turn,  
18 estimating total square footage would seem to require taking into account variables such as  
19 maximum building footprints, maximum building height, floor area ratios, setbacks, etc. that  
20 differ between the two zones being compared.

21           This suggests that one approach to determining whether the rezone from CC to OHC  
22 could generate additional traffic and thus requires further analysis under the TPR would be  
23 evaluate the square footage and hence the traffic generation capacity of the most traffic  
24 intensive use allowed in the C-2 zone that could reasonably be constructed on the subject  
25 property, given the different footprint, height, setback, and floor area ratios that would apply  
26 in the two sub-areas. If that analysis showed that constructing the use under the OHC

1 standards would increase traffic generation compared to constructing the use under the CC  
2 standards, then further analysis is necessary under the TPR. If not, then the city could  
3 conclude that no further analysis is necessary, and the TPR is satisfied.

4 However, the record and the city's findings do not address these questions. The  
5 applicant submitted a traffic impact analysis, but it analyzed only the traffic impacts of the  
6 proposed fuel station under the ITE Manual, and did not purport to compare the different  
7 traffic generating potential between uses allowed under the different CC and OHC sub-area  
8 design standards.<sup>3</sup> The city's conclusion that no further inquiry is necessary under the TPR  
9 rests mainly on its finding that the uses allowed in the base C-2 zone have not changed.  
10 However, that finding is not a sufficient basis for that conclusion, if in fact the different site  
11 design standards that apply in the CC and OHC sub-areas affect the size or type of  
12 development to an extent that would be significant under the ITE Manual. We conclude that  
13 remand is warranted for the city to address this issue.

14 Petitioner also challenges under this assignment of error a finding that appears to  
15 embody an alternative basis for concluding that the TPR is satisfied. The city noted that four  
16 years ago the city adopted an ordinance that applied the DCO and its sub-areas to the  
17 downtown area, and that ordinance was supported by a finding that "all required public  
18 facilities and services either exist or will be provided concurrent with development." Record  
19 21. Based on that referenced finding, the city concludes that "there was no change in  
20 transportation impact by implementing the DCO, meaning there would be no impact in  
21 changing the Property from CC to OHC." *Id.* Petitioner argues, and we agree, that this  
22 finding is not sufficient to demonstrate that the TPR is satisfied. It does not necessarily  
23 follow from the fact that the DCO as a whole complied with the TPR when it was adopted

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<sup>3</sup> The challenged ordinance does not limit or condition the zone change to allow only the proposed fuel station or otherwise limit the size or types of uses allowed on the subject property.

1 four years ago that rezoning property from one DCO sub-area to another will not increase  
2 traffic generation, compared to the prior configuration of sub-areas, if in fact the different  
3 sub-areas have different standards that result in higher traffic generation potential.

4 The only other argument presented in the first assignment of error that warrants  
5 discussion is petitioner's argument that the city's findings regarding the TPR and a "public  
6 need" standard are inconsistent. However, similar issues are raised under the second and  
7 third assignments of error, and we address the inconsistency argument under those  
8 assignments of error.

9 The first assignment of error is sustained.

## 10 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

11 Under these assignments of error, petitioner argues that the city's findings of  
12 compliance with three CMC criteria are inconsistent, and not supported by substantial  
13 evidence.

### 14 **A. Inconsistency**

15 Petitioner contends that the city's findings addressing several criteria characterize the  
16 subject property as essentially undevelopable under the CC sub-area. According to  
17 petitioner, those findings conflict with the city's TPR findings, which as discussed above  
18 conclude that the rezone from CC to OHC will not increase the traffic generative capacity of  
19 the property. Petitioner contends that the city cannot have it both ways: either (1) the subject  
20 property is undevelopable under the CC sub-area, and must be rezoned to OHC in order to be  
21 developed, in which case the rezone will result in a net increase traffic compared to the CC  
22 zone and thus potentially "significantly affect" transportation facilities under the TPR, or (2)  
23 the rezone does not change the development potential of the property at all, in which case the  
24 city's finding that the subject property is undevelopable under the CC sub-area is not  
25 supported by substantial evidence, which undercuts the basis for concluding that the rezone  
26 complies with other criteria.

1           The flaw in petitioner’s argument is that the city did not find that the subject property  
2 is “undevelopable” under the CC sub-area or any words to that effect. CMC 16.88.160(D)(2)  
3 is a text amendment standard requiring a finding that there is a “public need for the change.”  
4 Petitioner cites to the following finding addressing CMC 16.88.160(D)(2):

5           “The public need for the change is evidenced by the fact that development has  
6 not occurred on the Property over many years. The Property is located away  
7 from the core area of the City and is on the edge of the OHC. The  
8 amendments will make development and private investment on the Property  
9 more attractive, and through private investment and redevelopment of the  
10 Property, the downtown core will be enhanced. Without the amendments, the  
11 attractiveness for the Property is diminished and the parcels are more likely to  
12 remain undeveloped within the DCO, which will diminish the ability of the  
13 downtown core to prosper. Accordingly, there is a public need for the  
14 change.” Record 22.

15 Similarly, CMC 16.88.160(D)(4) requires a finding that the text amendment will “preserve  
16 and protect the health, safety and general welfare of the residents in the community.” The  
17 city’s findings addressing CMC 16.88.160(D)(4) state in relevant part that the change will  
18 “facilitate development of underutilized land.” Record 22. In addressing Statewide  
19 Planning Goal 9 (Economic Development), the city found that the amendment will “spur  
20 development and commercial use of the Property, which will contribute to economic  
21 development” of the city. Record 24.

22           However, fairly read, the above findings conclude that the subject property will be  
23 more likely to be developed under the OHC sub-area, not that it is undevelopable under the  
24 CC sub-area. There is no necessary contradiction or inconsistency in finding that the rezone  
25 complies with the TPR, because it does not authorize uses with more traffic generative  
26 capacity compared to the old zone, yet finding that the new zone will make it easier to  
27 actually develop the property.

28           As explained above, where a local government determines that a zone change  
29 complies with the TPR based on a comparison of uses allowed in the two zones, that  
30 comparison is largely a hypothetical one, having little to do with actual development of the

1 property or whether the property is or is not likely to be developed under the old zoning. We  
2 held above that the city's analysis was insufficient to establish that no further inquiry is  
3 necessary under the TPR. However, we disagree with petitioner that the city is on the horns  
4 of a dilemma, and that on remand if it again concludes that the rezone does not increase the  
5 traffic-generative capacity of the subject property that the city will necessarily undercut the  
6 evidentiary basis for concluding that the rezone complies with the "public need" standard at  
7 CMC 16.88.160(D)(2), the "health, safety and general welfare" standard at CMC  
8 16.88.160(D)(4), or Statewide Planning Goal 9.

9 **B. Substantial Evidence regarding Public Need**

10 Under the third assignment of error, petitioner asserts a substantial evidence challenge  
11 to the city's finding that the CMC 16.88.160(D)(2) "public need" criterion is met because  
12 the property "will not develop" under the CC sub-area. Petition for Review 22. According  
13 to petitioner, the DCO with its sub-areas was first applied only four years ago, at the start of a  
14 serious real estate recession. While the rezoning to the OHC sub-area may be useful to  
15 facilitate the proposed fuel station, petitioner argues that there is no evidence or explanation  
16 for why the property cannot be developed with other commercial uses under the CC sub-area.  
17 For these reasons, petitioner contends that remand is necessary for the city to require  
18 substantial evidence that there is a "public need" for the amendment.

19 As explained above, the city did not find that the subject property "will not develop"  
20 under the CC sub-area, only that rezoning the property to OHC would facilitate or make it  
21 easier to develop the property. Those findings are supported by testimony in the record.  
22 Petitioner's arguments are based on a mischaracterization of the city's findings, and  
23 accordingly do not provide a basis for reversal or remand.

24 The second and third assignments of error are denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 The city’s Transportation System Plan (TSP) calls for a future pedestrian crossing of  
3 OR 99E in the vicinity of the subject property. That future pedestrian crossing is included in  
4 TSP Table 5-1, among a list of financially constrained solutions that “can be funded using  
5 existing revenue streams through the year 2030.” At the time the city issued its decision, it  
6 was developing but had not yet adopted a OR 99E Corridor and Gateway Design Plan  
7 (Gateway Plan) that identified the specific location of that future pedestrian crossing at S  
8 Locust Street, approximately 100 feet from the subject property. The city’s traffic engineer  
9 testified that while the Gateway Plan has not yet been adopted, the location of the pedestrian  
10 crossing identified therein is consistent with and clarifies the TSP. Further, the engineer  
11 stated that when a pedestrian crossing is constructed in this area it would affect site access for  
12 the fuel station and would “trigger the need to convert the proposed site access to right-  
13 in/right-out.” Record 346.

14 Petitioner argued below that a future pedestrian crossing at S Locust Street would  
15 conflict with the proposed fuel station. The city’s findings do not specifically address the  
16 future pedestrian crossing listed in TSP Table 5-1 or identified in the Gateway Plan.  
17 However, there is a finding under CMC 16.88.160(D)(1), which requires that the city “shall  
18 consider” the comprehensive plan in adopting a text amendment, that the “99E Corridor and  
19 Gateway Design Plan is not yet adopted and is therefore not a criterion for this application.”  
20 Record 22.

21 Petitioner argues that even though the Gateway Plan was not adopted and need not be  
22 considered under CMC 16.88.160(D)(1), nonetheless the TSP itself calls for a future  
23 pedestrian crossing in the vicinity of the subject property, and therefore the city is obligated  
24 to consider and explain “why a pedestrian crossing in this area does not undermine the  
25 justification and purpose for seeking the Amendments in the first place.” Petition for Review  
26 24.

1            Respondents contend that the CMC 16.88.160(D)(1) obligation to “consider” the  
2 comprehensive plan does not convert a future pedestrian crossing listed in a TSP table into a  
3 mandatory approval consideration or criterion that requires specific findings to explain why  
4 the pedestrian crossing would not undermine the justification of the zone change to OHC. At  
5 best, respondents argue, under CMC 16.88.160(D)(1) the city is required to consider relevant  
6 comprehensive plan language and balance such language against other relevant  
7 considerations.

8            The city’s findings do not appear to “consider” the conflicts, if any, between uses  
9 allowed under the OHC sub-area and a future pedestrian crossing in the area, as  
10 contemplated by the TSP, or explain why such conflicts need not be considered for purposes  
11 of CMC 16.88.160(D)(1). Based on the city engineer’s testimony, the only consequence may  
12 be that when the pedestrian crossing is eventually constructed that access to the station must  
13 be converted sometime in the future to right-in/right-out. However, because the city did not  
14 appear to consider the question at all, and the decision must be remanded in any event under  
15 the first assignment of error, remand is also warranted under this assignment of error for the  
16 city to adopt findings considering the future pedestrian crossing listed in the TSP to the  
17 extent it is relevant to the amendment, and balancing that consideration against other relevant  
18 considerations, or explaining why no such consideration is required under CMC  
19 16.88.160(D)(1).

20            The fourth assignment of error is sustained.

21            The city’s decision is remanded.