

**PLANNING COMMISSION
Meeting Agenda
Monday – October 22, 2012**

7:00 PM

City Council Chambers – 155 NW 2nd Avenue

**Commissioners Dan Ewert (Chair), Randy Tessman (Vice-Chair),
Sean Joyce, Charles Kocher, John Proctor, Misty Slagle and Tyler Smith**

CALL TO ORDER

2. CITIZEN INPUT ON NON-AGENDA ITEMS

3. PUBLIC HEARINGS

a. Continued from September 24, 2012 applicant is requesting a Text Amendment/Zone Change to shift a subarea boundary of the Downtown Canby Overlay at this site from Core Commercial to Outer Highway Commercial to accommodate a Fred Meyer fuel station to be located at 391 SE 1st Avenue **(DR 12-03, TA 12-01, ZC 12-01 FRED MEYER FUEL STATION)**

b. Continued from September 24, 2012 applicant is requesting a Site and Design Review for a Fred Meyer fuel station located at 391 SE 1st Avenue **(DR 12-03, TA 12-01, ZC 12-01 FRED MEYER FUEL STATION)**

4. NEW BUSINESS - None

5. FINAL DECISIONS - None

6. MINUTES

a. September 24, 2012 Planning Commission Meeting 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. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503-263-6287

PUBLIC HEARING FORMAT

The public hearing will be conducted as follows:

- **STAFF REPORT**
- **QUESTIONS** (If any, by the Planning Commission or staff)
- **OPEN PUBLIC HEARING FOR TESTIMONY:**
 - APPLICANT** (Not more than 15 minutes)
 - PROPOSERS** (Persons in favor of application) (Not more than 5 minutes per person)
 - OPPOSERS** (Persons opposed to application) (Not more than 5 minutes per person)
 - NEUTRAL** (Persons with no opinion) (Not more than 5 minutes per person)
 - REBUTTAL** (By applicant, not more than 10 minutes)
- **CLOSE PUBLIC HEARING** (No further public testimony allowed)
- **QUESTIONS** (If any by the Planning Commission)
- **DISCUSSION** (By the Planning Commission)
- **DECISION** (By the Planning Commission)

All interested persons in attendance shall be heard on the matter. If you wish to testify on this matter, please step forward when the Chair calls for Proponents if you favor the application; or Opponents if you are opposed to the application; to the microphone, state your name address, and interest in the matter. You will also need to sign the Testimony sheet at the microphone with your name and address. You may be limited by time for your statement, depending upon how many people wish to testify.

EVERYONE PRESENT IS ENCOURAGED TO TESTIFY, EVEN IF IT IS ONLY TO CONCUR WITH PREVIOUS TESTIMONY. All questions must be directed through the Chair. Any evidence to be considered must be submitted to the hearing body for public access.

Testimony and evidence must be directed toward the applicable criteria listed on the wall.

Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and interested parties an opportunity to respond to the issue, may preclude appeal to the City Council and the Land Use Board of Appeals based on that issue.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue may preclude an action for damages in circuit court.

Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The Planning Commission shall grant such requests by continuing the public hearing or leaving the record open for additional written evidence or testimony. Any such continuance or extension shall be subject to the limitations of the 120-day rule, unless the continuance or extension is requested or agreed to by the applicant.

If additional documents or evidence are provided by any party, the Planning Commission may, if requested, allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any such continuance or extension of the record requested by an applicant shall result in a corresponding extension of the 120-day time period.

To: Canby Planning Commission

October 1, 2012

From: Curt Hovland Representing Hulberts Flowers

Subject: Proposed Development of Fueling Station


I previously submitted a comment on the subject of traffic congestion and dangers that may result from the current plan for the subject development. I attended the public hearing held before the Planning Commission on Monday 24 Sep. 2012 with the hope that my concerns would be addressed and if possible mitigated. I was disappointed to find that the traffic analyses mentioned in passing did not seem to be sophisticated enough to address my concerns. I continue to believe that the current design for a fueling station will have a profound impact on the traffic in the center lane which would be shared by Hulberts and the Fred Meyer fueling station. A proper analysis of the situation in the center lane must consider the time variable nature of the inputs to the problem. Let me illustrate my concerns by developing several simple traffic scenarios which have a significant probability of occurring.

Scenario 1: Imagine two cars approaching the center lane at the posted speed of 35 MPH. One approaching from the East wanting to go into the fueling station and one approaching from the West wanting to enter Hulberts. Traffic in both directions is heavy. If they are able to stop in time they will be sitting there face to face. Neither car has the right-of-way and each car is preventing the other from reaching its destination. The only solution is for one of the two vehicles to reenter the inside through lane and permit the other vehicle to advance and the go back into the turn lane. This represents a maneuver with risk.

Scenario 2: Imagine a situation where traffic is heavy and a car is waiting in the center lane to get into Hulberts. A tanker truck is approaching from the East wanting to enter the fueling station. He can't get into the center lane so what does he do. He might choose to go around to side street and enter the fueling station from 2nd Ave. The side streets are not well configured to handle a tanker. Or he may choose to sit in the through lane and wait for an opening. A very frightening situation.

Scenario 3: Imagine the center turn lane to be temporarily filled by cars wishing to enter Hulberts. A car approaches from the East wanting to go into the fueling station has to decide what to do. He could wait for the center lane to clear enough so that he can enter to go to the fueling station thus creating a danger of rear end collision. Or he could choose to go around and enter through the 2nd Ave entrance. It would seem that most people would take the second option. You might be tempted to think that this scenario could not happen. I believe it could on a day such as PROM Day this last year where we had 294 separate orders to be picked up within a time window of about 3 hours.

Scenario 4: Imagine the center turn lane to be filled with cars heading for the fueling station. A customer driving East and wanting to enter Hulberts parking lot is blocked from entering the left turn lane. His options are to wait for a opportunity to get into the turn lane there-by blocking the the inside through lane or continue down the highway. He however has no back entrance to Hulberts. He must find a place to turn around and approach Hulberts from the East. This will impact the Pine street intersection.



Scenario 5: Complicate all of these simple scenarios by adding in those vehicles wishing to make a left turn out of Hulberts, Plus those vehicles wishing to make a left turn out of the fueling station, plus those vehicles wishing to make a left turn from Locust onto the highway and pedestrians trying to cross the highway on Locust and you could see a chaotic mess. When a driver is faced with a very frustrating situation such as waiting for an opportunity to turn left, he is more likely to take a chance that can end in a serious accident. The other fact to remember is the situation will only get worse with time.

One could take the position that these scenarios don't represent very likely situations. During my career of analyzing and designing very complex aerospace systems, I have become a believer in Murphy's Law. If a system can fail it will, and at the very worst time.

My purpose in writing this letter is to only address the traffic issue. I personally believe that a better location could have been chosen for a fueling station. I will leave it to others to argue the merits of that case. If a decision is made to proceed with this development, I strongly urge you to limit the highway access to a right turn in and a right turn out of the fueling station. This would substantially reduce the conflicts in the center turn lane. I would believe that configuration would have only a minor impact on the fuel station business. Their customers will learn the easiest ways to gain access to discount gas. There is precedence for such a decision at the Fred Meyer complex and also to a lesser extent at Canby Place and at Walgreen's. A decision to limit highway access is also made easier by the stated position that the ODOT permit currently in the hands of the applicant would apply if a restricted access were to be incorporated in the site design. I would also raise a possible issue of City liability if a less safe approach were to be approved while a safer approach was available.

The idea of granting full access for now and looking at accident history that develops to support a later restriction to the access was mentioned at the public hearing. I would consider this approach to be a cavalier way to deal with a public safety issue.

Thank you for your careful consideration of this important issue.


Curtis A. Hovland

President of CRACO Inc. DBA Hulberts Flowers



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503-205-8401 direct

mikeconnors@hkcllp.com

VIA EMAIL

October 1, 2012

Planning Commission
c/o Brian Brown, Planning Director
Angie Lehnert, Associate Planner
City of Canby
PO Box 266-9404
Canby, OR 97013

Re: Fred Meyer Fuel Station
Application Nos. DR 12-03/TA 12-01/ZC 1201
Save Downtown Canby – Supplemental Evidence/Argument Letter

Dear Commissioners:

As you know, this firm represents Save Downtown Canby (“SDC”), a group of local business owners concerned about the above-referenced Text Amendment, Zone Change and Site and Design Review applications filed by Fred Meyer Stores, Inc. (the “Applicant”) for a new Fred Meyer fuel center. At the September 24, 2012 public hearing, the Planning Commission left the record open to allow all parties to submit supplemental evidence and argument by October 1, 2012 pursuant to ORS 197.763(6). This letter and the attached letter from Lancaster Engineering, dated October 1, 2012 (“Lancaster’s October 1st Letter”), constitute SDC’s supplemental submittal.

1. The City’s approval of the Text Amendment and Zone Change will establish precedent for future development in the downtown area.

Acknowledging that it would be detrimental to establish a precedent that the City will not strictly enforce the Downtown Canby Overlay (“DCO”) and will amend it to accommodate development proposals that cannot satisfy the standards, the Applicant argued at the September 24th hearing that the City should not be concerned because there is no precedent in land use cases. The Applicant’s claim that the City’s decision will not establish a precedent nor have any bearing on future development in the downtown area is flawed in several respects.

The Applicant’s claim that there is no precedent in land use cases and the City can freely apply different standards and interpretations to different applications is wrong. The Oregon Court of Appeals specifically rejected the authority of local governments to selectively apply different standards and interpretations to different applicants. *Holland v. City of Cannon Beach*, 154 Or

App 450, 458-59, 962 P2d 701 (1998); *Alexanderson v. Clackamas County*, 126 Or App 549, 552, 869 P2d 873, *rev. den.* 319 Or 150, 877 P2d 87 (1994).

The Applicant's argument is particularly problematic because its justification for the Text Amendment and Zone Change are based on broader concerns about the DCO, not the specific facts of this application or characteristics of this property. The Applicant argues that the Text Amendment and Zone Change are primarily justified because the current CC sub-area regulations have not fostered development since their adoption and the CC sub-area boundary is too broad. These same principles obviously apply to other properties in the CC sub-area and the DCO as a whole. If the City approves the Text Amendment and Zone Change based on these justifications, it is adopting broad policies and principles that will apply to the entire DCO.

Regardless of whether or not the City will be legally bound by the precedent established in this case, the City should make its decision based on the DCO as a whole and not just this application. The City is not allowed to give preferential treatment to the Applicant. The City should assume that the DCO policies and interpretations it adopts in this case will apply to other property owners and applicants. Other property owners and applicants will demand and are entitled to similar treatment. If the City does not apply the DCO policies and interpretations consistently, it will open itself up to accusations that the City is not enforcing the DCO fairly and equitably and legal challenge.

The City's approval of the Text Amendment and Zone Change will establish a bad precedent and its adoption of the Applicant's rationale will call the entire DCO into question. The City should not jeopardize the DCO for this single development.

2. The City cannot rely on the Text Amendment/Zone Change applications for purposes of reviewing the Site and Design Review application.

In its July 24, 2012 letter, SDC requested that the City clarify if it is processing the Text Amendment/Zone Change and Site and Design Review applications as consolidated applications. It is apparent from the September 24th public hearings that the City is not processing the applications as consolidated applications. The Planning Commission is considering the applications separately and has yet to hold a public hearing for the Site and Design Review application. The City staff stated at the September 24th hearing that the Planning Commission's decision on the Site and Design Review application is subject to an appeal to the City Council, which indicates that this application is being processed under the Type III process as opposed to the Type IV process for the Text Amendment/Zone Change applications. If all of the applications were consolidated, they would all be processed pursuant to the Type IV process.

Since the applications are not going through a consolidated process, the City cannot rely on the Text Amendment/Zone Change applications for purposes of reviewing the Site and Design Review application. The fixed goal-post rule requires the City to review all land use applications based on the acknowledged comprehensive plan and land use regulations in effect on the date the applications are filed. ORS 227.178(3)(a) provides that "approval or denial of the application shall be based upon the standards and criteria that were *applicable at the time the application was first submitted.*" (Emphasis added). Even if the Comprehensive Plan and Canby Municipal Code ("CMC") provisions change as a result of the approval of the Text Amendment/Zone

Change applications, the City must review the Site and Design Review application based on the provisions in effect when the application was filed since the applications are not consolidated.

The Applicant and the City staff acknowledge that the proposed fuel station does not comply with the City's regulations without the Text Amendment/Zone Change. Therefore, the City cannot approve the Site and Design Review application.

3. The Applicant's Traffic Analysis is flawed and unreliable.

The attached letter from Lancaster Engineering, dated October 1, 2012 ("Lancaster's October 1st Letter"), addresses additional flaws with the Applicant's traffic analysis. Lancaster Engineering confirmed that the Applicant's Transportation Impact Analysis, dated May 17, 2012 (the "TIA"), is inconsistent with ODOT and the City's traffic engineer's instructions based on recent conversations with ODOT and a review of ODOT and the City's traffic engineer (DKS Associates) written instructions. ODOT advised Lancaster Engineering that it intends to conduct an internal safety audit related to this proposed development and the potential safety and operational impacts prior to the City Council hearing for the project, a highly unusual step for ODOT and indicative of the problem with the TIA. Finally, Lancaster's October 1st Letter includes data from the Fred Meyer fuel station in Cornelius demonstrating that the trip generation for the proposed facility will likely be far in excess of the volumes relied on by the TIA.

Additionally, it is important to emphasize that the Applicant's traffic engineer acknowledged at the September 24th hearing that Applicant could have done more to accurately assess the traffic impacts of an off-site fuel station. In response to a question from the Planning Commission, the Applicant's traffic engineer confirmed that the Applicant could have performed surveys of Fred Meyer fuel stations located off-site from the Fred Meyer stores but chose not to do so because it would be too labor intensive. The Applicant's traffic engineer acknowledged that it "certainly" could have performed a survey of the Oak Grove fuel station since it is located approximately 0.6 miles from the store, but that it did not do so because it assumed that the traffic impact analysis was "pretty close to reality" and a survey would have required "quite a bit more effort" and would be too "labor intensive." The Applicant should not be allowed to cut corners simply because it requires more analysis than the Applicant wants to do, especially given that the Applicant did not provide *any* evidence of the impacts of an off-site fuel station. Given the existing traffic safety and congestion problems along Highway 99 and the significant problems projected in the future, the Applicant should be required to provide all of the available information to fully assess the traffic impacts.

Conclusion

This supplemental evidence and argument continues to demonstrate that SDC's concerns about the project are well-founded. The entire DCO would be undermined if the City approved the Text Amendment and Zone Change applications based on the rationale provided by the Applicant. Moreover, the Applicant has significantly underestimated the traffic impacts of the proposed fueling station and failed to adequately evaluate the impact on the surrounding transportation system. Regardless of how the City feels about this project, it should not approve such a flawed proposal that will have broader repercussions well beyond this particular property.

We appreciate your attention to this matter.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP


E. Michael Connors

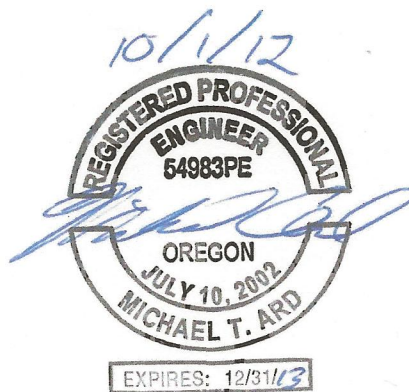
EMC/df

Enclosure

cc: Save Downtown Canby

October 1, 2012

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RE: Fred Meyer Canby – Fuel Facility

Dear Mike:

This letter is written to provide additional information related to the proposed Fred Meyer Fuel Facility in Canby, Oregon. We have continued investigating the many concerns we raised in our letter dated September 24, 2012 and we now are supplementing that letter with this additional information.

Zone Change Analysis

Our concerns regarding the need for a Transportation Planning Rule analysis have not yet been addressed. In order to make a finding of “no significant effect” which would indicate that no mitigation is needed for the proposed text amendment and zone change, an analysis is needed to demonstrate the reasonable worst case development scenarios under the existing and proposed conditions. Since this analysis is still conspicuously absent, there is insufficient information in the record to conclude that the proposed actions will not result in a significant effect. In the absence of this data, the proposed text amendment and zone change should not be approved.

Shared Trip Reductions

As described in detail in our previous review letter dated September 24, 2012, there are significant problems with utilization of “internal” or “shared trip” reductions for this project. We have subsequently reviewed comments provided by DKS Associates and the Oregon Department of Transportation that also express concerns about utilization of “shared trip” data.

I spoke with Avi Tayar of ODOT, and he informed me that he had expressly instructed Group Mackenzie **not** to use shared trip data. This instruction is also included in his email correspondence with Group Mackenzie (contained in the appendix to May 17, 2012 Transportation Impact Analysis), which stated “ODOT has concerns regarding applying diverted and internal trip reductions for this development. ODOT suggests that the analysis follow ITE’s Trip Generation Handbook with its recommendation for pass-by trip reduction for the proposed land use for the site.”



Mike Connors
October 1, 2012
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Chris Maciejewski of DKS Associates also expressed concerns regarding utilization of “shared trips”, stating “Also, I’m not sure that the internal reductions reasonably apply when the site is not adjacent to the Fred Meyer store... I’ll think more about that as I review the survey information.”

Despite the specific instruction from ODOT and the concerns expressed by DKS Associates, Group Mackenzie persisted in utilizing the shared trip data, and have recently asserted that these “shared trips” will have a lesser impact on the highway than would typical primary trips. This assertion is directly contradicted by the text of Group Mackenzie’s own Transportation Impact Analysis, which describes the shared trips as “Distribution for shared trips is simply between the fuel facility and the Canby Fred Meyer store location, **similar to primary trips.**”

In order to have a reduced impact on the street system, the “shared trips” would need to function in a manner similar to pass-by traffic. However, since an explicit pass-by trip reduction has already been taken, it is inappropriate to assume that additional trips will act as pass-by trips. Again, there is no reliable data in the record supporting any kind of reduction.

Group Mackenzie has also asserted that the “shared trip” reductions were taken in a manner consistent with standard transportation engineering procedures. The concerns expressed by ODOT, DKS Associates and Lancaster Engineering are ample evidence that the utilization of a “shared trip” reduction for non-conjoined sites is highly unusual. In fact, the ITE Trip Generation Handbook does not provide for nor is there any precedent for utilization of “internal” trip reductions for a project in which the secondary “shared trip” destination is wholly outside the study area of the project. These trips can in no way be considered as internal, and the reductions taken are not reflective of the standard practice of transportation engineering.

It is clear from a cursory review of the “shared trip” analysis that inadequate thought was put into the application of the reductions, and the result is not just inconsistent with standard transportation engineering procedures, but wrong. No consideration was given to the fact that internal trips are made principally because they are convenient, and travel to a site ½ mile distant greatly reduces that convenience. Similarly, no consideration was given to the fact that the trip distribution drawn from the City’s planning model already accounts for trips to and from the Fred Meyer site, resulting in an effective “shared trip” rate well in excess of the reported 38 percent.

The “shared trip” data utilized in the Transportation Impact Analysis is not applicable at the proposed development site due to lack of proximity, the application of the data is inconsistent with the standard practice of transportation engineering, and the resulting site trip distribution is not reflective of the actual impacts of the proposed development.

Traffic Impact Study Scoping

We have also spoken to ODOT regarding the scoping of the traffic impact study. ODOT plans to conduct an internal safety audit related to the Fred Meyer Fuel Facility development and the potential safety and operational impacts prior to the City Council hearing for this project. Specifically, since there has been no analysis provided for the intersection of Highway 99E at Ivy



Mike Connors
October 1, 2012
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Street, it is unknown whether the addition of site trips from the proposed development may have adverse operational and safety impacts on this intersection. ODOT's safety review of this intersection will focus on the likely impacts of the added traffic from the proposed development and the nature of the historical crashes at the intersection to determine whether additional traffic may exacerbate the existing safety hazards. It will be critical to correct all errors associated with the site trip generation and distribution prior to the safety analysis so that the impacts can be appropriately assessed.

It is unusual that analysis tasks need to be undertaken by ODOT rather than the applicant in order to determine whether site trips from a proposed development will have unacceptable safety impacts on nearby streets and intersections. It is the purpose of a transportation impact analysis to provide this specific information. In this instance, the lack of relevant information in the record demonstrates the incompleteness of the analysis provided by the applicant. There remains at this time insufficient information to make an appropriate determination as to whether operational or safety mitigations will be needed at the intersection of Highway 99E and Ivy Street as a result of the proposed development.

Trip Data

Since the applicant chose to use data from similar sites to estimate traffic impacts from the proposed development without collecting relevant "shared trip" data from the comparable site at Oak Grove, we also investigated another Fred Meyer fuel facility located in a suburban area where specific data was available that relates to trip generation and traffic volumes.

The Fred Meyer fuel facility in Cornelius, Oregon is subject to a two-cent-per-gallon tax, and the City keeps records of taxes paid, providing insight into the fuel sales of the Fred Meyer facility as well as the other fuel stations in town. Records for fiscal year 2012 (July 2011 through June 2012) show that Fred Meyer paid \$89,317.06 in taxes, which equates to sales of 372,000 gallons of fuel per month. Fuel sales for July and August of 2012 (September data was not yet available) show an average of 466,000 gallons of fuel sold per month.

For comparison, according to the NACS (National Association of Convenience Stores), the average convenience store in the United States sold 121,000 gallons of fuel per month in 2009. The Fred Meyer store in Cornelius sold 3 times this average. Within the City of Cornelius, the Fred Meyer fuel facility sold 2.35 times more fuel than the second-highest sales fuel station. These comparisons demonstrate that Fred Meyer fuel facilities generate far more traffic than typical fuel stations.

Fred Meyer provided trip generation data taken from Fred Meyer fuel facilities for use in the traffic impact study, and demonstrated that expected traffic volumes are slightly in excess of typical traffic volumes for a fuel station, however the above fuel tax data demonstrates that a reasonable expectation of the trip generation for the proposed facility may be far in excess of the volumes studied. Accordingly, there remains a serious concern that low-traffic sites may have been purposefully or inadvertently chosen as a basis for comparison.

Mike Connors
October 1, 2012
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In order to ensure that the trip data is representative of typical Fred Meyer facilities, one of two things should occur:

- 1) Fred Meyer should provide sales data for all facilities in the Portland Metropolitan area demonstrating that the sales volume at the selected comparable sites are reflective of typical fuel sales volumes; or
- 2) The City of Canby should randomly select the locations at which comparable trip generation data will be collected.

Access Control

In the DKS Associates review material, several comments were made regarding the potential need for a right-in, right-out restriction at the site access driveway in the future. The need for this restriction was based on several potential triggers, including construction of a pedestrian refuge within Highway 99E at S Locust Street and potential queuing on Highway 99E at the site access. DKS Associates recommended that ODOT monitor, evaluate and design and needed improvements for this access location.

Although it is appropriate to have ODOT monitor, evaluate and design these improvements since it involves a state transportation facility, the recommendation does not account for some additional effects of the potential future turning movement restrictions that directly impact City transportation facilities. For instance, the DKS Associates review specifically notes that "...it appears that the site access to OR 99E could be modified to right-in/right-out movements only, **which should divert some traffic to the SE 2nd Avenue access** and still provide access for fueling trucks via S Locust Street to SE 2nd Avenue." However, a diversion of additional traffic to SE 2nd Avenue will increase impacts on this local residential street, exacerbating the need for a Neighborhood Through Trip Study. As previously described in our letter dated September 24, 2012, there will be a projected increase of 34 peak-hour trips along SE 2nd Avenue immediately southwest of the site, even with the preferred full access on Highway 99E. Implementation of a future right-in, right-out restriction will further increase the traffic volumes on this local street.

Since it is anticipated that the primary site access driveway on Highway 99E will be converted to a right-in, right-out access in the future, it is necessary to analyze the impacts of the proposed development within the context of this future restriction. The still-needed Neighborhood Through Trip Study should therefore explicitly account for this restriction.

Mike Connors
October 1, 2012
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Conclusions

The concerns raised in our previous review letter dated September 24, 2012 have not been addressed, and further review of the project continues to raise red flags regarding the analysis assumptions including the fundamental attributes of trip generation and distribution for the site, as well as the operational and safety impacts of the proposed development.

The transportation analysis materials provided by the applicant include numerous unfounded assertions and draw several incorrect conclusions. Serious questions remain, and the material provided is insufficient to determine that the impacts of the development will not immediately compromise public safety at the intersection of Highway 99E and Ivy Street or neighborhood livability along SE 2nd Avenue adjacent to the site. Additionally, questions remain regarding the site access location on Highway 99E including when and how access control may be implemented to restrict the driveway to right-in, right-out movements only.

Sincerely,

Michael Ard, PE
Senior Transportation Engineer

APPENDIX

Fueling America: Key Facts and Figures

NACS ANNUAL FUELS REPORT 2011



Convenience stores sell approximately 80 percent of the fuels purchased in the United States. Here are some facts and figures related to the industry.

Demand

U.S. gasoline demand is projected to average 9.12 million barrels per day in 2011.

Americans are expected to travel 8.27 billion miles per day in 2011. This equates to an average of 33 miles per vehicle per day.

Petroleum Infrastructure

The U.S. petroleum distribution industry includes:

- 148 refineries
- 38 Jones Act vessels (U.S. flag ships that move products between U.S. ports)
- 3,300 coastal, Great Lakes and river tank barges
- 200,000 rail tank cars
- 1,400 petroleum product terminals
- 100,000 tanker trucks
- Approximately 200,000 miles of oil and refined product pipelines

Fueling Outlets

There were 159,006 total retail fueling sites in the United States in 2010.

A total of 117,297 convenience stores sell motor fuels in the United States. This represents 80 percent of the 146,341 convenience stores in the country.

Overall, 58 percent (67,504 stores) of the country's 117,297 convenience stores selling fuels are one-store operations. By contrast, about 1 percent are owned and operated by the integrated oil companies, of which only two (ChevronTexaco and Shell) still are committed to selling fuel at the retail level.

Fuels Sales

The gross margin (or markup) on gasoline in 2010 was 16.3 cents/gallon, or 5.6 percent.

Motor fuels sales in convenience stores totaled \$328.7 billion in 2009. Motor fuels sales accounted for 68 percent of the convenience store industry's sales in 2009. However, because of low margins, motor fuels sales contributed only 27 percent of total store gross margins dollars.

The average convenience store in 2009 sold 121,000 gallons of motor fuels per month — approximately 4,000 gallons per day.

Fuels Expenses

The federal excise tax on gasoline is 18.4 cents per gallon and 24.4 cents per gallon for diesel fuel.

In January 2011, motor gasoline taxes averaged 48.1 cents per gallon and diesel fuel taxes averaged 53.1 cents per gallon.

Factoring in all gasoline sales in 2009 transactions — whether the customer paid by cash, check or by either debit or credit card — credit and debit card fees averaged 4.7 cents per gallon.

Sources for this information include the U.S. Energy Information Administration, American Petroleum Institute, National Petroleum News, OPIS, National Petrochemical and Refiners Association, Association of Oil Pipe Lines, Nielsen TDLinx and NACS.



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October 8, 2012

STEVEN W. ABEL
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VIA EMAIL AND HAND DELIVERY

Planning Commission
Attn: Bryan Brown, Planning Director
City of Canby
111 NW Second Street
Canby, OR 97013

Re: Fred Meyer Submittal, File #ZC 12-01 and #TA 12-01

Dear Commissioners:

On behalf of Fred Meyer, Inc. ("Applicant"), please find enclosed Applicant's rebuttal evidence for the pending text and map amendment applications. The Group Mackenzie letter explains succinctly why the allegations raised by Save Downtown Canby in its submittal dated October 1, 2012 are not relevant in this proceeding.

Thank you for your consideration, and we look forward to submitting final written argument by October 15, 2012.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Abel', is written over the typed name 'Steven W. Abel'.

Steven W. Abel

Enclosure

cc: Michael Connors (*via email and hand delivery*)

GROUP MACKENZIE

October 8, 2012

City of Canby
Attention: Bryan Brown
111 NW 2nd Avenue
Canby, OR 97013

Re: **Fred Meyer Map and Text Amendment TA 12-01/ZC 12-02**
TPR Analysis Response
Project Number 2120130.00

Dear Mr. Brown:

This letter has been prepared in response to the October 1, 2012 letters from Michael Connors of Hathaway Koback Connors LLP and Michael Ard of Lancaster Engineering. Specifically, we are responding to comments related to the Transportation Planning Rule (TPR) and our Transportation Impact Analysis (TIA) report.

The TPR is a different traffic analysis than that performed as a part of the TIA. The TIA relates to a specific development proposal whereas a TPR is a big-picture analysis that is sometimes triggered during a comprehensive plan or zoning code amendment. The TIA was prepared for the Site and Design Review application for the Fred Meyer fuel station and supports findings that the proposed development meets the applicable development standards. Comments related to the TIA's content, such as those in the Lancaster Engineering letter, are not relevant to Text and Map Amendment applications and therefore, are not addressed.

With respect to the applicability of the TPR to the Text and Map Amendment applications, as noted in the September 4, 2012 letter from Steve Abel with Stoel Rives LLP, Fred Meyer is not proposing to change the underlying C-2 zone. The requests only change the boundary between two subareas of the Downtown Canby Overlay Zone (DCO). The change from Core Commercial (CC) to Outer Highway Commercial (OHC) only affects the design and development standards that apply to the site, not the allowed uses under the C-2 zone or the DCO. The TPR requires analysis of a worst-case scenario when considering a zone change, with the difference in traffic impacts between the existing and proposed zones being addressed. For example, when a residential zone is changed to a commercial zone, the increased trips associated with possible new uses of the land must be analyzed to ensure that the existing transportation system can accommodate any increased traffic. Here, there is no change in the allowed uses, and therefore Fred Meyer does not need to provide a TPR analysis.

The following support the fact that no TPR analysis is required:

- The City's Staff Report for the Text and Map Amendment application clearly states on pages 8 and 9, "the base C-2 Zone allows fuel stations". On page 5, the City notes "A retail fuel station is permitted within the C-2 zone. The site is also located within the Core Commercial (CC) area of the Downtown Overlay Zone. A fuel

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station could be designed in a pedestrian-friendly manner that would conform to the standards of the CC subarea; therefore not conflicting with the base C-2 Zone's permitted fuel station use."

- The Pre-Application Conference summary provided by the City of Canby states on page 5, "the proposed use is clearly permitted outright within the underlying C-2 zone". Staff also suggests in the summary that the applicant consider submitting a text amendment to modify the boundary between CC and OHC subareas in order to move the property into the more "suitable" OHC, where compliance with the applicable design guidelines can be more easily demonstrated.
- At no time in the application process did the City of Canby, its consultant DKS Associates, or the Oregon Department of Transportation (ODOT) require a TPR analysis. This includes any comments at the pre-application conference, where staff suggested the Text Amendment, and which was attended by Seth Brumley and Abraham Tayar from ODOT. Further, the March 29, 2012 traffic study scoping letter prepared by DKS Associates well after the pre-application meeting only addressed the need for a TIA for the site and design review application. No mention was made of the need for a TPR analysis. A copy of the scoping letter is attached.

It is clear that the proposed amendments to simply change from CC to OHC do not result in any change in allowed uses in the underlying C-2 zone, but only the design standards that are applied to those uses. With no change in allowed uses, there is no additional transportation impact, and therefore no requirement for an analysis per the Transportation Planning Rule. A TIA was prepared for the Site and Design Review application for the specific fuel station development, but that application has yet to be considered by the Planning Commission.

From a transportation engineering perspective, the pending Text and Map Amendment applications do not raise any new transportation system concerns and should be approved.

Sincerely,



Brent Ahrend, PE
Senior Associate | Traffic Engineer

Enclosure: DKS Scoping Memo

- c: Steve Abel – Stoel Rives
James Coombes – Fred Meyer
Jake Tate – Great Basin Engineering
Lee Leighton – Westlake



MEMORANDUM

DATE: March 29, 2012
TO: Bryan Brown, City of Canby
FROM: Chris Maciejewski, PE, PTOE
SUBJECT: Canby Fred Meyer Fuel Station Traffic Impact Study (TIS) Scope

P11010-015

This memorandum describes the scope of services to evaluate the transportation impacts associated with the proposed Fred Meyer Fuel Station in the City of Canby. This scope of services has been prepared through our on-call services contract and coordination with ODOT staff¹. The proposed fuel station would consist of twelve fueling stations (6 fuel pumps), a 3,956 square foot covered canopy, a 176 square foot kiosk with bathroom, two underground storage tanks, three employee parking spaces, an air dispenser station, and a 1,000 gallon propane fuel station². No convenience store will be provided.

The project site is located on the southwest corner of the intersection of Highway 99E (SE 1st Ave) and S Locus Street. Highway 99E is a state facility and is classified as a regional highway and state truck route³. Both S Locus Street and SE 2nd Avenue are classified as local City streets.

The site is made up of five property lots all of which are currently vacant. All lots are currently designated as Highway Commercial (HC) per the City's Comprehensive Plan and are zoned Highway Commercial (C-2). A service station is an outright permitted development based on the current zoning of the site; therefore no zone change would be required for the proposed application.

Scope of Services

Task 1: Existing Conditions Analysis/Data Collection

An existing conditions analysis will document the existing transportation conditions within the project study area. A description of the surrounding transportation network will be provided

¹ Phone conversation with Abraham Tayar, ODOT, March 14, 2012

² Fred Meyer Gas Station Pre-Application Meeting, February 28, 2012.

³ 1999 Oregon Highway Plan, Appendix D: Highway Classification by Milepoint.

including functional classification of roadways, roadway cross-sections, posted speed limits, and pedestrian/bicycle/transit facilities.

The study intersections will be reviewed to determine the existing geometry, traffic control, and operations during the peak hours. Existing intersection operating conditions will be analyzed to establish the current peak hour performance. The critical peak periods for this evaluation will be the weekday morning (7:00 to 9:00 am) and evening (4:00 to 6:00 pm). These are the times during a typical weekday when the study area street system would be expected to experience the highest vehicle volumes. DKS will collect vehicle turn movement counts at the study area intersections during each of the identified peak periods.

The study area intersections include the following:

- Highway 99E/S Locust Street
- S Locust Street/SE 2nd Avenue
- Onsite and Offsite study intersections (see Access Management Plan)

Furthermore, collision records at study intersections will be reviewed and summarized in a table.

Preliminary trip generation and distribution estimates indicate that trip levels would not trigger analysis to be conducted at any other intersections based on the City's and ODOT's intersection analysis evaluation guidelines. In addition, it does not appear that a Neighborhood Through-Trip Study would be required⁴.

Task 2: Project Trip Generation/Trip Distribution

The amount of new vehicle trips generated by the proposed fuel station to the site will be estimated using traffic counts collected by DKS at one similar land use within the surrounding area. DKS will collect traffic counts (entering/exiting volume) during the critical peak morning (7:00 to 9:00 am) and evening (4:00 to 6:00 pm) periods. The counts collected will be compared to trip generation estimates published in the ITE Trip Generation Manual for similar land use type⁵. The greater trip generation estimate will be used for analysis to evaluate worst case impacts. Trip generation estimates will be provided for daily, morning, and evening peak hour periods. The project trip generation estimate will be summarized in a table, including pass-by trip reductions.

The distribution of site vehicle traffic will be based on the existing travel patterns as determined by traffic counts at surrounding intersections, the City of Canby Travel Forecast Tool, and input from the project team. The project trip distribution will be shown on a study area figure.

⁴ City of Canby Transportation System Plan, Chapter 10: Implementation Plan, December 2010

⁵ Trip Generation Manual, Institute of Transportation Engineers, 8th Edition.

Task 3: Traffic Impact Analysis

A transportation impact analysis for the proposed project will be conducted in accordance to the City's requirements⁶. The new vehicle trips generated by the proposed project will be added onto the existing traffic volumes to identify the expected traffic operating conditions once the project is built and fully operational. The traffic conditions will be evaluated at the same study intersections as was considered in the Existing Conditions analysis. At this time, there are no significant approved but un-built projects in the study area, so a future background growth scenario will not be evaluated.

Street facilities and intersections that are shown to fall below the minimum acceptable operating thresholds will be identified for possible mitigation measures. Typical mitigation measures can include traffic control strategies, access management plans, intersection widening for turn lanes, and roadway widening. Transportation performance criteria will consider City of Canby and ODOT standards, where applicable.

Task 4: Site Access and Circulation Review

The forecasted site traffic accessing the public road system via the sites access will be evaluated for performance and safety. DKS will collect video recordings during the critical peak morning (7:00 to 9:00 am) and evening (4:00 to 6:00 pm) periods at a similar land use site to assist with estimating vehicle stacking within the proposed site. The video recordings will take place simultaneously with the traffic counts collected as part of Task 2.

Internal circulation routes will be examined using the AutoTURNTM turn simulation software to determine adequacy for serving fuel delivery vehicles, emergency vehicles, and motor vehicle traffic. In addition, site access for non-auto modes of travel (pedestrians and bicyclists) will be evaluated for connectivity to the surrounding transportation system. Any inadequacies discovered during the evaluation will be identified and mitigation measures will be recommended, as needed.

Sight distance will be verified at all site access locations and vision triangles will be checked to ensure that they are clear from any obstructions.

Task 5: Access Management Plan

The preliminary site plan indicates two proposed full accesses to the site. One is located along Highway 99E and the other along SE 2nd Avenue. Proposed access locations will be compared to both ODOT and the City's access spacing requirements. Preliminary review of the proposed site plan reveals that the City's access spacing standards would not be able to be met based on the close proximity of adjacent intersections (S Locust Street). The City's standard requires that accesses be located at least 330 feet away from any street intersection; therefore an access management plan

⁶ City of Canby Transportation System Plan, Chapter 10: Implementation Plan, December 2010.

will be prepared per the City's requirements to assess the potential impacts of the proposed access locations⁷. At a minimum the access management plan will include:

- The minimum study area shall include the length of the site's frontage plus 250 feet measured from each property line or access point(s), whichever is greater.
- The potential safety and operational problems associated with the proposed access point. The access management plan shall review both existing and future access for all properties within the study area as defined above.
- A comparison of all alternatives examined. At a minimum, the access management plan shall evaluate the proposed modification to the access spacing standard and the impacts of a plan utilizing the City standard for access spacing. Specifically, the access management plan shall identify any impacts on the operations and/or safety of the various alternatives.
- A list of improvements and recommendations necessary to implement the proposed access modification, specifically addressing all safety and operational concerns identified.
- References to standards or publications used to prepare the access management plan.

The access management plan will examine access alternatives such as the relocation of proposed access locations and the potential for shared use with adjacent accesses (property to the west). The plan will include the following alternative scenarios:

- No Access to Highway 99E
- Shared access to Highway 99E with the development to the west
- Restricted movement access to Highway 99E
- Full Access to Highway 99E

Based on the preliminary access management plan study area, approximately seven access points along Highway 99E and one additional intersection (Highway 99E/S Knott Street) would need to be analyzed. DKS will collect traffic counts at these locations during the critical peak morning (7:00 to 9:00 am) and evening (4:00 to 6:00 pm) periods. These counts will be collected in conjunction with those identified in Task 1.

Task 6: Documentation

The findings and recommendations of this traffic impact analysis will be presented in a Draft Report that will be submitted to the City and ODOT (one electronic copy). The report will document data collection, analysis procedure, results, and mitigation measures for the proposed project traffic if necessary. A technical appendix supporting calculations will accompany the report. After the City

⁷ City of Canby Transportation System Plan, Chapter 10: Implementation Plan, December 2010.

and ODOT have reviewed the Draft Report, we will make appropriate edits and submit a revised Draft Report. Once comments are received, DKS will make appropriate edits and submit a Final Report (one electronic copy).

Task 7: Meetings

The DKS project manager will attend up to one (1) coordination meeting or hearing as part of this project. Additional meetings as directed by the City will be provided for an additional fee on a time and expenses basis.

Budget

The level of effort for these tasks is up to 130 hours in addition to data collection efforts. Therefore, including expenses, our fee estimate for this effort is \$17,000.

If the applicant chooses to utilize another consultant to complete this task, our assistance with forecasting (using the Canby TSP Travel Forecast Tool) and review with written response of the applicant's TIS would be approximately \$1,500.

If you have any questions, please feel free to call or email.

MINUTES
PLANNING COMMISSION

September 24, 2012
City Council Chambers – 155 NW 2nd Avenue

PRESENT: Chair Dan Ewert, Vice Chair Randy Tessman, Commissioners Charles Kocher, John Proctor, Misty Slagle and Tyler Smith

ABSENT: Commissioner Sean Joyce

STAFF: Bryan Brown, Planning Director, Angie Lehnert, Associate Planner, Laney Fouse, Planning Staff

OTHERS: Steve Abel, Jake Tate, Lee Leighton, James S. Coombes, Brent Ahrend, Mike Connors, Ryan Oliver, Wayne Oliver, Roger Skoe, Gary Palfrey, Charles L. Burden, Curt Hovland, John Serlet, and Matt Michael

1. CALL TO ORDER

Planning Commission Chair Dan Ewert called the meeting to order at 7:00 pm.

2. CITIZEN INPUT ON NON-AGENDA ITEMS: None

3. PUBLIC HEARING

a. Continued from July 23, 2012 applicant is requesting a Text Amendment/Zone Change to shift a subarea boundary of the Downtown Canby Overlay at this site from Core Commercial to Outer Highway Commercial to accommodate a Fred Meyer fuel station to be located at 391 SE 1st Avenue (**DR 12-03, TA 12-01, ZC 12-01 FRED MEYER FUEL STATION**)

b. Continued from July 23, 2012, applicant is requesting a Site and Design Review for a Fred Meyer fuel station located at 391 SE 1st Avenue (**DR 12-03, TA 12-01, ZC 12-01 FRED MEYER FUEL STATION**)

Angie Lehnert entered her staff report into the record. Ms. Lehnert said the staff report was amended to include the Text Amendment and Zone Change. Ms. Lehnert said a re-notification had been sent to the surrounding property owners and that she had received a comment from the owner of Hulbert's Flowers. She stated, the applicant also submitted information about ODOT's approval of their State Highway Approach application.

APPLICANT:

Jim Coombes, Fred Meyers explained that they want to add a discount fuel station for their Canby customers.

Lee Leighton, Westlake Consultants stated they had submitted substantial written material responding to the testimony heard at the previous hearing. Mr. Leighton said there were good

reasons provided in the previous testimony as to why it made sense to change the zoning of this property to Outer Highway Commercial.

Brent Ahrend, traffic engineer with Group Mackenzie addressed the concerns from Hulbert's Flowers regarding the problems that could be created from traffic traveling on 99E and entering and exiting from either business. Mr. Ahrend said ODOT had reviewed and approved the engineer's recommendations but if a problem develops within one year of the occupancy of the fuel station ODOT has the ability to come in and restrict movement.

OPPONENTS

Mike Connors, attorney for "Save Downtown Canby" provided a letter which he said addressed two key issues and the impact to the Downtown Canby Overlay to accommodate a fuel station. Mr. Connors also submitted a memorandum from Lancaster Engineering, who reviewed the traffic study. Mr. Connors requested the hearing be continued or the record be kept open so he would be able to submit written responses.

Curt Hovland, owner of Hulbert's Flowers said although he is for a discount fuel station, but it does not make sense to him to have a fuel station in the core of the downtown because of the traffic problems it could create.

PROPONENTS - None

NEUTRAL: None

REBUTTAL:

Steve Abel, attorney for the applicant said in a land use setting there is no precedent because a City Council or Planning Commission have the ability to regulate land uses as they see fit and in accordance with the code. Mr. Abel said he believes the Transportation Planning Rule (TPR) does not apply to this applicant.

Brent Ahrend, traffic engineer said the TPR analysis requires a determination of the traffic impact by the fuel station. Mr. Ahrend said the city's traffic consultant agreed with their shared trip generation information.

MOTION:

Commissioner Smith moved to leave the record open in order to grant both parties seven days to submit new evidence; seven days to any rebuttal material to the new evidence, and an additional seven days for the applicant to submit closing arguments. In addition, the public hearing will be continued until Oct, 22, 2012 and the applicant's 120-day period was set to a time and date certain of November 22, 2012. Commissioner Tessman seconded the motion. **The motion passed 6/0.**

4. NEW BUSINESS

- a.** Consider a request from immediate neighboring residents living near Canby Utilities concrete water reservoir site at 440 SW 13th Ave to amend the previously required refurbished tank color from a dark Cobalt-Blue to a lighter pastel color (**Request for a**

Minor Modification (MOD 12-03) of Condition #6 of the Final Order for (DR 08-02/CUP 08-01)

Bryan Brown presented the information about the water tank previously approved by the Planning Commission to be painted cobalt blue and some of the neighbors wanted a lighter pastel blue, yellow or peach color. He said that Mrs. Holt was not present at meeting but Matt Michel, General Manager, Canby Utility was present. Mr. Brown said there is a time frame on this project.

Mr. Michel said Canby Utility was operating under marching orders from the Planning Commission. He said they had an open house two weeks ago and Mrs. Holt was at the meeting with a neighbor where she expressed her concerns. He said he has not heard strong feelings one way or another on the paint color and the paint needs to be ordered within a month.

There was discussion about the color of the paint and effects the rain might have on the lighter color paint.

Chair Ewert asked Mr. Brown to contact Mrs. Holt and let her know the Planning Commission would like to have a contingent of neighbors give them a recommendation prior to their next meeting or the order would stand.

5. FINAL DECISIONS – None

6. MINUTES

- a. Approval of the July 23, 2012 Regular Planning Commission Minutes

MOTION:

Commissioner Smith moved to approve the July 23, 2012 minutes. The motion was seconded by Commissioner Slagle. **The motion passed 6/0.**

7. ITEMS OF INTEREST/REPORT FROM STAFF –

- a. Staff is anticipating an application from the Dance Studio on SW 4th Avenue behind the high school. Applicant is trying to make
- b. Planning Commission would be participating in Gateway Plan soon.
- c. Parks & Transportation fee methodology will be put before the City Council.
- d. Tentatively scheduled code maintenance for Oct. 22, 2012.
- e. Visioning meeting at 7 pm.
- f.

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION - None

9. ADJOURNMENT: 8:40 p.m.