

MINUTES

REGULAR COUNCIL MEETING
OF
JULY 12, 2010
5:30 P.M.
CITY HALL COUNCIL CHAMBER
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Jim Wilcox

COUNCIL PRESENT: Bill Dick, Carolyn Wood, Dan Spatz, Brian Ahier, Tim McGlothlin

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Finance Director Kate Mast, Community Development Director Dan Durow, Police Chief Jay Waterbury, Administrative Intern Cooper Whitman, Engineer Dale McCabe

CALL TO ORDER

Mayor Wilcox called the meeting to order at 5:30 p.m.

ROLL CALL

Roll call was conducted by City Clerk Krueger; all Councilors present.

PLEDGE OF ALLEGIANCE

Mayor Wilcox invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Wood and seconded by McGlothlin to approve the agenda as presented. The motion carried unanimously.

AUDIENCE PARTICIPATION

None.

CITY MANAGER REPORT

None.

CITY ATTORNEY REPORT

City Attorney Parker said he had been working with staff to resolve issues with the Interchange Area Management Plan (IAMP), working on codes enforcement issues and urban renewal agreements.

CITY COUNCIL REPORTS

Councilor Ahier reported that the Council of Governments had been subjected to many positions being laid off due to State budget cuts. He said Project Independence had been cut, causing 16 people in the area to lose that service; workforce investment program cuts had caused the loss of seven employees; and the transportation program was being relocated back to the Kelly Avenue office. Ahier said they had hired a Community Development Director who would be working to help secure grants and funding for programs.

Councilor Spatz said the new Community Development Director for the Council of Governments was also involved in Mid Columbia Economic Development District grant work. He said they were working on a grant for sustainable communities to support regional transportation and housing needs.

Councilor Dick recognized Natisha Nesse as a local hero, saying she had saved the life of someone recently who may have drowned in the river. Dick said Natisha had learned to swim at our local swimming pool and that it was important to keep that facility operating so more people could learn that skill.

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Councilor McGlothlin said the next Traffic Safety Commission meeting was scheduled for July 21, 2010.

Councilor Wood said there had not been a Historic Landmarks Commission meeting this month. She asked if the Codes Enforcement Officer was working on a puncture vine program as they did last year, noting it was growing everywhere.

City Attorney Parker said the Codes Enforcement Officer didn't have time to devote to a puncture vine bounty program this year, but they would develop some type of program for next Spring. He said the City had not purchased weevils this year.

The Council asked that staff provide information to the public on disposal of puncture vine.

Mayor Wilcox said the Sister City Association was preparing to send a student delegation to Myoshi City in August. He reported the Airport Master Plan was being worked on to include economic information and would be coming to the City Council for approval in the near future.

CONSENT AGENDA

It was moved by Spatz and seconded by Ahier to approve the Consent Agenda as presented. The motion carried unanimously.

Items approved by Consent Agenda were: 1) approval of June 28, 2010 regular City Council meeting minutes; and 2) approval of June 21, 2010 Town Hall meeting minutes.

PUBLIC HEARINGS

Public Hearing to Receive Testimony Regarding Objections to the Cost of Assessment of the West First Street, terminal Way and Bargeway Road Reconstruction Project

Mayor Wilcox reviewed the procedures to be followed for the hearing.

City Clerk Krueger reviewed the staff report, noting no remonstrances had been received for the project. It was noted that if the Council proceeded with adoption of the ordinance after the hearing, it could be adopted by title only, having met Charter requirements for that process.

Testimony

Hearing no testimony, the public hearing was closed.

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Special Ordinance No. 10-537 Assessing Certain Lots and Tracts of Land Within the City of The Dalles, a Proportionate Share of the Cost of the West First Street, Terminal Way and Bargeway Road Reconstruction Project

City Clerk Krueger read Special Ordinance No. 10-537 by title.

It was moved by Wood and seconded by Ahier to adopt Special Ordinance No. 10-537 assessing certain lots and tracts of land within the City of The Dalles a proportionate share of the cost of the West First Street, Terminal Way and Bargeway Road Reconstruction Project, by title. The motion carried unanimously.

ACTION ITEMS

Approval of Design for East Tenth Street Widening Project Between “J” and Lewis Streets

Engineer Dale McCabe reviewed the staff report. McCabe said with parking on the south side of the street in the narrow area, a small jog would be created in the street, which would actually slow traffic a small amount.

Councilor Spatz said the survey completed by staff had been very helpful.

Mayor Wilcox asked where residents could park during the construction period. McCabe said there would be an approximate two week period during which there would be no parking available during the day. He said the parking questions would all be worked out prior to the construction project.

Councilor McGlothlin said he appreciated the extra work staff had done to resolve questions of the City Council.

Public Comment

Kathy Ursprung, 1525 East Tenth Street, The Dalles, expressed concern regarding traffic speeds in the area. She asked the City Council to consider traffic calming methods in the design of the project.

Councilor McGlothlin said he would bring up the request at the next Traffic Safety Commission meeting.

David Drive, 1512 East Tenth Street, The Dalles, complimented the staff, saying they had been excellent to work with, listened to the residents and should be commended for their work.

It was moved by Wood and seconded by McGlothlin to authorize staff to complete the design for the widening of East Tenth Street between Lewis and "J" Streets within the existing rights of way and provide on street parking on the south side in areas where the right of way is 40 feet wide. The motion carried unanimously.

General Ordinance No. 10-1306 Adopting the I-84 Chenowith Interchange Area Management Plan Dated December, 2009

The staff report was reviewed by City Attorney Parker. He said a letter had been received from Mr. Hattenhauer's attorney, requesting additional language changes. Parker provided a memorandum containing proposed amendments to the IAMP, which had been agreed to by Oregon Department of Transportation (ODOT), City staff and Mr. Hattenhauer (attached as Exhibit "A").

It was moved by Ahier and seconded by Dick to amend General Ordinance No. 10-1306 to including the following revisions to the I-84 Chenowith Interchange Management Plan:

- A. On page 174, at the top of the page, replace the sentence which begins with the words "Once completed", with the following language: "Once the review process at the staff level as described above has been completed, any proposed IAMP updates will be required to go through a legislative process, requiring public hearings before the Planning Commission and City Council, and adoption of the update by the City Council as an amendment to the City of The Dalles Transportation System Plan, which update would need to be adopted by the Wasco County Board of Commissioners (if affected) and the Oregon Transportation Commission as an update to the Oregon Highway Plan".
- B. On page 140, the following language will replace the seventh bulleted item under Phase 2 - Mid Term Improvements and Actions (Figure 7-6): "I-84 Chenowith IAMP Projects, including West 6th Street widening, will be reconsidered during future development of the Webber Street IAMP".
- C. Regarding Amendment C which concerns Project W-2, ODOT staff agrees that the proposed improvement for the intersection of River Road and West 6th will be presented in the alternative as either a roundabout or a traffic signal. If there are still references in the IAMP plan that refer to only a roundabout for this intersection, the language will be cleaned up by indicating the intersection could include either a roundabout or a traffic signal.

- D. On page 152, revise the second sentence in the first paragraph to read as follows: "ODOT guarantees Access permit protection, as allowed within ORS 374.305 & 310, to all existing private accesses, notably including access #13." On page 152, insert the following sentence in front of the last sentence in the first paragraph which introduces the bulleted list: "It is ODOT's express intent that, notwithstanding any provision herein, no access modifications will be made to the existing private accesses outside the scope of currently applicable law, specifically including OAR 734-051-0045 regarding change in use".

The motion carried unanimously.

City Clerk Krueger read General Ordinance No. 10-1306 by title.

It was moved by Spatz and seconded by Wood to adopt General Ordinance No. 10-1301, as amended, by title. The motion carried unanimously.

Approval of Amendment to QualityLife Agency (QLife) Intergovernmental Agreement

City Manager Young reviewed the staff report.

It was moved by Dick and seconded by Spatz to adopt the amendment to the QLife Intergovernmental Agreement. The motion carried unanimously.

General Ordinance No. 10-1305 Amending General Ordinance No. 07-1286, Establishing Additional Credits Toward Transportation Systems Development Charges

City Attorney Parker reviewed the staff report. He noted Mayor Wilcox had asked that the word "vacant" be removed in Sections 6 (A) and (B).

It was moved by McGlothlin and seconded by Ahier to amend Sections 6 (A) and (B) of General Ordinance 10-1305 by deleting the word "vacant" which appears a total of four times. The motion carried unanimously.

City Clerk Krueger read General Ordinance No. 10-1305 by title.

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It was moved by Wood and seconded by Spatz to adopt General Ordinance No. 10-1305 amending General Ordinance No. 07-1286, establishing additional credits toward Transportation Systems Development Charges as amended, by title. The motion carried unanimously.

Request by Northern Wasco County Parks and Recreation District to Waive the Fee for a Conditional Use Permit Application for the Thompson Skate Park

City Manager Young reviewed the staff report.

It was moved by Spatz and seconded by Dick to approve the request by Northern Wasco County Parks and Recreation District to waive the filing fee for a conditional use permit application in the amount of \$420 for a skate park at Thompson Park.

Councilor McGlothlin expressed concern that approval of the request would set a precedent for other entities.

City Manager Young said it was common to approve fee waivers for public entities where there was a public benefit for the use.

Councilor Spatz and Councilor Ahier both expressed support for the request, saying the public benefit of the skate park outweighed the cost for the fee.

The motion to approve the request by Northern Wasco County Parks and Recreation District to waive the filing fee for a conditional use permit application in the amount of \$420 for a skate park at Thompson Park was voted on and carried, McGlothlin opposed.

EXECUTIVE SESSION

Mayor Wilcox recessed the meeting to Executive Session at 6:40 p.m. in accordance with ORS 192.660 (2) (c) to conduct deliberations with persons designated by the governing body to negotiate real property transactions.

Reconvene to Open Session

The meeting reconvened to open session at 7:08 p.m.

DECISIONS FOLLOWING EXECUTIVE SESSION

None.

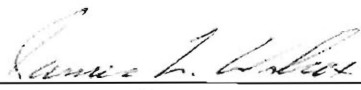
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ADJOURNMENT

Being no further business, the meeting adjourned at 7:09 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:


James L. Wilcox, Mayor

ATTEST:


Julie Krueger, MMC, City Clerk

MEMORANDUM

TO: Mayor and City Council

FROM: Gene Parker, City Attorney

DATE: July 12, 2010

RE: Proposed additional amendments for Chenoweth IAMP Plan

On July 9, 2010, I received a letter from Karen Feil, representing Doug Hattenhauer, setting forth additional comments concerning the Chenoweth IAMP Plan which the Council is being asked to approve by adoption of General Ordinance No. 10-1306. After reviewing Ms. Feil's letter, and consulting with ODOT staff, City staff believes that we have reached a resolution which resolves Mr. Hattenhauer's concerns, and which is acceptable to both the City and ODOT.

As part of this resolution, City staff will be requesting ODOT to investigate whether Mr. Hattenhauer's approach qualifies for a "grandfathered status", and to notify Mr. Hattenhauer in writing as to the results of their investigation. City staff has also represented to Mr. Hattenhauer that the final version of the IAMP plan, which has been previously approved by the Oregon Transportation Commission, will include the proposed revisions which are outlined below in this memorandum (assuming that the Council approves the proposed amendments). It is staff's understanding that the Transportation Commission will accept these proposed additional amendments which are outlined in this memorandum.

City staff is now recommending a different form of the two part alternative motion which was listed as an option in the Agenda Staff Report. The revised two part motion would include the following information:

1. First part: Move to amend General Ordinance No. 10-1306 to include the following revisions to the I-84 Chenoweth Interchange Area Management Plan:
 - A. On page 174, at the top of the page, replace the sentence which begins with the words "Once completed", with the following language: "Once the review process at the staff level as described above has been completed, any proposed IAMP updates will be required to go through a legislative process, requiring public hearings before the Planning Commission and City Council, and adoption of the update by the City Council as an amendment to the City of The Dalles Transportation System Plan, which update would need to be adopted by the Wasco County Board of Commissioners (if affected) and the Oregon Transportation Commission as an update to the Oregon Highway Plan".

- B. On page 140, the following language will replace the seventh bulleted item under Phase 2 - Mid Term Improvements and Actions (Figure 7-6): "I-84 Chenoweth IAMP Projects, including West 6th Street widening, will be reconsidered during future development of the Webber Street IAMP".
 - C. Regarding Amendment C which concerns Project W-2, ODOT staff agrees that the proposed improvement for the intersection of River Road and West 6th will be presented in the alternative as either a roundabout or a traffic signal. If there are still references in the IAMP plan that refer to only a roundabout for this intersection, the language will be cleaned up by indicating the intersection could include either a roundabout or a traffic signal.
 - D. On page 152, revise the second sentence in the first paragraph to read as follows: "ODOT guarantees Access permit protection, as allowed within ORS 374.305 & 310, to all existing private accesses, notably including access #13." On page 152, insert the following sentence in front of the last sentence in the first paragraph which introduces the bulleted list: "It is ODOT's express intent that, notwithstanding any provision herein, no access modifications will be made to the existing private accesses outside the scope of currently applicable law, specifically including OAR 734-051-0045 regarding change in use".
2. Second Part: Move to adopt General Ordinance No. 10-1306, as amended, by title only.

I have enclosed copies of the current pages from the IAMP plan, with arrows indicating the location of the language that would be revised, if the Council approves the proposed amendments outlined in this memorandum.

updating the IAMP will include scoping the planning process, identifying funding, and outlining a schedule for plan completion. Once completed, IAMP updates will be required to be legislatively adopted, requiring a City Council public hearing, as an amendment to the City of The Dalles Transportation System Plan and will be adopted by Wasco County Court (if affected) and the Oregon Transportation Commission as an update to the Oregon Highway Plan. ←

IAMP Review Triggers

Periodically, the IAMP implementation program will need to be evaluated to ensure it is accomplishing this goal. Events that will trigger an IAMP review include:

- Every fifth year from the date of IAMP adoption or latest update.
- Every cumulative addition of 250,000 sq. ft. of floor area within the IMSA.
- Cumulative trips from approved development within the IMSA exceed the combined trip budget for the subject parcels by more than 200 trips.
- Plan map and zone changes that have a "significant affect" per the Transportation Planning Rule⁴ and impact the I-84 Chenoweth Interchange.⁵
- Mobility measures at the River Road/I-84 Ramp Terminal intersections or River Road/West 6th Street/US 30 intersection exceed the forecasted mobility measures presented in Section 7.

It is recommended that the IAMP monitoring program be linked to a review of the system development charge methodology and fees associated with the Overlay District. Examining the STSDC program as part of an IAMP update will ensure that sufficient revenue is being generated to finance necessary improvements. During an IAMP review, trips may be reallocated, provided that the overall area total for the Overlay District is not exceeded.

Development Review within the Overlay District

The following outlines the transportation requirements for development and zone change applications within the Chenoweth Interchange Overlay District and describes how The City of The

⁴ Plan map or zone changes that result in equal to or less trips than included in the Trip Allocation Budget (*see Appendix "C"*) would not have a "significant affect".

⁵ A City amendment of the UGB in the vicinity of the interchange would also require an IAMP update, as land would be re-designated to allow urban uses. The Dalles Growth Management Report (2007) documents the City's intent to amend the Urban Growth Boundary and designate URA areas to the north/northwest of the city, including lands in the vicinity of the interchange. While the City has not adopted the report in its entirety through a legislative process, supportive source reports and analyses, such as the population forecast, have been adopted. Due to uncertainty as to when, or if, the UGB may be expanded within the National Scenic Area, the IAMP assumes that areas outside of the current UGB will not generate new trips within the 20-year planning horizon. The IAMP should be amended to reflect a revised future growth scenario when the UGB is updated.

In the near- and mid-term no access modifications will be made to the four existing private access approaches located on the west side of West 6th Street unless land use changes occur involving the properties served by these accesses or if increases in traffic volumes on West 6th Street warrant a modification for operation and safety reasons. ODOT guarantees Access Permit protection, as allowed within ORS374.305 & 310, to all existing private accesses. Each will remain a valid access as long as the existing uses remain on property/site (per OAR734.051.0045) and there is no capital improvement project that would trigger review of the access (per OAR734.051.0285). An access evaluation will be required, but is not limited to, when any of the following land use actions occur within 1,320 feet of the I-84 ramp terminal intersections:

- Modifications to existing land use or zoning;
- Changes to plan amendment designations;
- Construction of new buildings;
- Increases in floor space of existing buildings;
- Division or consolidation of property boundaries;
- Changes in the character of traffic using the driveway/approach;
- Safety or operational improvements;
- Changes to internal site circulation design or inter-parcel circulation;
- Reestablishment of a property's use (after discontinuance for two years or more that trigger a Traffic Impact Assessment as defined below) that occurs on the parcels served by the approaches; or,
- Capital improvement projects.

Long-Term Access Management Implementation

As traffic volumes increase with new development, access management can help maintain the operational integrity and safety of the primary roadways. Access management goals for each access identified in Figure 7-11 are outlined in Table 7-5. In general, the types of improvements identified include:

- Modifying, mitigating or removing existing approaches pursuant to an access management strategy as part of the highway project development and delivery process (OAR 734-051). This may include restricting left-turning egress movements along West 6th Street by constructing a raised median;
- Improving traffic safety and operations by improving the local street network to provide alternate access, better local street connections to the highway, and reducing conflict points. This may include consolidating access on West 6th Street from private approaches and minor public streets where traffic can be rerouted to a major public approach; and,

Phasing Plan

Four roadway improvement phases (near-term, mid-term, long-term, and vision beyond planning horizon) were developed in order to estimate the amount of new development that could occur within the IMSA before implementation of various components of the local access and circulation plan are required. These phases were developed as planning milestones, since improvements will likely be needed incrementally as development occurs. The phases are intended to show the increments of development that can occur before major improvements (e.g., new east-west crossing, Chenoweth Interchange Bridge widening, intersection control treatments, etc.) are needed.

The major components of each improvement phase are summarized below. Figure 7-5 through Figure 7-8 illustrates the lane configurations at the study intersections under each of the following improvement phases:

Phase 1 – Near-term Improvements (Figure 7-5)

- Traffic signal installed at West 6th Street/Hostetler Street intersection (Project #W4)
- Restriping of River Road overpass of I-84 to provide 4-lane cross-section (Project #I1)

Phase 2 – Mid-term Improvements and Actions (Figure 7-6)

- Roundabout constructed at River Road/River Trail Way (Project #E10)
- Traffic signal installed at River Road/I-84 Westbound Ramp Terminal, westbound and off-ramp approach widening (Project #I2)
- Traffic signal installed at River Road/I-84 Eastbound Ramp Terminal and eastbound approach widening (Project #I3)
- Roundabout or signal constructed at River Road/West 6th Street (US 30) (Project #W2)
- Roundabout or signal installed at West 6th Street/Chenoweth Loop (Project #W3)
- At the first triggered IAMP review, reevaluate improvement projects shown in Table 7-2 (W-1: 6th Street Median and E-2: Grade-Separated Crossing of the UP Railroad at Hostetler) based on updated forecasts.
- During the future development of the Webber Street IAMP, reevaluate the need for 6th Street widening (Project W-5).

Phase 3 – Long-term Improvements (Figure 7-7)

- Construct new east-west connection at Hostetler Street, either as an at-grade crossing (pending approval by ODOT Rail and UPRR) or a railroad undercrossing of Hostetler Street (Projects #E2, E2B, E3)
- Construct new collector roadway that extends River Trail Way from River Road to the Hostetler Street Extension (Project #E1)
- Provide dual westbound left-turns at River Road/West 6th Street (US 30) roundabout or signal (Project #W2)

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Karen A. Feil
**also admitted in Washington*

July 8, 2010

Mr. Gene Parker
City Attorney
City of The Dalles
313 Court Street
The Dalles, OR 97058

Re: Proposed Final IAMP Language

Dear Gene:

Thank you for your Memorandum dated March 15, 2010, in response to my letter to you dated March 9, 2010, on behalf of Hattenhauer Distributing Co. and Doug Hattenhauer (hereinafter "Hattenhauer"). I appreciate the City giving careful consideration to my clients' concerns. I submit the following comments in response to the issues you raised.

Legal Authority Implicated by City Council Approved Amendment D

Thank you for identifying the statutory and administrative authority that ODOT has advised the City would be violated if the IAMP was amended to include the precise language adopted by the City Council at their November 9, 2009 meeting. I have responded to each cited statute and rule as follows:

1. **ORS 374.305.** ODOT suggests this statute requires Hattenhauer to apply for a private access permit to Highway 30. However, this statute does not apply to existing approach roads which are not being substantially altered or the use of which is not being changed. ORS 374.305(1). In addition, ORS 374.330 preserves prior status and states that any amendments to the statute after 1967 do not apply to approaches existing prior to September 13, 1967. ORS 374.330(2)(a). Hattenhauer's current private access (North driveway) has been in existence at its present location since at least 1965. Hence, this access is not implicated by ORS 374.305.
2. **ORS 374.310.** While it is true that ORS 374.310 allows ODOT the right to adopt reasonable rules and regulations for issuing access permits, ODOT's OAR 734-

051-0035(2) provides that "Division 51 rules do not affect existing rights of owners of grandfathered approaches, except where these rules specifically state their application to grandfathered approaches, as in OAR 734-051-0045, Change of Use of an Approach."

Grandfathered approaches include "approaches intended to remain open that were improved in conjunction with a Department project prior to April 1, 2000, as set forth in OAR 734-051-0285(9)." Subsection 9 provides that "Notwithstanding other provisions of this Division, the Region Manager, not a designee, may recognize an approach to be in compliance where there is no Access Control, and where construction details for a Department project show the intention to preserve the approach as a part of that project, as documented by plans dated before April 1, 2000."

At the time the Chenoweth Interchange was built in the 1990s, ODOT required Hattenhauer to relinquish one of his two then existing approach roads (the South driveway), in exchange for ODOT improving, expanding and continuing access to his business via the North driveway. ODOT closed Hattenhauer's South driveway and expanded and improved his North driveway access, including paving and adding curbing. By this action ODOT expressed a clear intent to preserve Hattenhauer's North driveway as part of ODOT's interchange construction project, which occurred prior to April 1, 2000. Accordingly, the North driveway access is a grandfathered approach under ODOT's Division 51 rules. As such, those rules only apply to Hattenhauer's private approach if the rule specifically states that it applies to grandfathered approach roads.

3. **OAR 734-051-0135.** ODOT's regulations, specifically OAR 734-051-0135 et seq., outline the provisions for granting deviations from Access Management Spacing Standards. This rule, including OAR 734-051-0135(3) which vests authority to approve or deny an application for a deviation in the Region Access Management Engineer (RAME), does not specifically provide that it applies to grandfathered approaches. Hence, access management spacing standards, and deviations therefrom, only apply to Hattenhauer's property if there is a change in use or there exists a legitimate and expressly identified safety concern. OAR 734-051-0125(1)(c).
4. **OAR 734-051-0045.** This administrative rule pertaining to Change of Use of an Approach is one of those rules that is expressly applicable to grandfathered approaches. It provides that if there is a change in use that results in any of the

following, then the property owner must apply for a private access permit, including a deviation from access management spacing standards, if applicable:

- (A) Site traffic volume generation increases by more than 250 average daily trips or 25 peak hour trips (external trip generation for multi-use developments).
- (B) Operational problems occur or are anticipated.
- (C) The approach does not meet sight distance requirements.
- (D) The approach is not consistent with the safety factors set forth in OAR 734-051-0080(9).
- (E) Use of the approach by vehicles exceeding 20,000 pound gross vehicle weight increases by 10 vehicles or more per day.

Change of use is defined broadly as including:

- (A) Zoning or plan amendment designation changes;
- (B) Construction of new buildings;
- (C) Floor space of existing buildings increases;
- (D) Division or consolidation of property boundaries;
- (E) Changes in the character of traffic using the approach;
- (F) Internal site circulation design or inter-parcel circulation changes; or
- (G) Reestablishment of a property's use after discontinuance for two years or more.

If Hattenhauer does not change its existing use of the grandfathered access, or if it does change its use but it does not result in any of the delineated results referenced above, then Hattenhauer's approach to its business is not subject to modification per the Oregon Administrative Rules, absent a showing of a specifically identified safety concern.

Amendment A

- I. Preliminary Issue.** In your response to my clients' concerns related to Amendment A to the IAMP as passed by the City Council, you indicate that the OTC approved the February 2010 revised version of the Chenoweth IAMP, which contained different provisions than those cited in my letter.¹ The provisions cited

¹ Actually, you state that the OTC approved the version of the IAMP last revised in February 2009. I assumed this was a typographical error, as the most recent version of the IAMP ODOT provided Mr. Hattenhauer was revised February 2, 2010. Please advise of the date of the IAMP adopted by the City Council, with amendments on November 9, 2009, and the date of the IAMP approved by the OTC in February 2010.

in my correspondence came from the version of the IAMP adopted by the City Council in November 2009 as amended. Hence, Hattenhauer would encourage the City Council to confirm that the version of the IAMP it has approved as amended and which Wasco County has also approved, is indeed the version of the IAMP that is ultimately adopted by the OTC and which becomes the operative plan.

2. **Full Legislative Hearing Process.** The language proposed by the City staff on Page 2 of your March 15, 2010, Memorandum to the Mayor, City Council and City Manager, specifically clarifying that a full legislative process is required, including public hearings before the Planning Commission and the City Council, is acceptable. Thank you for addressing my clients' concerns regarding public review prior to implementation of any Chenoweth IAMP proposed projects.

Amendment B

1. **Reconsideration of Proposed Chenoweth IAMP Projects.** City staff's proposed language still fails to include the exact language adopted by the City Council at its November 9, 2009 meeting, which specifically referenced West 6th Street widening as one of the Chenoweth IAMP projects to be reconsidered. I would propose the seventh bullet item under Phase 2 of the Phasing Plan on page 140 referenced in your March 15, 2010 Memorandum be revised as follows:

"I-84 Chenoweth IAMP projects, including West 6th Street widening, will be reconsidered during the future development of the Webber Street IAMP."

Amendment C

If you meant to suggest in the Response to Amendment C on Page 2 of your March 15, 2010 Memorandum that the referenced tables "include the option for a signal *or* a roundabout at River Road and West 6th Street" instead of a "signal *for the* roundabout at River Road and West 6th Street", then the language is acceptable, provided however, that ODOT and City staff stipulate in writing that it is their intent that this proposed improvement be presented throughout the IAMP and its related documents as a signal or a roundabout, without preference indicated for one or the other traffic control device.

Amendment D

ODOT's language on page 152 of the IAMP attached to your March 15, 2010 Memorandum mirrors in part the Change in Use rule (OAR 734-051-0045) applicable to approaches, but unreasonably expands upon that rule as follows:

1. As written, it would require *all* private accesses to be evaluated when any of the listed actions occurred within 1320 feet of the I-84 ramp terminal intersections, regardless of whether the action occurred on a specific property owner's parcel.²
2. By adding the phrase "including but not limited to" in the introductory sentence to the listed land use actions that trigger a required evaluation of an approach road, the listed actions become merely illustrative of the kinds of land use actions that will trigger a mandatory review, rather than an exclusive list. This is significantly broader than the specific provisions of ODOT's rule relating to change in use. *See* OAR 734-051-0045.
3. ODOT's language identifies "Safety or operational improvements" within 1320 feet of the Chenoweth interchange as the seventh bulleted land use action that would trigger an automatic evaluation of an access. How is "safety or operational improvements" defined? Safety or operational improvements by whom? What does this include? "Safety and operational improvements" is not a listed change in use covered by the administrative rule and should not be included. To include this action greatly expands the scope and breadth of the IAMP beyond what was intended by the City when it agreed to adopt the same.
4. ODOT adds "Capital improvement projects" as the final bulleted land use action which would trigger a mandatory evaluation of an access. Again, this is not a listed change in use covered by the administrative rule and thus should not be included. What if Hattenhauer remodels the facilities on the property, but does not increase floor space? Under the current Oregon administrative rule, Hattenhauer's approach would not be subject to modification. However, under the language proposed by the City staff and ODOT above, Hattenhauer's access would be subject to evaluation (and likely modification) because the remodel would constitute a "capital improvement project."

² The last sentence of the first paragraph on page 152 immediately preceding the bulleted list provides: "*An access evaluation will be required, but is not limited to, when any of the following land use actions occur within 1,320 feet of the I-84 ramp terminal intersections:*"

Mr. Gene Parker
July 8, 2010
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I recommend that the language in this section be no broader than that currently provided for by the existing applicable statutes and rules. I disagree with your suggestion in the third paragraph on page 3 of your March 15, 2010 Memorandum that "the language included in the version approved by the OTC, referring to potential modification of the accesses in the event of a capital improvement on the project site, or development/redevelopment of the project site, is consistent with the state administrative rules concerning the granting of a deviation from the state's access standards." The OTC/ODOT approved language exceeds the scope of the applicable state administrative rules, as indicated above.³ Accordingly, I propose the following sentence be inserted just before the last sentence of the first paragraph on page 152 which introduces the bulleted list:

"It is ODOT's express intent that, notwithstanding any provision herein, no access modifications will be made to the existing private accesses outside the scope of currently applicable law, specifically including OAR 734-051-0045 regarding change in use."

Thank you for your consideration of these comments of behalf of Hattenhauer Distributing Co. and Doug Hattenhauer. Please give me a call if you would like to further discuss these issues.

Sincerely,

BRADLEY V. TIMMONS, PC

Karen A. Feil
karen@tinmons-law.com

KAF:ckl

cc: Doug Hattenhauer

Honorable Mayor, Jim Wilcox

Councilor Brian Ahier

Councilor Dan Spatz

Councilor Bill Dick

Councilor Carolyn Wood

Nolan Young, City Manager

³ See attached Exhibit 1, Challenge to Breadth and Scope of IAMP.

Challenge To Breadth and Scope of IAMP

A. History – Why We are Here

ODOT is using the LUBA appeal process to require the City of The Dalles, through a settlement agreement, to create an expansive IAMP that grants ODOT impressive authority over land use and transportation planning decisions in the City of The Dalles and Wasco County, far beyond that contemplated by any contractual obligation or law. We are here today because of the following:

Developer WM3, Inc. applied for a change to the zoning and comprehensive plan designation for a 67.2 acre parcel of industrial zoned property located at the Southwest end of River Road and adjacent to the Chenoweth Interchange for I-84. On July 10, 2006, the City Council approved the zone change application with conditions, and ODOT appealed the City Council's decision to the Land Use Board of Appeals (LUBA). On May 22, 2007, ODOT, the City of The Dalles and WM3, Inc. entered into a Settlement Agreement resolving the appeal, the terms of which provide in relevant part:

1. The parties agreed that the 1999 Oregon Highway Plan performance standards established for the Chenoweth Interchange ramp intersections at River Road of .85 Volume-to-Capacity Ratio should be lowered to .75 for the purpose of reserving capacity until the IAMP is complete. (Sections 1(B), 1(C), 5, 6 and 7).
2. The City agreed to pay for any future capacity increasing improvements to the Chenoweth Interchange, Highway 30 and the Webber Street Interchange necessitated by increased traffic as a result of the City's approval of zoning changes in the IAMP Study Area. (Section 2).¹
3. The parties agreed to develop an IAMP at ODOT's expense for the Chenoweth interchange. (Sections 3 and 8).
4. The purpose of the IAMP is to identify:
 - Land use management strategies;
 - Short term and long term transportation improvements;

¹ Through the provisions of the IAMP, the City is now passing the cost of the capacity increasing improvements necessitated by its zoning change for the benefit of Walmart on to existing business and property owners located on the opposite (South) side of the interstate.

- Access management; and
- Funding strategies to pay for identified improvements.

(Section 3)

5. The parties agreed that funding to pay for improvements to the Chenoweth interchange would be established upon adoption of the IAMP. (Section 1(D)).
6. The City agreed not to consider zone changes or comprehensive plan amendments or modifications to its industrial zone designation applicable to the IAMP Study Area until the City had adopted the IAMP. (Section 4).
7. WM3, Inc. agreed to place covenants on 42 of its subject 67.2 acres prohibiting “non-industrial” development until the sooner of the date the City adopts the IAMP or July 1, 2010. The City must provide ODOT notice and an opportunity to participate in any site plan review application submitted in the IAMP Study Area until the City adopts the IAMP. (Section 9) By its terms, these covenants may be removed from the deed to the property by the developer after July 1, 2010, regardless of whether or not the City has adopted an IAMP.
8. ODOT agreed to withdraw its LUBA appeal once WM3, Inc. placed the covenants on the remaining 42 acres. (Section 10).

B. IAMP Provisions Required by Statute

Oregon Administrative Rule 734-051-0155(7) recites the following exclusive criteria with which Interchange Area Management Plans (IAMPs) must comply, unless the IAMP documents why compliance with a criterion is not applicable:

- (a) Be developed no later than the time an interchange is designed or is being redesigned.
- (b) Identify opportunities to improve operations and safety in conjunction with roadway projects and property development or redevelopment and adopt policies, provisions, and development standards to capture those opportunities.

- (c) Include short, medium, and long-range actions to improve operations and safety within the designated study area.
- (d) Consider current and future traffic volumes and flows, roadway geometry, traffic control devices, current and planned land uses and zoning, and the location of all current and planned approaches.
- (e) Provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically 20 years.
- (f) Consider existing and proposed uses of all the property within the designated study area consistent with its comprehensive plan designations and zoning.
- (g) Be consistent with any applicable Access Management Plan, corridor plan or other facility plan adopted by the Oregon Transportation Commission.
- (h) Include policies, provisions and standards from local comprehensive plans, transportation system plans, and land use and subdivision codes that are relied upon for consistency and that are relied upon to implement the Interchange Area Management Plan.

These are the *only* criteria that must be addressed when an IAMP is developed. There is no requirement that an Access Management Plan be included as part of an IAMP. The settlement agreement recites only that one of the purposes of the IAMP is to “identify...access management.” There is no requirement that the City must establish system development charges to pay for the proposed transportation infrastructure improvements mandated by the IAMP.

The way the IAMP currently reads, business owners like Hattenhauer Distributing Co. on the South side of the interstate, will be obligated to pay a supplemental transportation system development charge (STSDC) for any new or “redevelopment” of their property, for the purpose of funding the IAMP improvements, including the proposed median on West 6th Street and roundabouts. These improvements are primarily for the benefit of new development on the North side of the interstate. Redevelopment is defined as “the act or process of changing existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning.” This definition could support the assessment of an STSDC when Hattenhauer simply remodels its existing building.

The City only agreed that funding to pay for improvements to the Chenoweth interchange would be established upon adoption of the IAMP. The City can decide for itself following adoption of the IAMP how it will fulfill this funding requirement, in addition to its obligation to pay for infrastructure improvements to the Webber Street interchange and Highway 30 that become necessary due to increased traffic resulting from the City's zoning change from industrial to commercial/light industrial. To the extent the Chenoweth IAMP addresses any matter not specifically required by the above criteria, it goes beyond the scope of both the Settlement Agreement and Oregon law.

C. Narrow Construction of IAMP Scope.

The above criteria should be narrowly, not broadly construed. A broad construction of the above criteria, as reflected in the current draft Chenoweth IAMP, greatly benefits ODOT to the City of The Dalles' detriment. ODOT is using the LUBA appeal process to require the City of The Dalles, through a settlement agreement, to create an expansive IAMP that grants ODOT impressive authority over land use and transportation planning decisions in the City of The Dalles and Wasco County, far beyond that contemplated by the settlement agreement or any law.

Let's be crystal clear here. The law *does not* require the City to enter into an IAMP with ODOT. The City is contractually obligated to enter into an IAMP, the mandatory terms of which are set out in the agreement and in OAR 734-051-0155(7) cited above. To the extent that any portion of the IAMP exceeds the scope of these provisions, it should not be adopted by the City absent further justification of the basis for its adoption.