

ORDINANCE NO. 1122-A

Introduced by All Commissioners

Amending the City of Warrenton Ordinance No. 1113-A to Ensure Compliance with Oregon Administrative Rule 660-12-60 (Transportation Planning Rule) and Statewide Planning Goal #12 by Adopting Amended Findings of Fact and Adding New Conditions of Approval.

WHEREAS, Oregon Land Use Board of Appeals (LUBA) remanded the City's decision in Nygaard v. City of Warrenton, et.al, LUBA No. 2007-195 to amend findings addressing OAR 660-12-60 (Transportation), and to add conditions of approval to ensure compliance with the Transportation Planning Rule; and

WHEREAS, the Warrenton City Commission held a public meeting on June 10, 2008, to review the amended findings and additional conditions to the approval; and

WHEREAS, the Warrenton City Commission approved and adopted the Findings of Fact as described in Exhibit "A", and Conditions #6 and #7 as described in Exhibit "B".


NOW, THEREFORE, the City of Warrenton ordains as follows:

Section 1: The City of Warrenton's findings attached to Ordinance No. 1113-A are amended as described in Exhibit "A" attached hereto and incorporated herein, and the City's rezone approval conditions as attached to Ordinance No. 1113-A are amended as described in Exhibit B, attached hereto and incorporated herein.

Section 2: This ordinance shall take effect 30 days after its adoption.

ADOPTED by the City Commission of the City of Warrenton, Oregon, this 24th day of June, 2008, after first being read in full and then by title.

APPROVED


Gilbert Gramson, Mayor

ATTEST


Linda Engbretson, City Recorder



TPR Findings.

12. Goal 12, Transportation – Goal 12 is “to provide and encourage a safe, convenient and economic transportation system.”

Findings: LCDC acknowledged the City of Warrenton’s comprehensive plan to comply with that goal on July 14, 1983. Later, the city did extensive work in periodic review to update transportation planning provisions and bring them into conformance with the LCDC’s transportation planning rule (TPR). The city’s work (done in accordance with periodic review Task 2) resulted in adoption of a transportation system plan (TSP). LCDC approved the TSP and the city’s work in Task 2 on May 25, 2005 (order #001633).

To evaluate the transportation effects of this proposal, Clatsop County contracted with JRH Transportation Engineering to prepare a traffic impact study. That study, the *North Coast Business Park Traffic Impact Analysis*, March 6, 2007, accompanies this application, and is specifically incorporated by reference as a component of these findings. (A similar study of traffic impacts at the proposed Dolphin Lane/Highway 101 intersection also was done by JRH for Home Depot’s development on the site just across Highway 101 from the subject property.)

The North Coast Business Park study evaluated traffic impacts for the years 2007, 2010, and 2022. It considered two phases of development: construction of a large retail center on the subject property in 2007, and additional commercial uses to be built on the property by 2010. The traffic analysis concludes:

With identified improvements all intersections studied are projected to meet the adopted mobility standard for the years 2007, 2010, and 2022. These improvements include the addition of a second through lane on Highway 101 and the connection of Dolphin Lane to Highway 101 Business and will be required with Phase 2 of the development. For Phase 1 no other mitigation is required beyond that which coincides with the Home Depot development of the opposite side of Highway 101 from the subject parcel. (p. 1)

The main transportation improvements to be undertaken are these:

- Construct the east leg of a new intersection with Highway 101 at milepost 8.08. This leg shall have two westbound to southbound left turn lanes, a single westbound through lane and a single westbound right-turn lane;
- Extend the eastern leg of that intersection to connect with 19th Street (and thus Highway 101 Business);

- Add a second northbound through lane and a northbound to eastbound deceleration, right- turn lane on Highway 101 in the vicinity of the new intersection; and
- Install a traffic signal at the new intersection with Highway 101 at milepost 8.08.

A diagram showing these improvements and the proposed intersection design is shown in Figure 3 (page 14) of the *North Coast Business Park Traffic Impact Analysis*, dated March 6, 2007.

Compliance with the TPR.

Oregon's "transportation planning rule" or TPR is a set of administrative rules codified at OAR Chapter 660, Division 012. Most of the TPR prescribes how local governments are to prepare their transportation system plans and thus is not applicable to quasi-judicial land-use decisions such as this. But one part of the TPR, OAR 660-012-0060, does apply here. The Land Use Board of Appeals summarizes OAR 660-012-0060 in these words:

Our cases involving OAR 660-012-0060(1) and (2) have typically concerned amendments to comprehensive plans or land use regulations to allow development that will generate additional traffic. [*Citations omitted.*] The relevant question in such cases is whether the existing and planned for transportation facilities will be able to accommodate that traffic without resulting in traffic congestion that leads to unacceptable levels of service. *Friends of Eugene et al. v. City of Eugene*, LUBA 2002-105, March 24, 2003, p. 34

For the plan amendment proposed here, the "relevant question" is whether Highway 101 will be able to accommodate the additional traffic generated by commercial use of the subject property without experiencing unacceptable levels of service. The step-by-step analysis below explains why the answer to that question is "Yes." We have emphasized some of this long rule's key passages by placing them in bold print.

OAR 660-012-0060(1) is the first of eight sections in this rule. Section 1 sets forth criteria by which to determine whether a proposed plan amendment might "significantly affect" a transportation facility:

(1) Where **an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:**

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Based upon the above-referenced analysis, the Commission finds that this proposal would not change the functional classification of any transportation facility. Subsection (1)(a) therefore does not apply here. Likewise, this proposal would not change any standards used to implement the functional classification system, so Subsection (1)(b) does not apply. The proposal also would not generate traffic “inconsistent with the functional classification of an existing or planned transportation facility,” so paragraph (1)(c)(A) does not apply. And the proposal does not involve any failing transportation facilities of the type described in paragraph (1)(c)(C), so that paragraph does not apply.

The traffic impact analysis prepared by JRH Engineering, however, does show that the proposed commercial use of the subject property — if done without improvements to the transportation facility — would reduce performance of Highway 101 below ODOT mobility standards. (The relevant standards are summarized on page 2-17 of Warrenton’s TSP.) OAR 660-012-0060(1)(c)(B) therefore is applicable, and we conclude that the proposed plan amendment would “significantly affect” a transportation facility (Highway 101).

Note that Subsection (1)(c) calls for performance to be measured over “the planning period identified in the adopted transportation system plan.” In this case, the appropriate “planning period” is from 2002 to 2022. (See page 1-1 of Warrenton’s TSP, which specifies a “planning horizon year of 2022.”) For this reason, the traffic impact analyses done for the Home Depot property and for this proposal both use that same planning period.

Section 2 of OAR 660-012-0060 describes measures to be taken when a proposed plan amendment would significantly affect a transportation facility.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

This application does not propose or involve measures of the type described in paragraphs (2)(a) through (2)(d) above. However, the submittal, based upon the analysis undertaken by JRH Engineering, does propose measures of the type described in (2)(e), namely conditions of development to establish 1) the east leg of a new intersection at milepost 8.08 with Highway 101, which shall have two westbound to southbound left turn lanes, a single westbound through lane and a single westbound right-turn lane, 2) an extension of the eastern leg of that intersection to connect with 19th Street (and thus to Highway 101 Business), 3) a second through northbound lane and a northbound to eastbound deceleration, right turn lane in the vicinity of the new east leg on Highway 101 at milepost 8.08, and 4) a traffic signal at the intersection with Highway 101 at milepost 8.08. With the mitigation described above as outlined in the JRH Transportation Engineering TIA, Highway 101 will be able to accommodate the additional traffic from the proposed land uses while meeting all applicable ODOT mobility standards throughout the planning period. Additional improvements discussed by the applicant, including closure of

Dolphin Avenue and reducing the speed limit on Highway 101 from 55 mph to 50 mph, are not required for TPR compliance based on the analysis in the traffic impact study by JRH Engineering and are not required as a condition of this decision. The Commission notes, however, that one or more of such improvements may be required as a condition of future ODOT authorizations.

Section 3 of OAR 660-012-0060 focuses on transportation facilities that are “performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted.” This proposal does not involve any transportation facilities of that type. Section 3 therefore does not apply here.

Section 4 of OAR 660-012-0060 calls for coordination among local governments and service providers. It also specifies types of transportation facilities and improvements that “count” toward satisfying OAR 660-012-0060:

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (?):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

With this proposal, the key local governments and service providers are the City of Warrenton, Clatsop County, and ODOT. As described elsewhere in this document, and as shown in the attachments to this application, there has been extensive coordination among all of these parties over a period spanning several years. See, for example, the February 20, 2007, ODOT memo referred to on the next page. The coordination requirement of OAR 660-012-0060 therefore is met.

The next step under Section 4 is to determine what "existing transportation facilities and services" and "planned transportation facilities, improvements and services" we may "rely on" in considering the transportation impacts of this proposal and the appropriate measures for mitigating those impacts. We need not consider paragraphs (c) or (d) above, because they deal with "interstate interchange areas," and this application involves no interstate highways or interchanges. We therefore turn to paragraph (b), which describes various types of transportation facilities and improvements that may be considered "planned" in areas not involving interstate highways and interchanges.

In this case, the applicable provision is OAR 660-012-0060(4)(b)(B), "transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved." A diagram showing these improvements and the proposed intersection design is shown in Figure 3 (page 14) of the *North Coast Business Park Traffic Impact Analysis*, dated March 6, 2007.

These improvements are authorized by the City of Warrenton's acknowledged transportation system plan ("TSP"). It says, "Through an IGA signed in December of 2000 between ODOT and the City of Warrenton, the north SE Dolphin Avenue approach to US 101 will be realigned as part of future development on adjacent properties" (p. 4-43). The TSP also discusses the possibility of a signal at the Dolphin/101 intersection, noting that such a measure would "need to be coordinated with ODOT and meet traffic signal warrants." The proposed signal has been coordinated with ODOT and found to meet traffic signal warrants. See the attached memo of February 20, 2007, from Edward L. Fischer, State Traffic Engineer, to Bruce Erickson, ODOT Region 2 Traffic Engineer, which states, "The request to signalize the intersection of Dolphin

Lane and US 101 in the City of Warrenton is approved with the following conditions.” The specified conditions deal with engineering and configuration of the intersection and signal.

These improvements will be funded by the developer as a condition of approval for this proposal and shall be in place and available for public use prior to occupancy of the initial phase of development on the site. The proposed improvements thus are “planned transportation facility improvements” of the type described in OAR 660-012-0060(4)(b)(B). The “funding mechanism” for those improvements is the conditions of approval. The city therefore may rely on these improvements as appropriate measures for dealing with the likely effects of this proposal on transportation facilities. The conditions of approval in Exhibit C ensure compliance with the TPR.

Section 5 of OAR 660-012-0060 deals with rural lands and exceptions related to transportation facilities. This proposal involves neither rural lands nor any exceptions to statewide planning goals. Section 5 therefore is not applicable.

Section 6 of OAR 660-012-0060 deals with vehicle trip reductions that may result from development of “mixed use, pedestrian-friendly centers and neighborhoods.” This proposal does not involve such centers or neighborhoods. Section 6 therefore does not apply here.

Section 7 of OAR 660-012-0060 focuses on commercial developments of two or more acres that would significantly affect transportation facilities in areas where “the local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b).” This proposal does involve commercial property larger than two acres, and it will significantly affect a transportation facility. It does not, however, involve an area not subject to a transportation system plan. The City of Warrenton has a TSP acknowledged by LCDC on May 25, 2005 (periodic review order #001633). Section 7 therefore does not apply to this proposal.

Section 8 of OAR 660-012-0060 defines the term “mixed-use, pedestrian-friendly center or neighborhood.” This proposal does not involve such centers or neighborhoods, and the definition is not a criterion for approval of this proposal. Section 8 therefore does not apply here.

In LUBA’s words, “An amendment complies with OAR 660-012-0060 where it does not ‘significantly affect’ a transportation facility in any of the ways described in OAR 660-012-0060(2) or, if it does significantly affect a facility, where the local government takes one or more of the steps prescribed in OAR 660-012-0060(1).” *Craig Realty v. City of Woodburn*, LUBA 99-031, February 2, 2001, p. 6

The steps described in this proposal are measures of the type prescribed in OAR 660-012-0060(1). By approving this proposal, the City of Warrenton would approve the measures needed to satisfy this rule. This proposal therefore fully complies with OAR 660-012-0060, and with all applicable provisions of Goal 12 and the transportation planning rule.

Conditions of Approval:

6. Construction of transportation improvements for mitigation identified in the Traffic Impact Analysis prepared by JRH Transportation Engineering, dated March 6, 2007, subject to final design approval by ODOT, as follows:

- Construct the east leg of a new intersection with Highway 101 at milepost 8.08. This leg shall have two westbound to southbound left turn lanes, a single westbound through lane and a single westbound right-turn lane;
- Extend the eastern leg of that intersection to connect with 19th Street (and thus Highway 101 Business);
- Add a second northbound through lane and a northbound to eastbound deceleration, right- turn lane on Highway 101 in the vicinity of the new intersection; and
- Install a traffic signal at the new intersection with Highway 101 at milepost 8.08.

7. All of the above transportation improvements shall be funded by the developer and shall be in place and available for public use prior to occupancy of the initial phase of development on the site.

