

UMATILLA COUNTY BOARD OF COMMISSIONERS
Land Use Hearing, Wednesday, February 19, 2014, 2:00 p.m.
Umatilla County Courthouse
Pendleton, Oregon 97801

COMMISSIONERS PRESENT: Bill Elfering (Chair), Larry Givens, George Murdock.
ABSENT: None.
COUNTY COUNSEL: Doug Olsen.
STAFF: Tamra Mabbott, Connie Hendrickson.

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. HOWEVER, A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

Chairman Elfering called the meeting to order at 2:00 p.m. He read the opening statement saying their role was to conduct a hearing to consider the traffic study and development agreement for Conditional Use Permit application #C-1086-05 submitted by Travel Centers of America, formerly Petro. He called for any bias, conflicts of interest or abstentions from the Commissioners; there were none.

Staff Report: County Counsel Doug Olsen said this application was originally submitted in 2005 for a Stopping Center Truck Stop on Westland Road near the intersection of I-84 and I-82. It was approved by the Planning Commission and subsequently appealed to the Board of Commissioners who also approved the Conditional Use Permit. That decision was appealed to LUBA (Land Use Board of Appeals). LUBA made some findings including one that states that the development agreement must be in place prior to the time that the spacing standards for access to I-84 can be lowered. The ordinance allowing the exception for the spacing standards took place in 2003 but that exception only comes into play once the development agreement is in place. Today's hearing is to determine if the development agreement is satisfactory to the county and to the Board of Commissioners.

Planning Director Tamra Mabbott added that LUBA determined the development agreement could not be adopted outside of a public hearing. The application began as Petro and is now Travel America but the interest with the permit stays with the property. She referred to a map and the intersection for the truck stop and there was discussion regarding the exact location. Mrs. Mabbott stated that Umatilla County Public Works Director, Tom Fellows, had worked with Access Engineering and he did not have further comment regarding the access design.

Mr. Olsen referred to a map showing where the original agreement would have placed the automobile access across from Livestock Road. He described how the access had been changed and Livestock Road would be moved to the north and the intersection between Westland Road and Livestock Road would be closed. Discussion followed.

Mrs. Mabbott said when this application was originally submitted, the county was concerned about the impact the development would have on the Westland Road/Lamb Road intersection. At that time a study was done that provided for participation in paving a portion of the intersection to be improved. Subsequently federal funds were made available and the intersection was designed and developed to a capacity that meets the projected demand. Commissioner Givens asked if the Millers from Northwest Livestock were in agreement with the changes that were made. Mr. Olsen said that they had been notified of the change and there had been no comment from them.

Commissioner Elfering asked if there had been a previous development agreement and Mrs. Mabbott said there had been but it was not fully promulgated according to LUBA. LUBA also said the agreement was subjective enough that the county needed to hold a public hearing in order to provide for public comment prior to adoption. Commissioner Elfering asked for clarification as to whether the details of this agreement had been discussed and vetted previously and Mr. Olsen answered that it had only been discussed amongst staff and the applicant. Discussion followed.

Proponent testimony: Jim Dulcich, attorney with Schwabe, Williamson & Wyatt introduced himself and said he was representing T.A. Operating, LLC which runs Travel Centers America and Petro which merged into Travel Centers. He then introduced Dave Summers, Regional Construction Manager for Travel Centers America.

Mr. Dulcich said LUBA took this case on appeal in 2007 and there were fifteen assignments of error. The reason it took so long to get to this point in the process was due to a severe depression in the travel industry. Many large companies went out of business or had to file for bankruptcy and their assets were acquired by other companies. It has been a challenging time in the travel industry over the last 5 to 6 years and it has only been in the last year or two that an upturn has occurred, allowing large corporations in the industry to move forward with new development and construction of travel centers.

LUBA sustained two assignments of error; one dealt with the interpretation of the ordinance adopted January 12, 2014 by the Board of Commissioners stating that the development agreement had to be approved and executed before the exceptions to the access spacing can come into play. Petro worked with staff in 2003 and the Board of Commissioners approved the access at 1100 feet from the freeway. The other assignment of error dealt with the Lamb Road/Westland Road intersection saying there wasn't evidence in the record as to the impact that the development would have on that intersection and that issue had to be dealt with.

Mr. Dulcich said the first step is to get the development agreement updated, approved and signed so the exception to the access could become effective. After that the applicant will

be able to start the remand proceeding as a final approval. T. A. Operating will be assisting the county in improving and paving Livestock Road at the intersection of Westland Road. They will pay for labor and materials taking on about 75% of the cost of that project as well as taking sole responsibility of improving and widening Westland Road and bringing it up to county standards including a turn lane.

Opponent testimony: Mike Connors, attorney with Hathaway Koback Connors introduced himself and said he was representing Space Age Fuels who was one of the parties involved in the previous county process for this project in 2005-2006. They were also involved in the LUBA appeal that resulted in the remand that prompted this issue. Neither he nor his client was aware that this project was still active until they received the public notice. He has been in communication with his client and reviewed the packet to determine if his client would have issues and if they should take some sort of action. He and his client have determined that they are not in a position to fully comment on all the material without more thorough examination. They were unable to retain a traffic engineer to review the study to provide an opinion in time for this hearing.

Mr. Connors handed out a letter he had written which detailed the issues they had. He asked that the Board grant a continuance to give them time to review the material and retain a traffic engineer to review the study. The letter cited the Umatilla County Development Code (UCDC) 152.772 (F), (12) and (15) which states that if a party requests a continuance they are entitled to it.

He said he would introduce the issues that had been identified thus far and if there are additional issues that arise they can be dealt with at the continued hearing. The first issue relates to a county approval that was appealed to LUBA who then remanded the decision back to the county. A separate but related issue deals with the Lamb Road/Westland Road intersection. That issue must be dealt with in a remand proceeding. Mr. Connors said he wanted to confirm that the only issue they were dealing with today was the development agreement and there will be a subsequent hearing to address the remand issue.

Mr. Connors listed the issues written in the letter he handed out:

1. His client is questioning whether the condition relating to the development agreement adopted pursuant to Ordinance 2003-09 which was adopted January in 2004 is still valid. In that Ordinance the Board of Commissioners adopted an amendment to the Comprehensive Plan and Transportation System Plan imposing a condition allowing local access exceptions which do not meet county or ODOT standards. These exceptions were allowed conditioned upon the developer executing a development agreement. The UCDC says when an amendment is adopted conditions must be satisfied in the specific time period identified in the decision. If a specific time has not been identified then the conditions must be satisfied within a reasonable time frame. It has been 10 years and his client feels that is not a reasonable time to meet the conditions.

2. Changes are being proposed in the development agreement that are different from the adopted ordinance. When that ordinance was adopted the county went through an extensive public process. The plan adopted by the Board refers to an exhibit from a traffic study done in 2004 by the applicant. The development agreement before the Board today wants to make changes to that ordinance. Procedurally that cannot be done just by approving a development agreement because the applicant is requesting that the Board amend their prior decision. When a prior decision is amended under Oregon law, they are required to go through the same process as they did to adopt the original decision.

3. The applicant is asking the Board to adopt this development agreement because until that agreement is approved and executed, the exceptions that were approved in the 2004 ordinance do not go into effect. There is a statute called the Goal Post statute which says that when a developer submits an application it must be judged by the laws and regulations in effect on the date that the application was submitted. The local access exceptions were not in effect when Travel America submitted their application. The applicant should file a new application and demonstrate under the current standards that they satisfy the standards in effect today. If the applicant wants to rely on the old application they can't rely on the local access exceptions because they were not in effect when they submitted the application and they will not be in effect until the Board approves this development agreement.

Commissioner Givens asked Mr. Olsen if there was a criterion in place in the county standards which states that a development must be started or completed or in process within a certain time frame. Mr. Olsen said if there had been a valid permit that would be the case but there was not because it was remanded so it was in suspension until the applicant requested the remand to start again. Because of that, the time limit would not apply.

Commissioner Givens asked if the applicant would be required to meet the new standards and Mr. Olsen said he did not think there had been many changes with regard to development requirements in the last ten years. That is something that would be dealt with during the remand process.

Rebuttal: Mr. Dulcich said that all of the arguments made by Mr. Connors can be dealt with during the next process at the remand hearing. The purpose today is to work on the terms and conditions of the development agreement. He added that there was no statute in Oregon which requires a remand be brought within a certain period of time and the development agreement is a contractual issue and not a land use issue.

There was discussion on whether or not the county was obliged to grant a continuance and Mr. Connors said that they were. He referred to UCDC 152.772 (F), (12) and (15) which is has to do with public hearing protocol. It says that you are required to ask if anyone wants to continue the hearing and if someone asks it shall be continued. He said their position was not discretionary but mandatory.

After referring to the Development Code Mr. Olsen said the request for a continuance should be granted.

Commissioner Givens moved that they continue the hearing to take place in the regularly scheduled meeting of the Board of Commissioners on March 19, 2014 at 10:00 a.m. Commissioner Murdock seconded the motion which passed unanimously.

Commissioner Givens moved that they accept into evidence exhibits one through four which included the letter hand delivered by Mr. Connors. Commissioner Murdock seconded the motion and it passed unanimously.

Respectfully submitted,



Connie Hendrickson
Administrative Assistant

(Adopted by the Board of Commissioners on April 2, 2014)