

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Wednesday, March 19, 2014
10:00 a.m., Room 130, County Courthouse, 216 SE 4th St
Pendleton, Oregon 97801

COMMISSIONERS PRESENT: Bill Elfering (Chairman), 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.

CALL TO ORDER:

#C-1086-05 Hearing continued from February 19, 2014

At 10:00 a.m. Chairman Elfering opened the continued hearing for Application #C-1086-05 to consider approval of the Development Agreement with Travel America, previously Petro.

Staff Report: County Counsel Doug Olsen described the item before the Board of Commissioners was consideration and approval of a Development Agreement with TA (Travel America). The agreement relates to an ordinance adopted in 2003 allowing exceptions to road siting standards. One of the conditions for that ordinance required a development agreement with the property owner outlining improvements and responsibilities, including the realignment of Livestock Road. After those improvements were completed the exceptions for the siting for the new Stopping Center would be effective.

At the hearing in February (2014) there was a request for a continuance by Mike Connors on behalf of Space Age Travel to further consider the Development Agreement and the requirements for improvements to Westland Road and northwest Livestock Road.

Proponent Testimony: Jim Dulcich, Attorney on behalf of TA (formerly Petro) introduced himself as well as Dave Summers, Region Construction Manager who was attending the hearing with him. He referenced a letter in the Commissioners' packets which he had submitted on behalf of TA.

Mr. Dulcich received a letter yesterday (March 18) from Mr. Mike Connors, Attorney for Space Age Fuels, along with a letter from Lancaster Engineering. An issue addressed in Mr. Connors' letter was regarding the lapse of time between the LUBA (Land Use Board of Appeals) remand and today. As stated at the hearing in February, economic conditions during the previous six years did not allow for development of truck stops by travel

companies. He referred to a portion of the letter from Mr. Connors which questioned the reason TA had not previously moved further along with the project by executing the Development Agreement. Mr. Dulcich explained that with the uncertain economic climate it was unclear if TA would be moving further at all. It would not have been a financially sound decision to spend money on a traffic study and additional money on attorney fees with respect to the Development Agreement when they knew they would be challenged by their competitor, Space Age Fuels, and did not have the certainty they would be able to go ahead with the project. The economy has experienced an incline recently and TA has determined that they are able to move ahead with their project.

Other issues raised in Mr. Connors' letter say that there is an impermissible amendment of the Ordinance from January 2004 and that the Development Agreement is not consistent with that Ordinance. Mr. Dulcich clarified that TA is not attempting to amend the 2004 Ordinance and the proposed Development Agreement does comply with that Ordinance. He read the part of the 2004 Ordinance which applied to the Development Agreement with the property owner which the Board of Commissioners' had required. The agreement outlines the improvements and responsibilities of his client with respect to Westland Road, the access points and the realignment of Livestock Road. He noted that the Ordinance did not require that TA had to pay for the realignment of Livestock Road but that the Development Agreement had to deal with the realignment of Livestock Road. TA has opted to pay for the majority of the improvements to Livestock Road which will total approximately \$75,000.00. That figure does not include the money that TA will spend with the commitments undertaken to repave Westland Road and to dedicate 20 feet of the easterly boundary of the property.

Mr. Dulcich referred to another portion of the Ordinance which stated that the Umatilla County Transportation System Plan and the Umatilla County Comprehensive Plan would be amended to provide an exception to the Westland area plan north of I-84 to allow for local access improvements for the automobile access point. The Ordinance says that TA is solely responsible for the expense of the construction of the automobile access point and the truck access point for the project. The Development Agreement complies completely with the 2004 Ordinance.

Mr. Dulcich said that because they did not receive the letter from Mr. Connors or Lancaster Engineering until yesterday at 4:30 p.m. they would like to keep the record open for seven days so they can submit a response. There was one issue that was addressed in the letter from Lancaster Engineering that he would like to respond to at this time. That issue was their question regarding ODOT's (Oregon Department of Transportation) position on the access spacing standards.

At the beginning of 2013 when it was decided to resume this project they spoke with their traffic engineers, Kittleson and Associates to make sure that ODOT was in agreement and did not have problems with the access points. Mr. Dulcich referred to an email he had received from Dan Seaman of Kittleson and Associates who had spoken with Jeff Weiss, the Region 5 Traffic Manager for ODOT. Mr. Seaman said that ODOT was in concurrence with the recommended access points for TA on Westland Road and that the

recommendations made by Kittleson and Associates were consistent with the previous access management plan prepared by Umatilla County.

Commissioner Givens asked Mr. Olsen if he and Public Works Director, Tom Fellows, had been able to review the Development Agreement. Mr. Olsen answered that they had and it was in compliance. Commissioner Givens confirmed that the only decision the Commissioners were required to make at this hearing was with regard to the Development Agreement and Mr. Olsen said that it was. Commissioner Givens asked Planning Director, Tamra Mabbott, if the Planning staff had issues with the agreement and she said they did not.

Opponent testimony: Mike Connors, Attorney on behalf of Space Age Fuels introduced himself. He verified that the letter he emailed to the county had been received by the Commissioners and County Counsel and they answered that it had.

Commissioner Givens moved that the letters from Mike Connors and Lancaster Engineering dated March 18, 2014 and the letter from Jim Dulcich dated March 10, 2014 be entered into the record. Commissioner Murdock seconded the motion and it passed unanimously.

Mr. Connors said he would be addressing three issues that were raised in the letters he submitted.

1. Ordinance 2003-09 adopted an amendment to the Transportation System Plan (TSP) with regard to the Westland Road interchange area. A condition to that amendment required TA (previously Petro) to enter into a Development Agreement with the property owner to effectuate the specific local access exceptions that were adopted pursuant to that Ordinance. Mr. Connors said the Umatilla County Development Code provides that conditions imposed to an amendment decision must be satisfied within a reasonable time frame.

He said it had been ten years since that amendment went into effect and six and a half years since the appeal and Petro could have moved toward compliance with the condition. The code places a time frame on compliance with conditions because circumstances can change over time and the conditions placed on a specific application may not apply if the conditions are not met in a timely manner. He noted changes that have occurred in that area since the adoption of the 2003-09 Ordinance including the Fed Ex truck center and Flying J facility and said traffic from those approved uses had to be taken into account for this TA project to go forward.

Mr. Connors said his client does not feel that the time elapsed since the adoption of the ordinance is a reasonable time frame. They understand the economic problems but that is not an excuse for the county to allow them to move forward after such an extended period of time. TA should be required to go through a process similar to when the Ordinance was originally adopted so the County would have current information available with which to make their decisions.

2. The second question is whether or not the Development Agreement amends or changes the plan that was approved by Ordinance 2003-09. The county received a detailed traffic impact analysis from Kittleson and Associates as a part the TA (Petro) application. The part of the analysis which identified the local improvements and access exceptions is what TA was asking the county to adopt. Mr. Connors read from a portion of the Ordinance which stated that the Transportation System Plan and County Comprehensive Plan will be amended to provide an exception to the Westland area plan north of I-84 to allow for local access improvements outlined in Figure 13 of Exhibit 62 which is from the Kittleson and Associates analysis. Those specific improvements were incorporated as a part of the plan. He then read from Mr. Dulcich's letter which acknowledged that there were differences between the plan TA has now and what had been proposed in the Ordinance but that the plan is still consistent with the intent of the Ordinance. Mr. Connors said his client takes issue with the statement in the letter that the differences in the plan are minor and even if the changes were only minor they are not consistent with the specific plan which was approved in the 2003-09 Ordinance. Mr. Connors said the county cannot amend the amendment to the Transportation System Plan which is what the Ordinance accomplished through the adoption of a Development Agreement.

3. The third issue pertains to traffic. Mr. Connors referred to the letter he submitted which contained a letter from Lancaster Engineering who reviewed the traffic analysis from December 2013 submitted by TA. There are flaws in that analysis as noted by Lancaster Engineering. One flaw is that it failed to account for the Northwest Livestock Commission auctions which occur on Tuesdays causing heavy traffic in that area on that day. The analysis says that the study was done on a Wednesday and because of that the traffic count is under reported. Another noted flaw is that the projected future growth for the area is underestimated. A third flaw is that the study failed to account for the full development potential of the adjacent 57 acre property by over 20 percent.

The overall landscape of his clients position is that TA should not be able to pick up this project 10 years later and ask the county to ignore the reasonable limitations set forth in the code for effectuating these conditions and ignore that TA is attempting to amend the Transportation System Plan by changing the specific improvements and access exceptions that were adopted in 2003. Mr. Connors said his client was asking the Commissioners to deny the request for approval of the Development Agreement and require TA to go through the correct process and demonstrate that there is still justification with the current improvements in the area, under the current code to move forward with this project. If Mr. Dulcich's' request to keep the record open for seven days is granted, his client would like another seven days afterward in order to submit a rebuttal to any new information that may come in.

Rebuttal testimony: Mr. Dulcich said they were not aware of any changes that would make the traffic study they presented invalid. The traffic counts in that study were done very recently. Although it has been 10 years since the application was originally submitted there is no evidence that the passage of time would have an affect on the development or that the development would affect traffic in the area. He also said there

had not been an amendment to the ordinance and they have followed it to the letter. He said their engineering firm would respond to the letter from Lancaster Engineering.

Commission comments: Commissioner Givens asked Mr. Olsen if there were any time limits placed in the 2003-09 Ordinance and he answered that there were not. Commissioner Givens asked Mr. Fellows if the improvements done with the Lamb/Walker intersection since TA's original application was submitted will have an effect on this proposal and he answered that they would not. Commissioner Givens asked Mr. Olsen for clarification regarding possible changes to the Ordinance due to this proposal. Mr. Olsen said Ordinance 2003-09 was to allow accesses that were not allowed under the existing standards. He said that under the proposed agreement the access points are still the same. The only difference is that the realigned road will come to the north instead of the center but the access points already have access permits and they are the same as what is proposed in the Development Agreement. Commissioner Givens asked if this agreement was an attempt to change the Ordinance and Mr. Olsen said it was not.

There was discussion with regard to keeping the record open for seven days and Mr. Dulcich said he would withdraw that request if it would prevent a final decision from being made today. It was decided that it would, so Mr. Dulcich withdrew the request to keep the record open.

Chair Elfering closed the hearing. Commissioner Givens made a motion to approve the Development Agreement submitted by TA and to close both the written and oral record. Commissioner Murdock seconded the motion and said that for the record he was familiar with the traffic at Northwest Livestock auction on sale day which would not skew the statistics given by roughly 20-30 cars per hour at the most, based on information from an employee of the auction yard.

With regard to the question of what is a reasonable length of time, Commissioner Murdock said that should be measured by monumental changes in conditions. The presence of the Fed Ex distribution center amounts to increased truck traffic in the area; the presence of truck traffic would not be considered a negative toward the development of a truck stop. As had been discussed at the hearing on February 19th, the new proposed intersection would be a positive and not a negative change. He said he had not heard any issues that would defer moving forward.

Chair Elfering said he had not heard anything significant in the changes that have been incorporated in this request and it was consistent with the action taken earlier. He said there was agreement and approval from the Public Works Department and the Planning staff to move forward.

Chair Elfering said the motion to approve the Development Agreement #C-1086-05 was on the floor and asked those in favor to say "aye". The motion passed unanimously.

Respectfully submitted,

A handwritten signature in cursive script that reads "Connie Hendrickson".

Connie Hendrickson
Administrative Assistant

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