

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

ZONE CHANGE REQUEST

Application File Name (Number):

Looking Glass School (Z 11-3).

Applicant's Request:

Approval of a zone change from the existing zoning of GO, General Office, to C-2, Community Commercial.

Subject Property/Zoning/Location:

Tax Lot 6501 of Assessor's Map 17-04-36-42; Located at 1662 West 12th on the southeast corner of Chambers Street and 12th Avenue; the subject property is currently zoned General Office.

Applicant/Owner:

Applicant: Looking Glass Youth & Family Services.

Owner: McG2 LLC.

Applicant's Representative:

Larry Reed, JRH Land Use Planning Division (541) 687-1081.

Lead City Staff:

Steve Ochs, Associate Planner, Eugene Planning Division,
Phone: (541) 682-5453.

Relevant Dates:

Application submitted on May 25, 2011; application deemed complete on June 9, 2011; public hearing date held July 13, 2011; record held open until July 20, 2011.

Summary of the Present Request

The applicant is requesting approval of a zone change from GO General Office to C-2 Community Commercial to accommodate the relocation of the Looking Glass Riverfront School which is presently housed near the U of O campus. The General Office zone does not permit schools. The subject property is approximately 1.1 acres in size and is developed with an existing building and related parking. The building was most recently used for various office uses.

The subject property is surrounded with a mix of zoning: the area directly to the east is zoned R-2 Medium-Density Residential and developed with multi-family units and the Eugene Hearing & Speech Center; the area directly to the west is zoned a mix of R-2 Medium-Density Residential (developed with the Berean Baptist Church and associated parking) and S-C/R-1 Chambers Special Area/Low-Density Residential, developed with single-family homes; and the properties to the north across West 12th Avenue are zoned S-C Chambers Special Area and Medium Density Residential and developed with a credit union and apartment buildings. Directly to the south is the Unitarian Universalist Church which was recently rezoned to C-2 Community Commercial. Beyond the immediately adjacent properties, the subject property is near a concentration of residential properties that extend to the north and east of the subject property.

Summary of the Public Hearing

Kelly Sandow, from the applicant's representative JRH, and Craig Opperman from Looking Glass, the applicant, appeared and testified at the public hearing in favor of the application. Paul Conte, from the Jefferson Westside Neighbors, a City of Eugene recognized neighborhood association, appeared and testified generally in favor of the application, with the caveat that the application should only be approved with a condition that limited the uses allowed on the subject property.

Documents Considered by the Hearings Official

Application and narrative
Completeness review correspondence
Revised application and narrative in response to completeness review
Referral correspondence from city staff
Hearing notice
Hearing notice mailing list
Staff report
Hearing agenda
Hearing Exhibit A, staff memo to hearings official
Hearing Exhibit B, written testimony from Paul Conte for Jefferson Westside Neighbors
Post hearing submission dated July 20 from Paul Conte for Jefferson Westside Neighbors
Post hearing submission dated July 20 from Paul Conte
Post hearing submission dated July 20 from Liz Zegar, Bill Walter, and Richard and Jean Sellers
Post hearing submission dated July 21 from Larry Read from applicant's representative JRH

Documents Rejected by the Hearings Official

Post hearing email submission dated July 21 from Paul Conte for Jefferson Westside Neighbors.

The open record period closed July 20. On July 21, Paul Conte submitted an email for inclusion into the record. The submission on July 21 was submitted after the close of the record, during the time period reserved for the applicant's rebuttal argument. ORS 197.763(6)(e). Because the email was submitted after the close of the record, I find that I cannot consider the email in making my decision and I specifically reject the submission. However, I also find that had I considered the email, it would not have changed my decision in any regard.

Evaluation of the Zone Change Request

In accordance with EC 9.7330, I am required to approve, approve with conditions, or deny this Type III land use application for a zone change. My decision must be based on, and be accompanied by, findings that explain the criteria and standards considered relevant to the decision. My decision must also state the facts relied upon in rendering the decision, and explain the justification for the decision based upon the criteria, standards, and facts set forth. The applicable zone change approval criteria are shown below in **bold** typeface, with each criterion followed by my findings and conclusions related to each criterion.

EC 9.8865(1): The proposed zone change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.

Findings

The Metro Plan land use diagram designates the subject property and adjacent sites along Chambers Street for commercial use. A change in zoning to C-2 Community Commercial is consistent with this designation. The Metro Plan generally supports the rezoning of land in order to be consistent with the plan designation, and the Eugene Code implements the Metro Plan by providing commercial zoning for these uses. EC 9.2110.

Paul Conte for the Jefferson Westside Neighbors argues that the application is not consistent with the Metro Plan without his proposed condition of approval. Mr. Conte's argument under the Metro Plan approval criterion is premised on his assertion that the Westside Neighborhood Plan, a Metro Plan refinement plan, *is* the Metro Plan. I do not need to address whether the refinement plan is or is not the Metro Plan, because consistency with applicable refinement plans is a separate approval criterion for this zone change application. Thus, to the extent there are Westside Neighborhood Plan policies applicable to this application, the policies will be addressed in the second criterion, below. Moreover, to the extent that the refinement plan policies Mr. Conte argues are a part of the Metro Plan itself are actually part of the Metro Plan, I incorporate my treatment of those policies from the second criterion below.

Other than the refinement plan policies addressed in the second criterion below, there were no allegations that specific Metro Plan policies are applicable to this application. I find no other applicable Metro Plan policies.

Conclusion

Changing the subject property to C-2 Community Commercial is consistent with the Metro Plan.

EC 9.8865(2): The proposed change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.

Findings

The Westside Neighborhood Plan (WNP) is the adopted refinement plan applicable to this request. The WNP land use diagram designates the subject property and adjacent sites along Chambers Street as the Chambers Street Commercial Area. WNP at page 3-4.

The WNP contains a general land use element policy applicable to this application that provides: "Prevent erosion of the neighborhood's residential character." WNP at page 3-1. I will refer to this policy as "Policy 1." The Chambers Street Commercial Area designation is implemented through an additional applicable policy that provides: "This area shall be recognized as appropriate for neighborhood and general commercial uses." WNP at page 3-11. I will refer to this policy as "Chambers Policy 1." I find that Policy 1 and Chambers Policy 1 are both applicable criteria for this zone change application. No one asserts that there are other mandatory approval criteria for this application in the WNP, and I find none.

The subject property, as part of the Chambers Street Commercial Area, is discussed in the WNP text, describing current uses within the sub-area, historical zoning of the sub-area, and the reason behind the original zoning of R-4 High Density Residential for the subject property. WNP at page 3-11. Chambers Policy 1 clearly calls out the Chambers Street Commercial Area, which includes the subject site, as being appropriate for "neighborhood commercial" and "general commercial" uses.

The subject property is within the WNP's sub-area designated for commercial uses and the plan's text refers to commercial uses being appropriate for this sub-area within the larger neighborhood. Continued use of the subject property, which carries a commercial designation under the WNP, will not erode the neighborhood's residential character. To the contrary, continued commercial use of the subject property will maintain the status of this property as commercial, and maintain this property's relationship with the rest of the neighborhood as contemplated by the WNP. Maintaining the status-quo contemplated by the WNP does not cause erosion. Policy 1 is satisfied by this proposal. As well, because the proposal is to zone the

subject property as general commercial (now known as community commercial), the proposal is consistent with Chambers Policy 1 that designates the subject property as appropriate for such general commercial uses.

Through testimony at the public hearing and written testimony submitted after the hearing, Mr. Conte eloquently argues that the applicant's proposal cannot meet the refinement plan policies unless a condition of approval is attached that would exclude certain C-2 uses from locating on the subject property. I appreciate Mr. Conte's thorough comments and his attention to the applicable approval criteria. However, I find that he has not raised issues that could lead to a denial, or an approval with conditions, of this application.


Mr. Conte argues that Policy 1 and Chambers Policy 1 should be read to limit the types of commercial uses allowed on the subject property. If such a limit is not imposed, argues Mr. Conte, the resulting zone change will erode the residential character of the neighborhood by placing commercial uses in the Chambers Street Commercial Area that are not "neighborhood commercial" uses or "general commercial" uses appropriate for the sub-area.

Mr. Conte's arguments are premised on the assertion that I must provide definitions to what Chambers Policy 1 means by using the terms "neighborhood commercial" and "general commercial." I do not accept that premise because those terms are not undefined terms that require dictionary assistance.


As used in Chambers Policy 1, "neighborhood commercial" is the term used to describe the C-1 zone at the time the WNP was adopted. See WNP at page 3-14 ("C-1 Neighborhood Commercial"); page 3-17 (Existing Zoning map identifying "C-1 Neighborhood Commercial" zoning). Likewise, "general commercial" is the term used to describe the C-2 zone at the time the WNP was adopted. See WNP at page 3-14 ("C-2 General Commercial"); page 3-17 (Existing Zoning map identifying "C-2 General Commercial" zoning). In late 1984 when the WNP was being developed and early 1985 when the City Council adopted the WNP, the Eugene Code confirms that the C-1 zone was called the "Neighborhood Commercial District" and the C-2 zone was called the "General Commercial District." EC 9.406 (9/15/84); EC 9.420 (9/15/84)¹. Thus, in using the terms "neighborhood commercial" and "general commercial," Chambers Policy 1 is referring to the C-1 and C-2 zones. There is no need to provide external definitions for these terms in Chambers Policy 1 because the terms are clear references to the C-1 and C-2 zoning districts in use in 1985 when the WNP was adopted.


With this definitional clarification, Chambers Policy 1 stands for the proposition that C-1 and C-2 uses are "appropriate" in the sub-area. The applicant wishes to zone the subject property C-2, which is appropriate under Chambers Policy 1.


¹ Although I do not believe I must formally take official notice of prior versions of the Eugene Code, out of an abundance of caution, I will do so. Prior versions of the Eugene Code are subject to official notice and it is proper for me to consider them here. EC 9.7095(1).


To the extent that Mr. Conte does not agree with how the City defines the C-2 zone now in comparison to how the C-2 zone was defined in 1985, such an argument is a collateral attack on the City's acknowledged zoning code. The applicant questions my authority to essentially create a new sub-zoning designation under the Eugene Code for the subject property. I agree with the applicant. This quasi-judicial proceeding cannot collaterally attack uses allowed under the C-2 zone as those uses may have changed over the years. See *Toler v. City of Cave Junction*, 53 Or LUBA 158, 161 (2006) 


Moreover, Mr. Conte's specific list of commercial uses that should be excluded as uses on the subject property does not find a basis in the WNP. Mr. Conte proposes the following uses should not be allowed on the subject property because they are outside the bounds of "neighborhood" or "general" commercial uses: Club and Lodge of State or National Organization, Manufacturing, Correctional Facility, Drug Treatment Clinic – Non-residential, Plasma Center, Recreational Vehicles and Heavy truck, Sales/Rental/Service, and Manufactured Dwelling Sales/Service/Repair.

In 1985, when the WNP was adopted, Chambers Policy 1 recognized the subject property as appropriate for C-2 zoning  with only two slight exceptions, each of the uses that Mr. Conte cites, or their equivalent based on different terminology, were allowed to the same extent in 1985 as they are today. Compare EC 9.439 (9/15/84) with 9.2160 (9/15/2010). The exceptions to the direct transfer of comparable uses from 1985 to 2011 is that in 1985 a Plasma Center was conditionally permitted while today it is an outright permitted use, and in 1985 manufacturing was not an allowed use but today it is permitted under specific conditions intended to minimize impact on surrounding properties. *Id.*

Even if I had the authority in this quasi-judicial proceeding to review the City Council's amendments over time to the C-2 use list, it would be difficult to find any cause to limit the uses as proposed by Mr. Conte. When the WNP was adopted, the subject site was designated for C-2 uses, and most all of the C-2 uses that can locate on the subject property today are the same C-2 uses that could have located on the subject property in 1985. I do not need to determine whether particular uses on the C-2 use list are "general commercial" uses. The City Council has already completed that task, and I am without the authority to second guess. If a particular C-2 use is arguably contrary to Policy 1 or Chambers Policy 1, that argument should have been made at the time the City Council amended the C-2 use list.  an acknowledged zoning code provision, the C-2 use list complies with the Metro Plan, and I am without the authority to decide otherwise. ORS 197.625.

The WNP allows C-2 commercial uses (termed "general commercial" in 1985, now termed "community commercial") in the Chambers Street Commercial Area. These C-2 uses were determined, at the time of adoption in 1985, as appropriate uses in the sub-area, and such uses would necessarily be consistent with the other WNP policies. To find otherwise would mean that the City Council adopted an internally inconsistent plan. In other words, in 1985, a C-2 use on the subject property would not erode the residential character of the neighborhood. A C-2 use in 2011 will likewise not  erode the

residential character of the neighborhood. It was the change in the C-2 uses, not this zone change application, which was the decision point for determining whether a particular C-2 use was compliant with Policy 1. Limiting certain C-2 uses from locating on the subject property would be a collateral attack on past legislative decisions taken by the City Council in amending the C-2 use list and finding that such changes were in conformity with the Metro Plan. 


In relation to Policy 1, I am fortunate with this application that I am not obligated to review this policy without any assistance. The Land Use Board of Appeals reviewed this policy in the past, and its review provides direction for me here. LUBA's prior treatment of Policy 1 leads to the conclusion that the intent of the policy, read in context, is to retain the neighborhood's residentially zoned areas and allow infill with uses consistent with the residential area's residential designation. *Jefferson Westside Neighbors v. City of Eugene*, 57 Or LUBA 421, 425-26 (2008). LUBA concluded that "the most natural reading of [Policy 1] is that it is intended to prevent non-residential forces from eroding the neighborhood's residential character." *Id.* at 57 Or LUBA at  426. At the same time, the policy cannot be read to require the exclusion of uses that are specifically allowed by the then-existing zoning and the adopted designations recognized by the WNP. *Id.*

I find LUBA's analysis persuasive and find that it aids my interpretation of Policy 1. As a result, Mr. Conte asks me to extend Policy 1 too far. Policy 1 has limited applicability for this application because this application does not concern property the WNP designated residential, but to the contrary, this application concerns a property that the WNP specifically designated for commercial uses.


As LUBA did before, I must read Policy 1 as being consistent with the rest of the WNP. When adopted, the WNP established the Chambers Street Commercial Area and, through Chambers Policy 1, established that C-1 and C-2 uses are appropriate uses in the sub-area. Mr. Conte would have me read Policy 1 as forbidding certain C-2 uses in the sub-area. He makes this argument despite the fact that these uses (C-2 uses) were allowed in the sub-area in 1985 when the plan was adopted.


For instance, Mr. Conte argues that a correctional facility would erode the neighborhood's residential character and must be excluded as a possible use for the subject property. But, in 1985, a correctional facility was a conditionally permitted use in the "general commercial district" (C-2). EC 9.439 (9/15/84). While the C-2 zone is now called the "community commercial zone," the correctional facility use remains a conditionally permitted use in the zone, the same as when the WNP was adopted in 1985. In 1985, Chambers Policy 1 determined that general commercial uses, without limitation, were appropriate within the sub-area.


In his analysis of appropriate commercial uses for the sub-area, Mr. Conte argues that the proper starting point is the list of "commercial" uses allowed in the R-2 and S-JW zones. That premise ignores Chambers Policy 1 that finds the sub-area appropriate for C-1 and C-2 uses. If the WNP sought to restrict the sub-area to a subset of C-1 and C-

2 uses, the plan would have explicitly done so. I cannot insert terms into Chambers Policy 1 that are not in the text of the policy. I decline to search for an alternative meaning for the terms “neighborhood commercial” and “general commercial” when the WNP and the Eugene Code of 1985 provide the definitions. 

Chambers Policy 1 finds C-1 and C-2 uses appropriate. Reading Chambers Policy 1 in harmony with Policy 1 leads to the conclusion that the uses deemed appropriate by Chambers Policy 1 do not erode the residential character of the neighborhood. To read Chambers Policy 1 differently would be to read a conflict into the WNP and disregard the plain meaning of Chambers Policy 1. This conclusion is all the more supported by looking to other context within the WNP.

The WNP land use element recognizes that policies are to be used together in evaluating an application by providing: “the Land Use Diagram and the accompanying policies are meant to be used along with other policies in the Westside Plan and applicable City goals, policies, and plans to evaluate individual land use proposals.” The WNP goes on to explain that “[i]n nearly every case there is more than one zoning district which, if applied, would be consistent with the suggested land use pattern.” I  read these together to imply that the WNP is not intended to be as rigid and inflexible as Mr. Conte asserts.

In addition, WNP Policy 4 at page 3-2 calls for land use decision to “[r]ecognize the diversity of uses currently allowed in the residential, commercial, and mixed use zoning districts that exist in the Westside Neighborhood.” This policy specifically calls for the varying uses within the neighborhood and recognizes that commercial uses have their place. Moreover, Policy 2 of the Chambers Street Commercial Area provides that expansion of commercial areas beyond the sub-area should be “discouraged.” WNP a  page 3-11. This does not mean that expansion of commercial uses beyond the sub-area is forbidden. In fact, the City Council changed the wording of this policy to specifically include flexibility for expanding commercial uses beyond the sub-area under certain situations. See WNP Exhibit B at page 4. If this policy is to have meaning within the Chambers Street Commercial Area, it must mean that commercial uses are appropriate within the sub-area, and they can even extend outside the sub-area under the right scenario.

These provisions provide context for the application of Policy 1. This analysis leads me to the conclusion that Policy 1 and Chambers Policy 1 must be read in concert. The meaning of Chambers Policy 1 is clear – C-2 general commercial uses (now community commercial uses) are appropriate for the subject property. Policy 1 is a general policy with overall applicability. But I must read it within the context of the more specific Chambers Policy 1. With this context, it is clear that Policy 1 cannot be read to create a conflict with Chambers Policy 1.  conclude that a zone change that is specifically appropriate under Chambers Policy 1 will not erode the residential character of the neighborhood. This does not read all meaning out of Policy 1. As LUBA found in evaluating Policy 1, the policy still has a place in protecting the residential areas of the plan area. *Jefferson Westside Neighbors*, 57 Or LUBA at 425-26.

The applicant has carried its burden to show compliance with Policy 1 and Chambers Policy 1. Although Mr. Conte argues that the applicant failed to present any evidence in response to certain issues he has raised, the issues raised were legal issues requiring legal analysis of the applicable criteria, not questions of fact that required the submission of particular evidence by the applicant.

Conclusion

Based on the findings above, this criterion is met; the application is consistent with applicable refinement plan policies.

EC 9.8865(3): The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.

Findings

Key urban facilities and services referred to in the above criterion are defined in the Metro Plan as including wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, City-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools on a district-wide basis. Metro Plan at page V-3. The minimum level of key urban facilities and services are defined in the Metro Plan and include wastewater service, stormwater service, and transportation facilities. The record shows that City Public Works staff confirmed the uses and density on the subject property that will be allowed by the proposed C-2, Community Commercial Zone can be served by existing adjacent wastewater, stormwater and transportation systems.

The undisputed evidence in the record shows the subject property is serviced by urban facilities. Wastewater service is provided to the existing structure via an eight-inch public wastewater system located off-site, east of the subject property. The public system has sufficient capacity to accommodate the proposed uses. Stormwater service is provided to the property via a 24-inch public stormwater system located west of the property, within Chambers Street. Transportation is provided by the property's frontages on W. 12th Avenue and Chambers Street. The segment of Chambers Street adjacent to the subject property is classified as a minor arterial and currently has 42 feet of paving within 60 feet of right-of-way abutting the subject property. West 12th Avenue is classified as a local street, improved with 36 feet of paving within 66 feet of right-of-way abutting the subject property.

Conclusion

Based on the findings above, key urban facilities and services are currently available, or can be extended in an orderly manner to the subject property. This criterion is met.

**EC 9.8865(4): The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:
(a) EC 9.2150 Commercial Zone Siting Requirements.**

Findings

The commercial zone siting standards referred to in EC 9.2150 pertain to the C-1 Neighborhood Commercial and C-4 Commercial/Industrial zones. The proposed zone change is to C-2. As a result, this criterion is not applicable.

Conclusion

This criterion is satisfied.

EC 9.8865(5): In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the City to ensure the area is maintained as a natural resource area for a minimum of 50 years.

Findings

EC 9.8865(5) is inapplicable in this instance, as the proposed zone change does not include application of the NR zone.

Conclusion

This criterion is satisfied.

Transportation Planning Rule

Findings

The Transportation Planning Rule (TPR) (OAR 660-012-0060(1)) applies to zone change applications. This zone change does not implicate the changing of the functional classification of an existing or planned transportation facility or the changing of standards implementing a functional classification system. As a result, for this application, the TPR requires additional analysis if the proposed zone change would significantly affect an existing or planned transportation facility, as defined in OAR 660-012-0060(1). The first question is to determine whether the proposed zone change would "significantly affect" an existing or planned transportation facility. If the answer is yes, then the TPR applies and further consideration is required. If the answer is no, then no further consideration is required.

The applicant's analysis prepared by JRH provided an analysis of allowed uses under the current zoning with allowed uses under the proposed zoning to determine whether the proposed zone change could result in increased trip generation impacting City transportation facilities. The analysis did not use a "worst-case scenario," but instead

evaluated trip generation based upon reasonable assumptions about what uses would likely locate on the subject property. I find that the applicant's analysis is not the proper analysis under the TPR. Although it would be logical to evaluate current and proposed uses within the confines of what uses would logically locate on the subject property based upon economics and other related factors, the TPR does not give us that freedom.

The applicant also proposed a trip cap as part of its TPR analysis. The proposal involves evaluating the worst case scenario under the current zoning and capping the proposed zoning to the number of trips that could be generated under the present zoning. Under this proposal, the proposed zone change would not have a significant impact under the TPR because the proposed zoning would include a trip cap that limits development on the subject property to trip generation uses that would not exceed trip generation uses currently allowed on the property. As discussed below, the current zoning would allow development uses that could create up to 113 PM peak hour trips. This type of trip cap analysis under the TPR is allowed and provides applicants with a means of meeting the TPR approval criterion. *Willamette Oaks, LLC. v. City of Eugene, _ Or LUBA _, Slip Op. at 11 (March 8, 2011)*. With the following condition of approval, I find that the proposed zone change would not have a significant impact on transportation facilities because it would hold future development of the subject property to trip generation uses that create no more trips than the current zoning would allow. The condition of approval applicable here would be:

“The maximum development on the site shall be limited so that it will not produce more than 113 trips during the PM peak hour as determined by the Institute of Transportation Engineers Trip Generation Manual. The city may allow development intensity beyond this maximum number of peak hour vehicle trips only if the applicant submits to the city a traffic impact analysis that demonstrates that the proposed intensification of use would be consistent with the Transportation Planning Rule at OAR 660-012-0060. The applicant shall seek and the city shall consider such approval using the city's Type II land use application procedure.”

Even with these findings, I will evaluate whether the proposed zone change meets the TPR without requiring a condition of approval. If the proposed zone change can meet the TPR without a condition of approval, then the findings discussed above in relation to the condition of approval can serve as alternative findings.

City staff has provided evidence and analysis under the TPR that does not rely on a trip cap approval criterion. Without considering the trip cap condition of approval, I find that the TPR requires a comparison of allowed uses under the current zoning with allowed uses under the proposed zoning to determine whether the proposed zone change could result in increased trip generation and affect City transportation facilities. See *Griffiths v. City of Corvallis*, 50 Or LUBA 588, 596-97 (2005). Using a strict “worst-case scenario” may not always be required for every application, but I find it is appropriate for this application.

The record contains an analysis provided by city staff that uses the more aggressive “worst-case scenario.” I find that this more aggressive scenario is appropriate for this application and also find that there was no evidence contrary to this more aggressive scenario being applicable to the subject property.

Under the existing zoning of GO, General Office, the 1.1 acre property could be redeveloped with a combination of medical and office (ITE Land Use Code 630 – Clinic) two story building (estimating 17,000 square feet for each use) for a total of 34,000 square feet. The remainder of the site could support the required parking, along with setbacks and landscaping. This would result in 88 PM peak hour trips for the medical use (ITE Land Use Code 630 *Clinics*; 5.18 average trip rate per 1,000 square feet) and an estimated 25 PM peak hour trips for the office use (ITE Land Use Code 710 *Office*) for a total of 113 PM peak hour trips.

Redevelopment of the site under the proposed zoning of C-2, could include a convenience store (ITE Land Use Code 852– Convenience Market, 15-16 hours), which would generate about 103 PM peak trips (assumed 3,000 s.f. store) and a fast food restaurant with drive-through (ITE Land Use Code 934), which would generate about 135 PM peak hour trips. These could reasonably be developed in C-2 and would result in a total of 238 PM peak hour trips.

I find that these development scenarios for the current zoning and the proposed zoning are reasonable maximum development scenarios for the subject property. Moreover, I find no contrary evidence in the record and note that there was no argument against this analysis.

With this scenario, there would be a total of 125 additional peak hour trips to and from the subject property as a result of the proposed zone change. However, the record also contains uncontroverted evidence that the subject property and this scenario of uses would be subject to trip reductions through the accepted theory of pass-by trips. Pass-by trips are an ITE set of factors that are published in the *Trip Generation Handbook*. There are not pass-by and/or diverted-linked factors for every ITE land use and the handbook contains several cautions noting that statistical analysis and correlation of the reduction factors by the profession continue to evolve. There are pass-by factors for convenience stores and fast food restaurants. The record reflects that city Public Works staff believes pass-by reductions are reasonable here given the nature of these possible uses. Pass-by trip analysis is an accepted traffic engineering principal, despite that it is an area of analysis that continues to evolve. That an engineering concept is continuing to be refined and is the subject of study does not mean that it is not fit for application as the concept stands now. The ITE has accepted the concept and has developed protocols for its use. Based upon this record, I find that reductions through pass-by trips is acceptable and that such pass-by trips should be taken into account for the scenario of uses for the proposed C-2 zone.

The record reflects a significant percentage of pass-by trips for these C-2 uses. The peak hour number could be reduced to approximately 128 total PM peak hour trips for the uses; however, neither Chambers Street nor 13th Avenue are heavily traveled commercial corridors, so pass-by reductions would likely be lower, resulting in approximately 143 total PM peak hour trips. After taking into account the reduction for pass by trips there would be an estimated 30 more trips (143 for C-2 rather than 113 in GO) on the adjacent transportation system as a result of the proposed zone change based on these uses.

Although there could be an increase in trips resulting from this zone change, there is only a marginal increase in potential trips. The record reflects that this marginal increase would not impact the levels of service of the nearby transportation facilities.

The record shows that the Chambers Street/West 11th Avenue intersection currently operates at LOS "C", the Chambers Street/West 13th Avenue intersection currently operates at LOS "B", and the West 13th Avenue/Polk Street intersection currently operates at LOS "C". All levels of service are gauged for the PM peak hour (the period of greatest impact). Both the Chambers Street/West 13th Avenue and West 13th Avenue/Polk Street intersections are projected to continue to perform at these same levels of service in 2015, and due to the built-out condition of the area, background traffic growth is anticipated to be minimal. Moreover, at the new TransPlan horizon of 2027, the record shows that both of these intersections are expected to operate above LOS "D" under the current general office zoning as well as under the proposed commercial zoning. The Chambers Street/West 11th Avenue intersection is the only intersection projected to decrease to LOS "D." But this intersection is expected to decrease under both the current zoning and under the proposed commercial zoning. Even so, LOS "D" is not a failing standard, as it is the minimum adopted performance standard for the City of Eugene outside of the Central Area Transportation Study (CATS) area and nodal development areas. The addition of 30 peak trips to the transportation facilities will not cause the transportation facilities to fall below acceptable levels within the planning horizon applicable to these facilities. As the projected performance of transportation facilities near the subject property will not be decreased below minimum standards by the zone change, even with an increase in 30 peak trips, no significant affect will occur based on the available information.

With this analysis, even under a worst-case scenario for the subject property, the increase in trips that could result from the zone change would not reduce the performance of the existing transportation facilities. As a result, the requested change in zoning results in no significant effect on any planned or existing facilities under OAR 660-012-0060(1). With this finding, OAR 660-012-0060(2) is inapplicable here and the TPR analysis ends.

Based upon these findings, there is no cause to rely upon a trip cap condition of approval to meet the TPR for this application. While the trip cap condition of approval would also meet the TPR standards, even without the trip cap, the proposed zone change does not cause significant affects on transportation facilities.

Conclusion

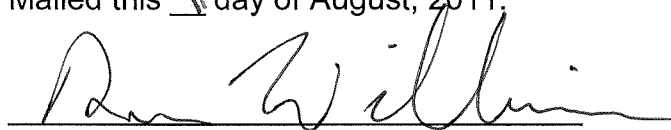
The requested zone change will not significantly affect transportation facilities within the meaning of OAR 660-012-0060. The request, without a trip cap condition of approval, is consistent with this criterion.

Decision

Based on the application, all additional materials in the record before the Hearings Official and the findings and conclusions contained in this decision, I APPROVE the requested zone change from General Office to C-2 Commercial.

Dated this 4th day of August, 2011.

Mailed this ~~4th~~ day of August, 2011.

A handwritten signature in black ink, appearing to read "Ross M. Williamson", written over a horizontal line.

Ross M. Williamson
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS