BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WESTERN EXPRESS and
SPACE AGE FUELS,
Petitioners,

vs.

UMATILLA COUNTY,
Respondent.

LUBA No. 2007-010

FINAL OPINION
AND ORDER

Appeal from Umatilla County.

E. Michael Connors, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Davis Wright Tremaine LLP.

Peter Livingston, Portland, filed the response brief and argued on behalf of respondent. With him on the brief were Douglas R. Olsen, Umatilla County Counsel and Schwabe, Williamson & Wyatt PC.

BASSHAM, Board Member; HOLSTUN, Board Chair; Member; RYAN, Board Member, participated in the decision.

REMANDED 07/20/2007

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county decision approving a conditional use permit for a proposed truck stop.

FACTS

The subject property is an 81.14-acre parcel located on Westland Road adjacent to an interchange with Interstate Highway 84 (I-84). The eastern portion of the property is zoned Tourist Commercial (TC), and the western portion is zoned Light Industrial (LI).

Petro Stopping Centers (the applicant) filed a conditional use application and site plan application with the county to develop a facility consisting of a truck fueling complex, truck service and repair facility, truck wash, automotive fueling station, an 18,000-square foot restaurant/retail store, 298 truck parking spaces, 215 automobile parking spaces, 8 RV parking spaces and related accessory uses and improvements.

The truck fueling center, service facility and truck wash will be located on the western portion of the property zoned LI, and the automotive fueling center and restaurant/retail store will be located on the eastern portion zoned TC. The truck facilities have a separate access point off Westland Road than the automobile fueling center and restaurant/retail store. The proposed 298-space truck parking lot occupies both LI and TC-zoned portions of the subject property.

The Umatilla County Development Code (UCDC) permits in the TC zone automobile service stations, eating or drinking establishments, food stores limited to 2,500 square feet, gift shops and information centers. UCDC 152.277(E) also allows as a conditional use in the TC zone "[o]ther uses similar to the uses permitted or the conditional uses normally located in a Tourist Commercial zone," subject to planning commission approval.

The LI zone does not explicitly permit truck stops or truck fueling facilities as either permitted or conditional uses, although it allows "truck sales, service, storage and

maintenance" as a permitted use. Like the TC zone, the LI zone allows uses "similar" to those listed, subject to certain limitations. UCDC 152.307(A)(17).

The UCDC defines a "truck stop" as

> "[a]ny building, premise or land in which or upon which maintenance, servicing, storage or repair of commercial licensed trucks or motor vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into the trucks or motor vehicles, the sale of accessories or equipment for trucks or similar motor vehicles." UCDC 152.003.

Under the UCDC, the only zone that expressly provides for a "truck stop" is the Commercial Rural Center (CRC), which allows a "truck stop or trucking terminal" as a conditional use.

Apparently because the LI and TC zones do not provide for "truck stops," the applicant characterized the proposed development as a "travel plaza," arguing that the project as a whole is more than a truck stop because it includes other uses such as the restaurant and retail store that are not specified in the code definition of "truck stop." The planning commission chose to consider the application as a single development with multiple components that can be approved in the LI and TC zones as a conditional "similar use" pursuant to UCDC 152.277(E) and UCDC 152.307(A)(17). The planning commission approved the proposed development on January 31, 2006.

Petitioners appealed the planning commission decision to the board of county commissioners (BCC), arguing among other things that the proposed use is a "truck stop" that is not permitted in either the TC or LI zones. The BCC conducted hearings and on May 17, 2006, ultimately voted to approve the development, subject to a precedent condition that the applicant sign a development agreement that obligated the applicant to mitigate traffic impacts on a nearby intersection. In subsequent months, the applicant and county counsel negotiated the terms of the development agreement, but could not reach agreement. In October 2006, petitioners' attorney objected to the negotiations as potential *ex parte* contacts. In response, the BCC re-opened the hearings limited to re-consideration of the

condition, and voted to modify it from a precedent to a subsequent condition. The county's final written decision was issued on December 19, 2006. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Petitioners contend that the proposed use is a "truck stop" that is not permitted in either the LI or TC zones, and that the county therefore erred in approving the use. Petitioners challenge the county's conclusion that the proposed uses can be approved as a collection of "similar uses" under UCDC 152.277(E) and UCDC 152.307(A)(17).

The BCC findings review the proposed uses and the list of uses allowed in the TC and LI zones and conclude, apparently as the county's initial or primary theory in support of its decision, that each of the individual proposed uses are listed as permitted uses in the TC and LI zones.[1] As an alternative, we understand the BCC to have concluded that even if one

[1] The BCC findings state, in relevant part:

> "The uses proposed in Finding 5(A) above are permitted uses in the [TC] Zone. * * * The Board interprets UCDC 152.276 to allow the proposed 'retail travel store' as a composite of food store, gift shop and information center. The applied for uses could be individually permitted outright. The Board also notes that UCDC 152.277(E), governing conditional uses, allows 'Other uses similar to the uses permitted or the conditional uses normally allowed in a [TC] Zone, providing that it has the approval of the Planning Commission.' If the proposed restaurant building, including a travel store, is not deemed on appeal to be allowable as a permitted use, it can be allowed as a conditional use. The Planning Commission reviewed and approved the entire proposal, described as a 'travel plaza,' as a conditional use. All of the uses, permitted or conditional, are subject to certain limitations on uses, as described in UCDC 152.278, and to Design Review, as described in UCDC 152.279.
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> "The Board interprets UCDC Light Industrial (LI) 152.306, Uses Permitted: '(20) Truck sales, service, storage and maintenance' to include the principal uses proposed in Finding 5(B) above (1) truck fueling complex; (2) truck service building; (3) truck wash building. If these uses are not deemed on appeal to be allowable as permitted uses, they can be allowed as conditional uses under UCDC 152.307(17), which allows similar uses. * * *
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> "Opponents contend the Applicant failed to demonstrate 'that the proposed truck stop is a use allowed in the underlying zone.' At the April 4, 2006 hearing before the Board, Opponents argued that because 'truck stop' is stated to be a conditional use in the [CRC] zone, a truck stop cannot be developed in a zone where it is not listed as a conditional use. However, nothing prohibits allowing a truck stop in a different zone if each of the proposed uses that together comprise a truck stop is an allowed or conditional use in the zone. * * *
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> "The Board finds that because the Applicant was applying for a combination of permitted uses, which included uses that are arguably conditional uses, staff and the Planning

or more of the individual uses are not listed as permitted uses in either zone, such uses may be conditionally approved as "similar uses" under UCDC 152.277(E) and UCDC 152.307(A)(17), and therefore the planning commission did not err in processing the entire application as one for a conditional use permit.

Petitioners devote most of their argument under the first assignment of error to challenging the county's alternative theory that the proposed use or those components that are not permitted uses can be approved as a conditional "similar use" under UCDC 152.277(E) and UCDC 152.307(A)(17). We address first petitioners' more limited challenges to the county's initial or primary theory, that each of the individual uses are listed as permitted uses in the TC and LI zones. Because we reject petitioners' challenges to the county's conclusion that each of the individual uses are permitted uses in the TC and LI zones, we do not address petitioners' challenges to the county's alternative "similar use" determinations.

A. The TC Zone

With respect to the TC zone, the applicant proposed a single building that includes the restaurant and a "retail travel store." The BCC interpreted UCDC 152.276 to permit the proposed "retail travel store" as a composite of food store, gift shop and information center, all permitted in the TC zone. The BCC concluded that "the applied for uses could be individually permitted outright," and then went on to conclude if the proposed restaurant/retail travel store "is not deemed on appeal to be allowable as a permitted use, it can be allowed as a conditional use." Record 4.

Petitioners argue first that the BCC "did not approve the individual components of the project separately." Petition for Review 11. We disagree. Although the above-quoted findings could be clearer on this point, fairly read, the findings conclude that each of the

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Commission correctly processed the entire application as one for a conditional use permit, as set forth in [UCDC] 152.277(E) (TC Zone) and 152.307(17) (LI Zone). Record 4-5.

proposed uses in the TC zone are permitted uses in that zone. The BCC considered whether the uses can be allowed as conditional "similar uses" only "[i]f the proposed restaurant building, including a travel store, is not deemed on appeal to be allowable as a permitted use[.]" Record 4. As discussed below under the second assignment of error, the county went on to adopt findings that address the uses proposed in the TC zone and conclude that those uses comply with all applicable code standards. While petitioners challenge those findings, for present purposes we disagree with petitioners that the county did not approve each of the proposed uses in the TC zone as permitted uses, and that the county's approval of those uses was based solely on the "similar use" provision at UCDC 152.277(E). As explained above, the county's initial or primary theory is that all of the uses proposed in the TC zone are permitted uses in that zone.

The only other challenge petitioners make to the uses approved in the TC zone is to argue that "it is highly questionable that the food store satisfies the 2,500 square foot limitation when the restaurant/food store is listed as over 18,000 square feet." Petition for Review 12. Petitioners are correct that UCDC 152.276(B)(4) allows a "[f]ood store limited to 2,500 square feet." Nothing cited to us in the decision or the record indicates what portion of the 18,000 square foot restaurant/retail travel store will be devoted to the proposed "food store." However, the county responds that the application has from the beginning proposed a single 18,000 square foot structure with (1) a restaurant and (2) a retail travel store that combines a food store, gift shop and information center, and that at no point below did any party raise any issue regarding whether the food store component of the facility might exceed 2,500 square feet. Had that issued been raised, the county argues, the BCC might have chosen to impose a condition to limit the size of the food store component. In any case, the county argues, the 18,000-square foot structure will house many uses, including a restaurant, and it is a reasonable inference that the food store portion will not exceed 2,500 square feet.

Petitioners do not identify any place in the record where the size of the food store component was raised as an issue below. Therefore, that issue is waived. ORS 197.763(1); ORS 197.835(3).

For the reasons explained above, petitioners have not demonstrated that the county erred in concluding that that all of the uses proposed in the TC zone are permitted uses in that zone.

B. The LI Zone

UCDC 152.306(20) allows the following as a permitted use in the LI zone: "truck sales, service, storage and maintenance." The BCC interpreted the UCDC 152.306(20) use category to include the proposed truck fueling complex, the truck service building, and the truck wash building. Petitioners do not dispute that interpretation with respect to the service building and wash building, but do dispute that the scope of truck "service" includes the proposed truck fueling complex. According to petitioners, a "truck stop" is the only UCDC use that expressly includes "dispensing of motor fuel" into trucks. As noted, the UCDC defines "truck stop" to constitute use of any building or land for "maintenance, servicing, storage or repair of commercial licensed trucks or motor vehicles * * *, including the dispensing of motor fuel or other petroleum products directly into the trucks or motor vehicles * * *." Because UCDC 152.306(20) allows "truck sales, service, storage and maintenance" but includes no explicit reference to dispensing fuel, we understand petitioners to argue, the BCC erred in interpreting the UCDC 152.306(20) use category to include dispensing fuel to trucks.

The county responds in relevant part that the BCC interpretation of UCDC 152.306(20) is correct and entitled to deference under ORS 197.829(1).[2] The county

[2] ORS 197.829(1) provides, in relevant part:

> "[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

points out that the code refers to fuel dispensing facilities as "service stations," and argues that "truck * * * service" is reasonably construed to include the service of dispensing fuel to trucks.

The UCDC does not define the use category "truck sales, service, storage and maintenance." The county is correct that the UCDC use category "automobile service station" is defined as "[a]ny building, land area or other premises or portion thereof, used or intended to be used for the retail dispensing or sale of vehicular fuels[.]" At least with respect to automobiles, the term "service" under the UCDC appears to be intrinsically related to dispensing fuel. The code definition of "truck stop" uses the similar term "servicing," and goes on to state that "maintenance, servicing, storage or repair" of trucks includes "the dispensing of motor fuel." Of the four activities listed, dispensing fuel is most obviously related to "servicing." That context lends some support to the county's view that the term "service" in the UCDC 152.306(20) provision for "truck sales, service, storage and maintenance" can be understood to include dispensing fuel. We understand petitioners to argue for the contrary inference, that the explicit provision for dispensing fuel in the code definitions of "truck stop" and "automobile service station" and the absence of such an explicit provision in UCDC 152.306(20) means that "truck * * * service," as used in UCDC 152.306(20) does not include dispensing fuel. That contrary inference would be stronger if the code included a definition of "truck sales, service, storage and maintenance" and that definition did not reference dispensing fuel. A code definition often describes the intended limits or scope of the defined code term or the words used in the definition, and the

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> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
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> "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

failure to reference dispensing fuel in any code definition of "truck sales, service, storage and maintenance," while including such a reference in similar definitions, would be significant. As noted, however, there is no code definition of "truck sales, service, storage and maintenance." "Truck * * * service" is simply listed under UCDC 152.306 as a permitted use in the LI zone, with no explicit limitations on or clarifications of the scope of "service."

Although it is a relatively close question, we agree with the county that the BCC interpretation of UCDC 152.306(20) is consistent with the text and context of that code provision, and must be affirmed under ORS 197.829(1). While the scope of "truck * * * service" certainly could be understood in context not to include the service of dispensing fuel to trucks, that context is not sufficient to reverse the BCC's interpretation, under the somewhat deferential scope of review LUBA must apply to a governing body's interpretation of local land use regulations. *Church v. Grant County*, 187 Or App 518, 524, 69 P3d 759 (2003). Petitioners make no argument that the BCC interpretation of UCDC 152.306(20) is inconsistent with the purpose or underlying policy of the LI zone.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

UCDC 152.616 provides additional approval standards for various use categories, including what appear to be some of the individual uses proposed in the present case.[3] The BCC adopted alternative findings, first concluding that UCDC 152.616 does not apply at all to any of the individual proposed uses, because the applicant sought approval of the entire project as a "similar use" under UCDC 152.307(17) and UCDC 152.277(E). In the alternative, the county adopted findings that address six of the sets of approval standards in

[3] UCDC 152.616 states that "[t]he following standards shall apply for review by the Hearings Officer, the Planning Director or appropriate planning authority of the *specific conditional uses and land use decisions listed in this chapter*[.]" (Emphasis added.) The relevant listed uses include "automobile service station," "commercial activity (to support multiple use areas)," "eating or drinking establishments," "petroleum products sales and storage," "retail and service commercial," and "truck stop or trucking terminal."

UCDC 152.616 and either find that the individual proposed use complies with those standards or explain why those standards do not apply to particular proposed uses.

Petitioners argue that the county cannot have it both ways, and cannot flip between a "similar use" or "individual use" theory of approval depending on which position is more advantageous in responding to arguments in opposition to the application. On the merits, petitioners challenge the county's conclusion that the UCDC 152.616 standards do not apply at all to the individual proposed uses, and further argue that the county's alternative findings under UCDC 152.616 are inadequate and not supported by substantial evidence.

As petitioners note, the county's findings under UCDC 152.616 appear to flip the county's initial position as to whether the "individual use" or "similar use" approach is the primary theory or the alternative theory. While that inconsistency is certainly confusing, we do not see that it constitutes reversible error in itself.

On the merits, we affirmed above the county's conclusion that each of the individual proposed uses are permitted uses in the LI and TC zones.[4] Although the county's alternative findings addressing UCDC 152.616 are not particularly clear or consistent on this point, we understand the county to take the position in its findings and response brief that the standards at UCDC 152.616 apply only to specified "conditional uses" and do not apply to any uses that are listed as permitted uses in their respective zones. For example, the county found

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[4] Although we need not and do not address the parties' arguments regarding the "similar use" approach, we note that the similar use provision for the LI zone at UCDC 152.307(A)(17) appears to include limitations not discussed by the decision or the parties. UCDC 152.307(A)(17) provides for:

> "Other buildings and uses similar to the list above which shall not have any different or more detrimental effect upon the adjoining neighborhood areas or districts than the buildings and uses specifically listed, shall only be incidental and directly related to the operation of permitted industrial uses."

The permissible scope of "similar uses" allowed under UCDC 152.307(A)(17) appears to be circumscribed. The similar use must not have any different or more detrimental effect upon adjoining areas than listed uses. Further, the similar use must be "incidental and directly related to the operation of permitted industrial uses." As far as we can tell, there are no findings addressing these requirements for a similar use in the LI zone, and the second requirement in particular would arguably preclude using UCDC 152.307(A)(17) to authorize any use that is not incidental or directly related to the operation of a permitted industrial use.

with respect to "eating or drinking establishments" that because it is a permitted use in the TC zone, the special conditional use standards in UCDC 152.616 do not apply. If that position is correct, then the county correctly concluded that the standards at UCDC 152.616 do not apply to any of the proposed uses, which the county found are all permitted uses. We turn then to that issue.

Petitioners argue that UCDC 152.616 applies both to "specific conditional uses and land use decisions listed in this chapter[.]" *See* n 3. According to petitioners, the reference to "land use decisions" must be understood as a reference to decisions on applications for something other than conditional use permits, including permitted uses listed in various zones. For example, petitioners argue that UCDC 152.616(Y) provides standards for "eating or drinking establishments," which are permitted uses in the TC zone, and thus the county erred in concluding that those standards do not apply to the proposed restaurant.[5]

The intended meaning of the reference to "land use decisions" in UCDC 152.616 is obscure to us. If the county intended that reference to provide that UCDC 152.616 governs uses that are permitted in various zones in addition to "specific conditional uses," it chose a strange way to express that intent. More importantly, it appears to us that the code

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[5] UCDC 152.616(Y) provides:

"Eating or drinking establishment.

"(1) The activity will primarily serve the needs of the employees and clientele within the industrial area;

"(2) The activity is the most compatible with adjacent land uses;

"(3) The site has direct access to a dedicated public or county road or a state highway;

"(4) The use is buffered from other adjacent land uses through the use of landscaping or fencing;

"(5) Additional setback requirements may be necessary to protect existing adjacent land uses from the activity;

"(6) Complies with other conditions deemed necessary."

provisions governing various zones explicitly determine whether or not UCDC 152.616 applies. In the TC zone, for example, UCDC 152.276(B) sets out a number of uses that are permitted with a zoning permit, including automobile service station, and an eating or drinking establishment.[6] UCDC 152.277 lists the "conditional uses" that are permitted in the TC zone "subject to the requirements of [UCDC] 152.610 through 152.616[.]"[7] The LI zone and all other UCDC zones we are aware of have exactly the same structure: a list of permitted uses with no reference to UCDC 152.616, and a separate list of conditional uses that are expressly made subject to UCDC 152.616. Significantly, it appears that "eating or drinking establishments" are a conditional use in one particular county zone, the HI heavy industrial zone. UCDC 152.322(A)(3). Like the TC and LI zones, the conditional uses section of the HI zone states that conditional uses are subject to UCDC 152.616, but does not so state for permitted uses. Equally significantly, we note that UCDC 152.616(Y)(1) allows an "eating or drinking establishment" if the activity "will primarily serve the needs of the employees and clientele within the *industrial area*." *See* n 5 (emphasis added). The TC zone is not an industrial zone, and it would make no sense at all to apply UCDC 152.616(Y)(1) to a proposed restaurant in the TC zone. That language supports our view that the only "eating or drinking establishments" subject to the UCDC 152.616(Y) standards are those that are listed as conditional uses in the zone, such as the HI zone.

For another example, "automobile service stations" are permitted uses in some zones, but conditional uses in other zones, such as the Unincorporated Community Zone (U-C). UCDC 152.117(A)(1). Like other zones, the U-C zone explicitly subjects conditional uses to

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[6] The title of UCDC 152.276(B) states that it governs uses permitted *with* a zoning permit, although the subsequent text states that the following uses are allowed "*without* a zoning permit." Although it has no significance in this case, we assume the latter text should read "with a zoning permit."

[7] UCDC 152.610 through 152.616 are subsections that are part of a distinct section of the UCDC that is entitled "Conditional Uses." UCDC page 248. The location of UCDC 152.616 within a section of the code that governs conditional uses is an additional indication that the UCDC 152.616 standards apply only to conditional uses.

the standards of UCDC 152.616, but does not explicitly subject permitted uses to those standards. Thus, an automobile service station in the U-C zone is subject to UCDC 152.616, but an automobile service station in the TC zone is not. In short, the structure of the county's zoning regulations make it clear that the UCDC 152.616 standards apply only to those "specific conditional uses" that are listed as conditional uses in various zones, and the UCDC 152.616 standards do not apply to permitted uses.

For the above reasons, the county correctly concluded that UCDC 152.616 does not apply to any of the proposed uses. Accordingly, any error the county might have made in adopting findings under UCDC 152.616 is harmless error.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

UCDC 152.017 is entitled "Conditions for Development Proposals," and requires that development proposals not impose an "undue burden on the public transportation system."[8] In addition, applicants for developments likely to generate a significant increase in trip

[8] UCDC 152.017 provides:

> "(A) The proposed use shall not impose an undue burden on the public transportation system. Any increase meeting the definition of significant change in trip generation constitutes an undue burden.
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> "(B) For developments likely to generate a significant increase in trip generation, applicant shall be required to provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding system. The scope of the impact study shall be coordinated with the providers of the transportation facility.
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> "(C) The applicant or developer may be required to mitigate impacts attributable to the project. Types of mitigation may include such improvements as paving, curbing, bridge improvements, drainage, installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways or paths. The determination of impact or effect should be coordinated with the providers of affected transportation facilities.
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> "(D) Dedication of land for roads, transit facilities, sidewalks, bikeways, paths, or accessways may be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use."

generation must provide "adequate information, such as a traffic impact study or traffic counts." UCDC 152.017(B). Finally, applicants must mitigate impacts attributable to the project. UCDC 152.017(C).

Petitioners argue that (1) the county erred in failing to require the applicant to provide a new traffic study, as required by UCDC 152.017(B), (2) the two studies the county relied upon are flawed and outdated, and (3) the county improperly deferred findings of compliance with UCDC 152.017 with respect to the nearby Lamb/Walker/Westland intersection to a process that does not provide for notice or hearing. We address these arguments in turn.

A. Traffic Impact Study

Petitioners contend that the county erred in allowing the applicant to rely on two outdated transportation studies that do not assess the specific impacts of the proposed development, and in failing to require the applicant to provide a traffic study, as required by UCDC 152.017(B).

The county responds, initially, that UCDC 152.017(B) requires "adequate information," including but not limited to a "traffic study," and there is no absolute requirement that the applicant supply a traffic study. We agree with the county that failure to provide a traffic study, in itself, is not contrary to UCDC 152.017(B), if the applicant nonetheless supplied "adequate information."

B. IATP and Kittleson Studies

The applicant relied upon, and the BCC accepted, two principal sources of information to determine whether the proposed development imposed an "undue burden" on the county transportation system. The first is the Westland Road Interchange Access Transportation Plan (IATP), prepared in 2003 and adopted in 2004 pursuant to Ordinance 2003-09 as an amendment to the county's Transportation System Plan (TSP) and

comprehensive plan.[9] The second is a "Technical Memorandum" prepared by the applicant's traffic consultant (Kittleson memorandum) that evaluates traffic conditions and various access alternatives for the proposed truck stop, dated December 2003.

Petitioners contend that neither study provides "adequate information" to determine the extent to which the proposed development will impact the transportation system. With respect to the IATP, petitioners argue that while that study estimated traffic impacts of hypothetical industrial and commercial development in the area including the subject property through the year 2023, the IATP did not contemplate the particular development proposed here. In addition, petitioners argue, the IATP is dated May 7, 2003, and fails to take into account recent development, such the 2005 expansion of the adjacent Eagle/Freightliner facility or the fact that the Umatilla Chemical Depot has now become operational. While the county adopted finding rejecting petitioners' arguments regarding increased traffic related to the Eagle/Freightliner facility, petitioners contend that the county's findings do not address increased traffic generated from the Umatilla Chemical Depot.

With respect to the Kittleson memorandum, petitioners argue that it is an access management study, not a traffic impact study. Further, petitioners contend that the memorandum's trip generation estimates are flawed, based on trips generated by a different, smaller facility. As with the IATP, petitioners argue that the Kittleson memorandum is outdated and does not take into account recent development in the area. Finally, petitioners argue that, as the BCC recognized, the memorandum does not address impacts on the Lamb/Walker/Westland Road intersection north of the subject property.

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[9] Apparently, when adopting Ordinance 2003-09 in January 2004 the county failed to provide notice of adoption to the Department of Land Conservation and Development, as required by ORS 197.610 and 197.615, and has only recently corrected that failure to provide the required notice. The parties dispute the significance of that failure, but we do not see that resolving this or other assignments of error require resolving that dispute, and we do not attempt to do so.

The county rejected petitioners' challenges to the adequacy of the IATP and Kittleson memorandum to demonstrate compliance with the UCDC 152.017 undue burden standard.[10] In its response brief, the county argues that the IATP and the Kittleson memorandum, taken together, are more than sufficient to provide the "adequate information" regarding traffic

[10] The BCC findings state, in relevant part:

> "The development is likely to generate a significant increase in trip generation. A traffic forecast study was conducted as part of the development of the Westland Road IATP and is satisfactory to demonstrate the level of the development's impact relative to the proposed access points along Westland Road. Additional impact was identified and a traffic study for the Westland Road, Lamb and Walker Road intersection was required as a condition of approval. * * *
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> "* * * * *
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> "[The IATP] traffic study did include the anticipated development of the Petro Stopping Center. The level of service and V/C ratio projected to 2023 with high density build out resulted in all study area intersections operating at acceptable levels of service and v/c ratios with the exception of the Lamb Road/Walker Road/Westland Road intersection. The northbound and southbound movements of this intersection are projected to operate at LOS F and a v/c ratio of over 1.00. This intersection is north of the subject property, but development of this site will impact the intersection. Accordingly, the [BCC] required a condition of approval to address the impact and for the Applicant to pay their proportionate share of improvements to that intersection.
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> "The Kittleson Analysis, dated December 4, 2003, and the Westland Road IATP, dated August 28, 2003, provide substantial, up-to-date evidence that the proposed development will have an acceptable impact on the surrounding transportation system. The IATP expressly contemplates the Applicant's proposal. * * * The Kittleson Analysis specifically assesses the impacts created by this particular proposal. * * * The Kittleson Analysis demonstrates that the proposed access is consistent with the IATP and that traffic operations and safety will be maintained to meet applicable standards over a 20-year time horizon. It addresses issues of access to Westland Road and therefore is tailored to address issues of concern to the county. * * *
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> "With the exception of an additional traffic study of the Lamb Road/Walker Road/Westland Road intersection, which is being required as a condition to this decision, Appellants have not demonstrated that more traffic study is required. * * * [Appellants claim] that the IATP and Kittleson Analysis are outdated and that new development at the Eagle/Freightliner property during 2005 necessitates a new traffic study. The letter [from Eagle/Freightliner] dispels any notion that the installation of a new truck service building on the Eagle/Freightliner property has had any notable impact on Westland Road truck traffic. Before installation of the building, Eagle/Freightliner was unable to service many of the trucks that entered the property. After installation of the building, Eagle/Freightliner was able to service the trucks that had previously been turned away. In short, the number of trucks did not change after adding the new building, because the same number of trucks were arriving and departing whether they could be serviced or not." Record 23-24.

impacts required by UCDC 152.017(B). In addition to those two studies, the county argues, the applicant submitted a letter from Kittleson rebutting petitioners' challenges that states, in relevant part, that the IATP and Kittleson memorandum anticipate normal incremental increases in traffic through 2023, and that "[t]here has been no unusual or unanticipated development in the area since the analysis was prepared." Record 165. The applicant also submitted a letter from Eagle/Freightliner stating that the expanded facility has not increased traffic in the area, and disputing petitioners' claims that operation of the Umatilla Chemical Depot has increased traffic on Westland Road. Record 192.

Petitioners are correct that the IATP appears to assume only nonspecific hypothetical industrial and commercial use of the subject property, not the specific development proposed here. Nonetheless, while the traffic study in the IATP may not be sufficient in itself, it is some evidence that even after full build-out of all property in the area the local transportation system will continue to operate within acceptable limits, with the exception of the Lamb/Walker/Westland intersection. The fact that the IATP is dated from 2004 does not detract from its reliability for that limited purpose, if there is evidence that the assumptions it is based upon are still valid. Petitioners have not established that the Eagle/Freightliner expansion is inconsistent with the IATP's assumptions for a full-build-out. With respect to the Umatilla Chemical Depot operation, the county cites to evidence that that facility, which is located west of I-82, has been under construction since the 1990s. Petitioners cite to no indication that the traffic conditions and assumptions in the IATP and Kittleson traffic studies do not already reflect area traffic that might be related to the Depot, or that the traffic impacts of its operation differ significantly from the traffic impacts of its construction.

Petitioners are also correct that the primary focus of the Kittleson memorandum appears to be determining which access points for the proposed development are safest and most suitable. Nonetheless, the Kittleson memorandum includes a traffic study with trip generation estimates and evaluations of the traffic impact of the proposed development on

area intersections, with the prominent omission of the Lamb/Walker/Westland intersection. That omission aside, petitioners do not identify any specific inadequacy in the intersections and road segments that were evaluated.

Petitioners do challenge the trip generation figures in the Kittleson memorandum, arguing that those figures were based on a smaller, different truck facility than that proposed. Petitioners' traffic consultant argued that the proposed truck stop includes facilities such as showers, overnight parking and a nearby restaurant that are not offered at the comparable site, and those extra services may attract more truckers than would otherwise be the case. The consultant also argued that the Kittleson memorandum assumed 10 fueling lanes, while the most recent proposal is for 12 fueling lanes.

The county disputes that the approved development is for 12 fueling lanes, citing to site plans that propose only 10 fueling lanes. As far as we can tell, the county is correct on this point. The county does not respond to the allegation that the extra services offered at the proposed truck stop might attract more truckers than assumed, and we are not cited to any findings addressing that argument. However, petitioners' consultant merely speculated that the extra services might attract more truckers than assumed, without citing any supporting evidence. Moreover, the applicant's consultant pointed out that the proposed development contemplated in the Kittleson memorandum included a high-volume fast-food restaurant, and concluded that the 2003 analysis "likely over-estimated the trip generation for this site" under the approved site plan, which proposes a smaller, traditional restaurant. Record 166. Petitioners have not demonstrated that the trip generation figures used in the 2003 Kittleson memorandum are flawed or inadequate.

Finally, petitioners repeat their argument that the Kittleson memorandum is outdated, given the new development in the area since 2003. As far as we can tell, the background and projected traffic conditions used in the Kittleson memorandum are based on the IATP traffic study, which was developed at approximately the same time. The Kittleson memorandum in

several places cites to the IATP as the source for its traffic condition analyses. As explained above, petitioners have not demonstrated that the assumptions in the IATP are outdated or invalid, and we reach the same conclusion with respect to the Kittleson memorandum.

C. Lamb/Walker/Westland Intersection

Finally, petitioners argue that the county erred in deferring a finding of compliance with UCDC 152.017 with respect to the nearby Lamb/Walker/Westland intersection to a process that does not provide for notice or hearing.

The applicant submitted no information regarding impacts of the development on the Lamb/Walker/Westland intersection. The county, believing that there would likely be some impacts, required the applicant to submit a traffic study on the Lamb/Walker/Westland intersection, and to negotiate and execute a development agreement with the county with respect to the applicant's contribution to mitigate the impacts of the development on the intersection. The negotiation and execution of the development agreement is not part of any process that provides notice or opportunity for petitioners to comment or provide input.

We agree with petitioners that the county impermissibly deferred a finding of compliance with UCDC 152.017 with respect to the nearby Lamb/Walker/Westland intersection, to a process that does not provide for notice or hearing. Where there is insufficient evidence to determine compliance with an approval criterion, a local government has essentially two options: either (1) deny the application or (2) defer evaluation of evidence and a determination of compliance with the applicable criterion to a subsequent process. *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992).[11] If the local

[11] In *Rhyne*, we stated:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to

government takes the latter course, in order to comply with statutes that govern public participation in land use decision-making, the local government must ensure through appropriate conditions that the subsequent process provides notice and an opportunity for hearing or to comment. *Id.*

In the present case, there apparently are no traffic studies or other evidence in the record regarding the adequacy of the Lamb/Walker/Westland intersection, or to what extent the proposed development will impose an "undue burden" on it, or what degree of mitigation is necessary to offset any undue burden. The applicant took the general position that there will be no impact and hence no need for mitigation, but the county clearly disagreed with that position. However, the county adopted no findings regarding whether there is an impact, the extent of such impact, or the extent of the required mitigation, all of which seem necessary to determine whether the proposed development complies with UCDC 152.017.[12]

> determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing, even though the local code may not require such notice and hearing for second stage decisions in other circumstances. *Holland v. Lane County*, 16 Or LUBA 583, 596-97 (1988)." *Id.* at 447-48.

[12] The BCC findings state, in relevant part:

> "* * * As a result of development of the property, the Board believes that additional traffic may be generated at the intersection of Lamb Road and Westland Road (the 'Intersection'). Improvements to the Intersection may be necessary to mitigate the impacts caused by the development of the property. Petro's share of the cost of any such improvements to the Intersection will be in proportion to the impact of its proposed development on the Intersection.
>
> "A traffic impact study by a qualified traffic consultant will be performed, and Petro shall contribute to the cost of the traffic study as agreed between Petro and the County. The traffic study will show the expected impact on the Intersection of Petro's proposed development based on Petro's final development design. The traffic study will be based on average weekday p.m. peak hour conditions and will assume the full development of all properties in the vicinity of the Intersection. Petro will pay for its proportionate share of the cost of the improvements to the Intersection that will be required as a result of the impact on the

Instead, the county simply deferred those questions to private negotiations between the applicant and the county, without offering petitioners or the public any opportunity to provide testimony or evidence with respect to compliance with UCDC 152.017.

The county argues that, rather than defer, the county attempted to exercise a different alternative described in *Rhyne*, that of finding that the "evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary." 23 Or LUBA at 447; *see* n 11. According to the county, the county implicitly found that there are "feasible solutions" to the problems posed by potential impacts of the development on the intersection, and the county imposed conditions that will ensure that such "technical" issues, *i.e.*, whether there is an impact on the intersection and how much the applicant must contribute to mitigate any impacts to the intersection, are resolved prior to final development approval. The county argues that it is appropriate to resolve such "technical" issues out of the public eye.

We disagree with the county that the BCC attempted to exercise the first option described in *Rhyne*, of finding based on evidence that (1) UCDC 152.017 is satisfied with respect to the Lamb/Walker/Westland intersection or that (2) "feasible solutions to identified problems exist[.]" The latter approach reflects the holding in *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741 (1984), in which the Court of Appeals upheld a finding of compliance with an approval criterion that was supported at the public hearing by a detailed geotechnical study and extensive expert testimony, notwithstanding that the city imposed conditions requiring that the applicant and the city work out the technical details of solving the geological problem posed by the development in second stage review process in which the petitioners could not participate. The Court found that the petitioners had had a full

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Intersection's traffic caused by Petro's development, taking into account all other potential development in the vicinity of the Intersection that may impact the traffic at the intersection. Payment of Petro's share of the improvement costs will be necessary prior to issuance to Petro of a final development permit. Cost estimates for the Intersection improvements shall be based on current construction rates." Record 22-23.

opportunity to be heard on the issue of whether the proposal complied with approval criteria, and while the city must find that solutions to identified development problems are available, the city can resolve "detailed technical matters involved in selecting a particular solution to each problem" in a second stage process that does not offer the petitioners a further opportunity to be heard. *Id.* at n 6.

The present case is quite different. There is apparently little or no evidence in the record on the adequacy of the Lamb/Walker/Westland intersection, the extent the proposed development will impose an "undue burden" on that intersection, or the degree of mitigation that will be necessary to offset any undue burden. These are all questions that must be resolved in order to find compliance with UCDC 152.017 with respect to that intersection. These are all questions that the county has not resolved in this decision, and they are questions that petitioners have a statutory right to be heard on. Further, there is no cited basis for the city to find compliance with or feasibility of compliance with UCDC 152.017 with respect to the Lamb/Walker/Westland intersection, even if the city had taken that approach.

The third assignment of error is sustained, in part.

FOURTH ASSIGNMENT OF ERROR

The site plan proposes two access points on Westland Road, one to the automobile service station approximately 605 feet north of the Westland Road/I-84 interchange, and one accessing the truck service area approximately 1,105 feet north of the interchange.

OAR 734-051-0125, Table 4, is an administrative rule promulgated by the Oregon Department of Transportation (ODOT) that sets out minimum spacing standards applicable to freeway interchanges with two-lane crossroads. In relevant part, Table 4 specifies a minimum distance of 1,320 feet between the interchange and access points located on the crossroad. The city's Transportation System Plan (TSP) requires the same 1,320 foot access spacing from interchanges.

The county approved the proposed access points, notwithstanding inconsistency with the Table 4 and the TSP spacing standards, by relying on Ordinance 2003-09. Ordinance 2003-09, adopted in 2004, amends the TSP and comprehensive plan to include the IATP. As explained above, the IATP contemplates that the subject property will be developed with commercial and industrial uses, and the IATP includes a diagram depicting two access points for the property at the approximate positions proposed by the site plan in the present case, which are considerably less than 1,320 feet.

Petitioners argue that the county erred in relying on Ordinance 2003-09 to authorize the proposed substandard access spacing. According to petitioners, paragraph 2 of Ordinance 2003-09 specifies that the TSP "will be amended to provide an exception to the Westland Area Plan north of I-84 to allow for local access improvements" only "[a]t such time as a development agreement is executed with the property owner." The "property owner" referenced in paragraph 2 of Ordinance 2003-09 is the applicant in the present case.[13] Thus, petitioners contend, the exceptions to the TSP access standards adopted by the IATP do not take effect until a development agreement is executed. Petitioners argue that because no development agreement had been executed on the date the applications were filed (or to

[13] Paragraphs 1 through 3 of Ordinance 2003-09 state:

> "1. The Westland Road/I-84/I-82 Interchange Area Transportation Plan is accepted and adopted, and the Umatilla County Transportation System Plan and the Umatilla County Comprehensive Plan are amended to include the Interchange Area Transportation Plan. A copy of the Interchange Area Transportation Plan is attached to this ordinance and incorporated by this reference.
>
> "2. At such time as a development agreement is executed with the property owner, outlining improvements and responsibilities (including realigned Livestock Road), the Umatilla County Transportation System Plan and the Umatilla 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, with additional access on east to be granted at industrial area access.
>
> "3. A hardship variance to the TSP standards for the area South of the intersection is granted, to incorporate the Kittleson proposal outlined in Figure 1C of Exhibit 59." Record 389-90.

the present day), the acknowledged TSP and its access standards applied on the date the applications were filed, and thus those acknowledged access standards govern the applications, pursuant to ORS 215.427(3)(a).[14]

The county rejected that argument below, finding:

> "Contrary to the Appellants' assertions, the county amended its TSP and Comprehensive Plan to provide for the Applicant's proposed access improvements when it adopted Ordinance 2003-09 on January 12, 2004. This is true for several reasons. First, the recitals to Ordinance 2003-09 leave no doubt that this Board voted to adopt the proposed Petro/Kittleson Plan outlined in Figure 13 of the Kittleson Analysis.
>
> "Second, Ordinance 2003-09, paragraph 1, accepts and adopts the IATP and amends the county TSP and comprehensive plan to include the IATP. Page 5-9 of the IATP clearly shows the access points to the Applicants' property and their distance from I-84. The distance of each access point is far less than the 1,320-feet minimum distance Appellants contend is required under the county's TSP prior to amendment. The drawing on page 5-9 shows the same access concept as was later outlined in Figure 13 of Exhibit 62 (the Kittleson Analysis), which was adopted in Ordinance 2003-09, paragraph 2.
>
> "Third, * * * the Board interprets [paragraph 2 of] Ordinance 2003-09 to mean that the amendment was effective as of the adoption date, long before the date the application was filed. The purpose of the language in paragraph 2 of Ordinance 2003-09 was to condition its actual implementation, but not its adoption, until such time as the Development Agreement was signed. Any other interpretation would make no sense, since the purpose of the Kittleson Analysis, which was commissioned by the Applicant, was to confirm the access points already contemplated by the IATP. If the Board intended to delay adoption until a later date, the ordinance would not have been adopted and signed at that time but delayed until the agreement was executed. The fixed goal post rule therefore does not require the county to consider this application under pre-amendment access-spacing standards." Record 24-25.

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[14] ORS 215.427(3)(a) provides:

> "If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted."

Petitioners challenge those findings, arguing that paragraph 2 unequivocally specifies that the TSP and comprehensive plan "will be amended" to include the exception to the TSP access spacing standards as proposed in Figure 13 of Exhibit 62 "[a]t such time as a development agreement is executed[.]" According to petitioners, paragraph 1 is not to the contrary; it simply states that the county adopts the IATP, and says nothing about any exception to the TSP spacing standards.

The county responds that a recital to Ordinance 2003-09 states that the exception to "the TSP standards for the area North of the intersection was accepted by the Board of Commissioners by a 3-0 vote, to incorporate the proposed Petro/Kittleson Plan outlined in Figure 13 of Exhibit 62 * * *" Record 389. According to the county, this recital makes it clear that the county actually approved the exception and intended that the exception be applied to any subsequent development proposal for the subject property. The county argues that the BCC correctly reconciled paragraphs 1 and 2, that the BCC interpretation is consistent with the text and context of Ordinance 2003-09, and that it is entitled to deference under ORS 197.829(1).

It is not exactly clear what the county intended paragraph 2 to provide, but we agree with petitioners that it is difficult to read that paragraph to make the exceptions to the TSP spacing standards the "applicable" criteria for purposes of ORS 215.247(3)(a) prior to execution of the development agreement. Read literally, paragraph 2 states that the TSP and plan "will be amended" to provide for the exception to TSP standards, which certainly suggests that Ordinance 2003-09 did not actually amend the TSP and comprehensive plan to include those exceptions. Even if paragraph 2 is not read literally, and the phrase "will be amended" is understood to mean something like "will be effective," it seems clear their effectiveness as approval criteria is conditional upon execution of the development agreement. If prior to execution of the development agreement the exceptions are not

effective, we do not understand how those exceptions can be "applied" or become the "applicable criteria" for purposes of ORS 215.247(3)(a).

The county apparently understands the phrase "will be amended" to mean something even further from its literal meaning, to the effect that paragraph 2 merely conditions the "implementation" of the exceptions, not their adoption or effectiveness. We understand the county to believe that paragraph 2 contemplates that the exceptions apply as approval criteria for purposes of ORS 215.247(3)(a) to the applicant's development application, notwithstanding the lack of an executed development agreement, as long as the county's approval is subject to a condition subsequent that requires an executed development agreement prior to actual development. While that may have been the county's intent when it wrote paragraph 2, that intent bears so little relationship to the actual language of paragraph 2 that we cannot affirm the county's interpretation under ORS 197.829(1)(a).

Finally, we note that paragraph 3 of Ordinance 2003-09 adopts a different exception or variance from the TSP standards, in unqualified terms that make it reasonably clear that that variance is immediately effective and provides the applicable standard for future development proposals south of the interchange. *See* n 13. If the county had intended a similar approach to paragraph 2, it knew how to express that intent. The BCC interpretation of paragraph 2 is not consistent with its text and context, and is therefore rejected.[15]

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

Petitioners challenge the county's findings that there is sufficient water to satisfy the projected needs of the proposed development. According to petitioners, the applicant

[15] Petitioners also argue that the ODOT standards in Table 4 apply directly to prohibit the proposed reduced access spacing on Westland Road, and argue that the county erred in concluding to the contrary. The county disputes that the ODOT standards apply. We need not resolve that dispute.

underestimated the amount of water the project will need, and failed to demonstrate that there is an adequate supply of water from the proposed wells.

A. Water Need

Petitioners argue that the estimated water need is based solely on two letters submitted by the applicant's director of engineering, whose initial estimate failed to include water for the proposed truck washing facility. After petitioners pointed out the omission, the director modified the estimate to 21,800,000 gallons per year, only slightly less than the estimated water availability (22,193,790 gallons per year). Given that narrow margin for error, petitioners contend that no reasonable decision maker would rely on the director's estimates. According to petitioners, the director failed to include additional water needed for irrigated landscaping, which petitioners estimated would require another 4,255,614 gallons per year, based on an assumption that 10 percent of the site would be landscaped. Further, petitioners cite to evidence that one of the applicant's smaller truck stops near the City of Medford consumed more water in the year 2005 than the director estimated for the proposed, larger facility, which places the 21,800,000 gallon estimate into doubt.

The county responds that the director manages 42 truck stops in 25 states and is a competent source of information regarding water usage at the applicant's various truck stops. With respect to landscaping, the county argues that the director testified that his estimates already included water required for landscaping. The director submitted a letter rebutting petitioners' estimates of an additional 4,255,614 gallons per year, which was based on an erroneous assumption that the county code would require that at least 10 percent of the site be landscaped. The county argues that there is no such requirement.

With respect to the Medford truck stop, the county cites to rebuttal testimony that the year 2005 water use of that facility was anomalous, based on a water leak, and after the leak was repaired in 2006 water usage levels returned to much lower normal levels.

We agree with the county that substantial evidence supports the county's findings regarding the amount of water the facility will need. The director's rebuttal letter addressed both objections raised by petitioners, and a reasonable decision maker could rely on that letter, and the director's other testimony, to conclude that the proposed facility's water needs will not exceed 21,800,000 gallons per year.

B. Water Supply

Petitioners also question the applicant's estimate of water supply, based on an existing well and certain water rights that the applicant has acquired. A water lawyer testified on petitioners' behalf that the applicant had not provided any pump testing to verify that the well can produce an adequate supply, and "expressed concerns" about the potential yield. Petition for Review 38. According to petitioners, the county failed to adopt findings addressing those concerns.

The county responds that there is extensive evidence from the watermaster documenting the availability of water, and that the county adopted extensive findings addressing the concerns raised by petitioners' water expert. The county argues that petitioners do not explain why pump testing is necessary to support the county's conclusions regarding water supply.

The BCC decision includes two and a half pages of single-spaced findings addressing the sufficiency of the water rights and the reliability and availability of water from the existing well. Record 12-14. The findings discuss at length various concerns raised by petitioners' water expert, noting in relevant part testimony by the watermaster that the applicant's well has continued to produce water at historic levels. While the findings do not address whether pump testing is necessary, neither petitioners nor the expert's letter explains why pump testing is necessary to verify the existence of a sufficient water supply. We agree with the county that the findings, which are largely unchallenged, adequately explain why

the county believes the applicant has demonstrated that it there is a sufficient supply of water available.

The fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR

UCDC 152.546(L) and 152.547 include standards for signage. The BCC reviewed the applicant's sign plan and concluded that it complied with all applicable criteria. Petitioners argue that the county's findings are conclusory and are not supported by substantial evidence, because the applicant's sign plan is not in the record.

The county responds, correctly, that the sign plan is located at Record 435. With respect to findings addressing UCDC 152.546(L) and 152.547, the county argues that the signage standards are clear and objective and consist mostly of clear prohibitions or numerical standards that require no detailed explanatory findings. We agree. Petitioners identify nothing about the proposed signs or any particular signage standard that requires much in the way of discussion. For example, UCDC 152.547(B) requires that no sign shall be illuminated by flashing lights. Petitioners do not contend that the sign plan proposes any flashing lights or explain why that standard requires any particular analysis when applied to the proposed signs. The county found that the sign plan complies with all applicable criteria, and petitioners do not contend otherwise. Absent some identified reason to remand for more detailed findings, the brevity of the county's findings regarding signage do not warrant reversal or remand.

The sixth assignment of error is denied.

SEVENTH ASSIGNMENT OF ERROR

UCDC 152.562(I) provides design standards for parking lots, and requires in relevant part that parking and loading areas adjacent to residential use shall be designed to minimize disturbance of residents by erecting a "sight-obscuring fence of not less than five feet in

height[.]" UCDC 152.562(I)(2). Further, any artificial lighting "shall not create or reflect glare in a residential zone or on any adjacent dwelling." UCDC 152.562(I)(4).

A residence is located approximately 500 feet from the subject property's northern boundary. The applicant submitted a landscape plan that proposed a six-foot high berm instead of a fence. Petitioners first challenge the county's conclusion that the berm is sufficient to minimize disturbance to residents, arguing that UCDC 152.562(I)(2) requires a fence, not a berm.

The county responds, and we agree, that the county did not err in concluding that a six-foot high berm is sufficient to comply with the code requirement for a five-foot high "sight-obscuring fence." The obvious purpose of UCDC 152.562(I)(2) is to obscure sight, a function that a six-foot high berm would seem to fulfill better than a five-foot high fence, even without regard for any vegetation that is planted or grown on the berm. The UCDC does not specify any particulars for the "fence" other than it must be "sight-obscuring." Petitioners have not demonstrated that the BCC erred in concluding that the landscape plan complies with UCDC 152.562(I)(2).

Petitioners next complain that the lighting plan fails to show how the lights on the subject property "shall not create or reflect glare in a residential zone or on any adjacent dwelling." The county adopted a finding that the lighting plan "shows that lighting will not create or reflect glare" on the residence to the north, which is not in a residential zone. Petitioners argue that the finding is inadequate, but do not explain why.

Finally, petitioners cite to UCDC 152.615(A), part of the standards that apply to conditional use permits. UCDC 152.615(A) authorizes the county to impose conditions to limit the use "to minimize such environmental effects as noise, vibration, air pollution, glare or odor" "upon a finding that circumstances warrant such additional restrictions[]."[16] The

[16] UCDC 152.615(A) is entitled "Additional Conditional Use Permit Restrictions" and provides in relevant part:

county concluded simply that "no restrictions appear to be necessary." Record 16. Petitioners challenge that finding, arguing that the proposed truck stop will have obvious "environmental effects" that might warrant additional restrictions, and that the county failed to explain its conclusion to the contrary.

The county responds that UCDC 152.615(A) is not an approval criterion in the usual sense, one that demands an affirmative finding of compliance, but instead it simply grants the county the option of imposing a range of conditions on approved conditional uses when specified circumstances warrant. The county argues that the BCC reasonably concluded that no additional restrictions are necessary, given the industrial zoning of the area, the lack of population in the area, and the proposed measures, such as the berm, to mitigate impacts between the truck stop and the non-conforming residence 500 feet to the north.

As noted, UCDC 152.615(A) applies only to conditional uses. While the county processed the application as an application for a conditional use permit, it also found that each of the individual uses are permitted uses in the LI and TC zones and approved those uses. Under that approach, UCDC 152.615(A) arguably does not apply here. Even if it does apply, we agree with the county that petitioners have not demonstrated that any inadequacy in the county's finding that "no restrictions appear to be necessary" under UCDC 152.615(A) warrants remand. Petitioners argue that "given the nature of truck stops," there will be environmental impacts on the dwelling, but petitioners do not explain what those impacts might be, why additional limitations beyond the proposed berm and other measures are warranted, or what those limitations might be. Without a more focused challenge to the

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> "In addition to the requirements and criteria listed in this subchapter, the Hearings Officer, Planning Director or the appropriate planning authority may impose the following conditions upon a finding that circumstances warrant such additional restrictions:
>
> "(A) Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such environmental effects as noise, vibration, air pollution, glare or odor[.]"

county's finding under UCDC 152.615(A), we decline to remand to the county to adopt a more adequate finding.

The seventh assignment of error is denied.

The county's decision is remanded.