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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OREGON DEPARTMENT OF TRANSPORTATION,
Petitioner,

vs.

CITY OF MADRAS,
Respondent.

LUBA No. 2007-149

FINAL OPINION
AND ORDER

Appeal from City of Madras.

Bonnie E. Heitsch, Assistant Attorney General, Salem, filed the petition for review on behalf of petitioner.

Robert S. Lovlien, Bend, filed the response brief on behalf of respondent. With him on the brief was Bryant, Lovlien & Jarvis, P.C.

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

REMANDED 12/05/2007

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

NATURE OF THE DECISION

Petitioner appeals two city decisions that annex and rezone two parcels.

FACTS

The applicants filed an application with the city to annex and rezone two parcels adjacent to US Highway 97, a 1.19-acre parcel zoned County Commercial and a 16.43-acre parcel zoned Rural Residential-5, to Corridor Commercial. Petitioner Oregon Department of Transportation (ODOT) appeared before the planning commission and raised objections to the traffic impact analysis (TIA) submitted with the application. The planning commission approved the application, but required the applicants to provide additional information. Before the city council, the applicants provided a revised TIA that ODOT asserted was also inadequate. The city council subsequently approved the application. This appeal followed.

FIRST ASSIGNMENT OF ERROR

ODOT argues that the city’s decision does not comply with the Transportation Planning Rule (TPR), OAR chapter 660, division 12. According to ODOT, the city’s decision is not supported by adequate findings because it does not identify the relevant approval criteria in Statewide Planning Goal 12 (Transportation) and the TPR or the facts the city relied upon in making the decision.

Under OAR 660-012-0060(1), when a local government amendment to a land use regulation would significantly affect a transportation facility, the local government must comply with OAR 660-012-0060(2) to mitigate the effect. The zone change appears to have a significant effect on US Highway 97, a transportation facility. According to ODOT, the decision does not explain how the annexations and rezonings comply with the TPR. The failure to make a finding regarding whether a proposed amendment will cause a significant effect under the TPR requires remand. *Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384, 389-91 (2001). The city concedes that its “findings of fact do not explain the

1 criteria or the facts relied upon in making its decision and that the matter should be
2 remanded.” Response Brief 1-2.

3 The first assignment of error is sustained.

4 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

5 ODOT argues that the city incorrectly relied upon unplanned and unfunded projects
6 to satisfy the TPR and improperly deferred compliance with the TPR. Because the city’s
7 decision must be remanded for additional findings, it would be premature to address these
8 assignments of error.

9 We do not reach the second and third assignments of error.

10 The city’s decision is remanded.