

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 THE LEAGUE OF WOMEN VOTERS

4 OF UMPQUA VALLEY,

5 *Petitioner,*

6 vs.

7 CITY OF ROSEBURG,

8 *Respondent.*

9 LUBA No. 2006-244

10 FINAL OPINION

11 AND ORDER

12 Appeal from City of Roseburg.

13 Charles F. Lee, Roseburg, filed the petition for review and argued on behalf of
14 petitioner. With him on the brief was Lee & Kaser PC.

15 Stephen Mountainspring, Roseburg, filed the response brief and argued on behalf of
16 respondent. With him on the brief was Dole, Coalwell, Clark, Mountainspring, Mornarich &
17 Aitken, P.C.

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

20 AFFIRMED

21 10/14/2008

22 You are entitled to judicial review of this Order. Judicial review is governed by the
23 provisions of ORS 197.850.
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NATURE OF THE DECISION

Petitioner appeals a decision by the city adopting a Transportation System Plan as a part of its comprehensive plan.

FACTS

Over an approximately two and one-half year period, beginning in August, 2004, the city developed a Transportation System Plan (TSP) as required by OAR 660-012-0000(3)(b). In November, 2006, the city adopted the TSP as an amendment to the Roseburg Urban Area Comprehensive Plan (UACP). The TSP replaced the UACP's transportation element. This appealed followed.

FIRST ASSIGNMENT OF ERROR

In its first assignment of error, petitioner argues:

“This [TSP] is incomplete on its face, as the City * * * failed to complete the plan with regard to the required elements related to Bicycle and Pedestrian Facilities and Services, with regard to the Finance Plan, and with regard to Public Transit.” Petition for Review 13.

The city's ordinance adopting the TSP adopts the following change to the proposed TSP:

“The City shall seek funds, time and resources to update 3 sections of the TSP, in order of priority: 1) Bicycle and Pedestrian, 2) Financial, and 3) Transit. Updates to these sections should be completed within 5 years.” Record 119.

Petitioner argues that adoption of this change means that the TSP “does not contain coherent decisions upon which planners, developers and citizens can rely.” Petition for Review 13.

The city responds that the adopted TSP includes bicycle, pedestrian, finance, and transit sections that meet the basic requirements of OAR 660-012-0020. The city points out that several sections of the administrative rules governing transportation planning allow for amendments to adopted transportation system plans. *See* OAR 660-012-0000(3), OAR 660-012-0015(3), and OAR 660-012-0060.

1 As the city points out, the TSP includes a finance plan and sections addressing
2 bicycle and pedestrian facilities and services and public transit. The city’s decision to
3 include a direction to the city to update those elements if funding, time and resources are
4 available simply makes it clear that the city retains flexibility to respond to future conditions.
5 We do not agree with petitioner that including a statement in the TSP that the city will seek
6 “funds, time and resources” to update certain elements of the TSP in the future necessarily
7 means that the adopted plan is somehow deficient. Other than citing to the statement noted
8 above, petitioner makes no attempt to explain why it believes the adopted plan fails to
9 comply with the transportation planning rule requirements governing bicycle and pedestrian
10 facilities, transportation finance, or public transit. Accordingly, the first assignment of error
11 provides no basis for reversal or remand of the decision.

12 The first assignment of error is denied.

13 **SECOND ASSIGNMENT OF ERROR**

14 In its second assignment of error, petitioner argues:

15 “This [TSP] fails to establish sufficient land use controls to make sure that
16 development does not proceed in the absence of the transportation facilities
17 that the plan finds will be needed.” Petition for Review 14.

18 Petitioner argues that the TSP is deficient because it:

19 “* * * does not attempt to establish land use controls responsive to the
20 availability of transportation facilities and services. Instead [the TSP]
21 assumes a level of development in the Roseburg area in the next 20 years
22 * * *. That growth will be accommodated by sprawl and increases in the
23 Roseburg Urban Growth Boundary, instead of by other adjustments to land
24 use controls.” *Id.*

25 The city first responds that petitioner cites nothing in the transportation planning rule
26 or any statute, administrative rule or other law or ordinance that requires that the TSP itself
27 must “establish sufficient land use controls” to ensure that transportation facilities and
28 services are available for development or to prevent development if a needed transportation
29 facility is absent. The city points out that the city’s Land Use and Development Ordinance

1 (LUDO) contains controls that ensure that the transportation facilities that will serve a
2 proposed development are adequate prior to the development being approved.¹ The city also
3 notes that the TSP proposes adoption of amendments to the LUDO to implement the TSP, as
4 required by OAR 661-012-0045(3)(a) – (e).² Finally, the city notes that although petitioner
5 appears to complain that the TSP includes assumptions regarding the anticipated level of

¹ The city explains that the LUDO requires site plan review and approval prior to development, and that site plans are required to (1) conform to the UACP (LUDO 2.3.000), (2) provide improved street access, (LUDO 2.3.075(1)), and (3) be reviewed for adverse impacts on the operation of public streets and traffic flows (LUDO 2.3.075(2)).

² OAR 660-012-0045(3) provides in relevant part:

“Local governments shall adopt land use or subdivision regulations for urban areas and rural communities as set forth below. The purposes of this section are to provide for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets, to ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel.

“(a) Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office and institutional developments, and all transit transfer stations and park-and-ride lots;

“(b) On-site facilities shall be provided which accommodate safe and convenient pedestrian and bicycle access from within new subdivisions, multi-family developments, planned developments, shopping centers, and commercial districts to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. Single-family residential developments shall generally include streets and accessways. Pedestrian circulation through parking lots should generally be provided in the form of accessways.

“ * * * * *

“(c) Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including bicycle ways along arterials and major collectors;

“ * * * * *

“(e) Internal pedestrian circulation within new office parks and commercial developments shall be provided through clustering of buildings, construction of accessways, walkways and similar techniques.” (Emphasis added.)

1 development and possible increases in the city’s UGB, petitioner does not challenge those
2 assumptions or explain why those assumptions are invalid.

3 We agree with the city. Nothing cited by petitioner requires the TSP itself to
4 establish land use controls to ensure that transportation facilities and services are available
5 for development or to prevent development if a needed transportation facility is absent. As
6 noted above, the LUDO has such provisions, and petitioner does not explain why those
7 provisions are inadequate. Similarly, petitioner’s challenge to the city’s growth assumptions
8 is not sufficiently developed to provide a basis for reversal or remand. Petitioner’s
9 arguments under this assignment of error provide no basis for reversal or remand of the
10 decision.

11 The second assignment of error is denied.

12 **THIRD ASSIGNMENT OF ERROR**

13 OAR 660-012-0040 requires the TSP to include a transportation financing program,
14 and OAR 660-012-0040(5) provides:

15 “The transportation financing program shall provide for phasing of major
16 improvements to encourage infill and redevelopment of urban lands prior to
17 facilities and improvements which would cause premature development of
18 urbanizable lands or conversion of rural lands to urban uses.”

19 In its third assignment of error, petitioner argues:

20 “The [TSP] fails to comply with OAR 660-012-0040(5), which requires that
21 the transportation financing program must provide for phasing of major
22 improvements to encourage infill and redevelopment of urban lands prior to
23 premature development of urbanizable lands.”

24 Petitioner’s entire argument under this assignment of error is: “This consideration is simply
25 missing from the [TSP].” Petition for Review 15.

26 The city responds that Chapter 8 of the TSP contains the required transportation
27 financing program that provides for the phasing of major improvements that is required by
28 OAR 660-012-0040(5). The city explains that the TSP includes timelines for roadway
29 improvements to be phased in over 5-year increments, with primary consideration given to

1 improving the road network in the center of the city, to providing alternate routes and
2 connections throughout the city, and to enhancing pedestrian and bicycle facilities. As such,
3 the city explains, the transportation financing program encourages use of urban lands by first
4 providing better transportation service to the center city.

5 Absent a more developed argument from petitioner regarding why it believes the
6 transportation financing program set forth in Chapter 8 of the TSP fails to satisfy OAR 660-
7 012-0040(5), we agree with the city that the TSP is adequate to satisfy the requirements of
8 that rule.

9 The third assignment of error is denied.

10 **FOURTH ASSIGNMENT OF ERROR**

11 In its fourth assignment of error, petitioner argues that the TSP lacks a transportation
12 financing program that meets the requirements of OAR 660-012-0040(3), which provides:

13 “The determination of rough cost estimates [under OAR 660-012-0040(2)(c)]
14 is intended to provide an estimate of the fiscal requirements to support the
15 land uses in the acknowledged comprehensive plan and allow jurisdictions to
16 assess the adequacy of existing and possible alternative funding mechanisms.
17 In addition to including rough cost estimates for each transportation facility
18 and major improvement, *the transportation financing plan shall include a*
19 *discussion of the facility provider’s existing funding mechanisms and the*
20 *ability of these and possible new mechanisms to fund the development of each*
21 *transportation facility and major improvement. These funding mechanisms*
22 *may also be described in terms of general guidelines or local policies.”*
23 (Emphasis added.)³

24 The TSP includes cost estimates for the identified transportation facilities. TSP 8-2 to 8-10.
25 Petitioner argues that the estimated costs for many of the projects are too low. The city

³ OAR 660-012-0040(2) provides in relevant part:

“A transportation financing program shall include * * *:

“* * * * *

“(c) A determination of rough cost estimates for the transportation facilities and major improvements identified in the TSP; * * *.”

1 responds that the “rough cost estimates” are just that, “rough approximations,” and points out
2 that in response to comments on an earlier draft of the TSP, the city revised certain costs
3 estimates upwards to better reflect the cost. The city also responds that petitioner points to
4 nothing in the record to indicate that the estimated costs of the transportation facilities are so
5 inaccurate as to fail to be “rough cost estimates.” We agree with the city that petitioner has
6 not demonstrated that the estimates included in the TSP are insufficient to meet the
7 requirement of the rule that the TSP include “rough cost estimates.”

8 We also understand petitioner to maintain that the TSP is insufficient to comply with
9 OAR 660-012-0040(3) because it acknowledges that existing funding mechanisms are
10 inadequate to fund the development of each transportation facility and major improvements,
11 and that future funding is uncertain. TSP 8-14. Petitioner argues that some of the identified
12 new funding mechanisms are improperly included because it is not likely that such funding
13 mechanisms will be approved or utilized.⁴

14 The city responds that the TSP meets the requirements of OAR 660-012-0040(3)
15 because it includes a discussion of existing and possible new funding mechanisms and their
16 ability to fund proposed projects. The city maintains that the rule does not require, as
17 petitioner argues, that such funding mechanisms be available or likely.

18 The TSP identifies and discusses existing and possible new funding sources for the
19 identified improvements, including state, county, and city revenues, system development
20 charges, urban renewal district revenues, shared gas taxes, street user fees, a local-option gas
21 tax, bond issues and local improvement district revenues. TSP 8-10 to 8-14. The TSP
22 contains the following summary:

⁴ Petitioner argues:

“This plan should be returned to the city, because it does not contain the decisions about which projects will be financed, and a realistic idea about how they are financed, which are needed in a plan which is to guide decision making about development in the city.” Petition for Review 18.

1 “The TSP capital improvements list identified \$79.5 million in projects of
2 which \$55.3 million of projects will require City or other funding. It does not
3 have the cash reserves to fund a significant portion of these improvement
4 costs. The newly adopted SDC will pay for up to \$12 million of these
5 improvements, but it lacks sufficient cash flow for nearly \$30 million of
6 improvement costs. The City may want to adopt new funding sources such as
7 a local-option motor fuel tax, general obligation bonds or serial bonds, a street
8 user fee, or come combination of these sources.” TSP 8-14.

9 In *Jacqua v. City of Springfield*, 46 Or LUBA 134, 176-77 (2004), *rev'd on other*
10 *grounds* 193 Or App 573, 91 P3d 817, we rejected an argument that was similar to the
11 argument made by petitioner in this appeal, noting that “[n]othing in the [transportation
12 planning rule] requires that a local government provide funding certainty for anticipated
13 transportation facility improvements that are identified in a TSP. * * * OAR 660-012-0040 *
14 * * make[s] it clear that transportation facility funding and timing uncertainty is expected.”
15 We agree with the city that the TSP is sufficient to meet the requirement that it include a
16 discussion of existing and possible new funding mechanisms.⁵

17 The fourth assignment of error is denied.

18 **FIFTH ASSIGNMENT OF ERROR**

19 In its fifth assignment of error, petitioner argues that the TSP fails to comply with
20 OAR 660-012-0020(2)(c), OAR 660-012-0020(3), and 660-012-0030(1)(b).⁶ In general,
21 those rules require the TSP to describe public transportation needs for the transportation
22 disadvantaged, describe the existing public transportation system and how it meets or does

⁵ OAR 660-012-0040(4) provides:

“Anticipated timing and financing provisions in the transportation financing program are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).”

Because we deny this assignment of error, we need not address the city’s argument that the transportation financing program is beyond LUBA’s scope of review under OAR 660-012-0040(4).

⁶ Although petitioner also references OAR 660-012-0000(1)(b) in this assignment of error, the argument in support of the assignment of error contains no additional reference to or discussion of that provision, and accordingly, we do not address it.

1 not meet those needs, and identify improvements to the public transportation system to meet
2 identified needs. OAR 660-012-0020(2)(c) requires the TSP to include a public
3 transportation plan that “[d]escribes public transportation services for the transportation
4 disadvantaged and identifies service inadequacies * * *,” and identifies existing and planned
5 service trunk routes, with major stops.⁷ OAR 660-012-0020(3) requires the TSP to include
6 an analysis of the current public transit system’s capacity and whether it has reached
7 capacity. OAR 660-012-0030(1)(b) provides that the TSP must identify “[n]eeds of the
8 transportation disadvantaged * * *,” and the scale of the transportation network being
9 planned.

10 We understand petitioner to argue that the TSP fails to describe the transportation
11 needs of transportation disadvantaged people and fails to describe the existing capacity of the
12 existing public transit system, and that the proposed improvements to the existing public
13 transit system are inadequate to meet the identified needs. Specifically, petitioner argues that
14 TSP 3-61 to 3-65 fail to describe the transportation needs of transportation disadvantaged
15 people and instead merely describe the inadequacies in the services that are presently
16 available. Petitioner also alleges that the city’s proposed improvements to public transit
17 services for the transportation disadvantaged that are found at TSP 7-60 and 7-61 are
18 inadequate because “[t]he response consists solely of the recommendation that the bus

⁷ OAR 660-012-0020(2)(c) requires a Transportation System Plan to include a public transportation plan that:

- “(A) Describes public transportation services for the transportation disadvantaged and identifies service inadequacies;
- “(B) Describes intercity bus and passenger rail service and identifies the location of terminals;
- “(C) For areas within an urban growth boundary which have public transit service, identifies existing and planned transit trunk routes, exclusive transit ways, terminals and major transfer stations, major transit stops, and park-and-ride stations. * * *”

1 system should provide more frequent service with better hours, as funding becomes
2 available.” Petition for Review 19.

3 The city responds that the TSP meets the TPR requirements cited by petitioner. First,
4 the city points out, Douglas County’s mass transit plan, which the city adopted as a
5 supplement to the TSP, provides demographic data regarding the needs of the transportation
6 disadvantaged and estimates their use of transportation services. Response Brief App. 3-4,
7 Record 120. That plan identifies the poor, the young, the elderly, and the disabled as
8 transportation disadvantaged and describes their transportation needs. Petitioner does not
9 challenge that description or otherwise explain why it is inadequate to meet the requirements
10 of the rules. We agree with the city that the TSP is adequate to meet the requirements of the
11 TPR that are cited by petitioner.

12 The city next explains that the TSP identifies as service inadequacies (1) deficiencies
13 in services to the disabled, (2) inefficient route structure, (3) lack of public transit stops in
14 lower income neighborhoods, (4) lack of evening hours and weekends service and (5) lack of
15 a guaranteed ride home. TSP 3-65. Finally, the city points to recommendations contained in
16 the TSP for future services and facilities to improve public transportation service to the
17 transportation disadvantaged, including providing shorter and more direct local routes,
18 flexible routing, more frequent service, better service hours and days, implementing a
19 passenger tracking system, and improving amenities such as bus shelters. TSP 7-60 to 7-61.
20 Petitioner does not explain why those proposed services and facilities are inadequate to
21 describe “the scale of the transportation network being planned” for the transportation
22 disadvantaged under OAR 660-012-0030(1)(b). We agree with the city that the TSP meets
23 the requirements of the rules cited by petitioner.

24 The fifth assignment of error is denied.

25 The city’s decision is affirmed.