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BEFORE THE HEARINGS OFFICER FOR CITY OF TALENT, OREGON

IN THE MATTER OF AN APPEAL FROM THE)
TENTATIVE DECISION OF THE TALENT)
PLANNING COMMISSION CONDITIONALLY)
APPROVING AN APPLICATION FOR THE)
DEVELOPMENT OF A NEW TRAVEL CENTER)
ON PROPERTY LOCATED IN TALENT,)
OREGON AT 251 WEST VALLEY VIEW ROAD)
ON A 5.38-ACRE PARCEL ZONED)
COMMERCIAL HIGHWAY WITH A MAP AND)
TAX LOT NUMBER OF TOWNSHIP 38,)
RANGE 1 WEST SECTION 23D, TAX)
LOTS 200 & 201.)

Case No. SPR 2017-005
Appeal No. APL 2017-001

**DECISION AND
FINAL ORDER**

Applicant: Northwest Properties and Investment)
Services, LLC)
Agent: Robert Krohn)
Attorney: Liz Dickson, Dickson Hatfield LLC)
Appellant: Gary Hall & Associates)
Attorney: E. Michael Connors, Hathaway)
Larson LLP)

16 **THE APPEAL IS GRANTED AND THE APPLICATION IS DENIED.**

17 **NATURE OF APPLICATION**

18 On July 27, 2017, Robert “Bob” Krohn, as agent for, and on behalf of Northwest Properties and
19 Investment Services, LLC (“Applicant”), filed an application for approval of a “Site Development Plan”
20 proposing the development and construction of a new travel center, with attendant structures and activities,
21 on real property located at 251 West Valley View Road in Talent, Oregon [the “Application,” Record
22 (“R”) pages 3–63]. The proposed development site is a 5.38-acre parcel, zoned Commercial Highway
23 (CH), with a Jackson County map and tax lot description of Township 38 South, Range 1 West, Section
24 23D, Tax Lots 200 and 201 (the “Property”).

25 The Application was deemed complete by Community Development Director Zac Moody (“Staff”)
26 as of July 27, 2017. R204. On August 24, 2017, the Talent Planning Commission (“Commission”) held a

1 properly noticed public hearing on the Application and, following extensive testimony and discussion, the
2 public hearing was continued to September 28, 2017 for additional testimony and Commission
3 deliberations. At the meeting on September 28, 2017, following a thorough review, analysis and discussion
4 of the entire record, the Commission issued a tentative decision approving the Application subject to an
5 extensive list of conditions. The Commission Order approving the Application was signed by the Planning
6 Commission Chair on September 29, 2017 (the “Commission Decision,” R250–279). The Commission
7 Decision contains extensive findings concerning all of the applicable approval criteria as set forth in the
8 Talent Zoning Code, Talent Municipal Code Title 8, Chapter 3 (“TZC” or “Zoning Code”). The final,
9 approved version of the Commission findings is set forth in the record at pages 253 to 279 (“Commission
10 Findings”).

11 On October 13, 2017, attorney E. Michael Connors filed a timely appeal of the Commission
12 Decision on behalf of Gary Hall & Associates (“Appellant”). R319–322. The letter submitted by Mr.
13 Connors consists of a three-page letter identifying the decision being appealed, the Appellant’s standing to
14 appeal and the “specific issues raised on appeal” and demonstrating that the appeal issues were raised
15 during the course of Commission proceedings (the “Appeal,” R319–321). Attorney Connors provided the
16 following descriptions of the specific issues raised in the Appeal:

- 17 • “The Planning Commission erred by failing to require a new traffic impact study as required
18 by Section 8-3L.920(A)(2).” R320.
- 19 • “The Planning Commission erred by relying on the Applicant’s flawed traffic study * * *
20 [because] the trip generation estimates were based on old studies of truck stops with no
21 assurance they have similar number of fueling positions and passenger and truck vehicles.” *Id.*
- 22 • “The Planning Commission erred by failing to require the Applicant to address traffic impacts
23 on the I-5 interchange, in particular the truck traffic.” *Id.*
- 24 • “The Planning Commission erred by concluding that the proposed development complies with
25 the floodplain and floodway regulations [because TZC] Section 8-3H.220(C)(1)(b) prohibits
26 development in the floodway.” *Id.*

- 1 • “The Planning Commission erred by approving the proposed driveway approaches. Section 8-
2 3J.630(A)(4)(b)(3) imposes maximum widths for curb cuts and driveway approaches [and the]
3 project exceeds those maximum widths by a significant amount.” *Id.*
- 4 • “The Planning Commission erred by improperly deferring the public improvements plan,
5 landscaping plan, lighting plan, stormwater [*sic*] plan and related plans through the use [*sic*]
6 conditions of approval. These plans are necessary for the Applicant to demonstrate
7 compliance with several site plan criteria. The City is not allowed [under Oregon case law] to
8 use conditions of approval as a substitute for findings of compliance with the approval
9 criteria.” R321.

10 Staff provided proper notice of the appeal hearing (“Hearing Notice”). R65–68. The Hearings
11 Officer conducted the public hearing on November 14, 2017 (“Hearing”). Prior to commencement of the
12 Hearing, the Hearings Officer reviewed a 340-page, hard-copy of the record developed during the
13 Commission proceedings. Additional testimony and documents were received during the Hearing and the
14 Hearings Officer closed the public hearing and the record at approximately 8:53 p.m. on November 14. The
15 documents received during the Hearing will be described herein as “Appeal Exhibits” and each will be
16 referenced by its designated Exhibit number and, where appropriate, the Exhibit page number (*e.g.*, Exb.#,
17 p.#).¹ During the Hearing, Applicant waived its opportunity “to submit final written arguments in support
18 of the application” as provided in ORS 197.763(6)(e). Following the close of the record, Staff determined
19 that two documents submitted by Applicant were inadvertently omitted from the Appeal record: 1) the
20 “Talent Confluence Project Site Wetland and Stream Delineation” report submitted on August 8, 2017
21 (“Wetland Study”); and 2) a transportation information memorandum, required by Jackson County,
22 submitted on August 2, 2017 (“Transportation Review”). Applicant, Appellant and the Hearings Officer
23 were advised of the omission via email from Staff on November 15, 2017. The Hearings Officer finds that
24 the Wetland Study and Transportation Review were timely submitted; were inadvertently omitted from the
25

26 ¹ The initial, hard-copy Record created by the Commission has consecutively numbered pages, but the
Appeal Exhibit pages are not consecutively numbered.

1 hard-copy record reviewed by the Hearings Officer; were referenced by the Commission, Applicant and
2 Appellant during the course of these proceedings; and are essential to a determination of the issues
3 presented in this matter. Based on the foregoing findings, the Hearings Officer concludes and orders that
4 these three documents be included as part of the record of this matter. Therefore, the email from Staff is
5 received as Exhibit 14, the Transportation Review as Exhibit 15 and the Wetlands Study as Exhibit 16.

6 All of the documents submitted, together with all oral testimony received at the two Commission
7 public hearings and the Hearing conducted by the Hearings Officer comprise the “Record” in this
8 proceeding. The matter is now properly before the Hearings Officer for decision.

9 **APPLICABLE APPROVAL CRITERIA**

10 This Appeal is conducted pursuant to Zoning Code Section 8-3M.150(F). The approval criteria
11 identified in the Commission Decision and by Staff in the Hearing Notice include the following applicable
12 TZC sections (R1, R65, R213–279):

- 13 Section 8-3D – Commercial Zones;
- 14 Section 8-3H – Overlay Zones;
- 15 Section 8-3J – Site Development Standards;
- 16 Section 8-3L – Development Review and Approval Procedures; and
- 17 Section 8-5 – Flood Damage Prevention.

18 Participants in this matter did not assert that other criteria in the Zoning Code, the City of Talent
19 Comprehensive Plan or state law should apply to this decision.

20 **DISCUSSION AND FINDINGS OF FACT**

21 **THE APPLICATION:**

22 The Application seeks approval of a Site Plan that would redevelop an existing truck stop, the
23 Talent Truck Stop, by constructing a new “travel center” on the Property. Applicant proposes to demolish
24 several structures, construct a new convenience store and restaurant building, and provide updated and
25 expanded diesel and gasoline fuel sales facilities. R253; Applicant Hearing testimony. The Application
26 describes the proposal as follows:

- 1 • “Applicant requests Site Plan approval for renovation of the existing fuel operations,
2 construction of a convenience store and restaurant, and construction of auto-fuel dispensing
3 stations. The Applicant also proposes upgrades to landscaping, construction of drainage
4 facilities, upgrades to site lighting, and refinement of access and circulation within the
5 property.” R25.
- 6 • “The proposed building is approximately 13,000 square feet, the proposed auto fuel area is
7 approximately 6250 square feet, and the diesel fuel area is approximately 3300 square feet.”
8 R31.
- 9 • “The proposed retail store has a gross floor area of 6,375 square feet and requires 16 parking
10 spaces. The restaurant has a gross floor area of 5,508 square feet and requires 55 parking
11 spaces. There are 61 standard and 4 ADA parking spaces. Auto fueling will contain 18 spaces.
12 In total there are 83 parking spaces for autos. There are 30 truck spaces proposed ranging in
13 length from 45 feet to 90 feet.” R34.
- 14 • “It is the intent of the Applicant to use two existing commercial driveways on West Valley
15 Road. They will be reduced from their current size and *brought into compliance with City*
16 *standards.*” R38 (emphasis added).
- 17 • A drawing titled “Existing Conditions and Demo Plan” (R46) identifies existing
18 improvements on the Property as follows:
- 19 ○ “2750 sq ft truck stop and restaurant” will be removed.
- 20 ○ “Shed” will be removed.
- 21 ○ “3000 sf shop to be removed.”
- 22 ○ “[C]overed vehicle maintenance area to be removed.”
- 23 ○ “[M]aintenance shed to be relocated.”
- 24 ○ “[P]ropane tank to be removed.”
- 25 ○ “[C]ell tower, protect in place.”
- 26

- A drawing titled “Site Plan” (R47) identifies six fueling stations for truck and RV fueling, and 18 fueling stations for “auto” fueling.

Testimony during the Hearing established that the site has been operated as a truck stop, in differing levels of operation, for about 50 years, since the 1970’s. Previous owners operated a restaurant on the site until it was closed in 2010, and the “last owner and operator of the truck stop,” Nancy Hinckley, stated, “The truck stop operated as recently as May 12, 2017, by pumping fuel for trucks.” Ex. 13. Ms. Hinckley also testified that she and other businesses in the area “paid extra” when West Valley View was being redone, so the roadway could be widened, and curbs and sidewalks could be added. Applicant testified that during the past 50 years of operation, the site sometimes had 60 to 100 trucks parked at the location, but the Application is only proposing parking for “32” trucks.

In support of the Application, Applicant provided numerous reports and documents, including, among other things: the Transportation Review memorandum dated July 26, 2017 prepared by Transight Consulting, LLC (Exb.15); and the Wetland Study dated April 7, 2017 prepared by Parametrix (Exb.16).

THE COMMISSION DECISION:

The Commission Decision consists of a 30-page “Order,” which meticulously details Application particulars and the Commission’s reasoning in reaching its decision, and includes detailed Findings and Conclusions in support of the decision. *See* R250–279. The Commission Decision ultimately concludes the Application should be approved, subject to a list of 18 conditions to assure compliance with the approval criteria. The approval conditions are listed at Record pages 250 to 252.

OPPONENTS’ CHALLENGES TO THE APPLICATION:

Appellant:

As previously noted, Appellant argued in its Appeal filing that the Commission erred by:

- Failing to require a new traffic impact study as required by Section 8-3L.920(A)(2).
- Relying on Applicant’s flawed Transportation Review.
- Failing to require the Applicant to address traffic impacts on the I-5 interchange.

- 1 • Concluding that the proposed development complies with the floodplain and floodway
- 2 regulations.
- 3 • Approving the proposed driveway approaches that exceed maximum widths.
- 4 • Improperly deferring, through conditions of approval, the public improvements plan,
- 5 landscaping plan, lighting plan, storm water plan and related plans.

6 During Hearing testimony and in written materials submitted during the Hearing (Exhibit 4),
7 Appellant made the following additional arguments in opposition to the Application:

- 8 • Section 8-3L.920(A)(2) requires a traffic impact study regardless of the previous use of the
- 9 property. Exb.15, p.1.
- 10 • Section 8-3L.920(A)(3) requires a traffic impact study to address identified safety issues along
- 11 West Valley View Road. *Id.*, p. 2.
- 12 • The 2015 TSP Update did not account for the traffic from the previous truck stop that ceased
- 13 operating in 2010. *Id.*
- 14 • The Applicant failed to actually compare the traffic impacts of the previous truck stop and the
- 15 proposed new truck stop. *Id.*, p 3.

16 **Other Opposition to the Application:**

17 There was substantial and vigorous opposition to the Application presented by persons who live
18 near the proposed redevelopment. The extensive list of concerns raised by opponents can be fairly
19 characterized as various quality of life impacts the neighbors will suffer if the Application is approved.

20 The list of adverse effects cited by opponents included such things as:

- 21 • Decreased property values;
- 22 • Offensive odors from diesel exhaust;
- 23 • Facilities located too close to their properties;
- 24 • Trucks will create noise and vibrations;
- 25 • Impacts on their privacy;
- 26 • Impacts of additional cars and traffic;
- Increase in crime (primarily prostitution and illegal drugs);
- Alterations to personal “connections” and a diminution in the sense of community;
- Health and environmental impacts from diesel fuel emissions; and
- The generalized sense that the proposed development is a burden and nuisance in the area and is not compatible with the neighborhood or community aesthetics and values.

1 While these concerns are understandably very important to all residents of the area, the approval
2 criteria applicable to this proceeding do not include any reference to odors, noise, vibrations, health effects,
3 environmental concerns, impacts on property values or any other potential adverse impacts on the
4 community or on adjacent, neighboring or nearby properties. These concerns are not matters that can be
5 addressed in this land use permitting process. Some of these considerations might be applicable if the
6 Application proposed a zone change, but that is not the issue presented by the Application in this matter.
7 Therefore, although understanding and appreciative of the numerous and legitimate concerns expressed by
8 area residents, the Hearings Officer is *not* permitted under the Zoning Code or state law to consider those
9 impacts in rendering this decision, and the comments of opponents regarding their concerns over the
10 potential adverse impacts are not germane to this decision.

11 **RESOLUTION OF SPECIFIC ISSUES:**

12 **Burden of Proof.**

13 Applicant must provide substantial evidence supporting the approval criteria applicable to the
14 Application. TZC 8-3M.150(E)(1) (“Approval or denial of an appeal * * * shall be based on standards and
15 criteria in the [TZC] * * * and any other applicable ordinances.”); *Fasano v. Board of County*
16 *Comm’rs*, 264 Or 574, 586, 507 P2d 23 (1973), *overruled on other grounds*, 288 Or 585 (1980) (an
17 applicant or proponent has the burden of proving that the applicable approval standards are met); ORS
18 197.835(9)(a)(C) and (D) (instructing that LUBA shall reverse or remand a land use decision if the local
19 government “made a decision not supported by substantial evidence in the whole record” or “improperly
20 construed the applicable law”); *see also* OAR 661-010-0071(2)(b) (explaining that LUBA will remand a
21 land use decision for further proceedings when the decision is not supported by substantial evidence in the
22 whole record) and . “A finding of fact is supported by substantial evidence if the record, viewed as a
23 whole, would permit a reasonable person to make that finding.” *Rogue Advocates v. Jackson County*, 282
24 Or App 381, 388–89 (2016) (citing *Younger v. City of Portland*, 305 Or 346, 360 (1988)).

1 **ISSUE 1: Did the Commission err by failing to require a new traffic impact study as required by**
2 **Section 8-3L.920(A)(2)?**

3 Zoning Code 8-3L.920(2) states, “A Transportation Impact Study (TIS) shall be required if * * * [a]
4 development proposal is *projected to generate fifty (50) or more net peak hour trips* on an arterial or
5 collector segment or intersection.” (Emphasis added.) This section of the decision will address whether
6 Zoning Code 8-3L.920(2) requires Applicant to provide the City with a TIS.

7 **Appellant Position:** In support of its position that a Transportation Impact Study is required,
8 Appellant provided the following, non-exclusive listing of information, assertions and arguments:

- 9 • “The development proposal will generate more than fifty peak hour trips on an arterial or
10 collector segment or intersection. It does not matter if there previously was a truck stop at this
11 site as Section 8-3L.920(A)(2) does not provide an exemption for that situation. Additionally,
12 the prior truck stop ceased operating in 2010, more than 7 years ago, so there is no basis for
13 assuming existing traffic from a project that ceased that long ago. Finally, the previous truck
14 stop did not sell gas to automobiles so it had significantly less and different types of traffic
15 impacts.” R320.
- 16 • “The [Transportation Review provided by Applicant] notes that the trip generation estimates
17 were based on old studies of truck stops with no assurance they have similar number of
18 fueling positions and passenger and truck vehicles. Since this project proposes a large number
19 of both truck and vehicle fueling stations, it is not appropriate to base the trip generation
20 estimates on these studies without any assurance that these other truck stops had at least a
21 similar number of fueling stations and mix of truck and vehicle traffic. The [Transportation
22 Review] also applies pass-by reductions based on a different use category than a truck stop
23 (convenience market with gasoline pump).” *Id.*
- 24 • “There is no dispute that the proposed truck stop will generate more than 50 peak hour trips.
25 Nonetheless, the applicant argued (and the Planning Commission agreed) that a traffic impact
26 study is not required because there previously was a truck stop on this property and the new
truck stop supposedly will not add more than 50 new peak hour trips beyond the previous
truck stop.” Exb.4, p.1.
- “Section 8-3L.920(A)(2) does not provide an exemption or discount for traffic impacts from a
previous development. * * * It does not allow an applicant to discount the traffic impacts of
the previous use or exempt the requirement for a traffic impact study if there was a previous
development on the property. It clearly and unambiguously requires a traffic impact study if
the proposed development generates more than 50 peak hour trips period. This interpretation
of Section 8-3L.920(A)(2) is supported by the remaining subsections of Section 8-3L.” *Id.*,
pp.1-2.
- “Section 8-3L.930(B)(3) addresses the scope of the traffic impact study and requires the
applicant to compare the ‘Existing conditions’ to the ‘Build-out year or completion year of
each significant phase of development.’ Section 8-3L.930(B)(3)(a) & (b). So the traffic

1 impact study is required to use the ‘existing conditions’ as the baseline, not the traffic impacts
2 of the previous development on the property.” *Id.*, p.2.

- 3 • “Section 8-3L.940 addresses the required methodology for the traffic impact analysis and
4 subsection B explains how the analysis must evaluate the ‘existing conditions.’ Section 8-
5 3L.940(B)(2) provides: ‘Traffic volumes shall be measured within the previous twelve months
6 for the weekday peak traffic period.’ If the existing conditions must be measured within the
7 previous twelve months, the applicant cannot consider traffic impacts from a development that
8 ceased operating 7 years ago.” *Id.* (Emphasis in original.)

9 **Applicant Position:** The Hearings Officer observes that Applicant elected not to provide any
10 arguments in writing; however, the Hearings Officer understands Applicant asserted the following
11 counterpoints in response to Appellant’s arguments, factual assertions and concerns:

- 12 • The proposed development is an existing use. Trucks continue to use the Property for
13 overnight parking and the facility was pumping diesel fuel for trucks as late as May 2017. The
14 restaurant use stopped in 2010; it was primarily frequented by truckers and there was not
15 much community use. In the past, the facility was used to park 60 to 100 trucks, and the
16 proposed use for parking a maximum of 32 trucks is substantially less.
- 17 • Testimony during the Hearing established that the site has been operated as a truck stop, in
18 differing levels of operation, for about 50 years, since the 1970’s. The “last owner and
19 operator of the truck stop,” Nancy Hinckley, stated, “The truck stop operated as recently as
20 May 12, 2017, by pumping fuel for trucks.” Ex. 13. Ms. Hinckley also testified that she and
21 other businesses in the area “paid extra” when West Valley View was being redone, so the
22 roadway could be widened and curbs and sidewalks could be added.
- 23 • Applicant intends to modify, modernize and improve the facilities, but the Application
24 proposes no change in the existing use, except to eliminate the truck washing activities.
- 25 • The Commission found that the Application is a continuation of an existing use, not a new
26 use, and that the truck stop operation is now in existence. The Commission also determined
that no additional trips would be generated by the proposal. Applicant also maintained that the
Commission is authorized to make these determinations.
- Applicant also referenced the Transportation Review.² Applicant generally asserted that the
Transportation Review supports Applicant’s view that no TIS is required in connection with
the Application, though the specifics of the argument were not precisely articulated.
- The Transportation Review addresses, to some extent, the issue of “Trip Generation
Estimates.” Exb.15, p.7. The Review states the following:
 - “The standard reference *Trip Generation*, published by * * * [ITE], contains a Truck
Stop land use (ITE 950) within the latest version of the manual. The data for this land
use was taken from three [2006 Florida] studies * * * [that] did not indicate the number

² The Hearings Officer notes that Applicant’s attorney, Ms. Dickson, made reference during the Hearing to
a “Kittleson” traffic study, but the Transportation Review was actually prepared by Transight Consulting,
LLC. (Exb.15.)

of fueling positions or indicate whether the sites catered toward passenger vehicles and trucks or trucks only.”

- “Furthermore, * * * *all trip rates are based only on the square footage* of the structure. The ITE land use description states the following:
‘Truck stops are facilities located on or near major roadways and provide refueling, food and other services to motorists and truck drivers. These facilities typically contain convenience stores, showers, restaurants, and on-site truck parking spaces.’” (Emphasis added.)
- “For purposes of this review [the trip generation estimates do] not account for the existing uses that will be removed, and is intended only to show the net effect of developing a truck stop.”
- “The trip generation estimates shown apply pass-by data from ITE Land Use 853: Convenience Market with Gasoline Pumps. While this is expected to realistically approximate the passenger vehicle site component, it is expected that nearly all truck trips would be pass-by/diverted trips from I-5 and that the overall pass-by trips would be closer to 80 percent. However, for impact purposes, both net and pass-by trips would affect the transportation system from the I-5 ramps west to the travel center entrances.
- The Review then estimates the “Weekday PM Peak Hour Trips” for an 11,883 square foot “Truck Stop” (ITE Code 950) to be 84 trips “In,” and 78 trips “Out,” for a total of 162 trips. The Pass-by trips (estimated at 66%) were projected to be (55) trips In, and (52) trips Out, for a total of (107) trips. Subtracting the total Pass-by trips from the total trips results in a “Net New Trips” calculation of 55.

Commission Findings: The Commission adopted the following findings regarding this issue:

“The proposal is for the redevelopment of an existing truck stop eliminating the truck wash and service area, leaving only truck and auto fueling and the restaurant/retail use. The reduction in services available at the site result[s] in a reduction of traffic. Considering that trip generation is calculated based on uses identified in the Institute of Transportation Engineer’s (ITE) manual and the truck wash and service area are being eliminated, no “new” trips are being generated. **The provisions of this section are not applicable.**” R277 (emphasis in original).

Discussion and Decision: The Hearings Officer has considered all the legal arguments, comments and information submitted by Applicant, Appellant and opponents to the Application and, based on the whole Record, the Hearings Officer finds and concludes as follows:

- Zoning Code Section 8-3L.920(2) [“§8-3L.920(2)”] states, “A Transportation Impact Study (TIS) shall be required if * * * [a] development proposal is *projected to generate fifty (50) or more net peak hour trips* on an arterial or collector segment or intersection.” (Emphasis added.)
- Interpreting what is intended by §8-3L.920(2) requires determining the definition of the term “net peak hour trips.” Although the term “peak hour trips” occurs frequently in discussions

1 regarding traffic generation, the Hearings Officer was unable to find a definition of “*net* peak
2 hour trips” in the Zoning Code, the ITE manual and other internet research resources.

- 3 • While §8-3L.920(2) is not a model of clarity, the Hearings Officer concludes that the term
4 “net peak hour trips” means the *difference* between two values: 1) a specifically identified
5 level of “peak hour” trips generated by existing and current development activities (the
6 “Current Traffic Levels”), and 2) a specifically identified level of “peak hour” trips
7 generated by activities associated with the development proposal (the “Proposed Traffic
8 Levels”). The Hearings Officer further concludes that these two values (Current and
9 Proposed Traffic Levels) need to be specific, identifiable numbers based on expert opinions,
10 resulting from the application of industry-accepted, traffic engineering principles, and
11 supported by reliable data and information, not historical or anecdotal guesstimates.
- 12 • As pointed out by Appellant, the Hearings Officer’s interpretation of §8-3L.920(2) is also
13 consistent with TZC 8-3L.930(B)(3), which addresses the “Study timeframes” scope of a
14 traffic impact study. That section requires the applicant to compare the “Existing conditions”
15 with conditions existing in “Build-out year or completion year of each significant phase of
16 development.” TZC 8-3L.930(B)(3)(a) & (b).
- 17 • In its arguments and materials, Appellant focused on the number of “peak hour trips,”
18 generally ignoring the “*net*” qualifier in §8-3L.920(2). There were repeated references during
19 the Hearing and in Appellant’s documents to the development generating “more than fifty
20 peak hour trips,” omitting the word “net” from the assertions. *See*, for example, R320 and
21 Exhibit 4, page1.
- 22 • Applicant, Staff and the Commission consistently misinterpreted the term “net peak hour
23 trips” by relying on comparisons between the existing, permitted *land uses* and activities on
24 the Property as compared to the *land uses* and activities that would be authorized if the
25 development proposal was approved. For example, the Commission findings state, “The
26 proposal is for the redevelopment of an existing truck stop eliminating the truck wash and

1 service area, leaving only truck and auto fueling and the restaurant/retail use. The reduction
2 in services available at the site result[s] in a reduction of traffic.” The Hearings Officer
3 concludes that the language of §8-3L.920(2) does not consider or allow the comparison of
4 existing land uses versus proposed land uses in determining whether a TIS is needed. If that
5 approach had been intended by the Talent City Council, it would have made reference in the
6 Code section to comparing the existing, authorized and/or permitted land uses with the land
7 uses proposed in a particular development application. The Hearings Officer finds that §8-
8 3L.920(2) contains no references to land uses, but instead focuses exclusively on a specific,
9 numerical threshold of whether the development proposal will generate more than 50 *net*
10 peak hour trips.

- 11 • The Hearings Officer finds there is no evidence in the Record establishing the Current
12 Traffic Levels or how many net peak hour trips the Application will generate. When
13 Applicant’s attorney was asked during the Hearing how many net peak hour trips the
14 development proposal would generate, she was not able to provide an answer. As previously
15 noted, Applicant was intent on contrasting the existing, permitted *land uses* with the *land*
16 *uses* proposed in the Application.
- 17 • The Hearings Officer finds there is no reliable evidence in the Record regarding how much
18 traffic will be generated by the proposed use. Although the Transportation Review submitted
19 by Applicant estimates a “Net New Trips” calculation of 55 “Weekday PM Peak Hour
20 Trips,” the Hearings Officer has reservations about the accuracy and reliability of that
21 estimate for a number of reasons. The Hearings Officer observes that the square footage
22 estimate for the proposed restaurant/store facility used in the Transportation Review is about
23 1,000 square feet smaller than the proposed structure. The Hearings Officer also accepts and
24 adopts the following concerns expressed by Appellant regarding possible deficiencies in the
25 Transportation Review: “The [Transportation Review] * * * trip generation estimates were
26 based on old studies of truck stops with no assurance they have similar number of fueling

1 positions and passenger and truck vehicles. Since this project proposes a large number of
2 both truck and vehicle fueling stations, it is not appropriate to base the trip generation
3 estimates on these studies without any assurance that these other truck stops had at least a
4 similar number of fueling stations and mix of truck and vehicle traffic. The [Transportation
5 Review] also applies pass-by reductions based on a different use category than a truck stop
6 (convenience market with gasoline pump).” R320.

- 7 • Although Applicant spoke often about the reduction of truck parking on the Property as
8 proposed by the Application, there is no evidence in the Record regarding the extent or
9 intensity of vehicle fueling or other identified site activities in recent years. Applicant’s
10 information and the testimony of the prior owner generally referred to activities that occurred
11 at the site over the course of the last 50 years, but the evidence was not directed at more
12 recent activity levels. In particular, there is no evidence in the Record regarding: the specific
13 number of fueling stations available; the number of trucks that fueled at the site; the extent of
14 auto fueling at the site; the extent of restaurant activities or its hours of operation; the extent
15 of auto traffic related to the restaurant; the frequency or extent of truck maintenance or truck
16 washing activities; when the truck maintenance and truck washing activities ended.
- 17 • The Hearings Officer finds that the development proposal includes: a new structure more
18 than three times the size of the existing retail area; a restaurant facility twice the size of the
19 existing structure; the addition of convenience store activities; a considerable expansion of
20 fueling station facilities; and the extension of fueling services to autos. The traffic impacts, if
21 any, of these expanded facilities and uses are not addressed by Applicant anywhere in the
22 Record.
- 23 • Although not well articulated in the Record, the Hearings Officer finds that West Valley
24 View Road is an “arterial” or “collector” segment where the Property is located.
- 25 • Based on the foregoing findings and observations, the Hearings Officer finds that the
26 Application proposes an intensity of use that is very different from, and, potentially much

1 more impactful on area traffic counts and traffic patterns, than the current and historical uses
2 on the Property.

- 3 • Based on the foregoing findings, analysis and conclusions, the Hearings Officer ultimately
4 concludes that Applicant failed to provide sufficient evidence regarding the number of net
5 peak hour trips that will be generated by the development proposal. The Hearings Officer
6 acknowledges that Applicant may well be able to demonstrate that the net peak hour trips
7 generated by the development proposal are less than 50, in which case no TIS would be
8 required. However, Applicant is required by Zoning Code §8-3L.920(2) to establish the
9 number of net peak hour trips in order to ascertain whether or not a TIS is required.
10 Accordingly, the Hearings Officer concludes that Applicant has not provided substantial
11 evidence that the Application meets the criteria set forth in Zoning Code §8-3L.920(2) and,
12 therefore, the Application must be denied.

13 **OTHER ISSUES:** Because the resolution of Issue 1 is fully dispositive of this matter and the
14 Application must be denied, the Hearings Officer will not examine or discuss the other issues raised on
15 Appeal.

16 **ADDITIONAL FINDINGS OF FACT:**

17 With the exception of the Commission Finding at the top of Record page 77 regarding Talent
18 Zoning Code §8-3L.920(2), which the Hearings Officer specifically rejects for the reasons explained
19 herein, the Hearings Officer accepts and adopts the remainder of the factual findings set forth in the
20 Commission Decision, Record pages 253–279; provided, however that the additional, specific findings set
21 forth in this Decision and Final Order shall supplement, modify and amend the Commission Decision.

22 **CONCLUSIONS OF LAW**

23 Having reviewed all of the evidence and testimony in the Record, and having weighed it against the
24 Applicable Criteria, the Hearings Officer makes the following conclusions of law:

- 25 1. The following Talent Zoning Code provisions are approval criteria applicable to the Application:

26 Section 8-3D – Commercial Zones;
Section 8-3H – Overlay Zones;

1 Section 8-3J – Site Development Standards;
2 Section 8-3L – Development Review and Approval Procedures; and
3 Section 8-5 – Flood Damage Prevention.

- 4 2. The term “net peak hour trips” in Zoning Code §8-3L.920(2) means the difference between two
5 values: 1) a specifically identified level of “peak hour” trips generated by existing and current
6 development activities; and 2) a specifically identified level of “peak hour” trips generated by
7 activities associated with the development proposal. These two values, and their difference, must be
8 specific, discernable numbers based on expert opinions, resulting from the application of industry-
9 accepted, traffic engineering principles, and supported by reliable data and information.
- 10 3. Talent Zoning Code §8-3L.920(2) does not consider or allow the comparison of existing land uses
11 versus proposed land uses in determining whether a Traffic Impact Study is needed.
- 12 4. Applicant failed to provide sufficient evidence regarding the number of net peak hour trips that will
13 be generated by the development proposal; therefore, Applicant has not provided substantial
14 evidence that the Application meets the criteria set forth in Zoning Code §8-3L.920(2).
- 15 5. The Application is not supported by substantial evidence and, therefore, the Application must be
16 denied.

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1 **ORDER**

- 2 1. Exhibit 14 (an email from Staff dated November 15, 2017), Exhibit 15 (the Transportation Review
3 submitted by Applicant on August 2, 2017), and Exhibit 16 (the Wetlands Study submitted by
4 Applicant on August 8, 2017) are received into, and made a part of the Record herein.
- 5 2. The Appeal is granted.
- 6 3. The Application is denied.

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10 Dated this 21st day of November, 2017.

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13 _____
14 RICK WHITLOCK,
15 Talent Hearings Officer

16 **APPEAL NOTICE**

17 The Hearings Officer’s Decision and Final Order is the final decision of the City of Talent on this
18 application. This decision may be appealed to the Oregon Land Use Appeals Board (LUBA) within 21
19 days of the date it is mailed. This decision is being mailed on _____, 2017.
20 Please contact LUBA for specific information at DSL Building, 775 Summer Street NE, Suite 330, Salem,
21 OR 97301-1283 or by phone at (503) 373-1265.
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