



City of Tigard Memorandum

To: Tigard City Council
From: Agnes Kowacz, Associate Planner
Re: CUP2013-00002 Costco Fuel Station Appeal
Date: August 18, 2014

I. Key Point and Summary

On August 12, 2013, the City received a Conditional Use Permit application and a Design Evaluation Team request for a fueling station for Costco located at 7850 SW Dartmouth Street. The Design Evaluation Team review took place first and was resolved by November of 2013. Review of the Conditional Use application followed and the first public hearing on the request was held on February 10, 2014. The hearing was continued to March 17, 2014 in order to work through the conditions relating to the intersection improvements at Highway 99W and SW Dartmouth Street. At the March 17, 2014 public hearing, the applicant requested another continuance to April 7, 2014. On April 7, 2014, the Planning Commission received testimony and written materials from Mr. Michael Connors, representing Cain Petroleum, who is in opposition of the project. The Planning Commission approved the Design Evaluation Team recommendations and continued the hearing for the decision on the Conditional Use Permit to May 5, 2014 in order to allow time to review the materials submitted by Mr. Connors. On May 5, 2014, the Planning Commission approved the Conditional Use Permit with the proposed changes from the April 7, 2014 hearing.

The main issue that was raised during the review of this proposal was the 99W and SW Dartmouth intersection. The city and the applicant met several times to discuss solutions on how Costco's impacts could be addressed. The city and the applicant reached an agreement with the applicant constructing a northbound and southbound designated right turn lane at that intersection. The final order contains the following condition of approval:

“10. Prior to final building inspection, the intersection improvements proposed by the applicant to the northbound and southbound right turn lanes at the SW Dartmouth/99W intersection shall be constructed.”

On June 5, 2014, the city received an appeal of the Planning Commission final order from Mr. Michael Connors. Outlined below are staff responses to Mr. Connor's specific issues.

II. Staff's Response to Appeal and Recommendations

1. *The planning commission erred in concluding that Costco demonstrated compliance with the applicable transportation standards. Tigard Community Development Code ("CDC") Sections 18.330.030(A)(3) and 18.810.020(A) require Costco to demonstrate that the transportation facilities have adequate capacity to accommodate the proposed fuel station. Costco's own traffic impact study ("TIS") concludes that the Highway 99W/SW Dartmouth Street intersection does not meet*

the City's operational standards and the proposed fuel station will worsen these conditions. The condition of approval requiring intersection improvements is legally impermissible because there is insufficient right-of-way for these improvements and Costco failed to demonstrate that these improvements are feasible.

Staff review corroborates the conclusion of the applicant's traffic analysis that the proposed northbound and southbound right-turn-lanes at the Hwy 99W / Dartmouth / 78th intersection would provide sufficient additional capacity to mitigate the impact of additional traffic to and from the proposed Costco Fuel station. In addition, staff review corroborates the conclusion of the applicant's traffic analysis that the combination of the Costco Fuel station and the proposed right-turn-lane mitigations would result in equivalent or better traffic flow than under background conditions.

The traffic reports submitted by the applicant show that completion of improvements already under construction at the intersection of 99W and SW Dartmouth Street will meet the adopted prevailing ODOT operational standard (i.e., volume-to-capacity ratio) even with the proposed fuel station in place. The applicant's submittal also demonstrates that while the intersection as a whole meets the applicable standard, there are individual movements on the northbound and southbound approaches that are currently operating at overcapacity. However, with construction of new right-turn lanes in both the northbound and southbound directions as proposed by the applicant in the approved decision, those overcapacity traffic movements would operate at equal or better conditions after the proposed fuel station is constructed.

The right-of-way necessary to construct these turn lanes has yet to be acquired, however, the applicant provided evidence showing that the property owner at the northwest corner of the intersection is willing to participate in further review and possible dedication of the necessary right-of-way.

- 2. The planning commission erred in concluding that Costco demonstrated compliance with CDC Section 18.620.010(B)(3). CDC Section 18.620.010(B)(3) requires all new development to "participate in funding future transportation and other public improvement projects in the Tigar Triangle Plan District, provided that the requirement to participate is directly related and roughly proportionate to the impact of the development." The planning commission concluded that Costco satisfied this requirement based on its payment of the Transportation Development Tax ("TDT"), when in fact the planning commission granted a full credit for the intersection improvements and determined "no TDT is required." The planning commission failed to impose the full amount of the proportionate share contribution based on the traffic impacts of the fuel station and erroneously granted Costco a complete TDT credit.*

The Transportation Development Tax (TDT) due for this proposal is \$192,528. This has been calculated using standard Washington County TDT calculation procedures.

The proposed condition #1 requires construction of dedicated northbound and southbound right-turn lanes at the Highway 99/SW Dartmouth intersection. The report of the applicant's traffic engineer dated April 1, 2014 constitutes substantial evidence that the cost of those improvements is \$237,833. Improvement of the Dartmouth/99W intersection is an "eligible capital improvement" under Washington County TDT Code Section 3.17.070(8) and Appendix C thereto, and therefore the full cost of the right-turn lanes is creditable against the

TDT. According to Washington County, the TDT is implemented at a level estimated to recover 23.3% of the cost County-wide to provide transportation system capacity sufficient to accommodate new development. Thus, 100% of the transportation capacity cost resulting from this project would be the TDT amount (\$192,528) divided by 23.3%, which equals \$826,299. The applicant proposes improvements costing \$237,833 which is 28.8% of the full transportation capacity cost.

The total cost of creditable improvements (\$237,833) exceeds the TDT due (\$192,528). Because the improvements are fully creditable, completion of the improvements constitutes payment of the TDT in full and no additional payment is due from the applicant. The cost of the creditable improvements is roughly proportional to the project's impact on the transportation system because it equals about 28.8% of the total estimated cost to provide transportation capacity accommodating the development, which is consistent with the 23.3% recovery expected from the TDT County-wide.

- 3. The planning commission erred by failing to adequately address the need for off-site shared parking agreements with neighboring properties. Costco's TIS concluded that parking was currently "at capacity" during peak hours, and therefore the reduction of parking due to the fuel station will result in an inadequate parking supply during peak times and consequential congestion. The City staff also concluded through field observations that the queuing of vehicles sometimes extends onto SW Dartmouth Street. Based on this evidence, the planning commission concluded: "To mitigate for this impact, this decision should be conditioned so that the applicant must develop, implement, and record signed agreements for an access I parking management plan that includes the establishment of an agreement(s) with neighboring property owner(s) to use some of their off-site parking for Costco employee parking during peak seasons in order to replace the 84 spaces removed for the fueling station. This standard can be met as conditioned." Planning Commission Decision, p.17. However, the planning commission failed to adopt this condition of approval. Additionally, this problem cannot be deferred through a condition of approval since Costco admits it cannot obtain such off-site shared parking agreements. The City must require Costco to provide the off-site shared parking agreements before it approves this application.*

The Planning Commission removed a condition of approval from the original staff report because the parking area already exceeds the required parking standard in the Development Code. In accordance with TDC 18.765 *Off-street parking and loading requirements*, sales-oriented uses require 3.0 parking spaces per 1,000 square foot of floor area and vehicle fuel sales uses require 3.0 parking spaces plus 2.0 parking spaces per service bay. The Costco warehouse is a total of 145,824 square feet; which required 438 parking spaces. The vehicle fuel station required 3 parking spaces (there are no service bays); total required parking is 441. The parking lot contains 730 spaces not counting the spaces which are proposed to be removed with the construction of the fuel station (84 spaces will be removed).

Because Costco meets the code standard for parking there is no basis on which to require the condition of approval, therefore the Planning Commission removed it. Unfortunately, in the write-up of the Planning Commission's decision the findings in the report were not changed to match the Planning Commission decision. Staff recommends the following change to the report findings in Section IV *Applicable Review Criteria and Findings* under TDC18.705.030.H. *Access Management*

“Access to the site is from SW Dartmouth Street. The two existing driveways to the site are approximately 617 feet apart. No new access is proposed. The existing driveway locations are well

over 300 feet from the existing driveways to the south of the site. There is an existing driveway, approximately 50 feet, to the north of the site. This standard is met.

It has been observed that the existing north entrance, which will be utilized by fuel trucks for the new fuel station, does not provide adequate space for the large vehicles to make this turn within curb lines. Public Works Engineering has noted in their comments on the application that the applicant should retrofit this driveway to correct this operations/safety problem.

Through field observations, the queuing of vehicles, particularly at the existing southern entrance, sometimes extends onto SW Dartmouth Street. This is due to pedestrian crossings as well as customers looking for an available parking space. The loss of parking from the proposed fuel station results in the likelihood of traffic queuing onto SW Dartmouth Street. To mitigate for this impact, this decision should be conditioned so that the applicant must develop, implement, and record signed agreements for an access/parking management plan that includes the establishment of an agreement(s) with neighboring property owner(s) to use some of their off-site parking for Costco employee parking during peak seasons in order to replace the 84 spaces removed for the fueling station. This standard can be met as conditioned.²²

4. *The planning commission erred by failing to address the transportation issues and deficiencies identified by Greenlight Engineering. Greenlight Engineering demonstrated in its letters, dated April 7, 2014 and May 5, 2014, and its testimony at the May 5, 2014 planning commission hearing, that Costco's traffic analysis is inadequate and failed to adequately address several issues. The planning commission ignored these issues and failed to adopt findings explaining why these issues and deficiencies are not required to be addressed.*

Staff provided a response to the Planning Commission regarding the information provided by Greenlight Engineering at the May 5, 2014 hearing. The Planning Commission also heard testimony on the issue but felt that the Greenlight issues were adequately addressed or had no merit.

5. *The planning commission erred in concluding that CDC Section 18.620.040(A)(1) does not apply. CDC Section 18.620.040(A)(1) requires all street-facing elevations along public streets to "include a minimum of 50% of the ground floor wall area with windows, display areas or door openings." The planning commission erroneously concluded that this requirement does not apply because the "proposed structure is a fuel station canopy and does not contain any windows or doors." Planning Commission Decision, p.12.
CDC Section 18.620.040(A)(1) applies to all non-residential buildings and there is no exception for fuel stations. It clearly requires that all non-residential buildings contain 50% windows, display areas or door openings on street-facing elevations. The fact that the fuel station does not contain any windows or doors is not a basis for concluding that this criteria does not apply, it is a basis for concluding that the proposed fuel station does not comply with this requirement.*

TDC 18.620.40.A.1 specifically states that "all street-facing elevations within the building setback (0 to 10 feet) along public streets shall include a minimum of 50% of the ground floor area with windows, display areas or doorway openings". The proposed canopy is setback 58 feet and 8 inches from the public street; therefore, this standard does not apply.

6. *The planning commission erred in concluding that Costco demonstrated compliance with CDC Section 18.620.090(C)(4) for purposes of the design adjustment requests to the setback and 50% building placement standards. CDC Section 18.620.090(C)(4) requires Costco to demonstrate that "granting the*

adjustment is the minimum necessary to allow the proposed use of the site." Costco failed to provide any evidence that it cannot site a fuel station on the property unless these adjustments are granted.

The Design Evaluation Team (DET) process is an optional process that “allows applicants to propose alternative designs to the plan district design standards that are consistent with the purpose of the standards”. The alternative design proposed by Costco was reviewed by a three-person professional design team who determined that the alternative design meets the intent of the Tigard Triangle Standards and can be approved through an adjustment of the standards. The DET recommended approval of the design adjustment subject to the applicant making certain changes to their proposal. The applicant made the DET recommended changes to their design before the public hearing for the Conditional Use Permit. With the changes, the Planning Commission voted to approve the design adjustment portion of the application at the April 7, 2014 hearing because the DET concluded that the alternative design was consistent with the purpose of the plan district design standards.

III. Conclusion and Recommendation

Staff has presented the City Council with a memorandum summarizing the issues of the appeal and staff response. In addition, the applicant provided recommended edits for the findings for City Council to consider and adopt into their decision. These edits have been provided to you as Exhibit “C”. In conclusion, staff finds that the proposal meets all applicable standards and recommends that City Council accept the edits to the finding of the decision as recommended by staff and deny the appeal.

Staff recommends the following edits to the planning commission final order:

Page 5- TDC18.330.030.A.3

“As described in the applicant’s impact study in Section 2.0 of their submittal, there is adequate capacity in the public facilities that serve the site. The frontage improvements along SW Dartmouth Street, including bicycle facilities (on the east side only), have already been constructed. The proposal does not require any additional water connections. A limited amount of runoff is anticipated from the canopy area; this area will be hydraulically separated from the rest of the site and routed through an oil/water separator prior to discharging to the sanitary sewer system. The proposed project will not increase stormwater runoff; however, the project will improve fifty percent of the overall site to comply with current water quality standards. **With the proposed mitigation measures and conditions, adequate streets and utilities capacity exists as analyzed in response to TDC18.810. This standard is met.”**

Page 12- TDC 18.620.040.A.1

~~The proposed structure is a fuel station canopy and does not contain any windows or doors. This standard does not apply.~~

This criterion applies to all street facing elevations within 10 feet of a public street. The fuel station canopy will be set back from SW Dartmouth by 58 feet 8 inches. Therefore, this criterion does not apply.

Further, the City Council finds that there are good reasons not to apply the street-facing elevation standard to the fuel station canopy. First, the canopy must necessarily admit vehicles to the gas pumps underneath, which cannot occur through doors and windows. Second, the

purpose of the standard is to create visual interest with windows, displays and openings, thereby avoiding featureless walls along pedestrian walkways. But with the greater setback here, the risk of a featureless visual canyon is eliminated. Visual interest for pedestrians will still exist with views of adjacent landscaping and the fuel station beyond. Third, the open sides of the canopy are the functional equivalent of windows, providing visual access to activity under the canopy.

Page 15- TDC 18.620.090

~~The applicant has submitted a site plan that meets the DET recommended conditions of approval. A copy of the DET report is attached as a part of this staff report, Exhibit "D".~~

The City Council agrees with the recommendations of the DET and the Planning Commission. Substantial evidence supports those recommendations as set forth in the DET report attached to this Order as Exhibit "D." The City Council further finds that this standard is met because the applicant has submitted a site plan that meets the DET's recommended conditions.

Page 17- TDC 18.705.030.H

Access to the site is from SW Dartmouth Street. The two existing driveways to the site are approximately 617 feet apart. No new access is proposed. The existing driveway locations are well over 300 feet from the existing driveways to the south of the site. There is an existing driveway, approximately 50 feet, to the north of the site. **Because no new driveways or other access points are proposed,** this standard is met.

~~It has been observed that the existing north entrance, which will be utilized by fuel trucks for the new fuel station, does not provide adequate space for the large vehicles to make this turn within curb lines. Public Works Engineering has noted in their comments on the application that the applicant should retrofit this driveway to correct this operations/safety problem.~~

~~Through field observations, the queuing of vehicles, particularly at the existing southern entrance, sometimes extends onto SW Dartmouth Street. This is due to pedestrian crossings as well as customers looking for an available parking space. The loss of parking from the proposed fuel station results in the likelihood of traffic queuing onto SW Dartmouth Street. To mitigate for this impact, this decision should be conditioned so that the applicant must develop, implement, and record signed agreements for an access/parking management plan that includes the establishment of an agreement(s) with neighboring property owner(s) to use some of their off-site parking for Costco employee parking during peak seasons in order to replace the 84 spaces removed for the fueling station. This standard can be met as conditioned.~~

The staff report dated April 7, 2014 identified possible concerns about sufficient turning radius at the north entrance for fuel delivery trucks. As recommended by City staff, the City Council finds that the applicant's redesign of the north entrance as part of this project that will address this concern.

The applicant introduced traffic counts and video documentation of traffic operations at the south entrance on a busy weekend peak period that revealed no queuing spillback from the south entrance driveway onto SW Dartmouth Street. In fact, the video showed very limited queuing at all during the peak period. As the applicant explained, the south driveway is long enough to accommodate many cars, and the primary movement at the inbound end of the driveway is a right turn that rarely causes significant delay. The applicant also submitted testimony from its warehouse manager that he had not seen inbound queuing at the south entrance back up onto SW Dartmouth at any time in the six years he has worked there, except possibly if construction or an accident blocked another entrance.

The City Council agrees with and adopts the Planning Commission's approval of the project without condition #6 as proposed in the April 7, 2014 staff report.

Page 28- TDC 18.810.030.CC

~~The applicant has submitted a traffic study prepared by Kittelson & Associates, Inc. According to the traffic study “Under the 2014 Total Traffic Conditions Scenario ... the intersection of OR 99W/Dartmouth St-78th Ave ... does not meet the City of Tigard standards. Several movements on the northbound and southbound approaches to the intersection are projected to operate at a LOS [Level of Service] F and/or v/c [volume/capacity] ratio over 1.0 during both the weekday PM and weekend midday peak hours, as under existing and 2014 background conditions.”~~

~~While the proposed fuel station is not the sole cause of the identified traffic problems at this intersection, as shown in the applicant’s study, it will contribute to them. The amount of traffic generated at this intersection by the proposed fuel station is 110 net new trips during the afternoon peak hour and 135 net new trips during the weekend midday peak hour, for an average of 122.5 net new trips during the peak hours. As identified in the applicant’s traffic study, the City of Tigard Transportation System Plan (TSP) includes a project to mitigate traffic congestion at this intersection by construction of turn lanes and/or auxiliary through lanes. This project is anticipated to increase the capacity of this intersection by about 1,400 vehicles per hour. The applicant is proposing to construct a designated northbound right turn lane from SW Dartmouth Street onto 99W and a designated southbound right turn lane from SW 78th Avenue onto 99W, to mitigate their impacts. Therefore, as a condition of approval, the applicant shall construct these improvements within a year of final land use approval.~~

~~According to the applicant’s traffic study “Given that the site is essentially at [parking] capacity during the peak half hour period, the proposed reduction in on-site parking needs to be addressed so that adequate parking supply will still be available on-site for Costco members and shoppers. Costco will pursue agreements with neighboring property owners ... for employee parking during peak periods in order to free up sufficient space for Costco members.”, Prior to issuance of a site permit, these agreements need to be established and implemented as part of the access/parking management plan.~~

The applicant submitted a traffic study dated August 5, 2013, as supplemented by reports dated April 1, April 23 and April 28, 2014. Collectively, those reports show that the new fuel station will generate about 45 additional net new vehicles (or 90 net new trips) to the site during the critical weekday p.m. peak hour, which is less than 9% of the current traffic on SW Dartmouth Avenue and less than 3% of the current traffic on Highway 99W.

The applicant's traffic reports show that with this small contribution of additional trips and the completion of improvements already under construction, the intersection of 99W and SW Dartmouth Street will meet the adopted prevailing ODOT operational standard (i.e., volume-to-capacity ratio) even with the proposed fuel station in place. The applicant's reports also show that while the intersection as a whole meets the applicable standard, there are individual movements on the northbound and southbound approaches that are currently operating at overcapacity. However, with construction of new right-turn lanes in both the northbound and southbound directions, those movements would operate at equal or better conditions even with the proposed fuel station in place, as compared to operations without the fuel station and without mitigation. Thus, the applicant proposes to

mitigate the proposed project's impact on those specific movements by constructing new right-turn lanes in both the northbound and southbound directions at the 99W/Dartmouth intersection. These improvements are required by condition #1.

The City Council finds that substantial evidence shows that the proposed fuel station with the proposed mitigation measures will not worsen the operation of the 99W/SW Dartmouth intersection, or any other transportation facility beyond applicable criteria. The City Council also finds that certain movements at the 99W/Dartmouth intersection presently operate overcapacity, but with construction of dedicated northbound and southbound right-turn lanes as proposed by the applicant, those movements will operate at equal or better capacity with the fuel station and mitigation measures in place as compared to present conditions. Accordingly, to mitigate the impact of the proposal on those specific movements, the City Council agrees with the Planning Commission's adoption of condition #1 requiring construction of dedicated northbound and southbound right-turn lanes at the 99W/Dartmouth intersection.

The City Council further finds that construction of the right-turn lanes is feasible because substantial evidence in the record shows that construction of the turning lanes is possible, likely and reasonably certain to proceed. Specifically, the applicant has submitted construction drawings showing that the turning lanes can be built. In the case of the northbound right-turn lane, no additional right-of-way is required based on modifications to turning radius standards approved by the City Public Works Department. As to the southbound right-turn lane, evidence submitted by the applicant shows that the property owner at the northwest corner of the intersection is likely to agree to dedicate the necessary right-of-way after further review. A showing of feasibility does not require a showing of absolute certainty.

Page 31- Rough Proportionality Analysis

~~The Transportation Development Tax (TDT) after adjusting as requested by applicant (because this is a members only station) for higher than normal internal (store and gas) trips, is \$192,528. The TDT has been implemented at a level that would recoup 23.3% of the Countywide cost necessary to provide the transportation system capacity necessary to accommodate new development. The total impact of the proposed development on the transportation system is estimated at the calculated TDT (\$192,528) divided by the recapture rate (23.3%), resulting in a calculated amount of \$826,299. The unmitigated impact totals \$551,361.~~

~~The driveway modifications do not count in this calculation because they solely serve the Costco property.~~

Less mitigated costs and credits

~~The proposal requires a proportional share contribution to mitigate traffic congestion at the intersection of 99W and SW Dartmouth Street. The total cost for the proposed improvements is \$237,833. This amount is creditable.~~

~~FINDING: — Based on the analysis above, no TDT is required.~~

The Transportation Development Tax (TDT) due for this proposal is \$192,528. This has been calculated using standard Washington County TDT calculation procedures. This calculation accounts for higher-than-normal internal trips between the Costco warehouse and fuel station, because the fuel station serves only Costco members.

The applicant proposes, and condition #1 requires, construction of dedicated northbound and southbound right-turn lanes at the Highway 99/SW Dartmouth intersection. The report of the

applicant's traffic engineer dated April 1, 2014 constitutes substantial evidence that the cost of those improvements is \$237,833, and no contrary evidence has been submitted. Improvement of the Dartmouth/99W intersection is an "eligible capital improvement" under Washington County TDT Code Section 3.17.070(8) and Appendix C thereto, and therefore the full cost of the right-turn lanes is creditable against the TDT. The applicant also proposes driveway modifications but they are not TDT creditable because they serve only the applicant's property.

According to Washington County, the TDT is implemented at a level estimated to recover 23.3% of the cost County-wide to provide transportation system capacity sufficient to accommodate new development. Thus, 100% of the transportation capacity cost resulting from this project would be the TDT amount (\$192,528) divided by 23.3%, which equals \$826,299. The applicant proposes improvements costing \$237,833 which is 28.8% of the full transportation capacity cost.

FINDING: The total cost of creditable improvements (\$237,833) exceeds the TDT due (\$192,528). Because the improvements are fully creditable, completion of the improvements would constitute payment of the TDT in full and no additional payment would be due from the applicant. The cost of the creditable improvements is roughly proportional to the project's impact on the transportation system because it equals about 28.8% of the total estimated cost to provide transportation capacity accommodating the development, which is consistent with the 23.3% recovery expected from the TDT County-wide.