



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

July 21, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Monmouth Plan Amendment
DLCD File Number 005-05 R



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 8, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Jason Locke, DLCD Regional Representative
Jeff White, City of Monmouth

<paa> ya/ph



2 Notice of Adoption

DEPT OF

JUL 19 2006

LAND CONSERVATION AND DEVELOPMENT

THIS FORM **MUST BE MAILED** TO DLCD **WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION** PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

For DLCD Use Only

Jurisdiction: City of Monmouth Local file number: ZC-05-02
Date of Adoption: July 12, 2006 Date Mailed: July 18, 2006
Date original Notice of Proposed Amendment was mailed to DLCD: Feb. 3, 2005

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Amendments to plan and zoning maps for two medium-density residential lots (approximately 0.39 acres) to Commercial Highway for development of a Walgreens pharmacy + drug store.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Same. City's August 2, 2005 decision was remanded by LUBA due to procedural error affecting one petitioner. City has adopted a slightly revised set of findings on remand.

Plan Map Changed from: Residential to: Commercial
Zone Map Changed from: RM to: CH
Location: 99W + Main Street Acres Involved: 0.39
Specify Density: Previous: 12 du/acre New: N/A
Applicable Statewide Planning Goals: 9, 10, 12
Was and Exception Adopted? YES NO

DLCD File No.: 005-05

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

- Forty-five (45) days prior to first evidentiary hearing? Yes No
If no, do the statewide planning goals apply? Yes No
If no, did Emergency Circumstances require immediate adoption? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts:

ODOT

Local Contact: Jeff White Phone: (503) 751-0147 Extension: _____
Address: 151 W. Main Street City: Monmouth
Zip Code + 4: 97361 Email Address: _____

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to maruulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

CITY OF MONMOUTH, COUNTY OF POLK
STATE OF OREGON

An Ordinance changing the zoning and)
comprehensive plan designations of a)
parcel of real property owned by Darrell)
Brandt; zone change and plan amendment)
ZC 05-2, repealing Ordinance 1217, and)
declaring an emergency.)
)

ORDINANCE NO. 1233

WHEREAS, on August 2, 2005, the Monmouth City Council adopted Ordinance No. 1217, approving the application of Benson Sainsbury in city file No. ZC 05-2, and amending the comprehensive plan and zoning map designations for two tax lots described on the attached Exhibit A (the "Property") from Mixed-Density Residential (RM) to Commercial Highway (CH); and

WHEREAS, the City Council's final decision was appealed to the Land Use Board of Appeals (LUBA) by several opponents of the project; and

WHEREAS, on April 24, 2006, LUBA issued its Final Opinion and Order remanding the decision to the City for the limited purpose of allowing petitioner Jason Brown to submit comments on the applicant's Traffic Impact Analysis (TIA); and

WHEREAS, after appropriate notice from the city, written comments on the TIA were submitted by Jason Brown on May 26, 2006, and the applicant submitted written responses to those comments on June 2, 2006; and

WHEREAS, on June 6, 2006, the City Council held a duly noticed public meeting to consider the comments and responses regarding the TIA, the City Council hereby adopts the following findings of fact and conclusions of law:

FINDINGS AND CONCLUSIONS

A. GENERAL INFORMATION

1. **Case Number:** ZC 05-2
2. **Applicant:** Benson Sainsbury
556 S. Fair Oaks Ave. #416
Pasadena, CA 91105

3. **Property Owner:** Darrell Brandt
13380 Monmouth Highway
Monmouth, OR 97361
Tax Lots #2300 and 2400
4. **Location:** Northeast corner of Main Street and Highway 99,
Monmouth, Oregon.
5. **Addresses:** 688 E. Main, 698 E. Main.
6. **Adoption and Incorporation by Reference of Prior Record**

In addition to the written materials submitted by Jason Brown and the applicant in the remand proceedings, the City Council hereby adopts and incorporates by reference the entire record of proceedings in ZC 05-2 leading to the adoption of Ordinance No. 1217, as transmitted to LUBA in LUBA No. 2005-123. If the City Council's decision on remand is appealed to LUBA, the City designates the record in LUBA No. 2005-123 as being included in the record for this decision. Although the City Council in this decision is re-adopting its previous findings in Ordinance No. 1217, and is also incorporating the entire record from that proceeding, the issues being considered by the City Council in adopting these findings on remand are very limited, as stated immediately below in Section A.7.

7. Issues Before the City Council on Remand

Under LUBA's Final Opinion and Order dated April 24, 2006, the remand proceeding before the City Council is limited to consideration of Jason Brown's response to the applicant's TIA, and rebuttal by the applicant. Therefore, the only relevant issues in this proceeding, and the only issues that may be raised on any appeal to LUBA of this decision, are issues raised by Jason Brown regarding the validity of the TIA, which issues are addressed in findings adopted by the City Council in Section D below.

8. Procedural History

An application was submitted to the City on March 2, 2005 requesting an amendment of the City Comprehensive Plan (Plan) and a change in the zoning (together, the Amendment) for tax lots #2300 and 2400. The purpose of the application was to ensure that there was sufficient property available in combination with Tax Lots 1900, 2000, 2100 and 2200 to allow construction of a Walgreens pharmacy and a Dutch Bros. coffee shop. Tax lots 1900, 2000, 2100 and 2200 are presently zoned to allow such uses outright.

On March 17, 2005 notice was provided, according to the provisions in the MZDO, to adjacent property owners of a hearing before the Commission for a hearing to be held on April 6, 2005. Notice was provided, according to the City's notice provisions, to adjacent property owners for a hearing to be held on May 5, 2005 on April 21, 2005. Finally, at the hearing on May 5 the Council received testimony from the Applicant and from the interested public. At that time, they closed the record for all issues except transportation. The Council continued the public hearing until June 7, 2005 and at that time took additional testimony on the effect the Amendment would likely have on transportation and traffic movement in the area.

At the June 7, 2005 public hearing, the Applicant and project opponents requested that the record be held open to allow additional evidence to be provided. The record was held open until June 14, 2005 for all parties to provide new evidence, June 21, 2005 for all parties to respond to new evidence with argument and evidence and until June 28, 2005 for the Applicant's final written argument.

The City Council adopted a final decision on August 2, 2005 approving the application. That decision was appealed to LUBA, and on April 24, 2006 LUBA issued a Final Opinion and Order affirming the majority of the decision; however, LUBA concluded that the City erred by failing to provide petitioner Jason Brown with a copy of the TIA for his review and comment. Accordingly, LUBA remanded the decision for the limited purpose of allowing Mr. Brown to review and comment on the TIA.

On May 5, 2006, the City provided written notice to Mr. Brown that, pursuant to LUBA's decision, the Monmouth City Council was opening the written record of proceedings in City Case No. ZC 05-2 until May 26, 2006, for the purpose of allowing Mr. Brown, and/or any consultant on his behalf, to submit written comments and responses to the TIA. Based on the limited scope of the remand order from LUBA, the City Council concluded that a public hearing was not required. The City Council allowed the applicant until June 2, 2006 to provide written comments and

argument in rebuttal to Mr. Brown's submittals. The City Council reviewed the written submittals and deliberated to a decision at its June 6, 2006 meeting.

9. Nature of the Application

The Applicant requested that the Plan designation be changed from residential to commercial and that the zoning designation map be changed from residential medium density (RM) to commercial highway (CH).

The requested Plan amendment and zone change is necessary to allow consolidation of sufficient land to support construction of a Walgreens pharmacy and Dutch Bros. coffee shop at the northwest corner of Pacific Ave. (Highway 99) and Main St. (Highway 51) in Monmouth. The proposed development will occur on a total of six parcels (Tax Lots 1900 through and including 2400). However, four of the parcels are already zoned CH which allows the proposed uses outright. See Monmouth Zoning and Development Ordinance (MZDO) at Section 31.010N. The total development will require about 1.43 acres.

10. Site Description

The two lots subject to the request for a Plan amendment and zone change presently have one house that has been vacant for some time. The adjacent lots already zoned appropriately for construction of the pharmacy and coffee shop are presently vacant. These properties were formerly a gas station that was demolished in the 1980s. After demolition, the property underwent environmental remediation and has been vacant since that time. Although several applications to develop the site have been submitted to the City in the past, no viable commercial development has come forward. The last application for development on the site was withdrawn in 2000.

11. Adjacent Zoning

The zoning on adjacent properties is CH to the north along Oregon Highway 99W, and also to the south and west where commercial establishments are already present. This corner of the intersection of Highway 99 and Highway 51 is the only vacant corner. Two gas stations and a Burgerville restaurant are located on the other corners of the intersection. The eastern portion of the site, and the lots considered for a zone change, is RM with a single-family home on one lot and no building on the other. The northeast corner of the block in question (bounded by Main Street, High Street, Jackson Street and Pacific Avenue (Highway 99W) contain lots zoned low-density residential (RL) also with single-family homes.

12. Approval Criteria for Plan Amendment and Zone Changes:

As explained in the findings set forth below, the Amendment is in compliance with the (1) applicable provisions of the Monmouth Zoning and Development Ordinance (MZDO), (2) the applicable provisions and Policies of the City Plan, and (3) the applicable Statewide Planning Goals.

B. COMPLIANCE WITH APPLICABLE CRITERIA

1. Compliance with Applicable Plan Policies and Goals. Although the Plan policies and goals are not intended as approval criteria but, instead, as policy statements, caution requires that we address them as criteria. In doing so, an admission is not intended.

a. Plan Economic Goals.

1) "To maintain existing businesses and encourage a variety of new business activities to locate in the City."

Approving the Amendment will meet this economic goal because it encourages development of two (2) new businesses. The Amendment will provide sufficient land for the two (2) proposed retail uses, Walgreens and a Dutch Bros. coffee shop. Without the amendment, sufficient acreage will not be available to accommodate Walgreens and associated parking. Dutch Bros. will benefit substantially by locating next to Walgreens since customers shopping at Walgreens will also patronize the coffee shop.

Project opponents suggest that the Council accept their definition of "variety" within this context. See letter received June 14, 2005 from Jack Sloan. However, the Council finds that the suggested definition of "variety" is unreasonable. The Council agrees with the applicant that, for example, the opponents' definition would result in a community with only one retail opportunity for any given product. According to the opponent's definition, "variety" means "something new and different." Under this definition, the City's retail commercial community would include one hardware store, one lamp store, one antique shop, and one grocery store, etc. The City would have to discourage anyone seeking to compete with any existing store because it would not respond to the opponents' definition of "variety." As shown by the Applicant's testimony, the City downtown area has little overlap with the product line and services offered by Walgreens. The Council has found that the presence of Walgreens will stimulate competition with respect to retail merchandise. The Council also finds that such competition always benefits the community and neighbors by helping to ensure lower, more competitive prices and better, more accessible services.

2) "To increase the short and long term stability of the local economy."

The Amendment will allow two (2) new businesses to locate in the City. Credible substantial testimony provided by the Applicant demonstrated that Walgreens will contribute to the short and long term stability of the local economy by increasing the property tax base and creating 30 to 35 new jobs. The Council anticipates that a substantial amount of the salaries and benefits resulting from those jobs will be spent in the City because the jobs are expected to be held by City residents or residents from the immediate area. The same is true for the salaries paid to the Dutch Bros. employees. Other customers shopping in the City or presently going outside the City to shop are expected to patronize both businesses. These customers will also generate business for other local businesses. As explained in the Plan (page 64), the City recognizes that the availability of products and the ease of transportation sets buying and shopping patterns. The City recognizes that many citizens of Monmouth shop elsewhere. This zone change will help change that pattern.

The Applicant provided credible and substantial evidence of Walgreens' history of successful store sites. According to evidence in the record, Walgreens has had only 2 of over 3,000 new stores close during the last 10 years. This testimony indicates that Walgreens is committed to and succeeds in the vast majority of markets it enters. This record of success also demonstrates its ability to identify a public need for its services in the communities it enters.

Evidence provided by Walgreens indicates that it recognizes that a need for its services and products is unaddressed in the City. Otherwise, Walgreens would not invest in the land and the construction necessary to open this store. If the citizens' need for retail goods and services are already being met, then Walgreens would not enter this market. However, the population of Monmouth, Western Oregon College and the surrounding area has grown. Unrefuted evidence from the Applicant shows that the City's population, like the general population, has also aged, which means a greater need for a drug store and pharmacy.

3) "To foster commercial and/or industrial activities to meet the expressed needs of the residences."

The Amendment will allow Walgreens and Dutch Bros. to join the City's business community. As testified to by the Applicant, the presence of Walgreens will increase the competitive retail environment in Monmouth which will benefit the City through lower prices and more services.

Walgreens' representatives testified to a need in the City for its goods and services and identified this site as a viable location for one of its stores. The Council accepts the Applicant's testimony that otherwise Walgreens would not locate within the City. The Applicant testified and the Council agrees that for the store to be successful, it must

fulfill a need for the local citizens and others. Walgreens record of successful new stores demonstrates its ability to identify areas with a need for its goods and services.

- 4) **"To increase and broaden employment opportunities for area residents and stimulate growth of retail and service-related activities."**

The Applicant has provided credible testimony that has not been refuted, that Walgreens will create 30 to 35 new jobs and that Dutch Bros. will also create several new jobs. Construction activities associated with the development will provide short term employment, some of which will be met by local small businesses and contractors.

b. Plan Economic Policies

- 1) **"The City shall create a favorable climate to attract new commercial uses that will benefit the community."**

The Applicant testified and the Council agrees that the Amendment will create a favorable climate for new businesses. It will allow two new businesses to be established. Dutch Bros. is a small business and establishment of such a business is consistent with the City's economic policy (see immediately below) to promote the recruitment of new commercial small business activity.

- 2) **"The City shall promote the retention and expansion of existing business activity while promoting the recruitment of new commercial small businesses"**

The Applicant has provided credible substantive evidence that Walgreens does not draw new consumers to an area in which a store is present. As is explained in the record, Walgreens draws its customers from a one (1) to two (2) mile radius around its stores. Testimony in the record, that remains unrefuted, indicates that about 90% of its customers are already shopping in the area or are passing by. Further, Nancy Ricchio, Walgreens Real Estate Manager, testified in writing that except for one small market, she saw no stores in Monmouth's downtown that offered products similar to Walgreens' product line. Based on this testimony, the City Council finds that existing small businesses will not be harmed by approval of the Amendment. To the contrary, by approving the Amendment, the Council will allow a new small business to be established.

- 3) **"The City shall reduce the community tax burden by fostering diversification and broadening the tax base."**

The introduction of the two new businesses with more than 30 to 35 new jobs will satisfy this policy by expanding the tax base both at the employee and employer levels.

c. Housing Goals

- 1) **"To meet housing needs of the citizens within the planning area."**

The record shows that the Amendment will remove a small area of RM from the City's inventory. The City's 2001 Buildable Lands Inventory (BLI) shows an excess of residential land available to meet the identified need for housing. The Applicant offers the City's decision on the Ballard zone change (ZC 04-4) in 2005 to show that it added 1.44 acres of RM to the City's BLI. Given that increase in the RM inventory that resulted from that approval, this request will still result in about 1.05 more acres of RM than was identified in the 2001 BLI. Additional findings relative to housing is presented under the findings for Statewide Planning Goal 10.

d. Housing Policies

- 1) **"The City shall continue to provide an adequate mix of housing types in residential areas."**

As shown in the record, the 2001 BLI recognizes that the housing mix needs to be modified. The Amendment does not change or otherwise affect that need. The Amendment will not prevent the City from ensuring that an adequate housing mix is available.

e. Transportation Policies

1) The Council has adopted in the Plan several policies relating to roads and streets in the transportation element of the Plan. The following policies have been established in the transportation element:

- New routes shall avoid existing houses and structures unless no other feasible alternative exists.
- New routes are to follow, where possible, existing property lines.
- New streets and roads will consider foundation soil and address required construction criteria for poor soil areas.

- Cul-de-sacs shall be discouraged.
- No building shall be located or constructed without prior Council approval in such a manner as to prevent the natural extension of streets.
- A future plan shall divert arterial through traffic from the central downtown area; particularly, heavy equipment, freight hauling, loud trucks and farm machinery.
- City shall work with the State Highway Division to eliminate oversized vehicle parking on Highway 99W.
- The City shall, in cooperation with the State Highway Division, attempt to provide off-street parking for oversized vehicles.

The above policies established by the Plan's Transportation Element are not applicable to the requested Amendment.

f. Other Plan Goals and Policies

Goals and policies in the urbanization, agricultural, parks, air, water and land resource quality, natural hazards, public facility and energy conservation elements of the Plan are not relevant to this decision.

2. Compliance with Applicable Provisions of the City's Zoning and Development Ordinance (MZDO)

At least one of the following criteria in the MZDO at Subchapter 12.025 (A)-(C) must be met to approve a zone change.

- a. "The zoning for the land on which the zone change is initiated is erroneous and the zone change would correct the error."**

The Plan (at page 64) notes that the commercial highway district extends along Highway 99 (Pacific Highway) from Madrona to East Church Streets. Over time this area has gone from residential to CH not just in terms of assigned zoning but in the actual use of the land.

As originally zoned, the commercial properties were left too shallow to accommodate retail outlets. By increasing the depth of the land designated CH that fronts Highway 99, the City will correct that error and ensure that land is sufficiently sized to accommodate retail uses.

- b. **"Conditions in the neighborhoods surrounding the land for which the zone change is initiated changed to such a degree that the zoning is no longer appropriate, and the zone change would conform to the new conditions of the neighborhood."**

The neighborhood and the City's needs have changed since the site was zoned initially. This area and the City generally have changed since this area was zoned initially. The property presently zoned RM has not been used for that purpose for years. The lack of use shows that the viability of these lots for residential use decreased. The houses on that property are presently vacant. In the past, they have been used for rental. The traffic and noise generated by Highway 99 increased making the areas closer to Highway 99 less attractive as residential property without the type of noise buffer that Walgreens can provide. There will be a greater economic benefit to the City by changing the zoning from RM to CH, because the property is and will not be used to its full extent under the current designation.

- c. **"There's a public need for land use of the kind for which the zone change is initiated and that public need can be best met by the zone change."**

The record demonstrates that since the 1970's, the City's population has increased from about 5,000 to 8,700. Such a growth in population also increases the need for retail outlets, including medical and health related retail.

As the need for medical related goods and services increases, Walgreens' ability to provide customers nationwide access to prescriptions becomes an increasingly important service unavailable from Bi-Mart or other local stores. About a fourth of Walgreens stores are open 24 hours a day. This increases everyone's access to medical and health care products even if they are not regular customers. The Monmouth store is intended to serve Monmouth and its neighborhoods and the immediate vicinity and meets a need for such services identified by the Applicant. Further, the record indicates that a public need for CH land is needed that will be met by the Amendment. The City recognized a need for the uses in the CH designation when it created that district. The Amendment is necessary to meet that identified need and is supported by the 25 year failure to site a commercial use on the site. The Amendment is necessary to meet the need for protecting and providing CH zoning and to serve motorists and others through exposure and access to Highway 99.

3. Compliance with Statewide Planning Goals

a. Goal 1 - Citizen Involvement

Goal 1 requires local government to develop a citizen involvement program to ensure

the opportunity for citizens to be involved in all phases of the planning process. Because Goal 1 establishes a requirement for local government to develop a program, it is not directly applicable to this decision. However, the City's citizen involvement plan has been adopted by the City and acknowledged by the Land Conservation and Development Commission. The hearings and City evaluation process for this case has been governed by that acknowledged program. For this particular request, public hearings have been held by the Commission and the Council. The record has been held open for additional testimony on traffic and transportation issues and then held open again for general written testimony. The Council finds that Goal 1 has been met generally by the City and specifically in this instance.

b. Goal 2 - Land Use Planning

Goal 2 requires the establishment of the land use planning and policy framework as a basis for all decisions and actions. Part 2 of Goal 2 relates to the exception process that must be followed should an applicant or local jurisdiction request an exception to any particular Statewide Planning Goal.

The first part of Goal 2 has been met by acknowledgement of the Plan by the state. Consequently, Goal 2 is not directly applicable to this land use decision. With respect to part 2, no exception has been requested and, therefore, it is not applicable.

c. Goal 3 – Agricultural Lands

The area at issue is located within the City of Monmouth and does not involve cultural lands. Consequently, Goal 3 is not applicable.

d. Goal 4 – Forest Lands

The area at issue is within the City limits of the City of Monmouth and Goal 4 is not applicable.

e. Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources

No Goal 5 natural resources (wetlands, riparian areas, wildlife habitat, etc.) have been identified at the affected parcels. In addition, the amendment does not propose that any natural resources be put onto an inventory of significant resources.

Project opponents have contended that Goal 5 will be violated because properties subject to the amendment are listed on the City's Goal 5 inventory of historic sites. However, the City has adopted Article 60 to the MZDO which specifically addresses and establishes a process by which such sites are evaluated for inclusion in and

removal from the inventory. In addition, no inventoried property can be removed, modified or razed without approval from the appropriate City authority. This requirement ensures that the provisions of Goal 5 are met with respect to historic properties. The Council finds that Goal 5 will not be violated by approving the requested Amendment.

f. Goal 6 – Air, Water and Land Resources Quality

The Applicant will comply with all state and federal environmental laws and regulations. Therefore, Goal 6 will be met.

g. Goal 7 – Area Subject to Natural Disasters and Hazards

No such areas have been identified on the site. Portions of the site have already been developed and are identified as redevelopment areas. The areas subject to the Amendment have been developed for residential use in the past. Goal 7 is not applicable.

h. Goal 8 – Recreational Needs

The area is not identified as a recreational resource by the City. Consequently, this Goal is not applicable.

i. Goal 9 – Economic Development

Goal 9 requires that local government provide adequate opportunities for a variety of economic activities vital to the health, welfare and prosperity of the citizens of Oregon. The Amendment proposes to bring two (2) new employers to the City. The Amendment would allow two (2) new businesses to be sited in the City. As a result, 35-40 new jobs would be created and properties, the area zoned CH and RM are presently vacant and under utilized will become economically productive. There is a vacant house on one lot that is zoned RM. That home will be removed as a result of the requested rezone. The rezone will result in the construction of a 377 square foot Dutch Bros. coffee shop and a 14,520 square foot Walgreens. The resulting demolition and construction will also result in a number of temporary construction jobs that will benefit the City. The Council finds that the Amendment is consistent with Goal 9.

j. Goal 10 – Housing

The City's BLI recognizes that additional RM zoning is needed. However, the City has a surplus of land in the residential plan designation from which the RM lands can come. The change in zoning will not substantially decrease the stock of residential

lands.

The City's BLI for residential properties was completed in January 2001. The 2001 BLI notes that 8.85 acres of land (vacant/redevelopable) are available for the CH zone. A total of 31.09 acres of commercial land are available (Table 2, page 6, 2001 BLI). However, the 2001 BLI did not evaluate the future need for commercial or industrial land. Under the heading "Future Commercial and Industrial Land Needs" the BLI notes that "MWVCOG [Mid-Willamette Valley Council of Governments] is in the process of preparing an 'economic opportunities analysis' for the City ... [d]ata from this report will be used ... to determine future commercial and industrial land needs." (See page 18, 2001 BLI.)

The 2001 BLI, Table 18 at page 17 shows that the City will need about 276.43 acres of residentially-zoned land by 2020. However, the BLI also notes that "approximately 493 acres are available for residential development within the urban area." Consequently, the City has a surplus of about 217 acres of residentially-zoned land within its urban area. The Amendment will remove only 0.39 acres of RM, which will not affect the surplus to any real degree. The BLI also notes that within the residential land category, reclassification is needed, for example, to meet the needs of manufactured homes.

The Amendment will remove about 0.39 acres of land from the RM zoning designation. However, given a recent decision by Council to rezone commercial land to RM, the Amendment will not affect the supply of RM zoned land in the City. In April 2005, the City Council approved a request from Susan Ballard (Zone Change and Plan Amendment ZC 04-4) that converted at least 1.4 acres of commercial retail land to RM. An undetermined amount of commercial office land was also rezoned to RM in that decision. The purpose of that rezone request was to make the entire 3.35 acre parcel RM. At the time of the April 2005 action, the property contained RM, RO and 1.44 acres of CR. The decision added 1.44 more acres of RM to the BLI than was identified in the 2001 BLI.

The present request will convert only 0.39 acres of RM to CH. This leaves about 1.05 more acres of RM in the inventory than was noted in the 2001 BLI. As a result, the Amendment has no effect on the inventory of RM because: (1) the City has a surplus of residential land, and (2) there will still be 1.05 acres more RM than identified in the 2001 BLI.

k. Goal 11 – Public Facilities and Services

Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The City of Monmouth has developed such a plan. The

Amendment relates to properties served with all the appropriate stormwater, electric, police and related services and utilities. The Amendment will result in commercial development for which the City's services will be sufficient. The site is located within the City limits and is served by the water and sewage systems.

1. Goal 12 – Transportation

1) Generally. The Applicant and several project opponents provided written and verbal testimony on transportation and traffic related issues. The Applicant's written testimony was provided by Kittelson & Associates, Inc. (Kittelson). Kittelson is a well recognized planning and engineering firm specializing in transportation planning and traffic engineering. Kittelson's written analysis and testimony was prepared and submitted by Julia Kuhn, P.E., Principal Engineer and Judith Gray, Senior Transportation Planner. Kittelson's testimony included: a traffic impact analysis dated January 21, 2005 and technical memoranda dated February 22, May 7, June 14 and June 21, 2005.

The Council accepts and finds Kittelson's testimony to be expert testimony in the field of transportation planning and traffic engineering and impacts and to be credible substantial evidence regarding the criteria applicable to compliance with Statewide Planning Goal 12, Oregon's Transportation Planning Rule (TPR) and other transportation and traffic related laws, ordinances, rules and issues. The record shows that Kittelson's testimony is based on the relevant and appropriate standards and criteria used in this field and in Oregon.

The amendment before the Council is a quasi-judicial plan amendment and zone change involving two tax lots in Monmouth, Oregon. As such, Council's evaluation and analysis is site specific and targeted to the impacts likely or expected to occur in this particular instance. Testimony from project opponents has been presented to the Council relating to a development project in Austin, Texas. That material was prepared by a statistician and no evidence has been presented to demonstrate that the author was or is an engineer, in particular, an engineer specializing in traffic and transportation issues. The report on the Austin, Texas development apparently was submitted to cast doubt on Kittelson's site specific work. However, the Austin, Texas report is not relevant to the Council's evaluation, does not relate to the City's code or Oregon's laws or administrative rules governing traffic and transportation.

The Austin, Texas report was addressed by Kittelson in the June 14, 2005 technical memorandum. The Council accepts and adopts as part of these findings Kittelson's analysis on pages 2 and 3 of that memorandum in response to the Austin, Texas report. Further, the Council finds that the Austin, Texas report is not relevant to the Council's site specific analysis in the quasi-judicial hearing process it is currently

engaged in.

Kittelson, the Applicant's transportation engineers, conducted an analysis of the impacts on the transportation system associated with the Amendment. That analysis is presented in the record as the Traffic Impact Analysis (TIA) dated January 21, 2005 (*Traffic Impact Analysis for the Proposed Zone Change and Walgreens Development in Monmouth, Oregon*).

To assess the potential traffic impacts of the proposed zone change, Kittelson analyzed the reasonable worst-case development scenarios for the site under both the existing and proposed zoning. Kittelson's analysis included the estimated conditions for the year 2020, the planning horizon for the City's TSP. Kittelson used the 2020 background conditions analysis to identify the impacts of the proposed zone change. The estimated site-generated trips associated with the proposed zone change were assigned to the transportation system for the 2020 total traffic conditions analysis.

Trip generation for the Amendment was estimated using a reasonable maximum development under both the existing RM and the proposed CH zoning districts. Typical potential developments for the existing residential zoning types include condominiums, apartments, townhouses, and duplexes. Given the maximum allowable densities, eight dwelling units could be developed on the site. The CH zone allows numerous retail and office uses, as well as residential. Kittelson worked with City staff to determine that 25 percent maximum lot coverage is a reasonable assumption for future commercial development in this location. Given this scale of likely development, a pharmacy with drive-through was identified as among the higher trip generating uses that could be developed on the site. (The record also shows that the drive-through capacity for a Walgreens is significantly less than a similar drive-through for a fast food restaurant.)

Kittelson concluded that the proposed zone change could increase daily trips by 240. About 30 of those trips may occur during a typical weekday p.m. peak hour.

Kittelson's analysis determined that the OR 99W/OR 51 intersection will operate with a volume-to-capacity (v/c) ratio of 0.87 during the weekday p.m. peak hour without the proposed zone change. With the proposed zone change, the v/c ratio would remain at 0.87. Although a v/c ratio of 0.87 exceeds ODOT's year 2020 mobility standards for this intersection, the zone change does not reflect any further degradation of anticipated intersection operations, thereby meeting the Oregon Highway Plan Policy 1F.6.

The other intersections analyzed by Kittelson are expected to operate at acceptable levels under the 2020 weekday p.m. peak hour conditions with the addition of traffic from the proposed zone change.

The TPR establishes the following tests to determine whether a Plan amendment significantly affects a transportation facility:

- a) Change the functional classification of an existing or planned transportation facility;
- b) Change standards implementing a functional classification system;
- c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan;
 - Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Based on the evidence in the record, the Council finds that no changes in functional classification or in standards are proposed. The Council further finds based on Kittelson's testimony that the types and levels of travel and access are consistent with the arterial classifications of OR 99W and OR 51 and that the OR 99W/OR 51 intersection will not meet ODOT's mobility standards under the existing or proposed zoning but that no change in the operations is anticipated as part of the Amendment. Further, the Council finds that other intersections analyzed by Kittelson meet the applicable standards, and, therefore, the Amendment will not significantly affect the transportation system.

Kittelson's analysis shows that the proposed zone change will not result in any degradation of the anticipated performance of the transportation system. The OR 99W/OR 51 intersection is expected to operate with a v/c ratio of 0.87 regardless of whether the zone change is approved.

The Council finds that no substantial evidence with greater evidentiary weight has been provided that overcomes the evidence provided by the Applicant in relation to the Amendment's ability to comply with Goal 12 or the TPR.

2) Goal 12: Goal 12 requires that an amendment to an

acknowledged comprehensive plan must result in a safe and efficient transportation system. The evidence presented before the Council, in particular, the credible and substantial evidence and testimony provided by Kittelson along with the conditions of approval demonstrate that the effected transportation facilities will operate at the appropriate standards. The Council relies on and adopts as part of its findings the Kittelson testimony demonstrating compliance with the requirements of the TPR as part of its findings.

3) Transportation Planning Rule: The TPR as set forth in OAR 660-012-0060 implements Goal 12. The TPR requires that any amendment to comprehensive plan or land use regulations that "significantly affect a transportation facility" must assure that the allowed land uses "are consistent with the identified function, capacity and performance standards of the facility." Based on the testimony from Kittelson, the Council finds that the Amendment will comply with the TPR.

4) Other Traffic Related Issues: Project opponents including Daniel Atchison, Janine Rice, and others raised numerous traffic and transportation related issues including questions relating to Kittelson's trip generation data, crash analysis, safety, and increases in neighborhood traffic. Kittelson and the Applicant responded to the issues raised by project opponents and the Council accepts and adopts that testimony as credible substantial evidence to support its findings. The Council finds that adoption of the amendment will not jeopardize the City's safe and efficient transportation system nor will it lead to adverse additional traffic impacts with the neighborhood streets or increase the risk to safety at the intersection of Highway 99 and Highway 51 or on neighborhood streets. Further, the Council finds that the Applicant has modified the site plan to reduce the perception of adverse traffic impacts held by the neighbors by removing 4,000 square feet of retail and directing traffic away from the neighborhood streets using traffic control devices.

m. Goal 13 – Energy Conservation

The purpose of Goal 13 is to have local governments conserve energy. The location of the Walgreens store is within an area with a growing population. The City of Monmouth has grown by several thousand over the last number of years. Present population is approximately 8,000. Having a retail resource such as Walgreens in the City limits will allow shoppers an opportunity for a variety of goods available within the community hence, long trips outside the City of Monmouth will not be necessary and energy conservation will result. In addition, the site being considered for the Walgreens location is a redevelopment site whether for highway commercial or residential. Consequently, not as much energy will necessary to redevelop these areas as would be to develop a greenfield site.

n. Goal 14 – Urbanization

Goal 14 requires local governments to provide for an orderly and efficient transition from rural to urban land uses. The uses being proposed are going to be located within the City of Monmouth. They are urban uses and will have access to urban levels of services from the City. By ensuring that retail outlets such as Walgreens are constructed inside the City limits, the City is complying with the requirements of Goal 14.

o. Goal 15 – Willamette River Greenway

p. Goal 16 – Estuarine Resources

This Statewide Planning Goal is not applicable in the City of Monmouth.

q. Goal 17 - Coastal Shorelands

This Statewide Planning Goal is not applicable in the City of Monmouth.

r. Goal 18 – Beaches and Dunes

This Statewide Planning Goal is not applicable in the City of Monmouth.

s. Goal 19 – Ocean Resources

This Statewide Planning Goal is not applicable in the City of Monmouth.

The Council finds that approving the Amendment is consistent and compatible with all applicable Statewide Planning Goals.

C. OPPOSITION TESTIMONY

The interested public, and in particular, residents living in the neighborhood of the proposed Amendment provided testimony on a variety of issues. Some of those issues and concerns raised by the public have been addressed either under the Council's findings relative to compliance with the Plan policies, zone change criteria and Statewide Planning Goals. In addition, several other issues raised by opponents were not raised with sufficient specificity to warrant a response or were not relevant to the particular criteria applicable in this instance. The section below addresses certain concerns raised by the opposition and constitutes the Council's findings on these matters.

1. Neighborhood Property Values will be Effected

Several members of the public testified that property values would be affected. However, property values are not a relevant approval criteria established for the amendment being considered. In addition, statements that the proposed amendment would "affect property values" do not provide sufficient information to allow the City or the Applicant to prepare a response.

2. The Council Should Consider Environmental Factors

Among the environmental factors that appear to have been raised by a number of different parties are noise, drainage, lighting and commotion. Various persons commenting in opposition have expressed a concern that the noise will be too loud and disruptive of the neighborhood, particularly the noise coming from air conditioning. However, aside from that expression of concern about noise from the air conditioning, no substantive technical information has been provided. The Applicant, however, has addressed the noise issue. The Applicant has testified that an acoustic engineer had been hired to study the air conditioning units and determined that over 60% of the noise coming from the units can be blocked by sheltering the units with a four foot high wall. The Applicant estimated that the 90 decibels (dB) produced by the unit will be reduced by 60% by the screening wall. This reduces the noise to approximately 36 decibels. The Applicant's engineers estimated that the noise at the nearest neighbor's home, which is 65 feet away, would not exceed 29 additional decibels as a result of the air conditioning unit. A condition of approval has been included in the site design review for this project to control air conditioning noise to that level.

Neighbors have expressed unspecified concerns about the possibility that construction on this site will result in drainage problems on their own property. Such comments were received even from neighbors on Sacre Lane which is not adjacent to the development site. In his testimony of June 14, 2005 the Applicant provided engineering drawings demonstrating how the drainage coming from construction on this site would be conducted to avoid any flooding on neighbor's property. That material was provided as Exhibit C to that letter. In addition, the Applicant clarified at the July 5, 2005 hearing exactly where walls would have to be placed in order to avoid flooding or ponding the neighbors yards.

The various neighbors have raised the issue of lighting without any specific technical information being provided. It is simply a concern that lighting from the area will affect their residences. In testimony provided by the Applicant, it was noted that lighting at the parking areas and along the building will be located and constructed to avoid intruding on neighboring residential properties.

Commotion was an issue raised by at least one commenter. The word "commotion" was not defined in any greater detail. However, the Applicant has agreed to provide various buffer practices including a block wall and twice the vegetation required by the MZDO in an effort to prevent any such "commotion" from intruding upon the neighboring residences.

3. An Environmental Impact Study should be conducted to address various Issues including Noise, Lighting, Congestion and Traffic Impacts.

The concept of an Environmental Impact Statement (EIS) was not explained in any substantial detail. The Council notes that an EIS is not required as approval criteria with respect to the decision currently before it.

4. The Proposed Rezone will result in Development that will draw more Resources from the Community than will be Gained.

The statement regarding resulting development drawing more resources from the community is not raised with sufficient specificity to warrant a response. In addition, the Applicant has provided substantial evidence that approximately 30 to 35 jobs will be created adding to the local tax base and to the economic base of the community. No substantial evidence has been provided by a project opponent to off-set the applicant's substantial evidence on this particular topic.

5. The Development resulting from the Requested Amendment will have a Negative Effect on Local Businesses including Downtown Businesses.

Evidence provided by the Applicant indicates that they recognize no substantial competition between the Walgreens is likely to be proposed as a result of the Amendment. Aside from unsubstantiated statements to the contrary, no substantive evidence has been provided that contradicts that information. In addition, testimony was provided by the Applicant in relation to likely competition between Bi-Mart and other stores. There is no supporting evidence that refutes that testimony.

6. The Project will Effect Historic Properties Adversely.

The issue of the City's response to historic properties is provided under its finding of compliance with respect to Goal 5. In addition, the Applicant in his June 14 written materials, notes that once the fact that one of the properties subject to the zone change was considered a historic property was determined then relocating the house to another property to avoid its being destroyed was identified as the appropriate solution. The Applicant testified that a party is currently involved in the City's permitting process to ensure that the home can be relocated.

7. Air Pollution and Decrease in Ground Water.

No substantial testimony was received with respect to these particular issues. They were raised in passing without sufficient information to warrant a response. However, the Council notes that the project will be held to an all applicable and appropriate air and water pollution control regulation whether it is implemented by the state (the Department of Environmental Quality) or locally. In addition, building permits will be required before any construction takes place on the site. Stormwater and other related issues will be addressed at that time.

8. Future Planning.

One comment was made that for the purposes of future planning, an ad hoc committee to assist the City in its future planning should be established. Future planning and the establishment of such a committee is not relevant to the approval criteria being considered as part of the Council's evaluation of the Amendment.

9. The City's Process Violates Goal 1, Notice to Citizens has been Flawed and Citizen Participation has not been Adequate.

As was shown in the Applicant's written testimony and discussed by the Applicant's attorney at the June 7, 2005 hearing, the hearing before the Council is de novo and any issues with respect to flawed notice had been cured at that hearing. In addition, as is explained earlier in the Council's findings, hearings were held before the Planning Commission on April 6. Hearings also were held before the City Council on May 7th and June 7th and additional written testimony was allowed according to an approved schedule up until June 28, 2005. The process conducted under the City's acknowledged Goal 1 program has provided substantial opportunities for public participation which, demonstrated by the depth of the record and the comments provided by the public, the various neighbors and others have taken full advantage of.

10. The Requested Amendment has had Overwhelming Opposition.

While the Council recognizes that many parties have expressed some opposition to the proposed amendment, one commenter actually noted that only a small percentage of the total population was in opposition to the project. Further, and more importantly, the tone and the amount of opposition is not relevant criterion for the City's decision.

11. Transportation, Project Need, and Changes and Conditions.

The above issues were raised by a number of persons commenting in opposition and have been addressed in relevant portions of these findings.

12. The Development to be Proposed as a Result of the Rezone will be out of Character with the Neighborhood.

Several property owners in the immediate area of the affected parcels, testified that a two-story building would be out of character with the particular neighborhood. The Applicant, in response, notes that the building expected to be constructed is only to be a one-story building with a four foot wall that would hide and serve as a noise mitigation device for the air conditioning unit. Consequently, the testimony relating to the size of the project by project opponents is inaccurate. In addition, the Applicant has noted that the style of the building is intended to replicate architecture in other areas of the City including and in particular at the local university. Also see Findings and Conclusions for SP 05-4.

D. FINDINGS REGARDING COMMENTS ON THE TIA

Pursuant to LUBA's remand, the City Council opened the written record of proceedings to allow petitioner Jason Brown to submit comments on the applicant's January 21, 2005 TIA. Mr. Brown submitted a letter dated May 26, 2006 with an attached letter from traffic engineer Thomas Bauer of PTV America dated May 25, 2006. Attached to the letter from Thomas Bauer are seven pages of materials, including trip counts for the Dutch Bros. site dated May 17 and 18, 2006, a summary of those trip counts, and several "bullet point" conclusions based on the trip counts.

In response to Mr. Brown's materials, the applicant submitted a letter from Roger Alfred of Perkins Coie dated June 2, 2006 with an attached letter from Dee Jones of ODOT dated April 5, 2006 and a copy of email correspondence between Roger Alfred of Perkins Coie and Mr. Brown's traffic engineer Thomas Bauer of PTV America. The applicant also submitted a memorandum from Judith Gray of Kittelson and Associates dated June 2, 2006, together with copies of two previous memoranda prepared by Kittelson in the prior proceedings dated June 14, 2005 and June 21, 2005, as well as copies of portions of the Oregon Highway Plan. The record in this matter also includes the original Kittelson TIA dated January 21, 2005.

1. Issues raised that are not related to the TIA or to traffic-related approval standards.

The scope of this remand proceeding is limited to consideration of Mr. Brown's comments on the TIA, based on LUBA's conclusion that he was improperly denied an opportunity to review that document in the prior proceeding. Therefore, the only applicable approval criteria for consideration on remand are those criteria addressed in the TIA related to transportation issues. In his correspondence dated May 26, 2006, Mr. Brown raises a number of arguments that are either beyond the scope of the remand proceeding or based on criteria that are not relevant to the City Council's

review. Specifically, the City Council finds that arguments related to Goal 9 and OAR 660-009-0015 are not properly before the city in this proceeding, because these issues are not related to the TIA, and could have been raised previously by Mr. Brown. In fact, LUBA expressly concluded that Mr. Brown waived this issue by failing to raise it in the initial proceedings; therefore, this is not an appropriate issue for consideration on remand. Even if this issue were properly before the City in this proceeding, the Goal 9 rule cited by Mr. Brown applies to map amendments affecting "in excess of two acres," and the map amendment at issue only involves 0.39 acres.

Mr. Brown also states that the intersection of OR 99W and OR 51 is critical for emergency services and security interests, citing ORS 35.385 to 35.415. However, these statutes apply to condemnation proceedings and are not relevant to any applicable approval standards. Also, to the extent these statutes are relevant, they have no bearing on the TIA and there is no reason these issues could not have been raised previously. Similarly, Mr. Brown raises issues related to the city's zone change criteria under ZDO 12.025, which are not relevant in this remand proceeding because those criteria are not implicated by the TIA, and the City's findings on those standards were reviewed and affirmed on appeal by LUBA.

Mr. Brown also contends that the TIA "omitted information from ODOT" regarding the crash history of the intersection. However, this issue was extensively addressed in the prior proceedings, as evidenced in the Kittelson memoranda dated June 14, 2005 and June 21, 2005. The Kittelson memorandum dated June 14, 2005 was provided at the close of the first seven-day "open record" period established by the City Council. All parties were then provided an additional seven days, until June 21, 2005, to submit responses to materials received on June 14, 2005. Mr. Brown has not alleged that he was denied an opportunity to respond to the safety-related information submitted by Kittelson on June 14, 2005, and LUBA did not remand the decision on this basis. The City Council finds that any arguments raised by Mr. Brown in this proceeding regarding safety issues are beyond the scope of LUBA's remand, because he had ample opportunity to respond to these issues previously, regardless of whether or not he was provided a copy of the TIA. In the event that these issues are not beyond the scope of the remand, the City Council also finds that Mr. Brown has not specifically identified any applicable approval criteria regarding safety that he believes are not satisfied by the application based on crash history, and has not identified any basis on which the City Council should adopt a different decision on remand.

The City Council adopts and incorporates by reference the evidence and conclusions in the Kittelson memoranda dated June 2, 2006, June 14, 2005 and June 21, 2005. The Kittelson materials explain the nature of the ODOT Safety Priority Index System (SPIS), and explain that the applicant is being required to construct improvements to

the intersection that will enhance operations and improve safety, including the provision of additional right-of-way in order to increase the turn radius, and also the addition of a center turn lane on OR 99W. The City Council finds that these improvements will increase safety at the OR 99W/OR 51 intersection above existing conditions, and that the map amendments are consistent with any and all applicable criteria related to safety.

2. Intersection Mobility Standards and the TPR

Mr. Brown contends that the plan and zoning map amendments violate the TPR because they will cause degradation to the OR 99W/ OR 51 intersection over the course of the applicable planning period. The essence of Mr. Brown's argument is that the map amendments, which affect only 0.39 acres of property, will result in an increase of the volume-to-capacity (v/c) ratio by three one-thousandths, from 0.868 to 0.871. However, as explained in the Kittelson memorandum dated June 2, 2006, to the extent that this constitutes a measurable increase for purposes of accepted traffic engineering principles (which only require measurement to two decimal places), any resulting increase would be so insignificant that it will be more than mitigated by the roadway system improvements being required of the applicant. The City Council adopts and incorporates by reference the Kittelson memorandum dated June 2, 2006, and also adopts a condition of approval requiring the applicant to provide the improvements stated in the Kittelson memorandum and the ODOT correspondence dated April 5, 2006.

The City Council concludes that the map amendments are consistent with the TPR because: (1) the applicable v/c ratio will remain at 0.87 with or without the amendments, a conclusion that has been reviewed and approved by ODOT; and/or (2) to the extent there is a measurable increase in the v/c ratio for purposes of the TPR, such an insignificant increase will be adequately mitigated by the required improvements, and therefore will not "significantly affect" the OR 99W/ OR 51 intersection. As explained in the Kittelson memorandum, a variance of three one-thousandths is so small that it "would be expected to occur due to daily fluctuation in traffic levels. Said another way, this microscopic level of change could not be measured in the field in a meaningful way." Based on this statistically insignificant increase and the substantial roadway system improvements being required of the applicant in conditions attached to this approval, Kittelson concludes that "the intersection improvements being constructed as part of this project will improve operations at the intersection and provide mitigation that will more than offset the microscopic change claimed in Mr. Brown's letter."

Mr. Brown further contends that the TIA failed to adequately assess the traffic impacts for a "reasonable worst-case development scenario" because it considered the

applicable trip estimates under the ITE manual for the proposed use, that is, a pharmacy with a drive-through, rather than for a potentially more intensive use, such as a fast food restaurant. Mr. Brown argues that Walgreens might at some point in the future decide to add an additional high-traffic use to the site that could result in more trips than were considered by the City Council in making its determination of compliance with the TPR. In order to remove any such concerns, the applicant has proposed a condition of approval specifically limiting the use of the site to the proposed drugstore/pharmacy with a drive-through, not to exceed 16,087 square feet in size, which is the size contemplated in the TIA for purposes of the trip estimates. This approach is specifically contemplated as a method for ensuring compliance with the TPR under OAR 660-012-0060(2)(a), and the City Council finds that it is appropriate to add this limitation as a condition of approval.

Mr. Brown asserts that the TIA's use of the ITE trip rates for "Pharmacy-Drugstore with Drive-Through Window" is not appropriate, due to allegedly small sample sizes and his belief that a drugstore is really a convenience store. These issues are addressed in the June 2, 2006 Kittelson memorandum, which is adopted and incorporated by reference by the City Council. The City Council finds that the TIA applies the appropriate land use designation under the ITE manual for the proposed use.

For the reasons stated in this Section D, and for the reasons stated in the prior Goal 12 findings adopted by the City Council in support of Ordinance 1217, set forth above in Section B.1.1, the City Council concludes that the proposed amendment of 0.39 acres from residential to commercial will not "significantly affect" the OR 99W/OR 51 intersection, and is consistent with the TPR. To the extent that there is any inconsistency between the findings adopted in this Section D and the Goal 12 findings set forth above in Section B.1.1, the findings in this Section D shall control.

3. Trip generation estimate for Dutch Bros. Coffee

Mr. Brown challenges the trip generation estimate applied in the TIA for the Dutch Bros. Coffee development, which is located on the northwestern portion of the site on property that was already zoned commercial, and is not the subject of the requested plan map amendment and zone change. Mr. Brown's arguments are based on trip counts undertaken at the Dutch Bros. site on May 17, 2006 and May 18, 2006 by opponents of the project. Although the trip counts were attached by Mr. Brown to the May 25, 2006 letter written by traffic engineer Thomas Bauer of PTV America, the applicant has submitted evidence indicating that the trip counts were not actually prepared by Mr. Bauer or by any other licensed traffic engineer, but were the result of car counting undertaken by the same individuals who are opposing the proposed development. The data provided by the opponents indicates over 100 a.m. peak hour

trips on the two dates and between 44 and 55 p.m. peak hour trips. These figures are significantly higher than the estimates in the Kittelson TIA, which were based on a trip generation study conducted by ODOT for similar uses on state highways.

First, with regard to the data provided by Mr. Brown regarding Dutch Bros. traffic, the City Council finds that Mr. Brown has not identified any applicable approval criterion that he believes has been violated as a result of this discrepancy. Although Mr. Brown asserts that the Kittelson TIA underestimated the number of Dutch Bros. trips by relying on the ODOT data, Mr. Brown does not explain why this results in an inconsistency with any applicable approval criterion, and the City Council concludes that these arguments can be rejected on this basis alone, without further analysis. In the absence of some explanation regarding why the variance in trip counts would require denial under some applicable criterion, the City Council has no basis on which to deny the application.

To the extent it could be found that Mr. Brown is implicitly alleging that the data collected by the opponents indicates that the application somehow violates the TPR, such an argument can also be rejected based on the fact that the Dutch Bros. site was already in a commercial zone, and was not the subject of review under the TPR. As explained in the June 2, 2006 Kittelson memorandum and the June 2, 2006 correspondence from Perkins Coie, the TPR applies only to the plan and zoning map amendments; that is, the two tax lots comprising the 0.39 acres in the southeastern portion of the subject property, and not to the Dutch Bros. location.

Finally, to the extent there is any relevance to the Dutch Bros. traffic counts provided by Mr. Brown, the City Council is afforded significant discretion regarding its consideration and weighing of evidence in the record. On one hand, the City Council is presented with evidence provided in a TIA prepared by licensed professional traffic engineers at Kittelson and Associates, which is based on an ODOT study of 11 similar sites on state highways. On the other hand, the City Council is presented with data collected through hand counts of cars entering and exiting at two different access points, undertaken by non-engineers who are also opponents of the project with a vested interest in the outcome. As explained in the Kittelson analysis, the counts provided by Mr. Brown are "highly unusual," and "if this were a relevant issue for the appeal, an independent traffic count by a licensed traffic engineer would be warranted, because the counts stated by Mr. Brown were not provided by a licensed engineer." Under these circumstances, the City Council accepts the evidence and analysis provided on this issue by Kittelson in the TIA and in the supplemental memorandum dated June 2, 2006. The City Council also disagrees with Mr. Brown's assertion that the alleged discrepancy in the traffic counts calls into question the Kittelson estimates for the Walgreens use, which were based on well-accepted data for drive-through drugstore/pharmacies under the ITE manual.

E. CONCLUSION

There is a public need for land use of the kind for which the zone change is initiated, commercial, and that public need can best be met by the requested zone change and comprehensive plan amendment. For the reasons explained above, the comments submitted by Mr. Brown responding to the applicant's TIA do not demonstrate any basis for denial of this application under any applicable approval criteria.

NOW THEREFORE, THE CITY OF MONMOUTH DOES ORDAIN AS FOLLOWS:

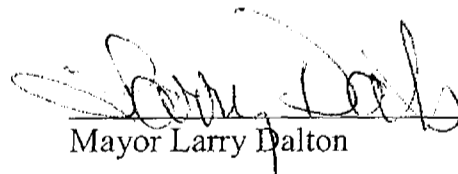
Section 1. The zoning and comprehensive plan designations of the Property are hereby changed to Commercial Highway, subject to the conditions of approval set forth in the attached Exhibit A.

Section 2. This Ordinance shall not become effective until the Owner signs and records, at Owner's expense, a waiver of all potential Measure 37 claims for the Property, and delivers the waiver to the City Recorder.

Section 3. Subject to the provisions of Section 2 above, in order to enable Owner to commence construction of the proposed development on the Property during the best "window of opportunity" for construction, an emergency is hereby declared and this Ordinance shall take effect upon its passage by the City Council and approval by the Mayor.

Section 4. Ordinance No. 1217, adopted by the City Council and approved by the Mayor on August 2, 2005, is hereby repealed.

Read for the first time:	June 6, 2006
Read for the second time:	July 11, 2006
Adopted by the City Council:	July 11, 2006
Approved by the Mayor:	July 11, 2006


Mayor Larry Dalton

ATTEST:

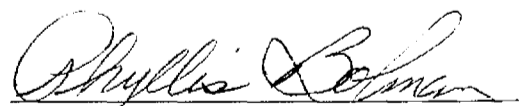

Phyllis Bolman, City Recorder

EXHIBIT A

**CONDITIONS OF APPROVAL
FOR ORDINANCE NO. 1233
ZC 05-02 REMAND / WALGREENS APPLICATION**

The City Council adopts the following conditions of approval as part of its decision in Ordinance No. _____, approving the application filed by Benson Sainsbury for plan and zoning map amendments affecting 0.39 acres of property for the construction of a Walgreens drugstore/pharmacy. These conditions require certain roadway system improvements designed to improve operations at the OR 99W/OR 51 intersection, and also create a use limitation on the subject property. These conditions are applied by the City in order to ensure compliance with the transportation planning rule (TPR).

1. The Applicant shall provide the following roadway system improvements:
 - a. Dedicate 3 feet of right of way along the OR 99W site frontage and construct full ½ street improvements, a new center turn lane for the entire block, and a northbound bicycle lane extending from the intersection with OR 51 north to Jackson Street.
 - b. Comply with ODOT requirements for construction of a 30-foot radius curb at the northeast corner of the OR 99W/OR 51 in order to increase the turning radius at that corner, and also construct an updated signal pole and new sidewalks at that corner.
 - c. Construct a southbound left-turn lane at the OR 99W/Jackson Street intersection.
 - d. As required by ODOT, relinquish three existing access reservations to OR 99W and remove all existing access rights on OR 51.
 - f. Obtain approval of all roadway engineering plans from ODOT.
2. In order to ensure that the plan and zoning map amendments will not "significantly affect" a transportation facility within the meaning of the TPR, this approval is limited to allow the construction of a maximum 16,087 square foot drugstore/pharmacy with a drive-through, consistent with the related development application for a Walgreens with a drive-through.