

Appellant Response to Open Record Submissions for TIA 16-0007

Appeal of Planning Director's decision to approve the TIA for Amazon Corner

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On behalf of Southeast Neighbors and Friends of Amazon Creek

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We wish to clarify that we are not seeking to deny an allowed use on the this site. We are rather seeking to have the Applicant provide a complete traffic impact analysis (TIA) so that the traffic impacts of the proposed development can be accurately determined and so that any needed mitigation can be properly identified.

We have a very reasonable request that we would like to know how this project will affect both the main streets and the neighborhood streets in the area during both the AM and PM peak traffic. Our goal is to assure that local streets continue to function in a safe and effective manner and that neighborhood streets will not be overrun by traffic and parking overflow from the proposed development.

Since this would be the largest development in South Eugene, we believe that a complete TIA is essential. Instead, the Applicant has gone to considerable effort to avoid doing the minimum amount of required traffic impact analysis for this major project. For that reason, we believe the TIA application should be denied.

Regarding the Applicant's claim that this is a "matter of right" development, it is true that the Applicant could proposed a smaller project that would generate fewer trips, and be able to obtain approval without triggering the need for a TIA.

The TIA requirements are triggered by the very large size of the proposed development and the associated vehicle trip generation.

Required Information

All of the information in the TIA Administrative Rule is required under Eugene Code for Traffic Impact Analysis Review. **Eugene Code Section 9.8675** states:

9.8675 General Application Requirements. *An application for Traffic Impact Analysis Review shall contain each of the items required by the "Standards for Traffic Impact Analyses" available from the city. An exception to any or all of the report content requirements listed in the "Standards for Traffic Impact Analyses" for development that generate less than 100 trips in any peak hour may be granted if the applicant demonstrates that the study is not necessary in order to demonstrate compliance with EC 9.8680.*

This is clear and unambiguous language that the TIA "**shall contain each of the items required by the 'Standards for Traffic Impact Analyses.'**" The City Planning Director does not have discretion to waive the requirements for traffic impact analyses for developments generating 100 or more peak-hour vehicle trips. The specific requirements are found under the TIA Administrative Rule.

Inadequate Scope for TIA

The City has tried to justify a limited scope for this TIA in its latest submission into the record (3/8/17). The City claims that Administrative Rule Section R-9.8650-E allows them to make exceptions to the TIA requirements. However, this section (cited below) applies only if the development "**will generate less than 100 trips in any peak hour.**" Due to the size of the project, it generates more than 100 trips during both the AM and PM peaks. Therefore, this section does not apply and the Planning Director may not grant exceptions to the TIA requirements.

R-9.8650-E Traffic Impact Analysis (TIA) - Exception to Requirements. *As part of a Type II or III review, the City Planning Director, or designee, may grant an exception to any or all of the content requirements of R-9.8650-F when both of the following are met:*

- 1. A development will generate less than 100 trips in any peak hour.*
- 2. The applicant has demonstrated that submittal of the item(s) listed in R-9.8650-F is not necessary in order to show compliance with the*

approval criteria of R-9.8650-C.

The City's efforts to limit the scope of the TIA seem irrational and unjustified. The City claims that an initial, non-public arrangement between the City and the Applicant resulted in an executive and non-reviewable decision to limit the TIA scope, and that this scope is no longer subject to further consideration. Such an interpretation would allow the City staff to make "back room" deals outside of the public view that would lack oversight and be contrary to the public interest and good governance.

Clearly, we have pointed out in our written Appeal Testimony that there are numerous instances where the scope should have been expanded. The failure of Staff to require an adequate scope for the TIA is a legitimate part of this appeal.

The TIA has failed to provide the following basic information:

- Failed to include nearby intersections;
- Failed to evaluate impacts on neighborhood streets;
- Failed to address the AM peak traffic impacts; and
- Failed to include reasonable AM trip generation estimates.

These are not minor omissions. They are basic requirements of a TIA for very large projects, like the proposed Amazon Corner development.

Impacts on neighborhood streets are of particular concerns to nearby residents. Many of the neighborhood streets are already part of the city's traffic calming program (Alder, 31st, and 33rd for examples), and are therefore implicitly included under the Applicability statement in the Administrative Rule:

R-9.8650-B Traffic Impact Analysis (TIA) - Applicability.

As provided in EC 9.8670, a TIA Review is required when one of the following conditions exist:

- 2. The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's **traffic calming program**, and identified locations where the City's concern for pedestrian and/or bicyclist safety is documented.*

Meaning of “Direct Access”

As we have previously cited, **Administrative Rule R-9.8650-F(8)** states:

8. Transportation Systems and Level of Service Requirements. *The TIA shall include:*

8. 1 Roadway and Intersection Capacity.

8. 1. 1 All streets and intersections contiguous to the development;

8. 1. 2 All streets and intersections that provide direct access to or from the development, regardless of the generated volume of traffic;

8. 1.3 All streets and intersections off site from the development that will receive 50 or more additional peak-hour vehicular trips upon completion of any phase of the development;

The City’s arguments regarding the requirement that the TIA include “***All streets and intersections that provide direct access to or from the development, regardless of the generated volume of traffic,***” are inconsistent and unreasonable.

At the Appeal Hearing, City Traffic Engineer Scott Gillespie responded for the City that interpretation of this requirement depended on how many access points there were, and how long the section of road was. Neither of these interpretations complies with the requirement.

First, the failure of the City to properly apply this criteria in the past, is no reason or justification for not applying it in the present to the current situation. This would be like arguing that breaking the speed limit is okay, because you have done it in the past.

Second, the length of the access is not relevant in this situation. Mr. Gillespie stated that if the access were a half-mile long, then the standard might not apply due to the distance. An access is an access, and there is no distance threshold. In this case, none of the access distances are more than a single city block away from the site, so this matter of length or distance is completely irrelevant.

Third the number of access points is also not relevant to applying this standard. Having more access points to a development implies additional flexibility in accessing the development. This is specifically why all “direct access” points must be evaluated. The standard does not say “evaluate only the most heavily used access points.” And it specifically includes language that states that these

accesses are to be evaluated "**regardless of generated volume of traffic.**"

Therefore, there is absolutely no basis for City's argument to exclude certain direct access intersections and streets from the TIA analysis.

Lastly, there is the question of what does it mean to say "**provide direct access to or from the development**"? In this case, "direct access" would mean any road or intersection that directly accesses the development and does not have to pass on or through another road or intersection to reach the development. There is absolutely no question that the intersection of 32nd and Alder meets this definition and must be include in the TIA. The City's failure to require inclusion of this intersection is inexplicable.

The other intersection that the Applicant's TIA has failed to include is the 33rd and Hilyard intersection. Perhaps the City believes that because there is an intersection at 32nd and Hilyard, it is not a direct access from the E33rd intersection. First, the intersection of 32nd and Hilyard is actually the corner of the development site, so it would seem unreasonable to count this as an access intersection, since it is actually the site itself. One must go to the next intersection to correctly identify a direct access point. Second, due to there being an access driveway for the development on Hilyard, the intersection of 33rd and Hilyard does, in fact, provide direct access to this entrance. There is no other intersection providing direct access to this entrance. To say that E 32nd is an access to the Hilyard Street site entrance, would be like saying that one project entrance is an access to another entrance – a faulty premise.

In order to interpret the meaning of "direct access" in a more-restrictive manner, one would literally have to assume that the only intersections and streets of concern in the TIA are those which are contiguous to the development. However since these are already specifically include in separate language, one must conclude that the meaning of "direct access" is to include something more than just contiguous streets and intersections. There is really no other reasonable interpretation of the requirements for the TIA than to conclude that the intersections of 33rd and Hilyard and 32nd and Alder must be included in the TIA.

AM Peak Traffic Analysis

Nothing the Applicant or the City have provided in the record demonstrates that the morning peak traffic is anything other than a basic requirement of the TIA.

Nothing in the language of Eugene Code or the applicable Administrative Rule provide for any discretion on this matter. It is simply a requirement that the City has failed to enforce in the past, but this does not make continuing failure to enforce it acceptable.

The requirement for AM peak traffic study are specified in **Administrative Rule Section R-9.8650-F(5)**, which states:

5. Peak Traffic Hours. *The TIA shall include peak hour traffic counts for all streets within the study area at the time of application. Existing traffic counts (less than 2 years old) may be factored by an average 2% per year growth rate to establish the forecasted background traffic volumes. Growth rates less than this amount may be used for those roadways that are already approaching their theoretical capacity during peak periods if the lower growth rates are justified by a different methodology presented by a professional traffic engineer. Traffic counts shall be provided for:*

5. 1 The weekday a.m. peak-traffic period (a one-hour peak in morning traffic volumes occurring between 7:00 a.m. and 9:00 a.m.).

5. 2 The weekday p.m. peak-traffic period (a one-hour peak in afternoon traffic volumes occurring between 4:00 p.m. and 6: 00 p.m.).

We have provided evidence in the record that the peak traffic on Hilyard Street is greater during the AM peak than during the PM peak. The AM peak traffic count and analysis we commissioned for the intersection of E 32nd and Hilyard by Access Engineering was dated February 28, 2017 and entered into the record on March 1, 2017. This report shows that the total AM peak-hour through traffic on Hilyard Street in front of the proposed site was 1,982 vehicles (both north and southbound directions combined). The Applicant's TIA reports that the PM peak-hour traffic on this same part of Hilyard Street was 1,847 vehicles. Thus, there were 135 more vehicle trips during the AM peak than the PM peak. While the relative size of the AM peak is not part of the TIA requirements, it is further demonstration that AM peak traffic is a significant issue and must be included in the TIA.

AM peak traffic analysis is especially important in the case of the proposed Amazon Corner development because four main traffic routes funnel together at the 33rd and Hilyard intersection to head northbound on Hilyard in front of the proposed site. East Amazon, West Amazon, E 33rd, and South Hilyard all come together here to result in significant morning congestion. And, as we have

previously mentioned, this morning rush hour is exacerbated by the many public schools in the area. Charlemagne Elementary School, for example is located just off East Amazon, south of the site. There are 325 school children attending this school and none of them receive school bus service. Almost all children arrive by car or bike between 8am and 8:15am each morning.

Commercial AM Trip Generation

We appreciate that the Applicant has provided, in new testimony, a more reasonable estimation of the AM peak trip generation from the commercial component of the proposed development. The revised estimate assumes that commercial trips will coincide with the ambient AM peak traffic and that there could be a mix of commercial uses that would generate more trips than the original “specialty retail” designation.

Needed Mitigation

Traffic Signal at E 32nd and Hilyard

After reviewing all the materials submitted during the Appeal Hearing, we have concluded that the proper mitigation for traffic generated at this site would include the installation of a traffic signal at E 32nd Avenue and Hilyard Street. This would provide a superior bike/pedestrian crossing at this critical nexus between two major bike routes.

In addition to creating a safe and functional bike/pedestrian crossing from the Amazon Bike Path to the Alder Street Bike Route, it would solve several other vehicle traffic problems generated by the proposed development. Left turns out of E 32nd onto Hilyard could be accomplished safely and effectively. The left turns out of E 31st onto Hilyard would be facilitated by the traffic gaps created by a signal at E 32nd. If a new signal at E 32nd was synchronized with the other traffic signals on Hilyard, traffic would continue to flow smoothly on Hilyard.

A traffic signal at E 32nd and Hilyard would be superior to the proposed bike/pedestrian crossing because it would provide a more-direct route between the two bike routes. The pedestrian crossing proposed by the City would be ½ block out of the way in both directions. There are already adequate curb cuts on west side of Hilyard at the E 32nd intersection, indicating that this may have been

previously planned as the principal bike/ped connection between the Amazon Bike Path and the Alder Street Bike Route. Having existing curb cuts on both the north and south side of the intersection makes it possible to cross Hilyard without also having to cross E 32nd to get in the correct lane, improving safety and convenience.

Another advantage of a traffic signal at E 32nd is that it provides a clearly protected crossing interval. While a flashing pedestrian crossing would be an improvement over the current conditions, drivers have discretion in stopping and they must be able to see the pedestrian in the crosswalk. Given that there are four lanes of traffic, all four lanes must be able to see the pedestrian and correctly respond to the flashing lights in order for a safe crossing to occur.

For these reasons, we believe that a traffic signal at 32nd and Hilyard should be considered as a potentially superior mitigation which supports all modes of transportation.

Left Turns from E 32nd Avenue

We retained a traffic engineer and conducted an AM traffic count, which showed that the left turn out of E 32nd onto Hilyard failed to meet city standards at LOS F. The Applicant's engineer has responded by saying that the failure of a single turn movement does not constitute failure of the entire intersection and that the average performance of the overall intersection is the correct measure to determine compliance with city standards for LOS D.

This is a contradiction with the Applicant's own TIA, which found that the left turn out of E 31st Avenue onto Hilyard was failing and required mitigation. The original TIA did not dismiss this failed turn movement based on the entire intersection's performance. We believe this is the correct interpretation of the service standards. It would not make sense to ignore one failed turn movement simply because other movements performed well.

We requested a review of this issue by Mike Weishar of Access Engineering and have included his letter with this submission. He states that he used the preferred method for evaluating this intersection, the this method shows that the left turn fails to meet City standards.

In this case, the left turn out of E 32nd is a critical movement for site traffic, as it is the only southbound route identified in the TIA. Therefore, the failure of this turn

movement cannot be ignored and must be address through mitigation, such as the traffic signal suggest previously.

Bus Bump-Out

The City indicates that a bus pull-out for the stop on Hilyard would not be desired by LTD. However, there has been no official referral of this matter to LTD by the City, so this is merely Staff opinion. The space necessary for a pullout could be obtained by purchasing an easement from the Applicant. LTD has the authority to require such an easement, if it is deemed necessary. Failure to perform such planning at this time will forever block this option. Therefore we are requesting that a referral to LTD be made by the City when the TIA is re-submitted.

Additional Traffic Counts

During the Open Record period, we attempted to conduct a traffic count at 33rd and Hilyard to demonstrate AM peak traffic issues at this intersection. Unfortunately, Northwest Natural Gas was conducting major utility work at this intersection (installing new gas mains). We believe this affected traffic patterns during the Open Record period, rendering uncharacteristic traffic counts.

It appears that the Applicant may have performed AM traffic counts during this period for the 32nd and Hilyard intersection. We question the validity of any traffic counts conducted while there was major utility work underway.

Conclusion

The refusal by the City to require, and the developer to provide, the additional traffic analyses needed for a complete TIA is puzzling. A traffic count at an intersection costs less than \$300, whereas this project is claimed to be valued at \$22 million. We believe that a complete analysis would reveal that there are, in fact, additional traffic problems in the area, which may require additional mitigation. It is the specific purpose and function of the TIA to identify these impacts, and we ask that the Hearings Official support the TIA requirements so that there can be full reporting of the traffic consequences of this proposal. We ask that the Hearings Official deny this TIA application so that the Applicant can submit a complete application. ◇◇◇