

*Willamette Oaks, LLC. v. City of Eugene*, 232 Or App 29, 220 P3d 445 (2009)

This case concerns a zone change and a city's responsibility under the transportation planning rule ("TPR"). The TPR is a Department of Land Conservation and Development rule found at OAR Chapter 660, division 12. The rule generally requires cities to determine whether comprehensive plan and zoning amendments, including zone changes, will "significantly affect" transportation facilities and put in place measures to ameliorate any such effects.

In *Willamette Oaks*, an applicant sought and Eugene approved a zone change from medium to high-density residential. The city did not evaluate whether the zone change would significantly affect transportation facilities, but instead imposed a condition requiring the applicant to demonstrate TPR compliance prior to any development on the property. Cities commonly defer TPR compliance to the development stage, as Eugene did here.

Willamette Oaks appealed Eugene's decision to the Land Use Board of Appeals ("LUBA") and argued that the City must evaluate the TPR before the zone change could be approved. LUBA rejected Willamette Oaks' argument and determined that the TPR analysis could be deferred until the applicant applied to develop the property. Willamette Oaks appealed LUBA's decision to the Court of Appeals.

The Court of Appeals limited their discussion to the question of "whether, pursuant to OAR 660-012-0060, prior to approving the zone change, the city was required to evaluate whether that zone change would significantly affect transportation facilities." The court determined that the text of the rule shows that "an evaluation of significant effect is intended to be performed *prior to* a contemplated amendment." *Id.* at 35, 448 (emphasis in original). The court held that any approval of an amendment subject to the TPR (e.g. any zone change) could only follow a "significant effect" determination.

With development projects significantly stalled as a result of the recession, many cities are using this time to focus on long range planning issues. The lesson here is that it is imperative for cities to consider what impacts a comprehensive plan amendment, zoning code amendment or zone change will have on transportation facilities and make the necessary TPR findings *before* approving the amendment. In the wake of the *Willamette Oaks* decision, the days of deferring TPR analysis to a later stage are, unfortunately, over.