

**CITY COUNCIL  
FINDINGS OF FACT ON APPEAL  
APPEAL APP24-000002  
CONDITIONAL USE PERMIT  
CUP24-000001**

**APPEAL: Appeal of Conditional Use Permit CUP24-000001.**

**REQUEST: To approve the installation of a HAWK (High-Intensity Activated CrossWalk) signal with related street improvements at the corner of North Main and Boardman Avenue to include conversion of the North Main Street intersection with the NE and NW Front Streets to a right-in/right-out configuration. To determine that the installation is in conformance with the Main Street Interchange Area Management Plan and meets necessary warrants.**

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**APPELLANT:** Hattenhauer Distributing Company  
Post Office Box 1397  
The Dalles, Oregon 97058

**APPLICANT/OWNER:** City of Boardman  
Post Office Box 229  
Boardman, Oregon 97818

**ZONING OF THE AREA:** Commercial (Tourist Commercial Sub District) and Residential

**PROPERTY LOCATION:** The subject property includes the rights-of-way for both Main Street and Boardman Avenue north of the Main Street Interchange. Adjacent businesses include C&D, Chevron, Sinclair, the Boardman Office Center, and Riverside High School.

**I. APPEAL BACKGROUND:** Hattenhauer Distributing, represented by Jennifer Bragar of TBD, is appealing the Planning Commission decision approving the proposed HAWK signal at the intersection of Boardman Avenue and North Main Street. Their appeal letter is attached and the issues identified are discussed later in this Findings of Fact.

**CONDITIONAL USE PERMIT BACKGROUND:** A number of years ago the City of Boardman experienced a loss of life at the subject intersection after which the currently installed Rectangular Rapid Flashing Beacon (RRFB) was installed. During peak pedestrian crossings, predominantly at school departure times, use of the RRFB can create traffic backups along Main Street that can impact queuing on the west bound Interstate 84 off ramp creating potential impediments into the west bound travel lane.

This area is subject to the Boardman Main Street Interchange Area Management Plan (MS IAMP) and any development or street projects within the Management Area must conform to the requirements of the IAMP. In the MS IAMP there are streetlights envisioned at the ramp intersections but not other intersections. About two years ago the City engaged Kittelson & Associates to do an evaluation of the Main Street corridor to accomplish an update to the planning level analysis documented in the 2009 MS IAMP. The purpose was to provide an

updated list of improvement projects to support multi-modal circulation improvements along the corridor and at the interchange.

After lengthy discussion with the Oregon Department of Transportation (ODOT) concerning the necessary planning process to authorize the installation of a streetlight it was determined that an amendment to the MS IAMP would not be necessary but signal warrants needed to be identified and no impacts to the interchange could occur. Signal warrants were justified and the streetlight was shown not to impact the interchange in the Kittleson & Associates Main Street corridor assessment. Installation of the center median is also justified to convert NW and NE Front Street to right-in/right-out and for traffic queueing/staging at the signalized intersection.

It should be noted that the MS IAMP does say the following about access to Main Street in the vicinity of the Interchange: "A key element of the IAMP is to the long-range preservation of operational efficiency and safety of the interchange is the management of access to Main Street. Because access points introduce a number of potential vehicular conflicts on a roadway and are frequently the causes of slowing or stopping vehicles, they can significantly degrade the flow of traffic and reduce the efficiency of the transportation system. However, reducing the overall number of access points and providing greater separation between them can minimize the impacts of these conflicts." The proposed center median and limiting left hand turns on North Main Street between Front Street and Boardman Avenue affectively achieves the intent of this statement without closing those accesses.

In limiting NE and NW Front Streets to a right-in/right-out configuration the Boardman Avenue and North Main Street intersection allows full turning movements. For comparison the same configuration on South Main Street would mean that Oregon Trail Boulevard will also allow full turning movements.

The street light installation, including street, sidewalk, and parking improvements, has been designed. It is anticipated that the project will go to bid in July 2024 with construction starting in March or April of 2025 and ending in July or August of that same year. The duration of time between the construction bidding process and the start of construction is for the procurement of long-lead time equipment and materials.

This project is identified in the Capital Improvement Plan adopted by the Boardman City Council on April 2 of this year. The City Manager and Planning Official have met with several of the immediately impacted landowners to discuss the project, the safety concerns it is addressing, mitigation of construction impacts, and to express our understanding of how this can create negative impacts to business operations.

*After the initial Planning Commission public hearing on April 17 staff did follow up with ODOT to further discuss the impacts of the proposal and their participation in accomplishing the requirements as laid out in the MS IAMP. Based on that conversation and further review of the Kittleson & Associates Main Street Assessment the city is modifying their project in two ways. First the street light infrastructure will be installed but the signal will initially be a High-Intensity Activiated CrossWalk, or HAWK and second the median will only affect the Front Street intersection allowing, for now, left turns across Main Street between Front Street and Boardman Avenue. The modification of Front Streets to a right-in/right-out configuration is maintained.*

**What is a HAWK signal?** *It is a device used to assist people with safely crossing busy streets. They work the same as other button-activated signals, either by pushing a button or an automatic sensor, which directs the person walking or biking to wait for the signal to change and traffic to stop allowing them to cross safely. For a driver, the HAWK signal appears differently than other traffic lights. At rest, HAWKs remain dark. Once triggered, it will then go through a series of yellow and red sequences requiring motorists to slow down and stop. After the people walking and biking cross, the HAWK will go dark again, allowing motorists to continue through the intersection.*

**Why are they helpful?** *HAWK signals provide safer crossing alternatives for people walking and biking than traditional crosswalks especially in mid-block locations with heavy demand. Because the devices are only activated when walkers or bikers are present, people driving experience minimal delays. HAWK signals can also be installed at the intersection of an arterial road with a smaller side street, which would not otherwise warrant a traffic light signalized crossing. This amounts to easier crossing on busy streets for people walking and biking. Data also suggests that HAWK signals create safer crossings, reduce crashes, and increase driver compliance with crosswalk laws.*

*The city is maintaining the conversion of the Front Street intersection to a right-in/right-out configuration for several reasons outlined here:*

- 1. The City's Level of Service, or LOS, standard is C which is higher than ODOTs and allows for less congestion.*
- 2. Access points introduce a number of potential vehicular conflicts on a roadway and are frequently the causes of slowing or stopping vehicles, they can significantly degrade the flow of traffic, and reduce the efficiency of the transportation types. Reducing the overall number of access points and providing greater separation between them can minimize the impacts of these conflicts. Reducing Front Street to a right-in-right-out configuration reduces a significant vehicular conflict adjacent to the west bound off-ramp.*
- 3. At the time the MS IAMP was adopted the LOS for Main Street and North Front Street was C. Today it is D which, under the MS IAMP, does require action on the part of the city. It should be noted that the LOS for South Front Street is also at a LOS of D. Without action both of those intersections are identified to achieve a LOS of F by 2042.*
- 4. The MS IAMP does identify that the City is to work towards two items, the first being development of the local street network both east and west of Main Street and second to limit access at Main Street at both north and south Front Street. The first step of this is to limit those intersections to right turn only.*

*For these reasons this request needs to be approved as presented*

- II. APPROVAL CRITERIA:** The Boardman Development Code Residential and Commercial use zones both identify in their respective Tables of allowed uses that "transportation projects that are not designated improvements in the Transportation System Plan" are subject to a Conditional Use Permit. While street lights are envisioned in the MS IAMP they are planned for the on- and off-ramps, not other intersections. The applicable criteria are found in Chapter 4.4 Conditional Use Permits at 4.4.400 Criteria, Standards and Conditions of Approval which is in **bold** text with responses in regular text.

#### **4.4.400 Criteria, Standards and Conditions of Approval**

The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the following standards and criteria:

##### **D. Transportation System Facilities and Improvements**

- 1. City or County facilities and improvements. Construction, reconstruction, or widening of highways, roads, bridges or other transportation facilities that are (1) not designated in the City's adopted Transportation System Plan ("TSP"), or (2) not designed and constructed as part of an approved subdivision or partition, are allowed in all Districts subject to a Conditional Use Permit and satisfaction of all of the following criteria:**
  - a. The project and its design are consistent with the City's adopted TSP, or, if the city has not adopted a TSP, consistent with the State Transportation Planning Rule, OAR 660-012 ("the TPR").**
  - b. The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties.**
  - c. The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities; and a site with fewer environmental impacts is not reasonably available. The applicant shall document all efforts to obtain a site with fewer environmental impacts, and the reasons alternative sites were not chosen.**
  - d. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.**
  - e. The project includes provisions for bicycle and pedestrian access and circulation consistent with the comprehensive plan, the requirements of this ordinance, and the TSP or TPR.**

The proposed HAWK signal and related improvements are on a city facility and involves the construction of the area in and around the Main Street and Boardman Avenue intersection. The construction will involve the installation of the HAWK signal and its components, improved street base and new pavement in the intersection and along Boardman Avenue to both the east and west, new sidewalk and improved access points, a median along North Main to convert the Front Street intersection into a right-in/right-out only configuration, and new striping throughout the area.

Staff have determined that the HAWK signal is consistent with the MS IAMP as it does conform to the Access Management Plan by:

- Continuing to restrict access to the interchange and interchange ramps and is, in fact, working to eliminate impacts to the interchange ramps from traffic that currently backs up when continual use of the RRFB causes delays of northbound travelers on Main Street.
- Improve safety factors not only within the interchange but also along Main Street and at this intersection in particular.
- Eliminating or reducing turning conflicts along the Main Street corridor at the Front Street intersection.
- Assuring that all current accesses are maintained to allow some level of ingress or egress and improving several accesses with improvements that also support pedestrian utilization.

Staff have also determined that the HAWK signal is warranted based on the following:

- While not within the standard time frame for consideration there has been a pedestrian loss of life at this intersection.
- This intersection is a primary school crossing area for Riverside High School during the arrival, lunch, and departure times. Use of the current RRFB creates backups along Main Street

impacting the west bound off ramp queuing and can result in traffic backing up into the west bound travel lane. This is further discussed on page 7 of the Kittelson & Associates analysis that is attached.

- Pedestrian volume outside of school pedestrian usage continues to increase along Main Street.
- Crash data from 2016 through 2020 identified in the Kittelson & Associates report shows that there are a variety of different types of crashes throughout the study corridor.

Abutting land uses are commercial in nature with the exception of the school. The school building is located 1,000 feet or more from the intersection with school green space and recreational space in between. The C&D Drive-In is most affected by the installation of the HAWK signal and the design of the project took into consideration their setback distance from the road with a desire to maintain their outdoor seating on the west side of their development. On street parking has been the most effected element through the design process with a number of angle and parallel parking spaces being removed. At least as many, if not more, parking spaces are being constructed resulting in a positive number of parking spaces. The new parking opportunity is being developed along the frontage of the Riverside High School with discussion ongoing to extend the parking further to the east from the current terminus shown on the Schematic Layout.

This project is locationally dependent. It is not specifically being designed to move more traffic, but to move current traffic more efficiently and safely.

Safety is one of the primary reasons for pursuing the street light project based on the loss of life from some years ago along with the reporting of a significant number of near misses with both cars and pedestrians.

Pedestrian, and by extension bicycle, movement and safety will be improved with the HAWK signal allowing for protected crossing times and spacing those crossing times to reduce if not eliminate backups along Main Street that can currently affect the queuing of west bound travelers on the west bound off ramp.

- 2. State facilities and improvements. The State Department of Transportation (“ODOT”) shall provide a narrative statement with the application demonstrating compliance with all of the criteria and standards in Section 4.4.400.D. 1.b. – e. above. Where applicable, an Environmental Impact Statement or Environmental Assessment may be used to address one or more of these criteria.**

The intersection of Main Street and Boardman Avenue is not a state facility. It is within the Management Area of the MS IAMP which was addressed through significant conversation with ODOT staff about the light, the mechanism to approve the installation of the street light, and will also include conversation with ODOT about management of the light once installed. The above criteria for a state facility have been deemed to not be applicable.

- 3. Proposal inconsistent with TSP/TPR. If the City determines that the proposed use or activity or its design is inconsistent with the TSP or TPR, then the applicant shall apply for and obtain a plan and/or zoning amendment prior to or in conjunction with conditional use permit approval. The applicant shall choose one of the following options: a. If the city determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall withdraw the conditional use permit application; or b If the city determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall withdraw the conditional permit application, apply for a plan/zone**

amendment, and re-apply for a conditional use permit if and when the amendment is approved; or

- a. **If the city determination of inconsistency is made prior to a final decision on the conditional use permit application, the applicant shall submit a plan/zoning amendment application for joint review and decision with the conditional use permit application, along with a written waiver of the ORS 227.178 120-day period within which to complete all local reviews and appeals once the application is deemed complete; or**
- b. **If the city determination of inconsistency is part of a final decision on the conditional use permit application, the applicant shall submit a new conditional use permit application, along with a plan/zoning amendment application for joint review and decision.**

The city has determined that the installation of the HAWK signal is consistent with the MS IAMP and is therefore consistent with the Transportation Planning Rule. See the discussion under 1. above and the attached Boardman Main Street Circulation Assessment dated March 2024 and prepared by Kittelson & Associates.

**4. Expiration. A Conditional Use Permit for Transportation System Facilities and Improvements shall be void after three (3) years.**

It is the intent of the City to have this project go to bid in July 2024 with construction to start in March or April 2025 and concluding in July or August 2025.

**III. ISSUES RAISED ON APPEAL:** The following were outlined in the appeal letter submitted on behalf of Hattenhauer Distributing:

Appellant Issue: While right-in/right-out at North Front Street may have been identified as part of the solution for traffic control along North Main Street under the 2009 IAMP, the timing for such decision should not occur as part of a piecemeal approach. Rather the traffic signal at N.E. Boardman should be installed and then the level of service at North Front Street should be revisited, prior to installing a median to accomplish right-in/right-out access. Further, ODOT's work on the overpass should occur before the right-in/right-out decision is made.

Staff Response: The City of Boardman secured the Boardman Main Street Circulation Assessment to evaluate the various needs along Main Street and the current Level of Service (LOS) identified for the Front Streets is at D which based on the Main Street Interchange Area Management Plan (IAMP) requires action by the city once a LOS of C is reached. This is not being done as a piecemeal approach with city planning and engineering staff evaluating the portion of Main Street north of the Interchange through Boardman Avenue. One of the primary reasons for evaluating these intersections is the conflict between pedestrians and vehicles at the Front Street intersection as well as the Boardman Avenue intersection. Use of the currently installed RRFB causes backup and delay issues along both Main Street to the south and Boardman Avenue to the east. Replacing the RRFB with a HAWK Signal should allow for smoother interaction between vehicle travel and pedestrian crossing, particularly at the Boardman Avenue intersection. The ODOT has been involved with these discussions and has indicated that they do not plan to make any changes to the interchange ramps or intersections.

Appellant Issue: The City is exceeding its authority to propose the median as part of the contemplated scope of improvements.

Staff Response: The median is defined in the MS IAMP as a solution to be implemented when certain conditions have been met, which is the case.

Appellant Issue: Full analysis should be done to ensure the City is not creating a stacking issue on Main Street that does not currently exist.

Staff Response: As discussed previously in these Findings of Fact there is already a stacking issue on Main Street that the upgrade from the RRFB to the HAWK signal should mitigate reducing the stacking that currently occurs. This will be achieved as the HAWK signal uses more advanced logic to balance the needs of the pedestrian crossing with motor vehicle needs.

Appellant Issue: A consistency finding is required for existing uses and there is no analysis that removal of parking from the C & D Drive-in will be consistent with current parking requirements for that use.

Staff Response: The on-street parking that has been utilized by the C&D Drive-in along Boardman Avenue encroached into the Boardman Avenue right-of-way. Development of that use predates current development standards, and no permit has been located as to what may have been permitted. That parking, under today's standards, would not be allowed. It should also be noted that when the drive-in and neighboring gas station were originally built it was under a single ownership and parking was shared. This response is not specifically a 'consistency finding' and one is not proposed as one is not required by the applicable standards. Nor has the appellant provided a requirement for such a finding.

Appellant Issue: The proposal is too premature because the Applicant has no authority over the school property for which it proposes to convert to parking, no basis to turn public school property into parking, and there is no finding of consistency with the school use and whether the proposed parking is allowed on school property.

Staff Response: The City of Boardman has been working with the Morrow County School District Superintendent for many months on this project and has secured a letter of support that outlines the right-of-way access process that will occur prior to the project's construction. The parking that is proposed will be shared by local businesses, including the C&D Drive-in, as well as the school district for sporting events and activities occurring on school property.

Appellant Issue: The Planning Commission decision is tainted by allowing Planning Commissioner Jennifer Leighton to vote and participate in deliberations when she has a financial benefit from the proposed parking on the school property, and a direct interest as her business will be impacted by the proposal.

Staff Response: Any perceived conflict is resolved by this appeal with the final decision before the City Council.

Appellant Issue: Even if a median at North Main Street and North Front Street is approved, the application should not be approved without significant design constraints imposed through this review process to preserve full access to Appellant's property along North Main Street.

Staff Response: The change from the traffic signal to the HAWK signal includes a reduction of the median along Main Street between Front Street and Boardman Avenue that will continue to allow left turns by travelers frequenting businesses on both sides of Main Street.

**IV. LEGAL NOTICE PUBLISHED:**

City Council  
July 17, 2024  
East Oregonian

Planning Commission  
March 26 and April 23, 2024  
East Oregonian

**V. PROPERTY OWNERS NOTIFIED (List on File):**

City Council  
July 17, 2024

Planning Commission  
March 26, 2024

**VI. AGENCIES NOTIFIED:** Teresa Penninger, Rich Lani, David Boyd, and Cheryl Jarvis-Smith, Oregon Department of Transportation; Marty Broadbent and Michael Hughes, Boardman Fire Rescue District; Emily Roberts, Morrow County Health District; Mike Lees and Rolf Prag, City of Boardman.

**VII. HEARING DATES:** City Council  
August 6, 2024

Planning Commission  
April 17 and May 15, 2024  
Boardman City Hall

**VIII. COMMENTS RECEIVED:** The following summarize comments received:

- Letter dated April 10, 2024, from Alex Hattenhauer, Hattenhauer Distributing, in opposition.
- Site Team was held on April 11, 2024, with local utilities, the Fire Marshall, and ODOT staff in attendance. No changes to the proposal emerged from this discussion.
- Public comment was received at the Planning Commission public hearing held on April 17 from Alex Hattenhauer, Greg Miller, Karen Purcell, and Nora Reyna and is summarized in the meeting minutes.

**IX. PLANNING OFFICIAL RECOMMENDATION:** The Planning Official recommends that the City Council deny this appeal and affirm that the HAWK signal is consistent with the MS IAMP and is warranted.

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Paul Keefer, Mayor

Date

**ATTACHMENTS:**

- Schematic Layout
- Boardman Main Street Circulation Assessment (March 2024)
- Boardman Main Street Interchange Area Management Plan (2009)
- April 10, 2024, letter in opposition – Alex Hattenhauer, Hattenhauer Distributing
- Planning Commission Findings of Fact dated May 16, 2024
- June 6, 2024, letter of appeal – Jeniffer Bragar, TBD, representing Alex Hattenhauer, Hattenhauer Distributing
- July 1, 2024, letter of support from the Morrow County School District