



Community Development Department / Planning Division  
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## MEMORANDUM

TO: Planning Commission  
FROM: Steve Regner, Senior Planner  
DATE: Oct. 07 2020  
SUBJECT: Downtown Design Project – Additional Written Testimony

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This memo is intended to supplement the staff report dated Sept. 16, 2020 and supplemental memos dated September 21, September 23, and October 2, 2020 for the Downtown Design Project hearing regarding CPA2020-0004, TA2020-0002 and ZMA2020-0004, first held Sept. 23, 2020, continued to Oct. 7, 2020. It addresses additional written testimony received by staff. This written testimony was received after the September 23, 2020 hearing.

Exhibit 8.13 Letter received October 5, from Jeff Bachrach, representing Lanphere Enterprises, Inc

### Comment Summary

Letter expresses support for Scenario 4 regarding vehicle sales and service regulations, as well as greater flexibility in reconstructing sites, including not being required to meet minimum floor area.

Exhibit 8.14 Letter received October 5, 2020, from Mike Robinson, representing the Francis Family

### Comment Summary

Letter expresses support for Scenario 4 regarding vehicle sales and service regulations, as well as greater flexibility in reconstructing sites, including not being required to meet minimum floor area.

Exhibit 8.15 Letter received October 6, 2020, from Melissa Thompson, representing the Standard Center

Comment Summary

Letter requests to have property removed from the Downtown Design District. Alternatively, the letter expresses support for Scenario 4 regarding vehicle sales and service regulations, as well as greater flexibility in reconstructing sites, including not being required to meet minimum floor area.

**Jeff Bachrach**  
**Bachrach.Law P.C.**

The Pittock Block, Suite 320  
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**Received**  
**Planning Division**  
10/05/2020

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October 5, 2020

Ms. Jennifer Nye, Chair  
Beaverton Planning Commission

**VIA EMAIL**

Re: Downtown Design Project  
Support for Staff Scenario 4  
Lanphere Property

Dear Chair Nye and Commissioners,

On behalf of my client, Lanphere Enterprises, Inc (“Lanphere”), we appreciated the Planning Commission’s unanimous vote to continue the hearing on the Downtown Design Project to allow time for Lanphere and Damerow Ford to work with staff on code language that would maintain the economic viability of the dealerships.

Working in collaboration, the parties have come up with a proposed amendment to the code that allows the existing operations to stay in business for the foreseeable future, while also supporting the longer-term vision for the Downtown District, which will ultimately result in the replacement of the dealerships with more compatible uses.

Scenario 4 in the staff memorandum to the Planning Commission of October 2, 2020 achieves that balance. Lanphere urges the Planning Commission to vote in favor of including the code language in Scenario 4 as part of the package of amendments to the code you will be forwarding to the city council for its final approval.

As part of Scenario 4, staff has suggested alternative language for Footnotes 2 and 3. Lanphere supports the alternative language due the slightly greater flexibility it provides.

Also, staff has proposed on page 7 of their memorandum two options under the heading “Minimum Floor Area” for how to address the code’s new minimum FAR standards in the event a building is rebuilt after being destroyed by fire or other cause. Lanphere supports Option 2 on page 8.

Finally, I wanted to thank staff for their willingness to discuss all these issues and the time and effort they devoted to crafting the compromise language in Scenario 4.

I plan to testify at your hearing Wednesday evening and thus will be available to answer any questions.

Very truly yours,

*Jeff Bachrach*

Jeff Bachrach

Cc: Steve Regner, Senior Planner  
Anna Slatinsky, Planning Division Manager  
Bob Lanphere Jr, President, Lanphere Enterprises  
Robb Walther, COO, Lanphere Enterprises  
Lyndsey Lanphere, Lanphere Enterprises  
Mike Robinson,

Received  
Planning Division  
10/05/2020

October 5, 2020

**Michael C. Robinson**

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**VIA E-MAIL**

Ms. Jennifer Nye, Chair  
City of Beaverton Planning Commission  
The Beaverton Building  
12725 SW Millikan Way  
Beaverton, OR 97005

RE: Downtown Design Project, Beaverton Planning Commission (the “Planning Commission”) October 7, 2020 Continued Public Hearing, Old Business Agenda Item; Letter on behalf of the Francis Family

Dear Chair Nye and Members of the Beaverton Planning Commission:

This office represents the Francis Family (the “Francis Family”). This letter is submitted on behalf of the Francis Family.

The Francis Family appreciates the Planning Commission continuing the public hearing from September 23, 2020 to October 7, 2020 so that the Francis Family and other interested persons could meet with City staff and discuss further changes to the proposed amendments to the Beaverton Development Code (the “BDC”). As explained below, following several meetings with City staff, the Francis Family supports Scenario 4 and certain of the Alternative Issues as described in Mr. Regner’s October 2, 2020 Memorandum (the “Memorandum”) to the Planning Commission.

The Memorandum contains four Scenarios. The Francis Family supports Scenario 4 at Memorandum Pages 6 and 7 because it allows a reasonable opportunity for the Francis Family’s tenant, Damerow Ford, to continue operating while providing the opportunity to rebuild in the event of destruction and a limited ability to expand buildings to meet the franchisor’s requirements. Scenario 4 addresses the majority of issues raised by the Francis Family and, out of the four Scenarios presented in the Memorandum, Scenario 4 is the most effective and fairest way to address those issues.

The Memorandum also discusses three Additional Issues. The Additional Issues each address an issue raised by the Francis Family and Damerow Ford. The Francis Family supports the addition of Additional Issue A, Option 2, Additional Issue B and Additional Issue C, Option 3.

Ms. Jennifer Nye, Chair  
October 5, 2020  
Page 2

The Francis Family requests that the Planning Commission recommend adoption of Scenario 4, Additional Issue A, Option 2, Additional Issue B and Additional Issue C, Option 2 and the specific BDC language under each to the Beaverton City Council.

The Francis Family and Mr. Garrett Stephenson of this office will be available at the October 7, 2020 public hearing to testify in support of their request and to answer any questions that the Planning Commission may have.

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive, flowing style.

Michael C. Robinson

MCR/jmhi

cc: Mr. Brett Francis (*via email*)  
Mr. John Francis (*via email*)  
Mr. Dan Kaiser (*via email*)  
Mr. Jeff Bachrach (*via email*)  
Ms. Anna Slatinsky (*via email*)  
Mr. Steve Regner (*via email*)  
Mr. Brian Martin (*via email*)  
Mr. Peter Livingston (*via email*)  
Mr. Garrett Stephenson (*via email*)

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Admitted in Oregon, Washington and Idaho

Received  
Planning Division  
10/06/20



October 6, 2020

**VIA U.S. MAIL**

City of Beaverton  
Planning Commission  
12725 SW Millikan Way  
Beaverton, OR 97005

RE: Case File Nos. CPA2020-0004, TA2020-0002, TA2020-0004, ZMA2020-0004  
13175 SW Henry Street/13203 SW Canyon Road (The Standard Center)

Dear Planning Commission:

We represent Canyon Plaza Associates, LLC (Canyon Plaza), which owns the northerly portion of the Standard Center Shopping Center (Standard Center) at the corner of SW Canyon Road and SW Lloyd Avenue. Canyon Plaza submitted written testimony to the September 23, 2020 hearing, objecting to the proposed rezoning on several bases, and requested that if zoning changes were made along the lines contemplated prior to that hearing, that the Standard Center be omitted from the proposed rezoning to RC-MU.

From discussions with staff, we understand that Canyon Plaza's parcel was not included in the original 2018 study, and was added about 1/3 of the way through the planning process, driven in part by a desire to add additional area to the downtown core, without meaningfully exceeding the prior westernmost boundary (Hocken Avenue). Notably, we have found no record of any notice received by Canyon Plaza, prior to the September 4, 2020 notice of hearing, that the Standard Center was to be included in the expanded Downtown core. Canyon Plaza was therefore denied an opportunity to participate in the planning process.

Inclusion in this process would have allowed Canyon Plaza to point out to staff the biggest problem with the proposed zoning change: that it conflicts with existing contractual obligations Canyon Plaza has to its southern neighbor. As discussed in Section A below, it is clear that this conflict would render Canyon Plaza's parcel undevelopable for any use if the buildings were destroyed by fire or earthquake. Unfortunately, this puts Canyon Plaza in the position of having to object to any of the scenarios put forward by staff, without another change.

This conclusion is unfortunate, because Canyon Plaza appreciates the work of the Commission and staff to address some of the concerns raised in testimony on September 23, both by Canyon Plaza and the other automotive users. We have reviewed the memoranda produced by staff following the continued September 23 hearing, and – in the absence of the contractual limitation -- find that while many of the issues raised by this rezoning are addressed by Scenario 3 *or* 4, Scenario 4 *and* Option 2 for Additional Issue A is the combination of provisions which would come closest to feasible for Canyon Plaza.

## **A. Contractual Restriction**

More than 30 years ago, Canyon Plaza's predecessor entered a reciprocal agreement with its southern neighbor that it would not expand or relocate the footprint of its buildings for any use. It's important that the Commission understand that this type of agreement was not only typical at the time it was formed, but it was actively encouraged by the City of Beaverton as a method of development in the area. Parcels were subdivided and developed as a way of collecting retail, minor automotive, and dining uses into areas serviced by common parking lots and driveways.

To promote this common usage, property owners (including Canyon Plaza's predecessor) were encouraged to sign agreements that were aimed at protecting their interests in their neighbors' common areas. Provisions that were promoted by the City at the time, without foreseeing changes such as street frontage requirements, were established via contract.

It is unlikely that Canyon Plaza will be the only property owner affected by the proposed rezoning who finds that this type of agreement, entered in good faith, will now prevent them from rebuilding, even given the more lenient scenarios proposed by staff, because it will simply be impossible to meet new design requirements on existing footprints.

## **B. Vacancy Clause**

Putting aside the contractual barriers, Canyon Plaza would also note that while Scenario 3 addresses some of the concerns identified in September 23's testimony, it fails to address the unique problems and uncertainties which face commercial landlords like Canyon Plaza in the wake of the current Covid-19 pandemic. It is, arguably, customary for development code to establish that a leased premises or building, which remains vacant for more than a year, loses its legal non-conforming status. After all, available space or buildings standing vacant for extended period may represent an opportunity to a property owner to review changed conditions influencing the highest and best use of its property. On the other hand, occurrences such as a global pandemic and/or recession caused by such an event may have no bearing on long-term highest and best use, and simply be a reflection of the current economic conditions. Property owners should not be penalized for such unanticipated impacts and the zoning code should not force changes to use when such conditions occur.

As is most apparent, these are not "normal" times, and we are learning that events affect the real estate market in ways we hadn't imagined possible. Businesses are at the whim of factors for which we have no frame of reference. It is difficult or impossible to say, at the moment, that a failure to re-rent a vacant property is the equivalent of a conclusion that the property is no longer economically viable. At this time, making a change which increases the burden on property owners faced with non-conforming uses runs counter to current conditions.

For that reason, Canyon Plaza could accept Scenario 4, which makes automotive uses conditionally permitted (and therefore not subject to the one-year vacancy clause), if it were altered to allow rebuilding on the same footprint, as further discussed in Sections A and C.



### **C. FAR**

Additional Issue A addresses the problem that arises if an automotive user seeks to rebuild a structure following fire, earthquake, or other disaster. Under Option 1, an automotive user would be required to either meet the updated FAR requirements of its zoning (in the case of RC-MU, 1.0), or under certain circumstances, a “phased” FAR between 66% and 85% of the zone’s requirements.

Option 1 would challenge Canyon Plaza, even in the absence of a contractual barrier, because achieving an FAR between .66 and 1.0 – that is, between 2.5 and 3.5 times the current square footage of the Standard Center – would inevitably require building upwards, an economically unlikely proposition above a minor automotive service center. Option 2, on the other hand, addresses most of those concerns, with the understanding that (at least under current economic conditions) “feasibility of constructing future phases” is as discussed above.

### **D. Highway Use**

The Standard Center Shopping center is oriented to SW Canyon Road, which is also recognized as OR 8, an Oregon highway that transitions into the SW Tualatin Valley Highway. The Oregon Department of Transportation has no plans that we are aware of to minimize the use of this heavily traveled highway. Proposing mixed use zoning on a busy highway runs counter to proper planning theory for safe, quiet and walkable development. This is, presumably, what the City recognized when it encouraged the current development, including the type of contract that solidified the footprints of the various buildings. This is just one reason why throwing a RC-MU blanket over the area of the Canyon Plaza property is misdirected, and why this area should be omitted from the proposed zone.

### **E. Conclusion**

Canyon Plaza renews its request to be removed from the proposed rezoning. If not, Scenario 4 with Option 2, with an additional provision that a destroyed building could be built on the same footprint, would best avoid causing severe economic harm to small businesses near Beaverton’s core, and should be the Scenario chosen by the Commission.

Very truly yours,



Melisa K. Thompson  
Cosgrave Vergeer Kester LLP

MKT:ab  
cc: Stanley Piha (via email)