



Community Development Department / Planning Division
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MEMORANDUM

TO: Planning Commission
FROM: Rob Zoeller, Senior Planner
DATE: October 16, 2024
SUBJECT: Additional Public Testimony Received for the Cooper Mountain Community Plan

Staff has received the following additional public testimony regarding the Cooper Mountain Community Plan hearing (CPMA42024-00679, ZMA42024-00681 and TA42024-00680) after the staff report dated October 2, 2024, was published.

Public Testimony (Exhibit 36)

- Exhibit 36.1 Letter from David M. Phillips of VF Law, representing MPR Development Co., a Cooper Mountain property owner
- Exhibit 36.2 Letter from Bonnie and Kenneth Howe, Cooper Mountain property owners

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Admitted to practice in:

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October 16, 2024

Via email

Chair McCann,
Beaverton Planning Commission
c/o Cooper Mountain Community Plan Project Planner
E: MailboxCDDPlanning@beavertonoregon.gov

RE: *Objection to Cooper Mountain Community Plan (Case File Nos. LU42024-00682, CPM42024-00679, TA42024-00680, ZMA42024-00681)*

Dear Chair McCann:

My office represents MPR Development Co., which owns a 43.4-acre parcel of property within the proposed Cooper Mountain Community Plan (“Plan”). I write on behalf of my client to object to the plan as proposed. In particular, my client objects to the prospective application of the Riparian Habitat Overlay Zone to his property.¹

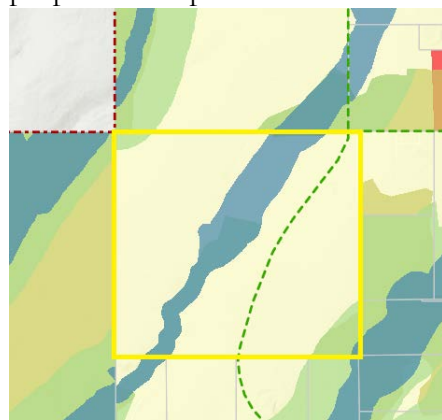


Figure 1

If my client’s property is ever annexed into the City of Beaverton, this overlay zone will significantly diminish the value of the property and the ability to continue its present use as a hay farm. Crucially, there is no evidence in the record—let alone substantial evidence—supporting the forced dedication of a large portion of my client’s property to the preservation of a non-existent riparian habitat. If the City wishes to effect such a change to any property in the project area by impose such an onerous overlay zone, the City should pause these proceedings and perform site-specific studies supporting the proposed zones. Unless and until those studies occur, the City cannot demonstrate substantial evidence supports its imposition of

¹ My client owns the property at the address 9989 SW 175th Ave., Beaverton, Oregon. The property is highlighted in yellow in Figure 1, which is taken from the proposed plan map. The proposed overlay zone is shown in blue.



the overlay zone on my client's property.

A decision by the City prospectively zoning unannexed property is a legislative decision. As such, the City's decision must be supported by substantial evidence in the record as a whole as does Statewide Planning Goal 2. *See 1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377–78 (1994), *aff'd*, 130 Or App 406 (1994). The Goal 2 “adequate factual base” requirement will be satisfied if the decision is supported by either (1) findings demonstrating compliance with applicable legal standards, or (2) argument and citations to facts in the record, in respondents' briefs, adequate to demonstrate compliance with applicable legal standards. *See Redland / Viola / Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560 (1994). It is reversible error for the City to make a decision based on facts that are not supported by substantial evidence in the record as a whole. *See* ORS 197.835(9)(a)(C).

Here, the City seeks to impose a riparian habitat overlay zone on my client's property without actually identifying any riparian habitat exists on the property. As described in the Staff Report, a resource overlay “will require the majority of the Resource Overlay to be placed in a protected tract or easement[.]” Staff Report at 25 (citing proposed Dev. Code Section 60.37.30). This will result in a significant reduction of the usable area of my client's property. *See* Fig. 1 (showing area to be subject to overlay zone). So what evidence does the City have that there exists riparian habitat on my client's property? Only conjecture and supposition.

The City relies on the “Local Wetlands Inventory” (“LWI”) as its evidentiary base for prospectively condemning an overlay zone. *See generally* Staff Report, Ex. 20 (“2024 Wetlands Inventory”). The methods used to develop the LWI—and to find the presence of riparian habitat on my client's property—leave much to be desired, particularly when compared to the scientifically sound process prescribed by the Department of State Lands for wetland delineations. *See* Ex. 20 at 2 (“Methods included a review of project area background materials and drive-by and on-site field reconnaissance visits.”). The result of these limited investigations as it relates to my client's property is shown at Figure 5, Sheet 5 of the LWI. *See* Ex. 20 at Fig. 5, Sheet 5 (map of client's property). Based on a single sample plot and site visit, the LWI extrapolates the presence of wetlands across a significant portion of my client's property. Given the substantial burden on my client's use of the property that will occur upon the application of the riparian overlay, the LWI is simply not substantial evidence supporting its application to my client's property. Even more concerning, the boundaries of the proposed riparian overlay do not correspond to the features identified on the LWI. A decision that is arbitrary and capricious cannot be supported by substantial evidence in the record.

OAR 141-086-0185 requires that “an approved LWI must be used in place of the National Wetlands Inventory (NWI) and is incorporated into the SWI.” *Id.* at (1). The administrative rule does not, however, command that approved LWI's be given definitive—or any—evidentiary weight in the planning process. The Planning Commission should reject this over inclusive, generalized study as a sufficient basis on which to impose a riparian overlay zone. The Planning Commission is free to conclude that the LWI, without more, is *not* substantial evidence.

October 16, 2024

Letter to City of Beaverton Planning Commission

RE: MPR Development Co.'s Objection to Cooper Mountain Community Plan

Page 3

If the City wishes to forcibly dedicate a portion of my client's property to a particular, non-economic use, then the law requires the City have substantial evidence supporting its decision to do so even if common sense (and neighborliness) suggests it should be higher. That standard is not met here. The Planning Commission should ask the City to pause this project and come back with more evidence supporting the existence or nonexistence of riparian habitats where an overlay zone is proposed.

Thank you for your consideration of this letter.

Sincerely,

VF LAW

David M. Phillips
Attorney at Law

DMP:mm

EXHIBIT 36.2 TESTIMONY

From: [KB](#)
To: [Rob Zoeller](#)
Subject: [EXTERNAL] Testimony for Beaverton, OR Planning Commission Hearing on October 16, 2024
Date: Wednesday, October 16, 2024 4:25:26 PM

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

Re: Project Name: Cooper Mountain Community Plan

Case File Numbers: LU42024-00682, CPMA42024-00679, TA42024-00680

As landowners within the affected unincorporated area, I wish to comment on the fact that the proposed code changes will affect our property values.

The proposed resource overlay appears to be based on outdated information and is not representative of the current state of our land. In particular, there is no open water on our land or current wetland on our property. An email received from Brian Martin on this subject (March 7, 2024) following a conversation with him at the January open house outlined two processes currently available to property owners to change this representation. Each would involve an investment in time and money by us.

I think that it is a form of coercion to ask property owners to correct information that the city should have done for this plan.

A third approach in the draft development code includes a process to correct this mapping, but that process will not be available if and until the property is annexed.

We do not want annexation, and I do not under current Oregon law believe that it is legal without a vote of the people to be annexed.

Annexation would significantly increase our property taxes, with no significant increase in services.

This process of changing the community code for Cooper Mountain seems to be a prelude to an assumed annexation.

Thank you for accepting our input.

Bonnie Howe
Kenneth Howe

17775 SW Cooper Mountain Lane
Beaverton, OR 97007

(Beaverton mailing address only; we do not live in the city of Beaverton)