

Oregon City Commission

Meeting of January 21, 2015

RE: Appeal of Proposed Development, File SP 14-01- Beavercreek Road Live/Work Apartments
Planning Files AP 14-01 and AP 14-02

Testimony of: Christine Kosinski, Unincorporated Clackamas County

This lot for development is 9.7 acres, but if it were 10 acres or more, Oregon City Municipal Code states the proposed development must be Master Planned. When looking at the boundaries of this parcel, one has to wonder why the lot on the Northwest corner was left out of the plan, even though it is owned by a separate party.

Without a doubt, the lack of necessary Infrastructure for development in this area, is of huge concern. This property was part of a 122 acre Annexation measure on the November, 2007 Ballot, a measure that won only by 43 votes, Yes= 4,116 No = 4,073. This should have never gone to ballot since the "factors for annexation could not be met for Infrastructure". Again, in 2010, when the City changed the zoning from FU-10 to MUC, the glaring lack of Infrastructure could not have been more apparent, and yet the City erroneously approved the zone change knowing that needed infrastructure would not be in place

On August 18th, 2014, a letter was sent from Beavercreek Road LLC to Clackamas River Water. The letter states "that the City of Oregon City may have difficulty providing adequate water service to the proposed development for both residential water and possibly for fire services". Beavercreek Road LLC went on to formally request exterritorial water service from CRW.

For Sewer capacity, I cite the Keller Associates Technical Memo of September 9, 2014 where they speak of (pg 3) "Glen Oak road sewer discharges into the Hwy 213 sewer nodes". Keller Associates recommends that the manholes with only two feet of cover be equipped with **Bolted down, sealed manholes if these are currently not in place.**

The transportation plan for this development is poor and severely underfunded, the City had to cut many projects from their TSP to "not likely to be funded" due to lack of funds. Out of 360 projects costing \$221 Million, only \$73 Million can reasonably be expected to be funded.

Take this development, a new Bus Barn on Meyers, an Industrial Enterprise zone, add proposed development at the old bus barn at Maplelane, Beavercreek and Hwy 213. All together these call for Master Planning this entire area of Oregon City. To do anything less, would be irresponsible. Now consider all of this development being served by only **ONE ROAD** where Tri-Met, school buses and parking on Beavercreek will be allowed. Now toss in traffic from an Enterprise zone and from development at the old bus barn and what do you have? A recipe for disaster.

The Hamlet of Beavercreek has submitted 24 pages of testimony with concerns about this development and the fact that they are being held hostage by irresponsible development from Oregon City, development that will leave them stranded and open to long response times for emergency help. This is why Master Planning is extremely vital.

The LUBA decision (in Case No. 2007-171) makes it crystal clear, they agreed the annexation could proceed the Beavercreek Concept Plan, with the understanding that the concept plan would proceed urbanization. So why is the City proposing spot development on these 9.7 acres without the concept plan, and master planning, going first?

Statewide Goal I, requirements for Citizen Involvement, have not been met. Oregon City did not reach out to the people of Holly Ln, to participate in any planning for this development, even though the next phase of development will directly link traffic to Holly Lane, a small and windy country road filled with landslides. May I remind you that I have testified on numerous occasions about the many serious landslides that line the street of Holly Lane, and I have notified you on numerous occasions that the people of Holly Lane are unable to obtain "Difference in Conditions" Insurance to cover losses due to any landslides you may re-activate on Holly Lane since you continue to state that you want to widen the road to carry the plethora of cars that you intend to stuff down this only North/South connector. This is an extremely serious legal question, and one that Oregon City has refused to answer for all the residents living in and near Holly Lane.

The transportation report for this 9.7 acre development has grossly understated the Average Daily Trip counts of 810 trips per day. Trip counts must be added for the new bus facility, for the enterprise zone, for trips to and from the live-work units and for trips coming from proposed development at Maplelane, Beavercreek and Hwy 213.

Annexation of this land should never have been approved by the City since you were unable to meet the "annexation factors" found in City Municipal Code 14.04.060, especially annexation factor number three, "adequacy and availability of public facilities and services to service potential development".

Zone change from FU-10 to MUC also should never have been approved, due to lack of Infrastructure. LUBA decision allowed annexation to FU-10, however NO urbanization was to go before the Concept Plan which would have called for Master Planning.

I believe the City continues to levy an additional \$3500 fee per new home to provide policy coverage. This certainly was part of the original Beavercreek Concept Plan. This has been brought up in several City Commission meetings, by Commissioners who wondered if this type of levy is allowable by State Laws.

I refer you to an e-mail to Pete Walter, from Doug Whiteley, Fire Marshall and Administrative Battalion Chief, Clackamas Fire District #1. This is regarding response times to various communities, I bring to your attention that he states it takes them 14 minutes and 38 seconds to response

In the October 13, 2010 letter from The Hamlet of Beavercreek to Oregon City, at the top of Pg 3, it is noted that testimony was given at both the September 15th and October 6th, 2010 hearings regarding financial concerns on the part of the applicant. The applicant explained that he is seeking a zone change for this property which will allow him to obtain the necessary financing for this parcel and that apparently without a zone change the lender may consider foreclosure. City Attorney, Ed Sullivan, quickly brought to the attention of the Commission that they cannot consider the financial concerns of the applicant a part of their decision to approve, or disapprove, these land use applications. Also, on the same page, Regarding Condition 2, the Hamlet seeks clarification. If the applicant is seeking zone change for financial reasons, can the applicant financially contribute funding to the City for the construction of the westbound right turn lane at the OR 213/Meyers Rd intersection? This was never answered.

I submitted testimony to Pete Walter, on August 11, 2014 and on October 31, 2014 regarding the Landslides that plague Holly Lane since in the 2nd phase of development in the Beavercreek/Meyers/Concept Plan area will dramatically effect all the peoples who live on Holly Ln. I spoke of the fact that these people cannot obtain Insurance for losses due to landslides and the concerns that the people have if the City should come in and excavate and widen the roads. We have, on numerous occasions, asked the City who will pay the damages if they create a landslide to re-activate and the City has given the people of Holly Ln NO answers. This must be addressed now prior to the Concept Plan being re-approved which the City is anticipating soon.

I do not support proposed development of 121 3-story apartments and 62 live-work units at Beavercreek & Meyers, It is not master planned, you are holding 6700 citizens in Beavercreek ransom by overwhelming the only road they have to get in and out of their community. Emergency response times will be greater due to Beavercreek Road being inundated with traffic. These people were never invited as a Stakeholder. You held meetings with your Caufield Neighborhood, who does not support this development, but you failed to invite even one person from the community of Beavercreek to participate in meetings regarding this proposed development along Beavercreek Road, rather the City has chosen to sacrifice the Safety and Livability of all the 6,700 people of Beavercreek, as well as the hundreds of people on Holly Ln who have asked for answers for years, and do get recognized.

The City cannot provide Water, adequate Sewer, nor the necessary roads to support such development. The City is recklessly developing.

Enclosed:

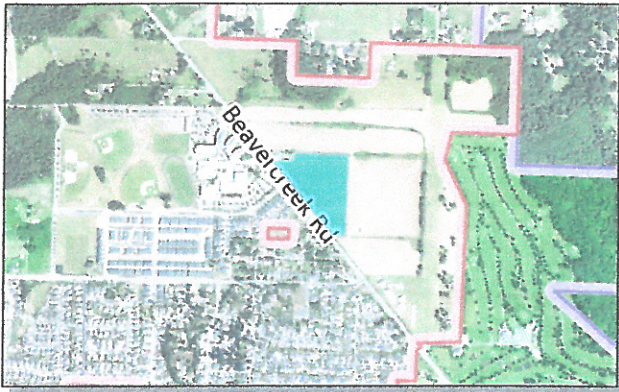
Boundaries of tax lot 800

Letter from Beavercreek Road LLC to Clackamas River Water dated August 18, 2014

Keller Associates manhole recommendation

E-mail to Pete Walter from Clackamas Fire District #1 – response times

City of Oregon City Staff Report dated 4/4/13



Overview Map

Taxlot Information

APN: 3-2E-10C -00800

Alt ID: 00870711

Site Address: 19896 BEAVERCREEK RD
OREGON CITY, OR 97045

Year Built: 1945



Taxlot highlighted in blue

Taxpayer Information

Taxpayer: BEAVERCREEK ROAD LLC

Address: 159 CIVITAS ST STE 212
MT PLEASANT, SC 29464

Reference Information

Parcel Area (acres - approx): 9.7

Parcel Area (sq. ft. - approx): 423,403

Twn/Rng/Sec: 03S 02E 10

Tax Map Reference: 32E10C

Values

Values as of: 12/20/2013

Land Value (Mkt): \$816,438

Building Value (Mkt): \$1,500

Exempt Amount: \$0

Net Value (Mkt): \$817,938

Note: The values above are Market, NOT Assessed values.

Assessed Value: \$230,820

Planning Designations

Zoning: MUC1

- Mixed Use Corridor District

Comprehensive Plan: muc

- Mixed Use - Corridor

Subdivision: NONE

PUD (if known):

Neighborhood Assn: Caufield NA

Urban Renewal District:

Historic District:

Historic Designated Structure? N

In Willamette Greenway? N

In Geologic Hazard? N

In Nat. Res. Overlay District (NROD)? N

In 1996 Floodplain? N

Beavercreek Road LLC
600 University St, Suite 1708
Seattle, WA 98101
206-535-6348

August 18, 2014

Bob George
Clackamas River Water District
16770 SE 82nd Dr. #100
Clackamas, OR 97015

RE: Request for Water Service at 19896 Beavercreek Road, Oregon City, OR

Bob,

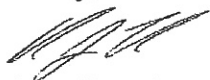
I am writing today as the representative for Beavercreek Road LLC, the owner of an approximately 11 acre parcel of land at 19896 Beavercreek Road in Oregon City and land use applicant to develop approximately 186 units of multi-family rental housing on this same site.

It has come to our attention that the City of Oregon City may have difficulty providing adequate water service to meet the needs of our proposed development both for residential domestic water and possibly for fire services. Before our parcel was annexed to Oregon City it was under the jurisdiction of CRW. As such, it still has an abandoned water line running to it from the CRW pump station on Beavercreek Road.

I am writing to formally ask for extraterritorial water service from CRW to supply our project. I would appreciate having a formal decision from the CRW board as soon as possible stating CRW's willingness to provide water services to our project.

I appreciate your time on this matter. Please let me know if I can clarify any questions you may have about our proposed project or this request for extraterritorial service.

Sincerely,



Andrew Brand
Authorized Representative
Beavercreek Road LLC
andrew@evergreenhd.com

location where the Glen Oak Road sewer discharges into the Hwy 213 sewer (nodes 12371 and 12372). Regardless of the source of additional flows in the Glen Oak Road sewer, Keller Associates recommends that the manholes with only two feet of cover be equipped with bolted down, sealed manholes if these are currently not in place.

The City desires to reserve approximately 20 gpm of the available 225 gpm capacity for the existing Three Mountains subdivision (currently on septic systems). This would leave approximately 205 gpm of uncommitted capacity that could be used to service a portion of Areas 1 and 2 of the Beavercreek Development. **Allowing the proposed Beavercreek Apartment Development to gravity flow to Glen Oak Road would still leave approximately 100+ gpm of uncommitted capacity for future downstream development.**

While accommodating the Beavercreek Apartment Development in the Glen Oak Road sewer would direct flows across sewer basins on a short-term basis, it is worth noting that the area can gravity flow to the Glen Oak Road sewer system. Additionally, in the short-term there may be operational benefits to the City to direct flow into the Glen Oak Road sewer. Allowing flow from Beavercreek Development to go to the Glen Oak Road sewer would also allow the large capital expenditures of the Beavercreek Sewer Trunkline project to be delayed without exceeding the capacity of the existing pipelines, giving the City and development community more time to plan for and fund the new trunkline. Flow from the Beavercreek Development could eventually be routed into the Beavercreek Sewer Trunkline, and provisions for this transfer should be incorporated into the design of the Beavercreek Development.

Accommodating the Beavercreek Apartment Development in the Glen Oak Road sewer does not obligate the City to service other future developments in Areas 1 and 2 within the Glen Oak Road sewer. Should Areas 1 and 2 be committed long-term to the Glen Oak Road sewer, then as an alternative to the Beavercreek Sewer Trunkline, it may be possible to complete downstream improvements in Hwy 213 to alleviate surcharged conditions in the City's Glen Oak Road sewer. In their June 30, 2014 technical memorandum, BC estimated that a \$537,000 pipe upsizing project in Hwy 213 would alleviate the surcharged conditions in the City-owned Glen Oak Road sewer.

One of the concerns expressed by the City in allowing Beavercreek Apartment Development to discharge into the Glen Oak Road sewer is that the flow utilizes available downstream capacity in HWY 219 that could be dedicated to other developments. The City also recognizes that significant contributions of I/I utilize available pipe capacity. Reducing the amount of I/I could free up pipe capacity for development. The cost to reduce flow by reducing I/I is a function of a number of factors, including the presence of direct storm water connections, topography, climate, groundwater levels, soil conditions, and pipe material conditions.

Keller Associates investigated whether there are benchmarks for estimating typical cost per gallon for I/I removed from a wastewater collection system. Contact was made with the City of Eugene, City of Springfield, City of Salem, City of Portland, and Clean Water Services. All of these entities desire to obtain this information, but do not have it at the present time. Clean Water Services reported that they have done similar research on the

From: [Whiteley, Doug](#)
To: [Pete Walter](#)
Subject: FW: SOC
Date: Monday, January 12, 2015 1:11:34 PM

Hi Pete,

Here is the language directly from our Standards Of Coverage document. The highlighted line references our urban response area which the area in questions falls within.

Let me know if you need anything else.

Thanks,

Doug Whiteley

Fire Marshal - Administrative Battalion Chief

Direct: 503.742.2660

main: 503.742.2600



To Safely Protect & Preserve
Life & Property

CLACKAMAS FIRE DISTRICT #1
www.clackamasfire.com

Here is the info we discussed, this is our BASELINE published in 2013 SOC with 2012 data.

Baseline EMS Objectives:

DISTRIBUTION- Baseline EMS

For 90 percent of EMS responses, total response time of the first arriving apparatus arrives within:

7 minutes and 15 seconds in URBAN communities

7 minutes and 37 seconds in SUBURBAN communities

14 minutes and 38 seconds in RURAL communities.

The first arriving unit is staffed with two, three, or four personnel and is capable of providing advanced life

support and treatment for a one or two patient medical incident while providing for the safety of victims and

responders in accordance with department policy and procedures.



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

File Number: PC 13-032

Agenda Date: 4/9/2013

Status: Agenda Ready

To: City Commission

Agenda #: 3a.

From: Public Works Director John Lewis

File Type: Planning Item

SUBJECT:

Transportation System Plan Update (File L 13-01, Ordinance No. 13-1002)

RECOMMENDED ACTION (Motion):

This is a work session presentation; no action is required.

BACKGROUND:

The Transportation System Plan (TSP) provides a long term guide for transportation investments for an equitable and efficient transportation system. Over the past year, City staff has been working with the community to evaluate the current transportation system and outline policies and projects to protect and enhance the quality of life in Oregon City through 2035. Approximately 360 potential transportation improvements were identified totaling an estimated \$221 million. With approximately \$73 million worth of investments reasonably expected to be funded, approval criteria created by the public identified the transportation improvements which best reflect our community goals and are anticipated to be constructed by 2035.

The purpose of this work session is to provide background on the creation and recommendations of the Transportation System Plan. The Planning Commission has been reviewing the document and will share their thoughts on the document.

The proposed amendments to the Oregon City Municipal Code associated with the Transportation System Plan (file L 13-02, Ordinance No. 13-003) will be discussed at the May 7, 2013 City Commission Work Session. The first City Commission hearing is expected to be on May 15, 2013.

The full document may be found at www.OCTransportationPlan.org.

City

AP 14-02 Graser-Lindsey Appeal of Planning File SP 14-01
Beavercreek Rd. Live/Work Apartments
Jan. 21, 2015

PROBLEM (Or STAFF ERROR) #1:

Consideration or approval of application SP 14-01 does not comply with law. According to OC law, LUBA's interpretation of OC law, and OC commitments made during an appeal of the annexation of this land, the Beavercreek Road Concept Plan must precede any urbanization and development of this property.

MAP 1. This map shows that this property (the subject of SP 14-01) is part of the land annexed to Oregon City by annexation AN 07-02¹ which was appealed to the Oregon's Land Use Board of Appeal (or LUBA) (which was appealed and affirmed).

This land is also a central part of the Beavercreek Rd. Concept Plan area that the City adopted in 2008, but LUBA remanded in Aug. 2009; i.e., LUBA rejected the concept plan as it was and sent it back to Oregon City to be revised.

Like me (the appellant), the City's own Planning Commission felt that annexing the land (in blue), which includes this property (red), before the concept plan was completed put the "cart before the horse".

Consequently, I appealed this annexation to LUBA.

LUBA affirmed the annexation and allowed it to proceed the adoption of the concept plan,

but LUBA found "the question is a reasonably close one" and it found that the annexation required very specific interpretations of OC law which it provided. (LUBA 2007-171 Final Opinion and Order, p. 19 line 13).

LAW #1

LUBA looked at Oregon City Comprehensive Plan (OCCP) Goal 14.4 and provided its interpretation based on the City's interpretation and argument:

¹ Appeal Memorandum from City Staff of Jan. 15, 2015, p. 2, cites Ord. #1021.

ENTERED INTO THE RECORD

DATE RECEIVED: 1/21/15

SUBMITTED BY: Elizabeth

SUBJECT: Graser-Lindsey

Item 10a

Oregon City Comprehensive Plan (OCCP) Goal 14.4 “Annex lands to the city through a process that considers the effects on public services and the benefits to the city as a whole and ensures that development within the annexed area is consistent with the Oregon City Comprehensive Plan, City ordinances, and the City Charter.”

“Policy 14.4.2 Include an assessment of the fiscal impacts of providing public services to unincorporated areas upon annexation, including the costs and benefits to the city as a whole as a requirement for concept plans.” LUBA, p. 17

LUBA’S INTERPRETATION of OCCP Goal 14.4 and similar law:

“The underlying purpose of OCCP Goal 14.4 and related city and Metro provisions appears to be to ensure that

- (1) a concept plan will precede actual urbanization of the annexed areas,
- (2) concept plans will provide the basis for planning and zoning of annexed areas for urban development, and
- (3) adequate and sufficient public facilities are extended to annexed areas as they urbanize in a way that does not financially burden or adversely affect public facilities and services in other parts of the city.

As we have explained elsewhere in this opinion, the city took steps to ensure that urbanization cannot occur until the Beavercreek Road Concept Plan has been completed.” (LUBA 2007-171 Final Opinion and Order, p. 20)

LAW #2

LUBA also looked at the Oregon City Municipal Code (OCMC)

OCMC 14.04.060(A) "14.04.060 - Annexation factors.

A. When reviewing a proposed annexation, the commission shall consider the following factors, as relevant:

1. Adequacy of access to the site;
2. Conformity of the proposal with the city's comprehensive plan;
3. Adequacy and availability of public facilities and services to service potential development;
4. Compliance with applicable sections of ORS Ch. 222, and Metro Code Section 3.09;
5. Natural hazards identified by the city, such as wetlands, floodplains and steep slopes;
6. Any significant adverse effects on specially designated open space, scenic, historic or natural resource areas by urbanization of the subject property at time of annexation;
7. Lack of any significant adverse effects on the economic, social and physical environment of the community by the overall impact of the annexation.

LUBA'S INTERPRETATION of OCMC 14.04.060(A)

In the absence of the City's express interpretation of this law, LUBA supplied the City's interpretation:

"...the city interprets OCMC 14.04.060(A) to require that the city 'consider' the ultimate comprehensive planning for the annexed area and to 'consider' the adequacy and availability of public services and facilities to serve that urban development as 'relevant factors.' We understand the city to argue that since (1) annexation, in and of itself, authorizes no additional urban development of the annexed property, (2) no urban development of the 122 annexed acres is allowed or will be allowed under the existing FU-10 zoning, (3) **no urban development will be possible before the Beavercreek Road Concept Plan is adopted** and necessary comprehensive plan and zoning amendments are adopted to allow urbanization of the annexed area, and (4) **the Beavercreek Road Concept**

Plan will be required to address the public facilities and services that will be needed for the urbanization of the plan area, the city's findings that recognize and point out **these facts are sufficient to 'consider' the 'relevant factors' set out in OCMC 14.04.060(A).**" (LUBA 2007-171 Final Opinion and Order, p. 24).

LUBA'S REITERATION

LUBA reiterated this opinion in several further statements:

"We ultimately conclude in rejecting subassignments of error B and C under the first assignment of error that **the city** did not violate its obligations under those OCCP and OCMC requirements because it **has ensured that the 122 acres will not urbanize until the required land use and public facilities planning is completed under the Beavercreek Road Concept Plan.**" LUBA 2007-171 Final Opinion and Order, p. 2 line 13-17).

On OCMC 14.04.050(E), the annexation application and its references to "anticipated development" and "proposed development", LUBA notes: "**The city concedes that the Metro Code and the OCCP require that the Beavercreek Road Concept Plan must be adopted before the annexed territory can be planned and zoned in a manner that would allow the annexed property to be developed with urban uses.**" (LUBA 2007-171 Final Opinion and Order, p. 13-14).

OTHER LAWS REQUIRING THE CONCEPT PLAN PRIOR TO DEVELOPMENT

And regardless of the Annexation requirements outstanding for the city, other city laws require the concept plan before development:

OCCP Policy 14.1.2

Concept plans that provide more detail than the city's Comprehensive Plan will be required prior to development of lands within the Urban Growth

Boundary.

Goal 14.3 Orderly Provision of Services to Growth Areas

Plan for public services to lands within the Urban Growth Boundary through adoption of a concept plan and related Capital Improvement Program, as amendments to the Comprehensive Plan.

STAFF CLAIM NOT RELEVANT: REZONING IS INADEQUATE

(City specifically promised to have a concept plan before urbanization and development and LUBA's opinion specifically requires a concept plan before urbanization – LUBA found this necessary to approve the annexation in a close decision. (LUBA 2007-171 Final Opinion and Order, p. 19 line 13.)

The City's staff suggests that the 2010 re-zoning of this land with conditions² was sufficient to allow urbanization and development of this land.

(Appeal Memorandum from City Staff of Jan. 15, 2015, p. 3-4)

- The City gave one argument before LUBA for the annexation. The City did not divide the annexation into subzones that could receive reduced planning.
- A rezone with conditions is not the concept plan that the City's law requires -- neither as written or as interpreted by LUBA or mentioned in LUBA's Final Opinion and Order. (It did not need to be appealed; it was irrelevant to LUBA's requirements and the City's law).
- At no point did LUBA say rezoning could substitute for a concept plan and the City's law does not state that either.
- The staff report acknowledges, that without a concept plan, "compliance with the concept plan cannot be require" (p. 4 ¶2)³.
- In addition, the conditions that the City applied with the rezone do not constitute an entire concept plan nor do they serve to coordinate the property with the whole concept plan area.

² Staff says, "The conditions attached to the plan amendment/zone change explain that development of the property may proceed adoption of the Beaver Creek Road Concept Plan..." (p. 4 ¶4). Conditions do not supercede pre-existing law or create law.

³ "[t]he City's more recently adopted sewer, water, and stormwater master plans" themselves potentially would need revising to conform with the concept plan.

or pseudo conditions

- Finally, since a LUBA-affirmable concept plan has not yet been considered or adopted, there is no reason to think:
 - that the provisions of an old, remanded plan meet the City's current needs or
 - that an old plan adequately deals with public facilities and services.
 - LUBA anticipated that the creation of a new, legally-compliant concept plan could remedy potential additional errors in the old plan's handling of public facilities and services and citizen involvement⁴

The City itself is in error to consider this application (site plan design review) when the time is not right. The City is wrong to guide the applicant toward applying and approval criteria at a time when an application cannot yet be received due to the needed concept planning being incomplete and the concept plan, not adopted.

It is the concept plan which "identifies the effects of the full build-out ... on public services and any benefit to the city as a whole..." and which guides updating of appropriate Master Plans, such as the Transportation System Plan, Water and Sewer Master Plans. Without the concept plan being finalized these updates can't be properly planned⁵.

⁴ LUBA 2008-170 Final Opinion and Order for the Remand of the Beavercreek Rd. Concept Plan. "The petition for review also includes two more assignments of error that we have not addressed. The issues presented by those arguments may or may not arise if the city on remand adopts a new concept plan that complies with MC 3.07.1120 and 3.07.430... We therefore remand the decision without considering petitioner's remaining arguments." p. 26.

⁵ The city's findings addressing OCCP 14.4 are set out below:

'The city annexation process is set out in Chapter 14 of the [OCMC]. By requiring compliance with that code, the Metro Code, and the statewide Planning Rules, the city is **identifying the effects of the full build-out of these annexed properties will have on public services and any benefit to the city as a whole**. As part of the Beavercreek Road Concept Plan adoption, appropriate Master Plans, such as the **Transportation System Plan, Water and Sewer Master Plans for example, will be updated to address the anticipated impacts.**" Record 63. (LUBA 2007-171 Final Opinion and Order, p. 19 FN 11)] ____ see OC reports on this.

Without the concept plan, this area is not planned compatibly with the surrounding area and the city's purposes for the area and urban services and facilities are uncoordinated and not planned for adequacy, proper design, or , properly designed.

ERROR 2: Public services and facilities are not planned and designed properly and are not adequate.

The application indicates

- the plans and designs for providing of public facilities are not proper or adequate^{6, 7},
- are not without adverse impacts on existing residents of the city,
- are not coordinated, and
- are without plans for funding⁸ to accomplish the plans.

⁶ Goal 14.3 Orderly Provision of Services to Growth Areas

Plan for public services to lands within the Urban Growth Boundary through adoption of a concept plan and related Capital Improvement Program, as amendments to the Comprehensive Plan.

Policy 14.3.1

Maximize new public facilities and services by encouraging new development within the Urban Growth Boundary at maximum densities allowed by the Comprehensive Plan.

Policy 14.3.2

Ensure that the extension of new services does not diminish the delivery of those same services to existing areas and residents in the city.

Policy 14.3.3

Oppose the formation of new urban services districts and oppose the formation of new utility districts that may conflict with efficient delivery of city utilities within the Urban Growth Boundary.

Policy 14.3.4

Ensure the cost of providing new public services and improvements to existing public services resulting from new development are borne by the entity responsible for the new development to the maximum extent allowed under state law for Systems Development Charges.

⁷ An adopted concept plan is not providing this function. In addition, the remanded concept plan did an inadequate job of planning how the necessary public facilities will be provided and paid for, ensuring that delivery of those services would not diminish services to existing residents, and ensuring costs were borne by the developer.

⁸ LUBA 2007-171 Final Opinion and Order, p. 27 “the Beaver Creek Road concept Plan planning process... will establish the nature of that urbanization and how the necessary public facilities will be provided and paid for is complete.” p.28 line 13 adequate and available

This puts the application out of compliance with OCMC 12.04 (streets), 17.62.050 (sewer and water), and 13.12 stormwater.

TRANSPORTATION

Beavercreek Rd., despite being crowded already, isn't getting a new lane to handle the new traffic volumes.

In fact, the development is being planned so close to the road right-of-way that it effectively will prevent or make enormously expensive a future widening of BC Rd

Past traffic analyses from your consultant predicted that 10s of thousands of VTD vehicles trips per day would be generated by the concept plan area. The ODOT reviewer believed that the trip load was underestimated (numbers lower than usual were used for unit trip generation) due to the an assumption that the residents would largely work on site.

There was no evidence for that assumption before. And now, with residential being prioritized over family-wage job creation and proceeding family-wage job creation, there won't be family wage jobs on the site.

This increased congestion is devastating for the Beavercreek community and Oregon City neighborhoods

and frightening to the Holly Lane community as well that gets the overflow traffic and, if BC Rd. can't accommodate all the traffic, potentially becomes a thoroughfare.

During the next 20 years the state and county predict that Hwy 213 through Newell Creek canyon and I205 past Oregon City will reach terrible levels of congestion which required a drop in the traffic standards.

SEWER

OCMC 17.62.050⁹ provides for the city to require over sizing of facilities to meet standards in the master plan or needed to be orderly and efficient in

⁹ OCMC 17.62.050 ...A development may be required to modify or replace existing offsite systems if necessary to provide adequate public facilities. **The city may require**

provision of services. "Per the [City's] 2014 SSMP [Sanitary Sewer Master Plan], the BRCP [Beavercreek Road Concept Plan] area, including the Beavercreek Rd. Apts, is planned to be served by the Beavercreek Rd. basin from a future 15" sanitary sewer main extension in Beavercreek Rd...." (City Engineer Aleta Froman-Goodrich Memorandum, Nov. 5, 2014). The applicant instead selected the Glen Oaks basin sewer system. To make it work they indicate that manhole covers will needed to be welded shut due to sewage being 2 feet down. ____ "Bolting down the manholes does not resolve the capacity deficieiencies of the sewer pipes." (p. 4) "The SSMP has committed the existing remaining capacity of the Glen Oak collection system fo the planned developments that must flow to the Gen Oaks basin and Hwy 213 sewers." (p. 4) "The results predict there are additional impacts to the existing collection system that cause excessive surcharging of gravity sewers that **could lead to basement backups.**" (Memorandum from City Engineer Aleta Froman-Goodrich, January 5, 2015, p. 3 paragraph 3). The applicant would be charged 25% of the cost (shared with other BRCP development) for increasing the capacity of the Hwy 213 sewers to prevent the back up. However, what if the other 75% of the 213/Glen Oak solution does not manifest nor pay (so there is insufficient funds to do the fix) before the sewage system begins backing in basements and streets? Timing is a problem: "...very little flow" from the BRCP area is expected "within the next 10 years" (p. 5 vii 5) which implies that "very little flow" of dollars from the BRCP area can be expected to supplement the applicant's fee in lieu which will leave the Glen Oaks sewage line with bolted down manhole covers and sewage backing up in basements for 10 years (or possibly more). The City requires the development sewage line "shall incorporate the design of the future 15-inch sanitary sewer so in the future the Beavercreek Apts can be transferred to

over sizing of facilities if necessary to meet standards in the city's facility master plan or to allow for the orderly and efficient provision of public facilities and services. Where over sizing is required, the developer may request reimbursement from the city for over sizing based on the city's reimbursement policy and fund availability, or provide for recovery of costs from intervening properties as they develop.

the Beavercreek basin...” (p. 5 vii 2) If the developer pays for the Hwy 213 capacity increase now, it is not clear they are paying for the BC line in the future.

[Previously, at one of your hearings, one of the adjacent BRCP land owners proposed putting treated sewage into the creek.]

The City should require the normal approach, that is, that the developer put in the needed Beavercreek Rd. line with cost reimbursements, because this protects the public from sewage backups and overflows and it prepares the concept plan area for future development with the proper necessary infrastructure.

WATER

The City needs more water and more water pressure to serve this area. It needs to build a reservoir to the south to achieve this according to the experts. It needs to address this short- and long-term need to serve this development with city water and to be able to serve the BRCP area. If the City allows the water to be bought from a rural water district, which has the priority function of meeting rural needs, it could come up short under various scenarios such as

- build out in the Beavercreek area,
- drought,
- increase irrigation demand for more local food production,
- others

leaving this development without water, or other city residents with reduced water to serve this development.

This “solution” lacks a contract (a firm commitment) with the Clackamas River Water District. In the recent response from Clackamas River Water (1-14-2015), the district gave “no comment” regarding most aspects of supplying water; it would not serve BRCP needs.

Avoiding making a long-term plan leaves the concept plan area without a workable water solution for the whole area and it leaves this development not contributing financially to the solution..

[Earlier in the process one of the adjacent BRCP land owners indicated they would build a well to get water.]

It appears the City could be left not providing necessary urban services.

POLICE AND FIRE. There was no word from the police or fire until after the application was approved by Planning. The constrained traffic flow on Beaver Creek Rd. constitutes a hazard to life and safety in Beaver Creek which receives fire services from Oregon City (and vice versa).

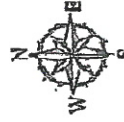
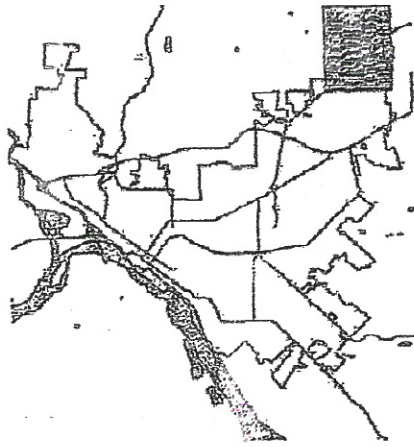
ERROR #3 This development would hamper, block and preempt needed concept planning. This could prevent meeting Oregon City's needs and compliance with the law.

This land is part of the flat and un-bisected part of the site where much of the northern and eastern part of the site is unbuildable due to severe slopes of ravines and canyons and/or due to multiple regional power-line corridors. Its specific use greatly constrains the development of the concept plan.

ERROR #4: Oregon City did not get notice of the appeal to the Caufield Neighborhood Association although they submitted testimony in the file.

AN 07-02

SP 14-01



CITY of Oregon City
P.O. Box 3040
320 Warner Mills Rd
Oregon City, OR 97045
(503) 637-0391
www.orcity.org

This map is not suitable for survey, engineering, legal, or navigation purposes. Errors and omissions may exist.

Map created with QCMAP 2006

05/29/2007

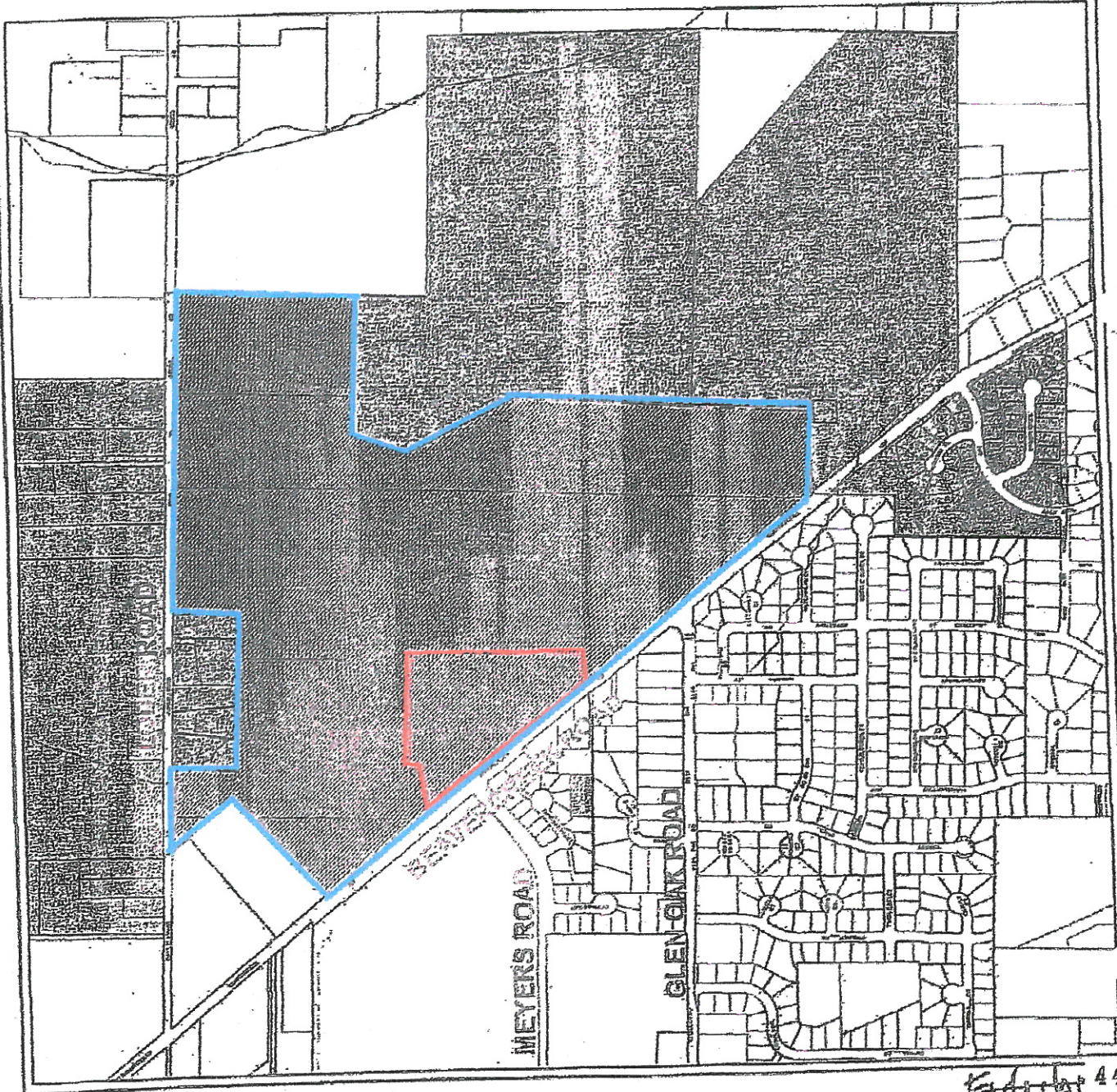


Exhibit 442

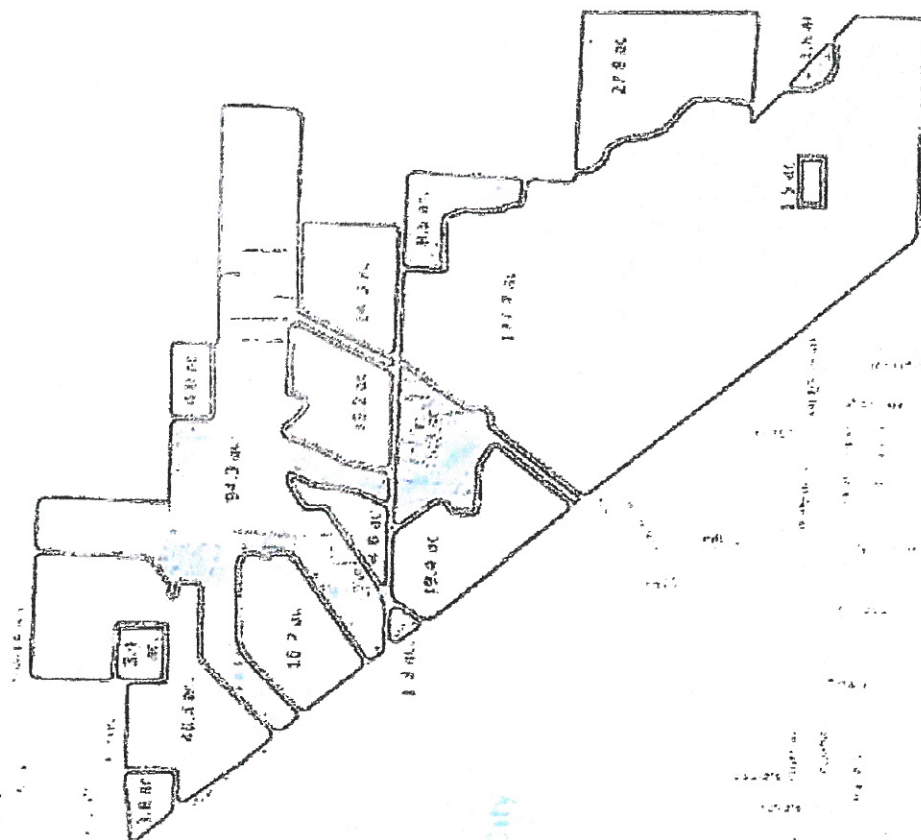
Figure 1



Figure 8 - Land Use Sub-districts

Note: Beaver Creek Road Concept Road

EVERETT R.O.D. CONCEPT PLAN



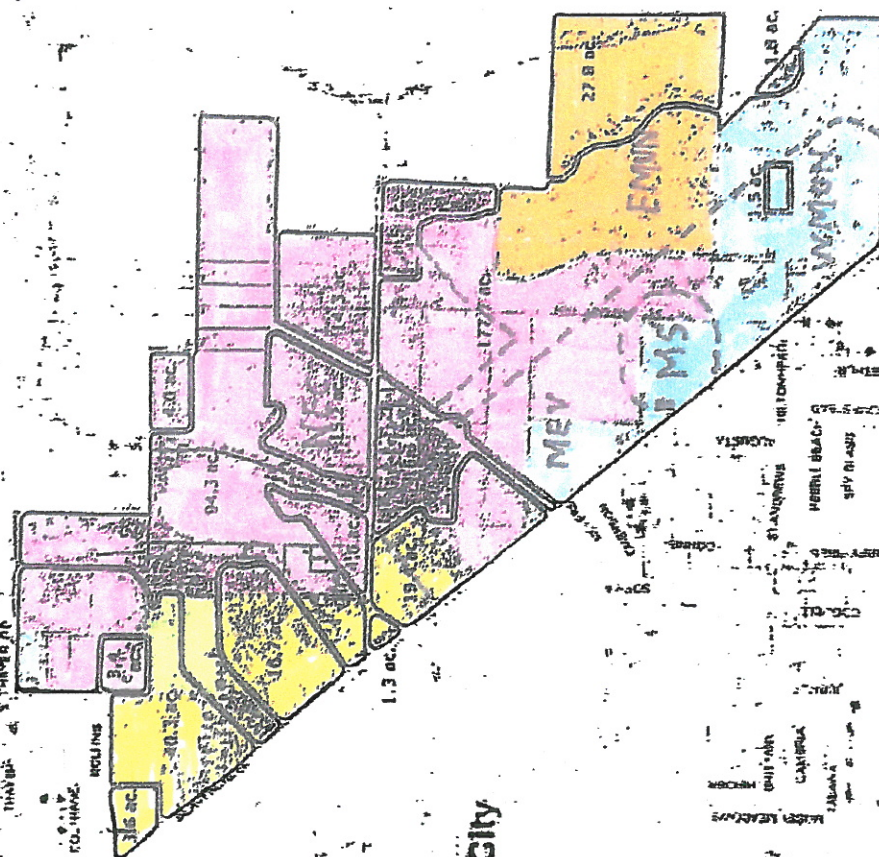
Note: Buildable Lands

☐ A. untrained
☐ B. untrained Java-enabled with Java
☐ C. untrained
☐ D. untrained Java-enabled with Java

1. Beaver Creek Road
2. Concord Plaza Area
3. City Limits
4. URB
5. 200 400 600 800
6. 1 mi

2

Actual Photography is 7 foot resolution at 1:1
All data on this map is derived from the Aerial
map. The information was developed at a digital
and accurate. No warranty is made with respect to



Oregon City

BEAVERCREEK ROAD
CONCEPT PLAN

See map on previous page

Legend to APPENDIX C. Comparison of Maps in the Record Showing the 2002 and 2004 Metro Title-4 Industrial UGB Expansions and Other Lands in the Beavercreek Road Concept Plan Area.

Map Color	Metro 2040 Growth Concept Design Type	UGB Expansion	City Zoning or County	Acreage	Record page
Pink	Industrial	2002		245	42, 1524 & 725, Appendix B
Orange	Industrial	2004		63	42, 1524 & 725, Appendix B
Yellow	Employment	Pre-existing	Campus Industrial	~50	44, Appendix B, 1524
Green	Employment	Pre-existing	County	~14	Appendix B
Blue	Outer Neighborhood	Pre-existing	County	~74 ~2	1524 & 725, 42, 801, 1525, Appendix B
			Loder Rd.	5	Rec. 44

The Base Map is taken from Rec. 728 which is cleaner than other versions of the same thing.

The City limits and property lines are evident at Record pages 1778, 1512, 1402, 1404, 727, 248.

The concept plan dotted lines come from Rec. 49.

Acreages

Blue ~74. This land in the south is part of the total annexation area of 114 acres litigated in *Graser-Lindsey v. City of Oregon City*. 2007-257. Final Order and Opinion page 2. Rec. 801. The 2004 UGB expansion was 63 acres. Rec. 42. The balance is 51 acres. Two additional wedge shaped properties along Beavercreek Road are estimated as 23 acres. In total that gives 74 acres. FN 6.

Green. This is estimated off the map. FN 6.

Blue. This is estimated off the map at the top left corner. FN 6.

Oregon City's zoning can be seen most clearly at http://www.ci.oregon-city.or.us/gis-mapping/pdf/atlas_zoning/Zoning Atlas Page 21.pdf and pages 22 and 28.

The Metro's adopted 2040 Growth Concept map can be seen most clearly at http://www.oregonmetro.gov/files/planning/2040_growth_concept.pdf



Elizabeth Graser-Lindsey <egraserlindsey@gmail.com>

Beavercreek Rd. Development Appeal

3 messages

Elizabeth Graser-Lindsey <egraserlindsey@gmail.com>

Thu, Jan 15, 2015 at 2:51 PM

To: Larry Hanlon <larryhanlon@hotmail.com>, Mike Mermelstein <mike1376@aol.com>

Dear Mike and Larry:

By now you have most likely received word of the appeal of the Beavercreek Rd. Development from Oregon City. Can the Caufield Neighborhood Association please bring its concerns to the attention of the Oregon City Commission which will newly be hearing the matter on January 21?

Elizabeth Graser-Lindsey

Mike Mermelstein <mike1376@aol.com>

Thu, Jan 15, 2015 at 7:15 PM

To: Elizabeth Graser-Lindsey <egraserlindsey@gmail.com>

Have not seen the appeal yet.

Mike

Sent from my iPhone

[Quoted text hidden]

Elizabeth Graser-Lindsey <egraserlindsey@gmail.com>

Fri, Jan 16, 2015 at 11:56 AM

To: Mike Mermelstein <mike1376@aol.com>

They were supposed to have send you notice a while back as they document in their appeal report. As of today the appeal is shown in the Jan. 21 agenda for the City Commission: <https://oregon-city.legistar.com/Calendar.aspx>

[Quoted text hidden]

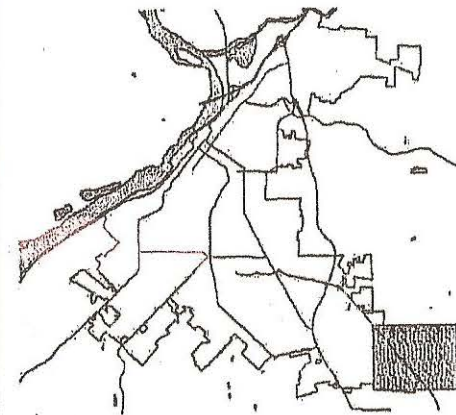
AP 14-02 Graser-Lindsey Appeal
of Planning File SP 14-01
Beavercreek Rd. Live/Work Apartments
Jan. 21, 2015

Problem #1:

Application cannot be approved
because the concept plan
must proceed
urbanization and development.

AN 07-02

SP 14-01

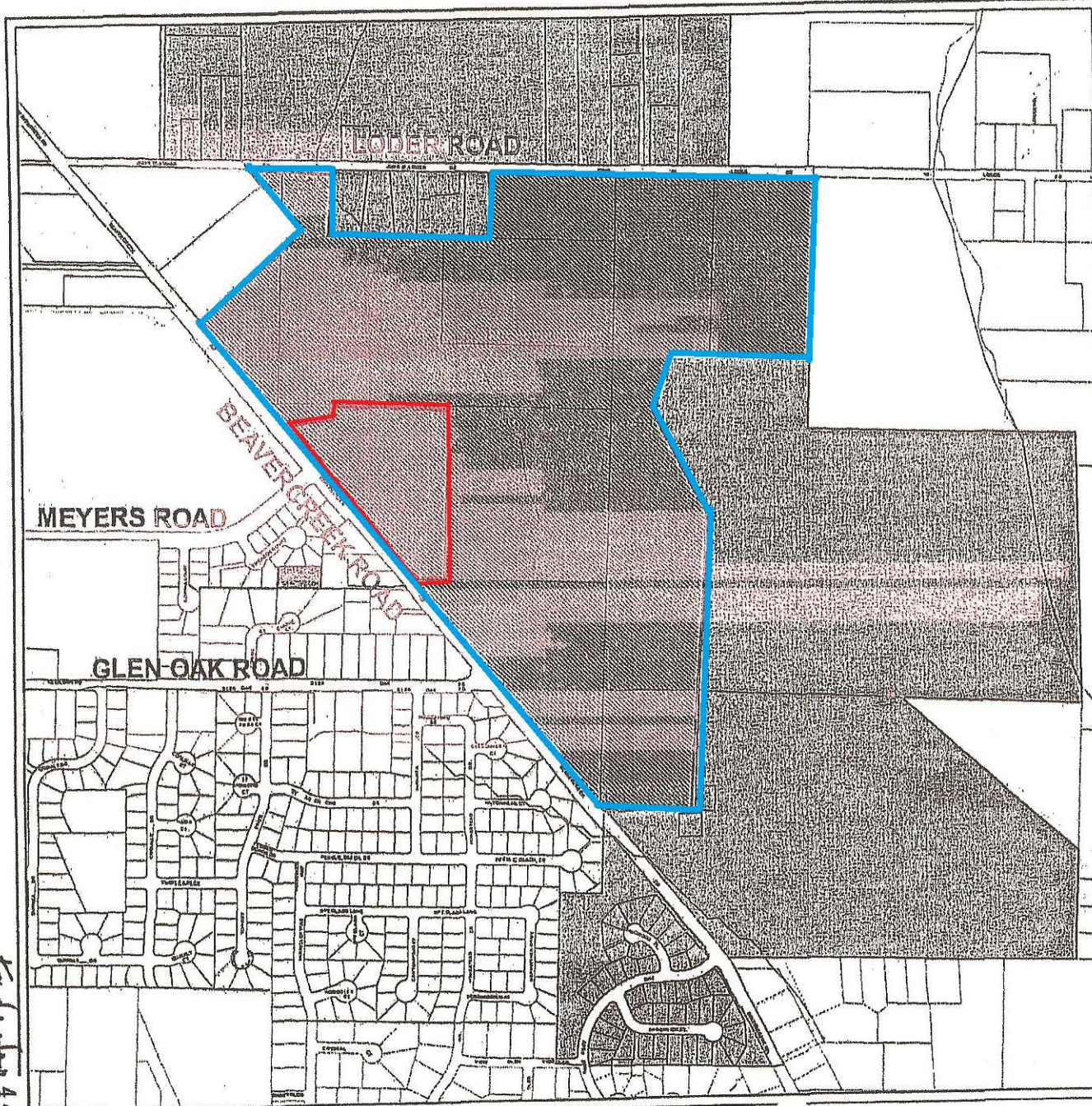


City of Oregon City
P.O. Box 3040
320 Warner Milne Rd
Oregon City, OR 97045
(503) 657-0891
www.oregcity.org

This map is not suitable for survey, engineering, legal, or navigation purposes. Errors and omissions may exist.

Map created with OCMAP 2006

05/29/2007



LV04 2007-171 Record

Page

Exhibit 442

Division

Annexation Law considered by LUBA

#1

OCCP Goal 14.4 “Annex lands to the city through a process that considers the effects on public services and the benefits to the city as a whole and ensures that development within the annexed area is consistent with the Oregon City Comprehensive Plan, City ordinances, and the City Charter.”

“Policy 14.4.2 Include an assessment of the fiscal impacts of providing public services to unincorporated areas upon annexation, including the costs and benefits to the city as a whole as a requirement for concept plans.”

LUBA's interpretation of OCCP Goal 14.4 and similar law:

“The underlying purpose of OCCP Goal 14.4 and related city and Metro provisions appears to be to ensure that

- (1) **a concept plan will precede actual urbanization of the annexed areas,**
- (2) concept plans will provide the basis for planning and zoning of annexed areas for urban development, and
- (3) adequate and sufficient public facilities are extended to annexed areas as they urbanize in a way that does not financially burden or adversely affect public facilities and services in other parts of the city.

As we have explained elsewhere in this opinion, **the city took steps to ensure that urbanization cannot occur until the Beaver Creek Road Concept Plan has been completed.**” (LUBA 2007-171 Final Opinion and Order, p. 20)

Annexation Law considered by LUBA

#2

OCMC 14.04.060(A) Annexation factors

- A. When reviewing a proposed annexation, the commission shall consider the following factors, as relevant:
 - 1. Adequacy of access to the site;
 - 2. Conformity of the proposal with the city's comprehensive plan;
 - 3. Adequacy and availability of public facilities and services to service potential development;
 - 4. Compliance with applicable sections of ORS Ch. 222, and Metro Code Section 3.09;
 - 5. Natural hazards identified by the city, such as wetlands, floodplains and steep slopes;
 - 6. Any significant adverse effects on specially designated open space, scenic, historic or natural resource areas by urbanization of the subject property at time of annexation;
 - 7. Lack of any significant adverse effects on the economic, social and physical environment of the community by the overall impact of the annexation.

LUBA's interpretation of OCMC 14.04.060(A)

“...the city interprets OCMC 14.04.060(A) to require that the city ‘consider’ the ultimate comprehensive planning for the annexed area and to ‘consider’ the adequacy and availability of public services and facilities to serve that urban development as ‘relevant factors.’

We understand the city to argue that since (1) annexation, in and of itself, authorizes no additional urban development of the annexed property, (2) no urban development of the 122 annexed acres is allowed or will be allowed under the existing FU-10 zoning, (3) **no urban development will be possible before the Beavercreek Road Concept Plan is adopted** and necessary comprehensive plan and zoning amendments are adopted to allow urbanization of the annexed area, and (4) **the Beavercreek Road Concept Plan will be required to address the public facilities and services** that will be needed for the urbanization of the plan area, the city’s findings that recognize and point out **these facts are sufficient to** ‘consider’ the ‘relevant factors’ set out in **OCMC 14.04.060(A).**” (LUBA 2007-171 Final Opinion and Order, p. 24).

LUBA's Reiteration

“We ultimately conclude in rejecting subassignments of error B and C under the first assignment of error that **the city** did not violate its obligations under those OCCP and OCMC requirements because it **has ensured that the 122 acres will not urbanize until the required land use and public facilities planning is completed under the Beaver Creek Road Concept Plan.**” LUBA 2007-171 Final Opinion and Order, p. 2 line 13-17).

On OCMC 14.04.050(E), the annexation application and its references to “anticipated development” and “proposed development”, LUBA notes: **“The city concedes that the Metro Code and the OCCP require that the Beaver Creek Road Concept Plan must be adopted before the annexed territory can be planned and zoned in a manner that would allow the annexed property to be developed with urban uses.”** (LUBA 2007-171 Final Opinion and Order, p. 13-14).

Other laws requiring concept plan prior to development

OCCP Policy 14.1.2

Concept plans that provide more detail than the city's Comprehensive Plan **will be required prior to development** of lands within the Urban Growth Boundary.

OCCP Goal 14.3 Orderly Provision of Services to Growth Areas

Plan for public services to lands within the Urban Growth Boundary **through adoption of a concept plan** and related Capital Improvement Program, as amendments to the Comprehensive Plan.

Problem #2:

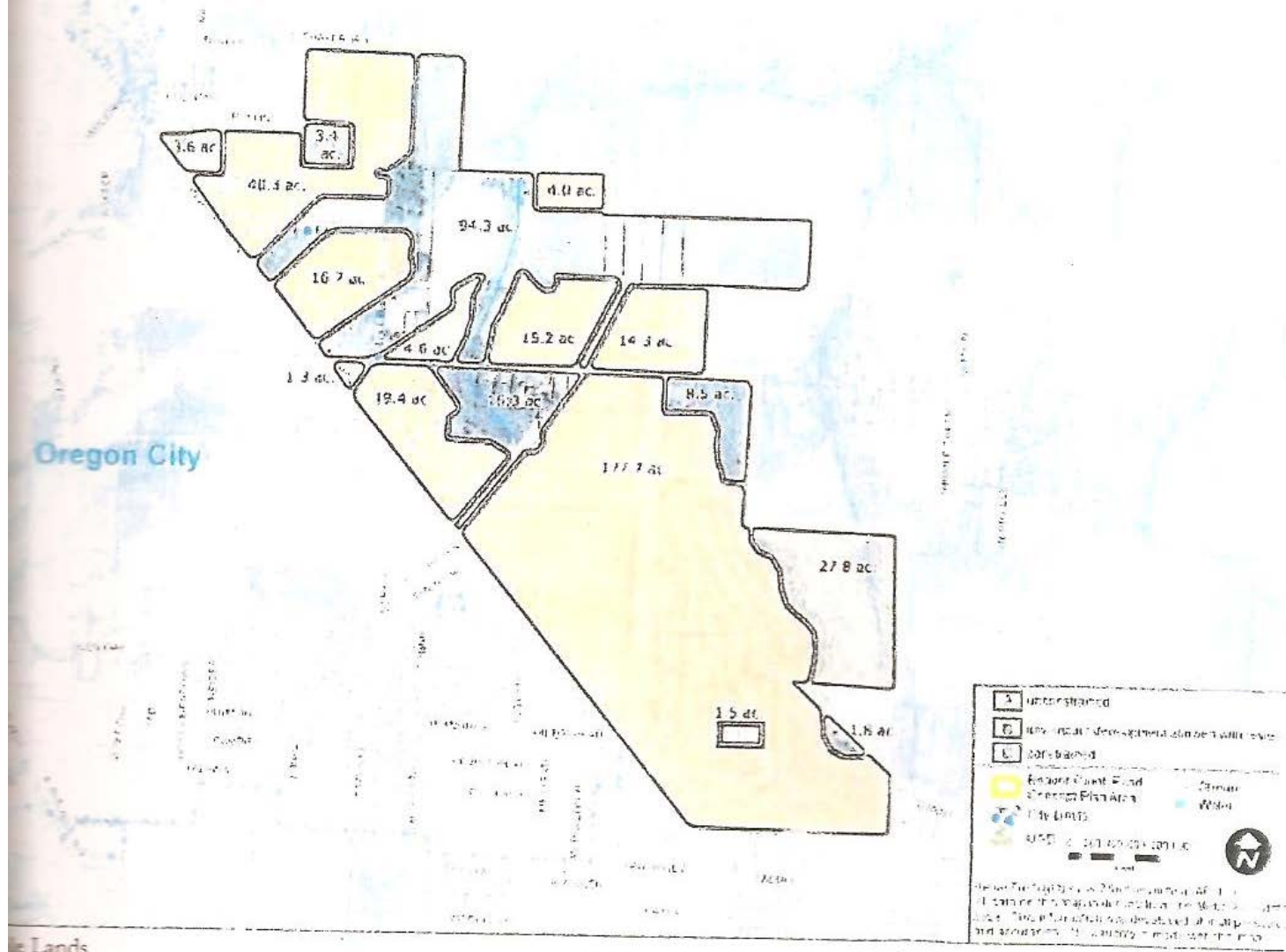
Public services and facilities
are not planned properly
for the development.

Problem #3:

This development would hamper, block and preempt needed concept planning.

This could prevent meeting Oregon City's needs and compliance with the law.

BEAVERCREEK ROAD CONCEPT PLAN

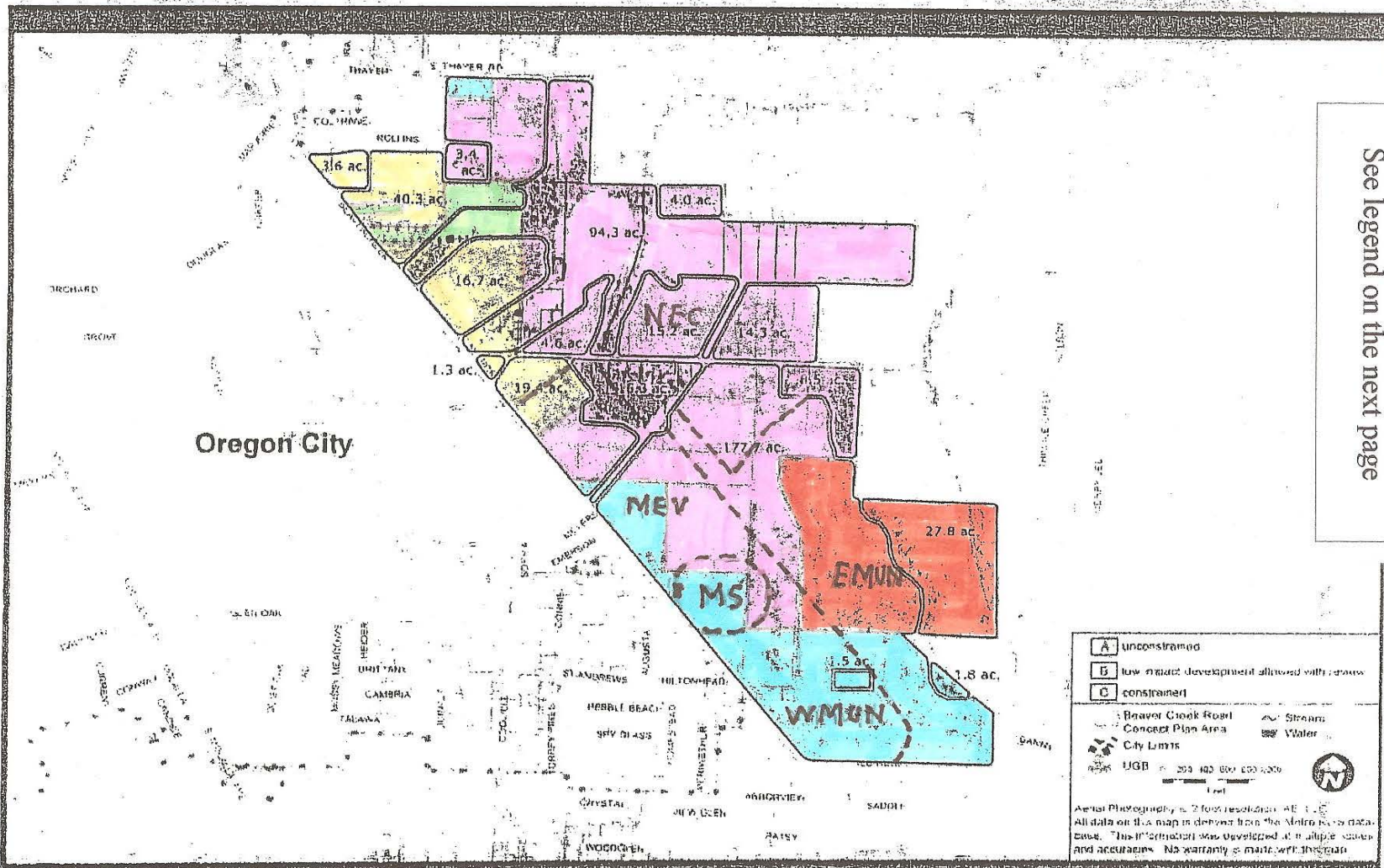


Note: Buildable Lands



Figure 8 - Land Use Sub-districts

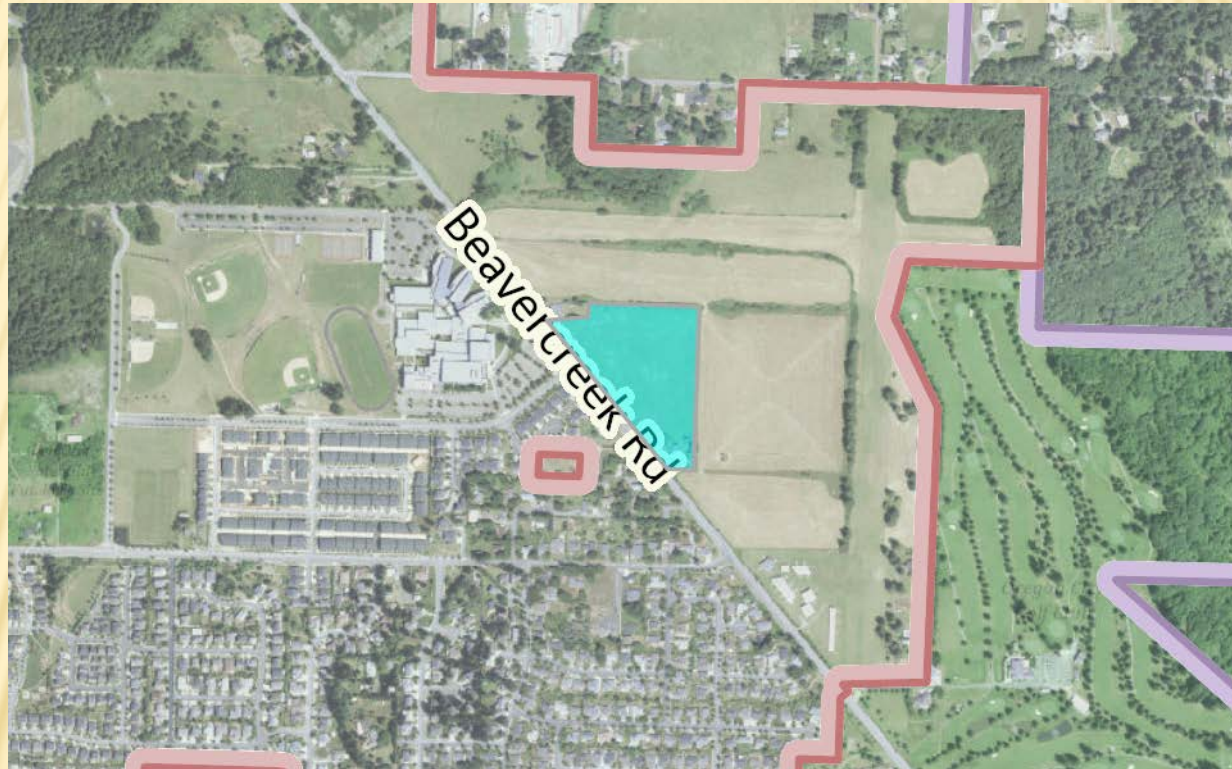
See legend on the next page



BEAVERCREEK ROAD
CONCEPT PLAN

Draft Buildable Lands

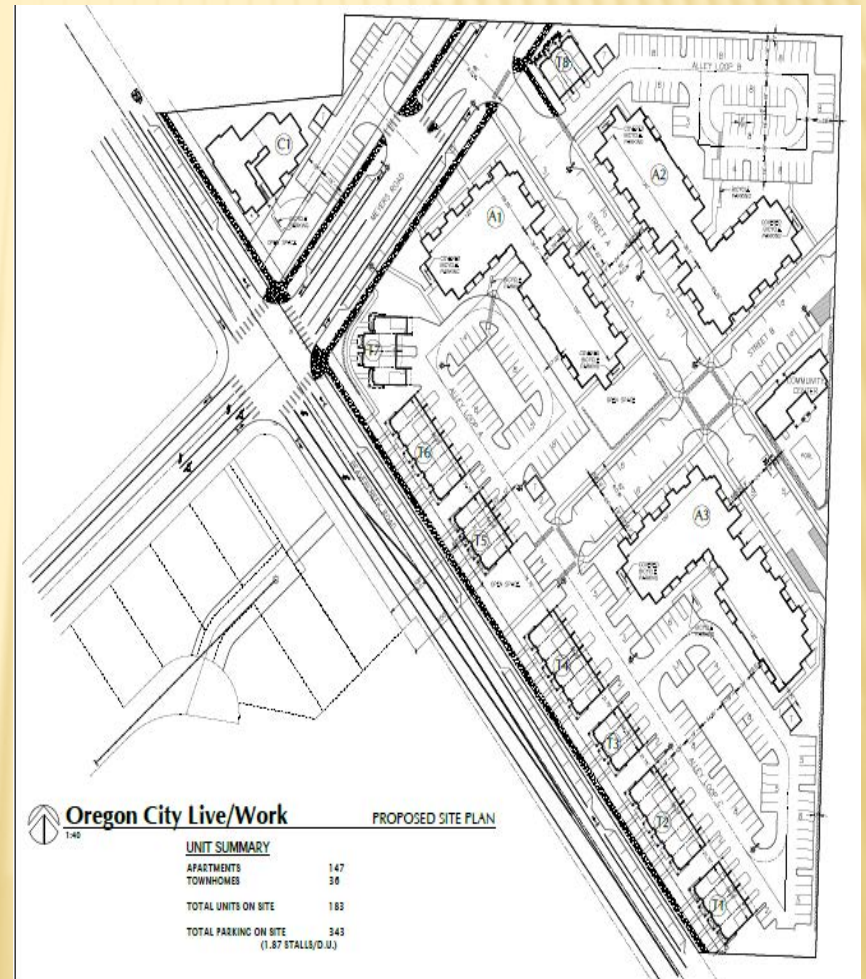
TWO APPEALS OF PLANNING FILE SP 14-01



Proposed 121 apartment and 59 live-work units located at 19896 Beavercreek Road.

PROJECT SITE

- Property is zoned MUC-1.
- Approximately 9.7 acres.
- Property was included in the UGB in 1979, prior to Metro Title 11 concept planning requirements.
- Identified as outer neighborhood, not industrial or employment, on the Metro 2040 Design Type Map.
- Annexed into Oregon City in 2008, this decision was not appealed.
- Zone changed approved to MUC-1 in 2010, this decision was not appealed.



AP 14-02: MS. GRASER-LINDSEY

Issues raised:

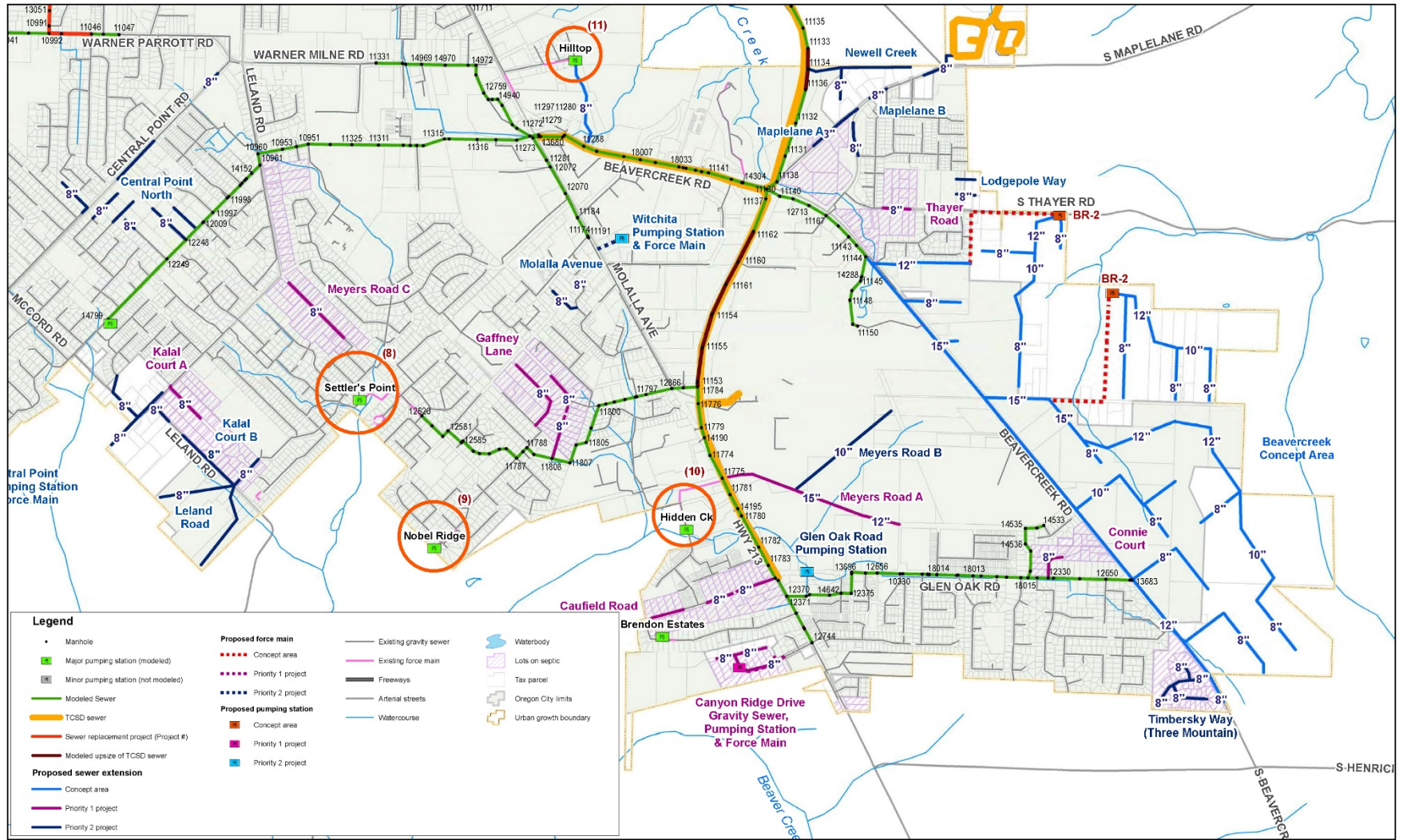
- Urbanization of the property cannot precede adoption of a concept plan.
- Compliance with the Oregon City Comprehensive Plan.
- Violation of findings from annexation (planning file AN 07-02).
- Violation of the Land Use Board of Appeals remand of the Beavercreek Road Concept Plan.
- Public facilities and services are not being coordinated nor adequate.
- The application is incomplete.

AP 14-01: BEAVERCREEK ROAD LLC

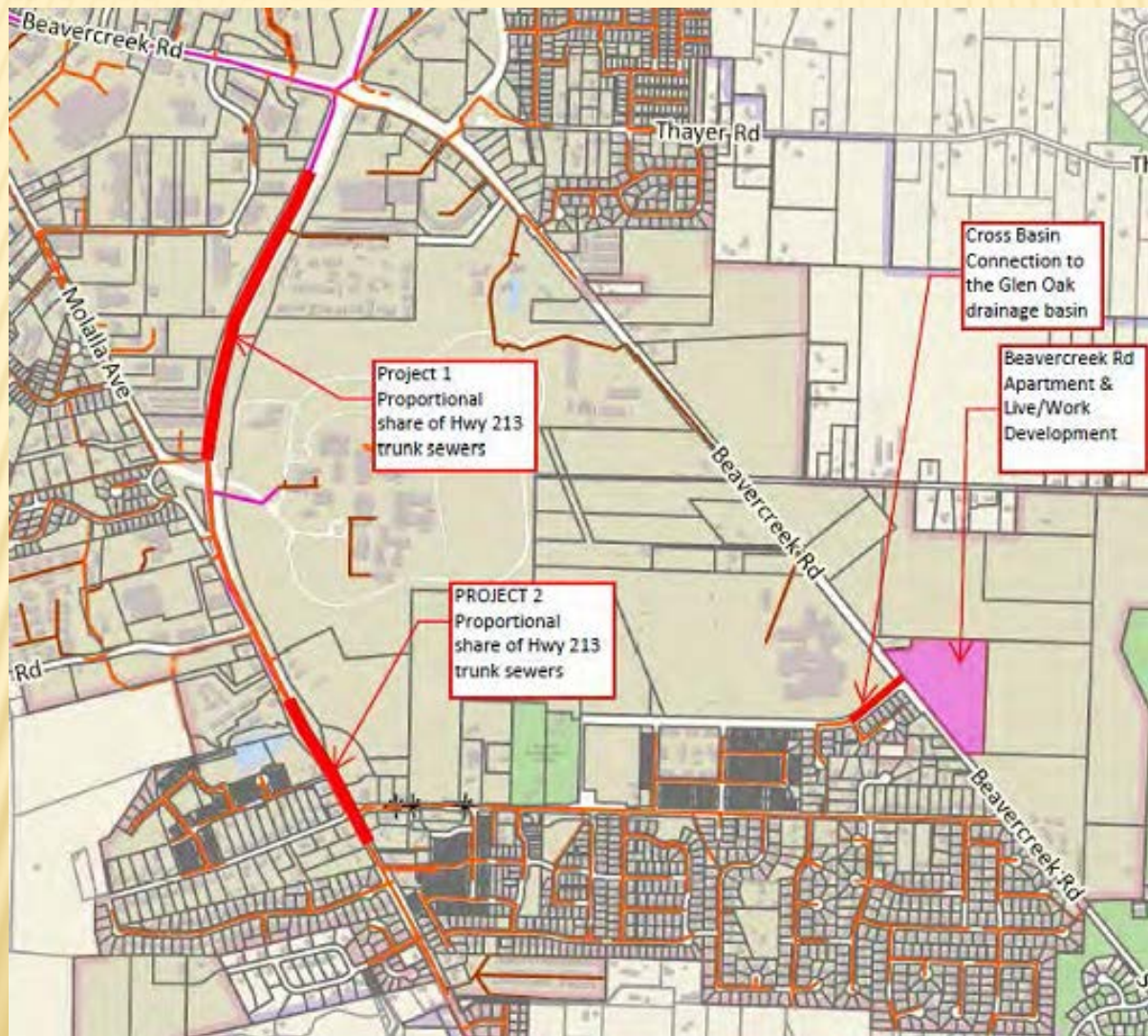
Issues raised:

- The city erred in imposing a fee in lieu of \$545,000 to modify and upsize portions of the off-site sewer system (condition of approval 37).
 - *Condition of approval 37. The applicant shall pay fee-in-lieu of downstream improvements in the Glen Oak basin required due to the cross basin connection. The amount of the fee-in-lieu shall be \$545,000 in accordance with the documentation provided in the “Public Works Engineering Memorandum” (November 5, 2014)*
- The location of the new sewer connection in Meyers Road (condition of approval 34).
 - *Condition of approval 34. The applicant shall provide 8-inch sanitary sewer collection system in the existing and future public right-of-way with the connection to the existing collection system at the manhole located in Meyers Road at Emerson Court. A short section of the collection system shall be located in a 15-foot wide public easement that extends from the western end of “B” Street to the Beavercreek Road ROW.*

SANITARY SEWER



SANITARY SEWER



CONCLUSION

- ✘ Staff Recommendation: Deny both appeals and uphold the Community Development Director's decision to conditionally approve planning file SP 14-01.

Steven P. Hultberg
shultberg@radlerwhite.com
541-585-3697

January 21, 2015

VIA HAND DELIVERY

Honorable Mayor Dan Holladay
and City Commissioners
City of Oregon City
625 Center Street
Oregon City, OR 97045

RE: AP 14-01/14-02 Beaver Creek Road LLC

Dear Mayor Holladay and City Commissioners:

This office represents the applicant in this matter, Beaver Creek Road, LLC. Please add this letter to the record in the above matter.

Two appeals are before the City Commission. One filed by an opponent of the project, and one filed by the applicant. This letter first addresses the applicant's appeal and then addresses the issues raised by the appellant.

Applicant's Appeal

Cross Basin Fee-in-lieu

The applicant has proposed to provide sanitary sewer service through a cross-basin connection into the Glen Oaks Basin rather than the Beaver Creek Basin. Presently, there is adequate capacity in the Glen Oaks Basin to serve the project. The project, however, will utilize capacity that the City has reserved for the full build-out of the Glen Oaks Basin. Full build-out of the Glen Oaks Basin is not anticipated for many years. The City has identified certain future improvements in the Glen Oaks Basin necessary to serve the project, to maintain long-term capacity in the Glen Oaks Basin and has identified the applicant's proportionate share of those improvements (the "Glen Oaks Improvements"). Because there will be sufficient capacity in the Glen Oaks Basin when the project is completed (and for the foreseeable future), the timing of construction of the Glen Oaks Improvements is unknown. The Glen Oaks Improvements are not required to be in place at the time of completion of the applicant's project, but will be completed at a later date as the Glen Oaks Basin approaches full build-out.

To be absolutely clear, the applicant is not contesting the requirement to pay a fee-in-lieu for the Glen Oaks Improvements, nor is the applicant contesting the amount of the fee-in-lieu. As required by Condition of Approval No. 37, the applicant will pay the fee-in-lieu in the amount of \$545,000. The applicant is merely requesting that if the City later determines that the Glen Oaks Improvements are not necessary due to the construction of alternate sewer

ENTERED INTO THE RECORD
DATE RECEIVED: 1/21/15
SUBMITTED BY: Steve Hultberg
SUBJECT: Item 6a

Mayor Holladay and City Commissioners
January 20, 2015
Page 2

improvements, and if the Glen Oaks Improvements are not constructed, that the applicant be entitled to a refund of the fee-in-lieu payment.

It is altogether possible that prior to construction of the Glen Oaks Improvements, the City or another developer could complete sewer improvements within the Beavercreek Basin which would serve the applicant's project and obviate the need for the Glen Oaks Improvements. At such time, the applicant's project would be disconnected from the Glen Oaks Basin and connected to the Beavercreek Basin sewer lines. In that case, it would not be equitable for the City to retain the fee-in-lieu payment for construction of improvements that were never completed. This would be especially true were the City to collect SDCs from the applicant, a portion of which are attributable to the Beavercreek Basin improvements, or impose an LID on the project for connection to the Beavercreek Basin improvements.

To address this situation, the applicant is merely requesting the ability to enter into a development agreement with the City which would provide for a refund or partial refund of the fee-in-lieu if the Glen Oaks Improvements are not constructed and the Glen Oaks Improvements are no longer necessary to serve the project.

The applicant proposes the following condition of approval. The applicant's proposed language is underlined:

37. The applicant shall pay fee-in-lieu of downstream improvements in the Glen Oak Basin required due to the cross basin connection. The amount of the fee-in-lieu shall be \$545,000 in accordance with the documentation provided in the "Public Works Engineering File Memorandum" (November 5, 2014). The payment of the fee-in-lieu may be made in connection with a development or other agreement with the City which may provide for a refund or partial refund of the fee-in-lieu payment if (a) the project is connected to improvements within the Beavercreek Basin sufficient to serve the project and (b) at the time of such connection the improvements in the Glen Oak Basin for which the fee-in-lieu has been paid have not yet been constructed.

The express intent of the above condition is only to provide a mechanism in the future for a return of the fee-in-lieu if the Glen Oaks Improvements are never completed and sufficient alternative improvements serving the Beavercreek Basin are constructed instead.

Location of New Sewer Connection

Condition No. 34 requires the applicant to connect to the existing sanitary system on Meyers Road, west of Beavercreek Road. The applicant had proposed making this connection within an easement off of Emerson Court in a location adjacent to Beavercreek Road. The applicant's selected connection point saves considerable money due to the relative difference in length of sewer line between the City's proposed location and the applicant's. The applicant is requesting that Condition No. 34 be amended to permit the applicant to make the connection at Emerson Court if, and only if, the City determines that such location is feasible and will not result in additional costs to the City. The location of the connection is entirely in the City's hands. If the applicant is unable to persuade the City Engineer, then the City can mandate the connection be as required by Condition No. 34. The manhole on Meyers Road and the manhole within Emerson Court both connect to the same 8" PVC line that runs down

Meyers Road and Sophia Court, so the impacts to the overall system are identical. The only question is whether the connection at Emerson Court is feasible due to depth and other engineering issues unrelated to the capacity of the 8" line in Emerson Court.

The applicant proposes the following condition of approval. The applicant's proposed language is underlined:

34. The applicant shall provide 8-inch sanitary sewer collection system in the existing and future public right-of-way with the connection to the existing collection system at the manhole located in Meyers Road at Emerson Court. A short section of the collection system shall be located in a 15-foot wide public easement that extends from the western end of "B" Street to the Beaver Creek Road ROW. The applicant shall have the option of making this connection within the easement off of Emerson Court if Public Works/Engineering Development Services Division determines such connection is feasible, will not result in additional costs to the City and approves such connection prior to the time of construction.

Appellant's Appeal

The appellant alleges that the City's decision violates the Oregon City Comprehensive Plan, the Oregon City Municipal Code, the Metro Code and State Law. The appellant's arguments provide no basis to overturn the decision of the Community Development Director.

As a starting point, the present application is a "limited land use decision," meaning that the proposed use is permitted outright on the subject property. The City's decision is limited to approval or denial of the application based on discretionary site and design standards that regulate the physical characteristics of the use. See ORS 197.015(12)(B). As a limited land use decision, neither the City's Comprehensive Plan nor any of its goals or policies apply to this application. ORS 197.195(1). Consequently, the appellant's arguments under the Comprehensive Plan have no bearing on this application and the City Commission is prohibited from applying the Comprehensive Plan to this application.

Beaver Creek Road Concept Plan

The appellant generally argues that the subject property, due to its inclusion in the Beaver Creek Road Concept Plan (the "BRCP"), cannot be developed until the BRCP is approved. The appellant's argument has no legal merit.

An overwhelming majority of the 453 acres in the BRCP was added to the regional urban growth boundary by Metro in 2002 and 2004. The subject property, however, was added to the City's UGB in 1979, predating Metro's Title 11 requirements applicable to urban reserve areas and areas added to the UGB. Thus, while the balance of the property within the BRCP area may be subject to Metro's Title 11 planning requirements, the subject property is not. Moreover, the subject property does not carry Metro's Title 4 Significant Industrial Lands designation. The Metro Code simply has no application to the present request. Indeed, the appellant has not identified with any specificity how a site and design review application would violate the Metro Code.

Even if the applicant's property were subject to Metro's Title 11 standards, approval of a site and design review application would not violate Title 11. Metro Code 3.07.1130 provides the standards for planning in areas added to the UGB, but for which no concept plan has been approved. Title 11 provides that local jurisdictions may not approve the following:

- A. A land use regulation or zoning map amendment that allows higher residential density in the area than allowed by regulations in effect at the time of addition of the area to the UGB;
- B. A land use regulation or zoning map amendment that allows commercial or industrial uses not allowed under regulations in effect at the time of addition of the area to the UGB;
- C. A land division or partition that would result in creation of a lot or parcel less than 20 acres in size, except for public facilities and services as defined in section 3.07.1010 of this chapter, or for a new public school;
- D. In an area designated by the Metro Council in the ordinance adding the area to the UGB as Regionally Significant Industrial Area:
 - 1. A commercial use that is not accessory to industrial uses in the area; and
 - 2. A school, a church, a park or any other institutional or community service use intended to serve people who do not work or reside in the area.

None of the above standards would prohibit the City from approving a site and design review application on MUC-zoned land. In short, the Metro Code provides no basis to overturn the City's decision. Other than merely referencing the Metro Code, the appellant has not provided any legal argument as to why the Metro Code would apply to the present site and design review application.

The appellant relies heavily on LUBA's decision affirming the City's annexation of 122 acres to the City—including the applicant's property—in 2008. See, *Grazer-Lindsay v. City of Oregon City*, 56 Or. LUBA 504 (2008). The appellant's reliance on *Grazer-Lindsay* is misplaced because LUBA's decision has no relevance to the present application. The primary question before LUBA in *Grazer-Lindsay* was whether it was permissible to annex 122 acres to the City prior to adoption of the BRCP. LUBA held that it was permissible to do so. LUBA did not hold or otherwise mandate that the BRCP be adopted before the applicant's property is developed. While portions of the 122 acres may have such a requirement due to the fact that such property is subject to Metro's Title 11 rules, the applicant's property carries no such restriction. Consequently, LUBA's decision has no influence on the present case.

2010 Zone Change

In 2010, the City approved a Comprehensive Plan Amendment and Zone Change for the subject property from Future Urban (FU) to Mixed Use Corridor (MUC). The 2010 zone change was not appealed and has been acknowledged by LCDC. Members of the Hamlet of Beavercreek opposed the rezoning application, arguing, among other things, that Metro's Title 11 regulations prohibited rezoning until adoption of the BRCP. The City rejected the opponents' arguments for the same reasons stated above, namely, that Title 11 does not apply to the subject property. The opponents did not appeal the City's decision and the decision is final. To the extent that the appellant or other opponents believe that the City should not have rezoned the property, they should have appealed the City's 2010 zone change. They did not and cannot now challenge the application of the City's acknowledged MUC zone. The MUC zone is acknowledged and the City has every right to approve a site and design review application on the property.

Statewide Planning Goals

The appellant argues that the City's decision violates Statewide Planning Goals 1 and 2. The Statewide Planning Goals have no application to a limited land use decision where the City's land use regulations and zoning maps have been acknowledged. The goals simply do not apply. ORS 197.175(2)(d); *Byrd v. Stringer*, 295 Or. 311, 316, 666 P.2d 1332 (1982).

Applicable Criteria

Approval or denial of the present application must be based on the standards and criteria in effect on the date the application was filed. Testimony, in turn, must be directed to the applicable standards and criteria. The appellant's testimony does not identify any relevant standard or explain why the applicant has not met its burden of proof with respect to an applicable standard. The appellant's testimony, therefore, falls far short of identifying any basis upon which to overturn the decision of the Community Development Director.

The applicant respectfully requests that the City Commission amend the decision of the Community Development Director to include the amended conditions proposed by the applicant and to deny the appeal.

Very truly yours,



Steven P. Hultberg

cc: Andrew Brand
City Attorney