

**BEFORE THE CITY COUNCIL OF
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF APPEALS OF THE)	ORDER NO. 2421
PLANNING COMMISSION'S DECISION TO)	APP 2015-0001 and APP 2015-0002 Appeals of the
APPROVE CU 2015-0003 – THE CONDITIONAL)	Planning Commission's decision to approve CU 2015-
USE FOR SOUTH COOPER MOUNTAIN HIGH)	0003, Conditional Use for South Cooper Mountain
SCHOOL, ED BARTHOLEMY AND TUALATIN)	High School.
RIVERKEEPERS, APPELLANTS.)	

I. INTRODUCTION

The matter came before the City Council (“Council”) on August 18, 2015, for a public hearing on an appeal of the Planning Commission’s decision to approve the Conditional Use (“CU”) application for a new high school by the Beaverton School District (“BSD”), original case file CU 2015-0003. Two appeals requested reversal of the Planning Commission’s decision to approve. The first appeal was received from Ed Bartholemy (Bartholemy) who owns an abutting property located west of the subject properties where BSD proposes to develop a new high school. The second appeal was received from Tualatin Riverkeepers. The Council considered both appellant statements of appeal and testimony. The Council also considered testimony from those in favor and those in opposition to the appeals. After considering the facts, findings and testimony presented on August 18, 2015, the Council affirms the decision of the Planning Commission to approve the CU for South Cooper Mountain High School with conditions as stated in Order No. 2407. The

Council action also amends Order No. 2407 by adding two other conditions as described herein.

II. PROCEDURAL FINDINGS

The Council finds that all required notices of the public hearing were given and that the staff report for the appeal was published within the time required by the Beaverton Development Code (“BDC”). Further, the Council finds that its hearing procedures complied with applicable law. At the public hearing in this matter on August 18, 2015 were Councilors Cate Arnold, Mark Fagin, Lacey Beaty, Betty Bode and Marc San Soucie. The Council opened the hearing and read the announcements required by ORS 197.763 and 197.796. No members of the Council disclosed any bias. Two Councilors declared site visits. No members of the Council disclosed any *ex parte* communications. No one challenged or objected to the jurisdiction of the Council or its members to hear this matter, and no one raised any procedural objections at the hearing. The Council accepted testimony from staff, the applicant, and parties for and against the proposal. The Council then closed the public hearing and deliberated. At the conclusion of these deliberations, the Council voted, 5-0, to deny both appeals and affirm the Planning Commission’s decision as amended hereto with two additional conditions.

III. SUBSTANTIVE FINDINGS

The Council adopts the findings of the Planning Commission in this matter set forth in Order No. 2407. Additionally, the Council adopts the following supplemental findings that address specific issues raised at the appeal hearing:

Whether Applicant's proposal is consistent with applicable policies of the City Comprehensive Plan for findings that support Criterion No. 3 of Conditional Use approval. Both appellants contended that the applicant's proposal is inconsistent with certain plan policies as contained in the City's Comprehensive Plan, inclusive of the adopted Community Plan for this area, the South Cooper Mountain Community Plan ("SCMCP").

Statements of appeal received from attorney David Hunnicutt (Hunnicutt) representing Bartholemy, dated July 17, 2015 and August 17 2015, identified the following Comprehensive Plan policies of contention: Policy "b" of Goal 7.1.1; Policy "a" and "c" of Goal 7.3.1.1; Policy "a" of Goal 7.3.3.1; Natural Resource Policy No. 1 of the SCMCP; Overarching Policies 2, 3, 6, 7 and 11 of the SCMCP; Implementing Policy No. 7 of the SCMCP; and Main Street Policy 3 of the SCMCP.

The statement of appeal received from Brian Wegener of Tualatin Riverkeepers, dated July 17, 2015, identified the following Comprehensive Plan policies of contention: Policy "a" and "c" of Goal 7.3.1.1; Policy "a" of 7.3.3.1; Policy "a" of 8.2.1; and Natural Resource Policy No. 1 of the SCMCP.

The Council denies both appellants' contentions that the applicant's proposal is inconsistent with the plan policies identified above, in part because both appellants failed to provide convincing arguments that show how the BSD proposal does not comply with these policies. The Council also finds that staff has correctly interpreted the intent and direction in the plan policies. In review of these identified policies, the Council finds the BSD development proposal to be consistent with all applicable

natural resource policies identified in Chapters 7 and 8 of the City Comprehensive Plan including all applicable natural resource policies identified in the SCMCP, together with all applicable overarching and implementing policies of the SCMCP. Findings herein respond to key arguments raised by the appellants with respect to plan policy compliance.

Whether Wetland A can be practicably avoided as Policy b of 7.1.1 describes.

The letter dated August 17, 2015 from Hunnicutt contends that Wetland A can be practicably avoided by leaving the wetland alone and not building the athletic field, or by purchase of other property for athletic fields. On the latter, Bartholemy contends that he, as the abutting property owner, would sell sufficient land to the applicant at fair market value to enable construction of the athletic fields and thereby avoid filling the wetlands on the subject property. The Hunnicutt letter identified the text contained in Comprehensive Plan policy “b” of Goal 7.1.1 which reads: *Where adverse impacts to Significant Natural Resources cannot be practicably avoided, require mitigation of the same resource type commensurate with the impact, at a location as close as possible to the impacted resource site.*

The Council first finds that Wetland A is not adversely impacted by the development plan, which consists of a partial wetland fill of approximately 2.52 acres. The Council observes that the impacted portion of Wetland A is dominated by non-native pasture grasses and contains only one tree and no shrubs. Aerial photographs of the subject property for the past ten years show that Wetland A has been regularly mowed. The applicant’s natural resource assessment also describes existing

conditions and explains that Wetland A has been regularly disturbed for agricultural purposes. The applicant's natural resource assessment determined Wetland A to be in a degraded condition and the Council agrees. The Council received no evidence that is contrary to the applicant's assessment of existing conditions specific to Wetland A. Where policy "b" of 7.1.1 requires *mitigation of the same resource type commensurate with the impact*, the Council finds (1) the impact of the loss of 2.5 acres of non-native pasture grasses that are regularly mowed is limited; and (2) the limited impact can be mitigated by the applicant's proposal to introduce 1,494 trees and 7,470 shrubs and small trees to the 3.43 acre portion of Wetland A that will be preserved.

The Council notes that the 3.43 acre portion of Wetland A on the school site, where the trees and shrubs will be planted, is located adjacent to existing off-site forested wetlands that are fed by groundwater and two streams. These streams and the forested portions of the wetland will remain intact and will not be impacted by construction of the high school. The Council agrees with the applicant that the higher value component of the wetland identified in the SCMCP (west of the school properties) will remain as it is today, will not be adversely impacted by the development plan and, in fact, will be enhanced by the mitigation provided.

After reviewing Policy "b" from Goal 7.1.1, the Council finds it applies broadly to wetlands identified in Figure 12 of the SCMCP inclusive of the entire Community Plan at 554 acres and is not confined to the limits of the applicant's properties. The loss of just one tree to the impacted portion of Wetland A, in its degraded condition, will be mitigated by applicant's plan that calls for 1,494 trees planted in another

degraded portion of the same property. The plantings on the portion of Wetland A that will remain a wetland are commensurate with the impacts of the fill on the highly degraded portion of Wetland A. The mitigation will occur *at a location as close as possible to the impacted resource site*. Forested portions of existing wetlands to the west will remain undisturbed. For these reasons, the Council concludes that the proposed mitigation on Wetland A is sufficient to meet Comprehensive Plan policy “b” of Goal 7.1.1.

In response to the scenario described by Hunnicutt, in which his client, Bartholemy, as the abutting property owner, would sell sufficient land to the applicant at fair market value to enable construction of the athletic fields, thereby avoiding filling the wetlands on the subject property, the Council agrees with the staff findings identified in the report dated August 6, 2015, concluding that the Bartholemy property is not a feasible alternative location for an athletic field. The Council also agrees that alternative analysis is not required of the applicant in response to the CU approval criteria.

The Council also agrees with the staff report of August 6, 2015 where it explains why the city cannot compel the applicant to acquire Bartholemy’s property, apply to rezone it, and then make it part of the development proposal. To ask the city to require the sale of other property to the District in order to construct the same athletic fields elsewhere and avoid fill of the wetland, goes far beyond the scope of review, which is specific to properties acquired by the School District or within its control. Arguably, if the Bartholemy property were made part of the development

plan, it would need to be evaluated against the same criteria identified for CU approval. This would include the same type and scope of natural resource assessment as prepared by the applicant's wetland biologist. While Bartholemy claims the sale of his property is a practicable way of avoiding the impact to Wetland A, the larger question before Council is that of feasibility. Bartholemy has provided no evidence to demonstrate how existing conditions of his property are suitable for development. Such evidence would include a wetland survey and possible delineation similar to that supplied by the applicant. In this case, the Bartholemy property has not been evaluated in response to the applicable approval criteria because it was not part of the development plan at the time of application and the approval criteria for CU do not require alternative location analysis. Furthermore, as the staff report of August 6, 2015 explains, if the Bartholemy property were made part of the development plan, it would need to be rezoned to allow a use that is part of the high school. At this time, the Bartholemy property is zoned *Washington County - Agriculture-Forestry (AF-20)*, where public high schools are prohibited. In the Hunnicutt letter dated August 17, 2015, a counter argument is raised as to the AF-20 zone not allowing the Collector Street, as identified by the SCMCP, and how the city must therefore not allow this Collector Street. However, this argument fails to recognize the significance of the Collector Street to the SCMCP, which has been adopted as part of the City Comprehensive Plan. Additionally, as the BSD development plan illustrates, no improvements associated with this Collector Street are to be constructed on the appellant's property.

The Council also finds that other Plan policies identified by the applicant and city staff in the evaluation of Wetland A are relevant and deserve equal consideration in response to the development plan. Of significance are two policies from Goal 7.3.1.1 (d and g) under Significant Natural Resources which acknowledge the needs of development, relative to protecting natural resources. These policies read:

d. The City shall rely on its site development permitting process as a mechanism to balance the needs of development with natural resource protection.

g. Limited alteration or improvement of Significant Natural Resource areas may be permitted so long as potential losses are mitigated and "best management practices" are employed.

In this case, the loss of the natural resource in its degraded condition is limited and will be mitigated as Policy "g" describes. The Council also finds the city's development permitting process, subject to a public hearing, is the mechanism by which to weigh and balance the needs of development with natural resource protection, as Policy "d" describes. For the reasons stated above, the Council finds the appellant's contentions with respect to Policy "b" of 7.1.1 to be without merit, lacking facts as necessary to show how an error occurred as a matter of fact, law or both.

Whether Plan policies that refer to inventoried natural resources are relevant when the Department of State Lands (DSL) has yet to approve SCMCP inventoried wetlands. Appellant Tualatin Riverkeepers, in its letter of July 17, 2015 (page 1) contends that Planning Commission Order 2407 is in error because it misinterprets Oregon Administrative Rule (OAR) 141-086-0185. According to appellant, the rule

does not state that “wetland inventory products” are required to be reviewed and approved by the DSL before they can be used by a city or county for Goal 5, Goal 17 and Wetland Conservation Plan (WCP) purposes. Also, the letter prepared by Hunnicutt, dated August 17, 2015, contends that the SCMCP has been acknowledged by the Oregon’s Land Conservation and Development Commission (LCDC). According to the Hunnicutt letter (page 7), “While it may have been prudent for LCDC to withhold acknowledgement of the SCMCP until such time as DSL finished its review of the City’s LWI study, LCDC did not do so.”

In response to these contentions, the Council first agrees with the staff interpretation of OAR 141-086-0185 (and specifically subsection (7) (c) thereof), to the effect that the city Local Wetland Inventory (LWI) must be approved by the DSL before it is used by the city for Goal 5, Goal 17 or WCP purposes. The record shows that DSL has not approved the wetland inventory prepared for the SCMCP. The appellants present no evidence to the contrary. The Council acknowledges one policy of the Comprehensive Plan that specifically refers to significant wetlands in the LWI. In part, Planning Commission Order No. 2407 explains how Policy “a” of Goal 7.3.3.1 is not applicable because the LWI prepared for the SCMCP has not been approved by the DSL. For reference, Policy “a” of 7.3.3.1 reads:

- a. *Significant Wetlands in the Local Wetland Inventory shall be protected for their filtration, flood control, wildlife habitat, natural vegetation and other water resource values.*

Because this policy specifically refers to the LWI as a qualifier, and the LWI for SCMCP has not been approved by the DSL, the Council agrees that this policy is

not applicable. The portion of wetlands that has been chosen for fill has not itself been designated as significant. However, the Council acknowledges other policies that simply refer to “inventoried natural resources” and make no reference to the LWI. Policy “a” of Goal 7.3.1.1 is one such policy which reads:

- a. *Inventoried natural resources shall be conserved, protected, enhanced or restored:*
- *to retain the visual and scenic diversity of our community;*
 - *for their educational and recreational values;*
 - *to provide habitats for fish and wildlife in our urban area.*

There is also Policy “c” of the same Goal that reads:

- c. *Inventoried natural resources shall be incorporated into the landscape design of development projects as part of a site development plan, recognizing them as amenities for residents and employees alike.*

In response to these policies, the Council acknowledges that natural resources of the SCMCP, inclusive of wetlands, have been inventoried through the planning process prior to Community Plan adoption. The inventory prepared by David Evans and Associates (DEA) dated December 2013, though not approved by the DSL for inclusion in the city LWI, was developed according to rules administered by the DSL for wetlands inventory described under Oregon Administrative Rules (OAR) 141-086 for the purpose of planning the entire SCMCP that is roughly 544 acres in size. As the record for this CU approval shows, the applicant’s materials include a separate wetland delineation and natural resource assessment prepared by Pacific Habitat Services that is specific to properties subject to development. In part, the staff report dated August 6, 2015 explains how the inventory prepared by DEA in 2013 for planning the SCMCP identified two sample points associated with that portion of

wetland located on the BSD properties. Comparatively, the wetland delineation report prepared by the applicant's wetland biologist (Pacific Habitat Services) identified eleven sample points in the same wetland localized on the BSD properties. The Council also acknowledges the limited purpose to which the DEA report was intended to serve, and the DEA report also acknowledges this (in part) stating:

The LWI is intended to support planning level decision making and is not intended to replace more detailed site level wetland delineation work that may be needed for compliance with local, state, or federal regulations governing the protection of wetlands and surface waters. ...

The Council finds the applicant's inventoried delineation of the wetlands on site to be applicable for considering policies that refer to *inventoried natural resources*, as Policies "a" and "c" of 7.3.1.1 describe. Where Policy "a" of 7.3.1.1 states that *Inventoried natural resources shall be conserved, protected, enhanced or restored*, the applicant's natural resource assessment describes the degraded conditions of that portion of the wetland subject to encroachment in addition to a plan for enhancing and mitigating the resource identified to remain on-site, together with an off-site mitigation and restoration proposal. In this case, the applicant's mitigation plan (on and off-site) achieves the intent of Policy "a" from 7.3.1.1 as it will both retain and enhance the visual and scenic diversity of existing vegetated areas to the west while providing educational and recreational values and habitats for fish and wildlife in an area of Beaverton that will become urbanized through the implementation of the SCMCP. As previously stated herein, the Council finds significant the policy direction provided in "d" of Goal 7.3.1.1 where *the city shall rely*

on its site development permitting process as a mechanism to balance the needs of development with natural resource protection.

In response to Policy “c” of Goal 7.3.1.1, the Council finds that inventoried natural resources have been incorporated into the landscape design of development project subject to consideration. The remaining portion of Wetland A on-site, as mitigated, will become an amenity for future residents of the SCMCP.

For the reasons stated above, the Council concludes that the BSD development plan for the high school is consistent with policies that refer to inventoried natural resources, absent specific reference to the LWI. The Council therefore concludes the appellants’ contention to be without merit, lacking facts as necessary to show how an error occurred as a matter of fact, law or both.

Whether the School District boundary (between Beaverton and Hillsboro Districts) violates Overarching, Implementing and Main Street Policies of the SCMCP. Bartholemey contends that the School District boundary (between Beaverton and Hillsboro) is significant to the decision, relative to Overarching, Implementation and Main Street policies of SCMCP. Written testimony prepared by Hunnicutt identifies certain Overarching Policies 2 and 3 of the SCMCP, claiming that the proposed development will not create a walkable, family-friendly community, as a majority of the properties in the South Cooper Mountain community are within the Hillsboro School District, and that future residents will be unable to attend the new school. The Bartholemey statement of appeal also refers to SCMCP Main Street Plan Policy No. 3 and claims that the school does not complement the commercial

development slated for Bartholemy's property. The statement of appeal also refers to a land use implementation policy of the SCMCP (No. 7) that encourages the BSD and Hillsboro School District to work toward an adjustment of the boundary that would result in all of the Community Plan area being served by BSD. Bartholemy claims the BSD has done nothing to adjust the boundary between the two districts.

The Council denies the appellant's contention because land use implementation policy No. 7 makes clear what the City can and cannot do. The policy uses the word "encourage," indicating the policy is aspirational. The city can encourage, but it cannot require. The Council is implementing the policy by urging the BSD and Hillsboro School District to work toward adjusting the boundary so that all future residents of the Community Plan are served by BSD. The Council is also persuaded by testimony from BSD representatives indicating that coordination efforts between the two school districts have taken place. However, to this end, the city cannot compel the BSD to change the boundary through this land use action.

The Council also recognizes the joint use of school athletic facilities by the Tualatin Hill Parks and Recreation Department (THPRD). This was confirmed in the oral and written testimony presented by THPRD staff in response to the BSD proposal. Because future residents of SCMCP will be located inside the THPRD service boundary, the school athletic facilities will not be off-limits to those living in close proximity. The Council therefore disagrees with Bartholemy's contention that the new school is unable to serve as a center of community activity (as Overarching Policy 11 describes). The Council also observes that development of the western

portion of the SCMCP, while currently outside the BSD boundary, has yet to occur and that the appellant's concerns about the social and economic impacts to future residents of the SCMCP are premature, speculative, and unsubstantiated by facts. The Council is not persuaded by these arguments and therefore concludes the contention to be without merit, lacking facts as necessary to show how an error occurred as matter of fact, law or both.

Whether the City's decision relies too much on mandates established by Federal Title IX. Tualatin Riverkeepers contended that the applicant's proposal for partial wetland encroachment is not required for Federal Title IX compliance. In part, the Tualatin Riverkeepers appeal (page 4) states:

"...There is no mandate in Title IX to fill wetlands. There is no mandate in Title IX to have athletic fields on the site of the high school. Title IX mandates equal access..."

The Council does not support this contention because the mandates of Title IX have no correlation to city CU approval criteria. The Council acknowledges the applicant's wetland biologist, Pacific Habitat Services, having prepared a natural resource assessment as referred to herein. In part, the applicant's natural resource assessment responds to the Tier 2 Alternative Analysis required by the Clean Water Services agency (CWS). The Council also acknowledges that Tier 2 Alternative Analysis require specific findings that explain how there is no practicable alternative to the location of the development and also findings that explain how the proposed

encroachment provides public benefits. The applicant identifies Federal Title IX compliance as part of the response provided to CWS Tier 2 Alternative Analysis.

The Council finds that compliance with Federal Title IX has no relevance or significance in meeting applicable city approval criteria or development standards established in the BDC or the Comprehensive Plan. Additionally, the Council finds that the Service Provider Letter (SPL) issued by CWS is not subject to further review by the city. Where the applicant's natural resource assessment explains how the impact to Wetland A is necessary because of the Federal Title IX requirements, and further explains how additional ball fields are required so that both male and female students have fields for play and practice during school hours, the Council finds the need for adding a condition that requires all weather surfaces (artificial turf) for every field as proposed and that this not to be limited to the football field to comply with equal access. The Council so conditions herein. The Council also finds that the Planning Commission's decision to approve the applicant's CU, inclusive of partial wetland encroachment, is not solely influenced by Federal Title IX requirements as the plan must also demonstrate compliance with other requirements established by the Oregon Department of Education (ODE), the Americans with Disabilities Act (ADA), the Oregon Fire Code (OFC) and the International Building Code (IBC). The combination of these requirements pose considerable challenges in developing a high school inclusive of multi-purpose sport facilities. Also, where opposition testimony claimed the BSD Title IX justification for partial wetland encroachment/mitigation would set a precedent, the Council agrees with the staff finding that it will not set a

precedent because future residential and commercial projects anticipated in the SCMCP are not expected to provide public athletic facilities.

The Council also concurs with the Planning Commission determination that alternative field layouts were considered and included as part of the applicant's plans and materials package. These alternative field layouts, in concert with Federal Title IX mandates for equal access, together with dimensional and specification requirements for fields as required by the ODE, together with access requirement of the ADA, OFC and IBC, demonstrate how it is impracticable to preserve a degraded portion of Wetland A identified for encroachment according to the applicant's development plan. Accordingly, the Council concludes the contention to be without merit, lacking facts as necessary to show how an error occurred as a matter of fact, law or both.

Whether the City's decision relies too much on regulatory authority provided to Clean Water Services, the Department of State Lands and the U.S. Army Corps of Engineers. In part, the Tualatin Riverkeepers appeal claimed that CWS is not a land use authority and that they have no obligation to enforce Beaverton's rules. The Bartholemy appeal acknowledges the role of CWS, DSL and the U.S. Army Corps of Engineers (USACE) in determining whether the wetland on the subject property can be filled. However, the Bartholemy appeal claims that only the city can interpret the SCMCP, and the policy stated under Natural Resource No. 1, and that there is nothing in local, regional, state or federal law which prohibits the City from adopting

a more restrictive policy on wetland preservation. For reference, Natural Resource Policy No. 1 of the SCMCP reads:

“Locally significant wetlands and protected riparian corridors within the Community Plan area shall be protected and enhanced, consistent with local, state and federal regulations.”

At the hearing, city staff testified as to the key component of Policy No. 1 which calls for consistency with local, state, and federal regulations. The city council interprets the policy to say that the city’s responsibilities for protection and enhancement can be limited to consistency with local, state and federal regulations. At the hearing, staff also testified as to the role and responsibility of the DSL for state, the USACE for federal and CWS for local. The Council recognizes the role and responsibility of CWS as codified in Section 50.25.1.F of the BDC for initial review of the development proposal. The role of CWS and its required documentation (the Service Provider Letter - SPL) is a matter of procedure and the applicant obtained this required document before the CU application and other land use applications were deemed complete by the city. The Planning Commission decision via separate Order issued for Design Review incorporates the conditions identified in the applicant’s SPL which identify additional approvals required by DSL and the USACE.

The Council agrees with the staff position, as stated to the record, that where development is found to be constrained due to wetland protection regulations, the city has no separate hardship variance criteria from that of CWS or other agencies to evaluate wetland encroachment. The Council further recognizes the role of CWS as

identified in Chapter 50 of the BDC, where applicants for development must first obtain required documentation from CWS before the application is deemed complete and can proceed forward with the review process. In this case, the Council acknowledges the applicant's SPL from CWS as required documentation. The Council also acknowledges the applicant's wetland mitigation proposal recognized as part of the SPL and how mitigation is to be accomplished as part of the development plan by condition of approval. The Council further acknowledges the role of DSL and USACE, consistent with the policy direction provided in Natural Resource Policy 1 of the SCMCP. As the record shows, the applicant has pursued respective approvals from the DSL and USACE. Conditions of city land use approval require these approvals prior to issuance of the site development permit.

Whether the City's decision is to subject to supportive findings that an off-site location for athletic facilities is not a reasonable alternative. Tualatin Riverkeepers contends that the Planning Commission's decision to allow partial wetland encroachment errs in not evaluating other off-site locations for athletic facilities, as a reasonable alternative to the on-site proposal. Similarly, Bartholemy also contends that he, as the abutting property owner, would sell sufficient land to the applicant at fair market value to enable construction of the athletic fields and thereby avoid filling of the mentioned wetlands.

The Council rejects this contention because alternative analysis, inclusive of an off-site location for similar athletic facilities, is not part of the submittal

requirements, standards or relevant criteria for CU approval. However, as explained in response to the contention that claims the city relies too much on regulatory authoring provided to CWS, the Council acknowledges how alternative analysis is necessary as part of CWS's Tier 2 Alternative Analysis which is not subject to further review by the city.

Council therefore concludes the contention is without merit, lacking facts as necessary to show how an error occurred as a matter of fact, law or both.

Whether the City's decision is consistent with Criterion No. 4 of Conditional Use approval, which (in part) require supportive findings as to how natural and man-made features of the site can reasonably accommodate the proposal.

Tualatin Riverkeepers contends that the Planning Commission's decision to allow partial wetland encroachment is inconsistent with Criterion No. 4 of CU approval as the proposal does not protect inventoried resources.

The Council denies the appellant's contention because Criterion No. 4 does not refer to inventoried resources but rather applies broadly to the entire property, inclusive of upland portions that do not contain wetlands. The Council concurs with the applicant's response to Criterion No. 4, which explains how the site is designed to adequately accommodate a school building, required parking, necessary circulation systems and multi-purpose athletic fields. In response to Criterion No. 4, the applicant also explained how a large portion the existing wetland on site is to be preserved and that the portion subject to fill will be mitigated on and off-site,

consistent with DSL and USACE regulations. The Council also acknowledges the applicant's natural resource assessment and delineation report prepared by Pacific Habitat where it describes existing conditions of Wetland A and how that portion proposed for fill is dominated by non-native pasture grasses, contains one tree, no shrubs and is regularly mowed. In response to CU criterion No. 4, the Council finds that man-made features include conditions attributable to regular mowing of the wetland, at least historically so for the past ten years, and possibly used for agricultural purposes. Accordingly, Council concludes that the Tualatin Riverkeepers contention is without merit, lacking facts as necessary to show how an error occurred as a matter of fact, law or both.

Whether the proposal to partially fill Wetland A is consistent with a Design Guideline in Section 60.05.24.10 of the BDC. Bartholemy contends that the Planning Commission's decision to allow partial wetland encroachment is inconsistent with a Design Guideline found in Section 60.05.24.10 of the BDC. The Council denies Bartholemy's contention because the appeal is specific to the CU and not the associated application for Design Review 3. Because the Design Review 3 decision has not been appealed, the contention cannot be considered as part of this appeal.

Whether Street Vacation (of Old 175th) necessitates approval from both the Washington County Board of Commissioners and the Beaverton City Council to

comply with ORS 368.361. Bartholemy contends that street vacation procedures under ORS 368.361 require approval of both the Washington County Board of Commissioners and the Beaverton City Council. Bartholemy further contends that the city should condition site development and building permits upon demonstrating that the right-of-way (a.k.a. Old 175th) has been vacated in accordance with the requirements of ORS 368.361 and BDC Section 40.75.15.

In response to this contention, the Council acknowledges that the high school property is bisected by an unimproved right-of-way that is under maintenance jurisdiction of Washington County. The Council notes that this right-of-way serves no practical purpose and has not been identified in the Street Framework plan adopted through the SCMCP which identifies future streets. The Council observes that the applicant has full ownership of both abutting properties to which the entire length of Old 175th is bordered. The Council agrees with the staff finding that the high school building is set back at a sufficient distance to meet minimum building setback standards of the R-1 zone, whether Old 175th right-of-way is vacated or not. For these reasons, the Council disagrees with the appellant's contention concerning the applicability of a condition that would restrain issuance of the city site development and building permits prior to demonstrating that Old 175th has been vacated. Because the appellant has not explained how the vacation proposal violates a city development standard, there is no immediate need for the vacation. However, to comply with the procedural requirements of ORS 368.361, the Council acknowledges that a separate resolution by the city on the matter of vacation is

necessary. For this reason, the Council hereby amends the Planning Commission Order by adding a condition where the final decision by Washington County (as to vacation of Old 175th) is to be forwarded to City Council for resolution, prior to the City issuing final plat approval associated with the Preliminary Partition approval for the school property which was not appealed.

Therefore, **IT IS HEREBY ORDERED** that APP2015-0001 and APP2015-0002 are **denied** and the Planning Commission decision to approve CU2015-0003, subject to conditions 1-12, is **affirmed**, amended by two other conditions (13 and 14) adopted by the Council, based upon the testimony and evidence presented during the public hearing on this matter and based upon the facts and findings in the Staff Report and Memorandums addressed to the Planning Commission dated May 20, 2015, June 12, 2015, June 17, 2015 and July 1, 2015, and based upon the staff response to the statements of appeal as contained in the report addressed to the City Council dated August 6, 2015, and on the statements and evidence as in the record of the hearing. Council amends Order No. 2407 by addition of two conditions as follows:

13. Final decision by Washington County as to street vacation of Old 175th is to be forwarded to City Council for resolution, prior to the City issuing Final Plat approval associated with the Preliminary Partition application.

14. The athletic fields illustrated on the applicant's site plan shall be constructed with an appropriate all weather playing surface such as Field Turf or similar surface.

Motion **CARRIED**, by the following vote:

AYES: Arnold, Bode, San Soucie, Beaty, Fagin
NAYS: None.
ABSTAIN: None.
ABSENT: None.

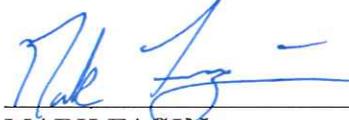
Dated this 1st day of September, 2015.

CITY COUNCIL
FOR BEAVERTON, OREGON

ATTEST:

APPROVED:


CATHY JANSEN
City Recorder


MARK FAGIN
Council President

Nanci Moyo, Deputy City Recorder
signing for Cathy Jansen