

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 KAREN MILLER,
5 *Petitioner,*

6 vs.
7

8
9 CITY OF MAUPIN,
10 *Respondent.*

11
12 LUBA No. 2025-027

13
14 FINAL OPINION
15 AND ORDER

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17 Appeal from City of Maupin.

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19 Petitioner filed the petition for review and reply brief and argued on behalf
20 of themselves.

21
22 Elise N. Koepke filed the respondent's brief and argued on behalf of
23 respondent. Also on the brief was Tommy A. Brooks and Cable Huston LLP.

24
25 ZAMUDIO, Board Chair; BASSHAM, Board Member; WILSON, Board
26 Member, participated in the decision.

27
28 DISMISSED 01/28/2026

29
30 You are entitled to judicial review of this Order. Judicial review is
31 governed by the provisions of ORS 197.850.

Opinion by Zamudio.

NATURE OF THE DECISION

Petitioner appeals a city council decision upholding the planning commission's approval of a floodplain development permit for an RV park.

FACTS

In 2022, the city approved an RV park site plan for the subject property. Record 29. That approval is not before us for review in this appeal. In 2024, the applicant applied to the city for a floodplain development permit for the RV park under Maupin Municipal Code (MMC) chapter 14.10, Floodplains Management. MMC 14.10.120(1) provides:

“Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in MMC 14.10.070. The permit shall be for all structures including manufactured homes, as set forth in MMC 14.10.050, Definitions, and for all development including fill and other activities, also as set forth in MMC 14.10.050, Definitions.” (Emphasis omitted.)

The planning commission reviewed the application and approved the floodplain development permit without holding a hearing. Petitioner subsequently filed a local appeal to the city council. Petitioner requested and the city held an on-the-record hearing and issued a decision upholding the planning commission's approval of the floodplain development permit. This appeal followed.

1 **JURISDICTION**

2 The city moves to dismiss this appeal for lack of jurisdiction on the basis
3 that the floodplain permit is not a “land use decision” as defined at ORS
4 197.015(10)(a). We agree and grant the motion to dismiss for the reasons that
5 follow.

6 ORS 197.825(1) limits LUBA’s jurisdiction to review of “land use
7 decisions,” as defined at ORS 197.015(10)(a). Under that definition, a “land use
8 decision” includes a “final decision or determination made by a local government
9 or special district that concerns the adoption, amendment or application of[,]”
10 among other things, “a land use regulation.” ORS 197.015(10)(a)(A)(iii). In turn,
11 ORS 197.015(11) defines “land use regulation” to mean “any local government
12 zoning ordinance * * * or similar general ordinance establishing standards for
13 implementing a comprehensive plan.”

14 **A. MMC chapter 14 is not a zoning ordinance.**

15 As the party seeking LUBA review, petitioner bears the burden of
16 establishing that LUBA has jurisdiction to review the challenged decision.
17 *Billington v. Polk County*, 299 Or 471, 475, 703 P2d 232 (1985). In the petition
18 for review, petitioner asserts that MCC chapter 14 is a land use regulation.

19 The city argues that the floodplain permit standards are not “land use
20 regulations.” The city points out that the city’s land use regulations are codified
21 at MMC chapter 18, while the city’s floodplain regulations are codified at MMC
22 chapter 14. The fact that standards are codified outside of a zoning ordinance

1 suggests that the standards are not “land use regulations.” *Lazarus v. City of*
2 *Milwaukie*, 67 Or LUBA 226, 230 (2013). However, location of codification
3 alone is not dispositive. *See Oregon Aviation Watch v. City of Hillsboro*, 67 Or
4 LUBA 252, 256 (2013) (explaining that regulations that are codified elsewhere
5 than in a local government’s zoning or land use ordinance may nonetheless
6 constitute “land use regulations” if the petitioner establishes that the regulations
7 implement the comprehensive plan); *Home Builders Assoc. v. City of Eugene*, 41
8 Or LUBA 453, 457 (2002) (“Mere labeling of the ordinance or its location within
9 a local code does not make a land use regulation something else.”).

10 A development permit is required for all structures in the designated
11 floodplain. MMC 14.10.120(1). The city planning commission is responsible for
12 implementing MMC chapter 14 and reviewing floodplain development permit
13 applications. MMC 14.10.130-140. The city explains that the floodplain
14 development standards in MMC chapter 14 relate to the National Flood Insurance
15 Program, which is managed by the Federal Emergency Management Agency.
16 MMC 14.10 establishes standards that apply only within areas of special flood
17 hazard identified by the federal Flood Insurance Rate Map. MMC 14.10.070.
18 MMC chapter 14 does not establish zoning and contains only flood-hazard
19 mitigation standards. It is not a zoning ordinance.

1 **B. Petitioner has not established that MMC chapter 14 standards**
2 **implement the city's comprehensive plan.**

3 In determining whether an ordinance establishes standards for
4 implementing a comprehensive plan, the critical inquiry is "whether there is a
5 clear connection between the ordinance and the * * * comprehensive plan
6 provision it allegedly implements." *Angius v. Clean Water Services District*, 50
7 Or LUBA 154, 163 (2005) (quoting *Home Builders Assoc.*, 41 Or LUBA at 457).
8 A city code standard "is not a land use regulation even though it may arguably
9 further some comprehensive plan provisions in a general or indirect way." *Rest-
10 Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282, 288, *aff'd*, 175 Or
11 App 419, 28 P3d 1229 (2001).

12 The city argues that the MMC 14.10 standards that the city applied in
13 issuing the challenged floodplain permit do not clearly implement the city's
14 comprehensive plan. The stated purpose for those standards is to "promote the
15 public health, safety, and general welfare" without reference to the
16 comprehensive plan. MMC 14.10.010.

17 In their reply brief, petitioner argues that MMC 18.20.020 establishes a
18 Flood Hazard Overlay District. Petitioner points to MMC 18.30.110 which
19 provides, in part:

20 "It is the purpose of the overlay districts to identify areas in which
21 special permit procedures must be followed prior to the approval of
22 any use, whether permitted outright or conditionally, in the zone in
23 which the overlay district is located. The overlay districts are
24 established to protect against property loss or personal injury due to
25 geologic hazards and to protect the scenic value of the Deschutes

1 River.

2 “(1) Flood Hazard District. Buildings and structures hereafter
3 erected, structurally altered, enlarged or moved and land
4 hereafter used in the flood hazard district shall comply with
5 the requirements of all city ordinances relating to flood areas
6 in addition to the requirements for that zone.” (Emphasis
7 omitted.)

8 It is not clear to us whether, when, and where the city has applied the Flood
9 Hazard District and whether the subject property is within that overlay zone. The
10 challenged floodplain permit did not approve the underlying RV park land use or
11 apply MMC 18.30.110 or any provision from MMC chapter 18.¹

12 Petitioner argues that MMC chapter 14 implements MMC chapter 18 and,
13 thus, the floodplain permit standards in MMC chapter 14 are land use regulations.
14 Petitioner reasons that the express purpose of MMC chapter 18 is to implement
15 the comprehensive plan and, because MMC 18.30.110 requires compliance with
16 “city ordinances related to flood areas,” which includes MMC chapter 14, the
17 city adopted MMC chapter 14 to implement the comprehensive plan.

18 We assume for the sake of argument that the city has applied the flood
19 hazard overlay to the subject property, which makes MMC 18.30.110 potentially
20 relevant to the jurisdictional analysis. The fact that the city land use and zoning
21 ordinance points to floodplain standards and requires compliance with those
22 standards does not make MMC chapter 14 a land use regulation that implements

¹ We assume that the city applied any applicable MMC chapter 18 standards during the 2022 site plan review, which is not before us in this appeal.

1 the comprehensive plan. Local land use regulations may require an applicant for
2 land use approval to obtain a variety of permits. It does not follow that all of the
3 standards for obtaining those permits are properly characterized as land use
4 regulations. Instead, the critical inquiry under ORS 197.015(11) is whether
5 petitioner has demonstrated “a clear connection between the ordinance and the
6 * * * comprehensive plan provision it allegedly implements.” *Angius*, 50 Or
7 LUBA at 163.

8 Petitioner has not identified any comprehensive plan provision that MMC
9 chapter 14 implements. Absent that connection, we agree with the city that MMC
10 chapter 14 is not a land use regulation. *See Ramsey v. City of Portland*, 30 Or
11 LUBA 212 (1995) (agreeing with the local government that its tree removal
12 ordinance, which was not included in the city’s zoning code, was not a land use
13 regulation where the petitioner did not identify a comprehensive plan provision
14 that the challenged ordinance implemented). We conclude that the challenged
15 decision is not a land use decision and we do not have jurisdiction to review or
16 resolve petitioner’s assignments of error challenging it.

17 The appeal is dismissed.