

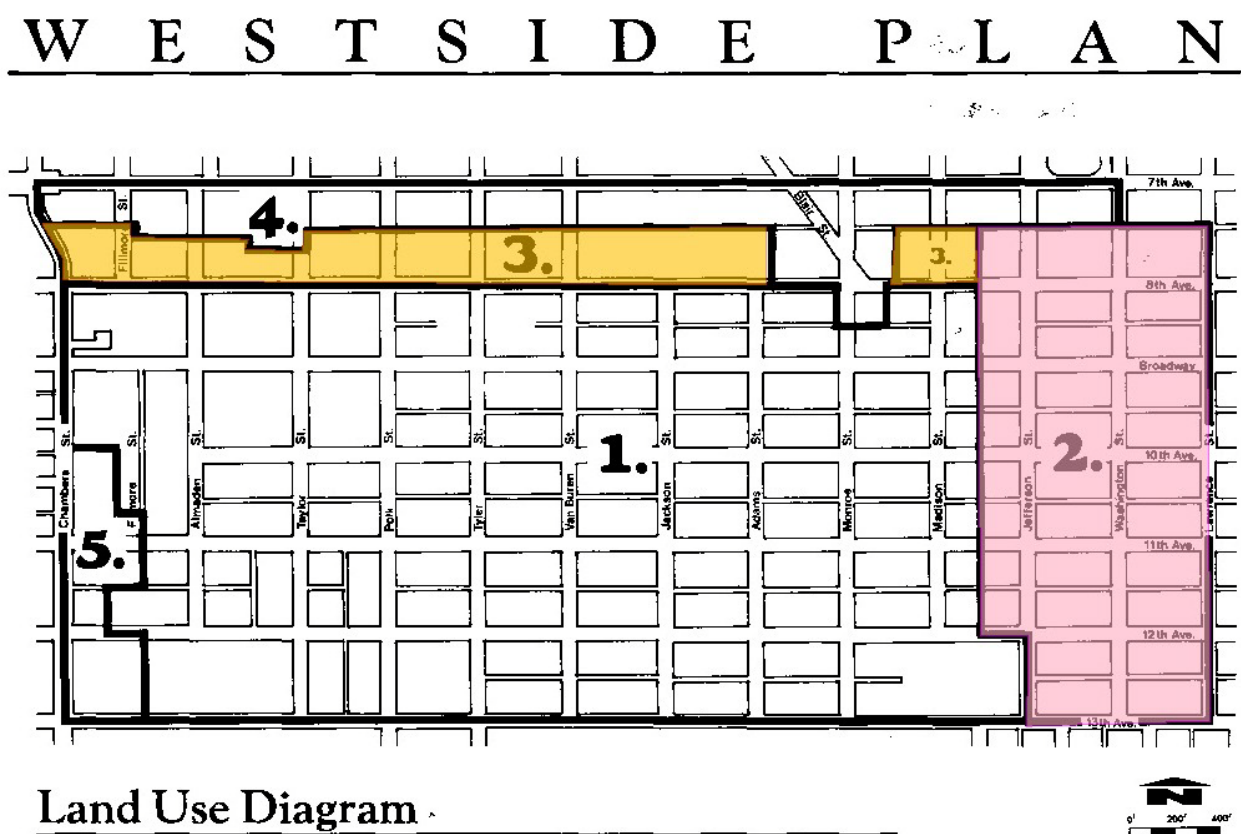
Guide to the Noncompliant R-3 Zoning of “Medium Density Residential” Lots within the *Westside Neighborhood Plan*

Summary of issue

Approximately 246 tax lots, covering around twenty-percent (50-60 acres of 250-300 acres total) of the area covered by the 1987 Westside Refinement Plan (WNP) and within the Jefferson Westside Neighbors (JWN) boundaries, are improperly zoned R-3 Limited High-Density Residential Zone because the R-3 zone is not legally consistent with the lots’ designation as “Medium Density Residential” (MDR) on the Metro Plan Diagram and in policies of the WNP. To correct this error, the lots should be rezoned to R-2 Medium Density Residential Zone, which is the zone specifically intended to implement the MDR designation.

Geographic area

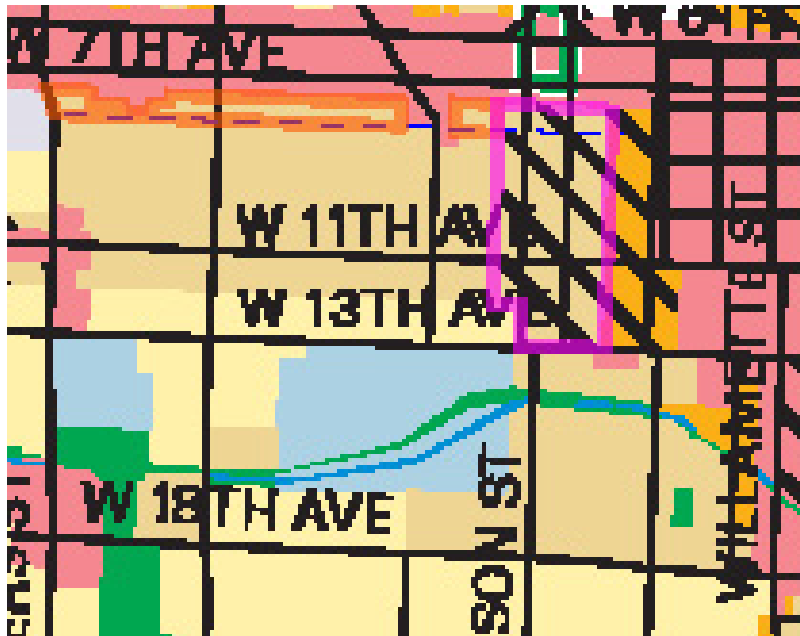
The areas in which these lots are found are defined as the "Eastern Residential / Mixed-Use Area" and the "Northern Residential Area" in the WNP, as depicted on the following map. Both areas are designated “medium density residential.”



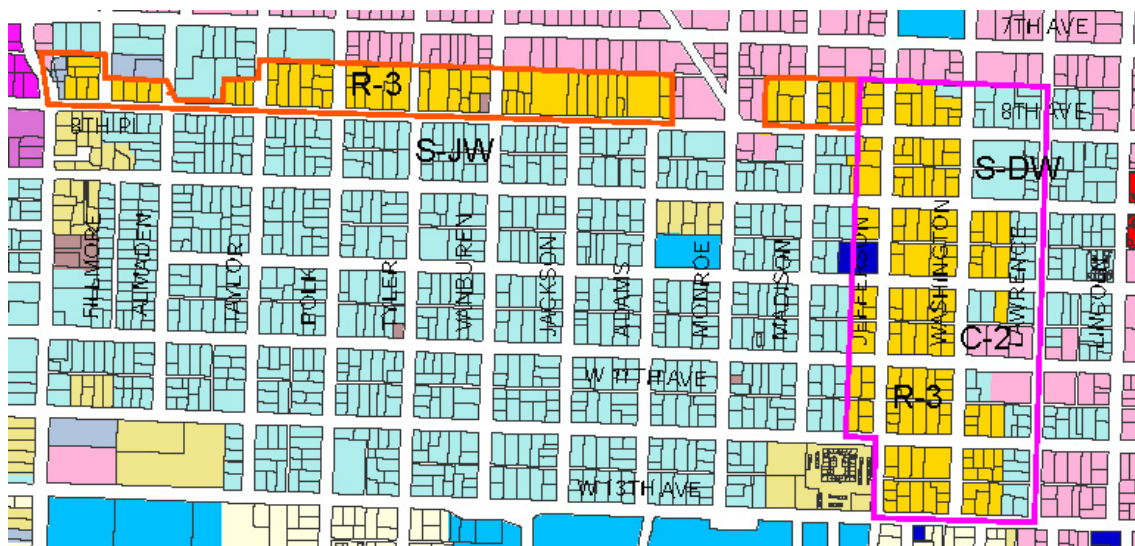
Land Use Diagram

- | | |
|----------------------------------------------|-------------------------------------------|
| 1. Central Residential Area | 4. West 7th Avenue Commercial Area |
| 2. Eastern Residential/Mixed Use Area | 5. Chambers Street Commercial Area |
| 3. Northern Residential Area | |

The areas are depicted on the following section of the current Metro Plan Diagram. (A fuchsia line depicts the “Eastern Residential / Mixed Use Area,” and orange lines depict the two parts of the “Northern Residential Area.”) Both are designated “Medium Density Residential.” The hash marks on the Eastern Residential / Mixed Use Area indicate a “Mixed Use” overlay; however, this is only in recognition of commercial uses that existed as of the adoption of the WNP in 1987. No new commercial zoning is allowed in this area.



The areas are depicted on the following section of the Eugene Zoning Map. The gold color indicates R-3, pink indicates C-2 and light blue indicates Downtown Westside Special Area Zone (S-DW).



Applicable policies and code

Metro Plan

Policy A.2 of the Metro Plan requires:

Residentially designated land within the UGB should be zoned consistent with the Metro Plan and applicable plans and policies; however, existing agricultural zoning may be continued within the area between the city limits and the UGB until rezoned for urban uses.

Policy A.9 of the Metro Plan defines the density ranges as follows:

Establish density ranges in local zoning and development regulations that are consistent with the broad density categories of this plan.

Low density: Through 10 dwelling units per gross acre (could translate up to 14.28 units per net acre depending on each jurisdiction's implementation measures and land use and development codes)

Medium density: Over 10 through 20 dwelling units per gross acre (could translate to over 14.28 units per net acre through 28.56 units per net acre depending on each jurisdiction's implementation measures and land use and development codes)

High density: Over 20 dwelling units per gross acre (could translate to over 28.56 units per net acre depending on each jurisdiction's implementation measures and land use and development codes)

Westside Refinement Plan

In the WNP, Policy #1 for the "Eastern Residential / Mixed Use Area" states:

This area shall continue to be recognized as appropriate for medium-density residential development. Although there is currently a mixture of land uses in the area, any further rezonings that would promote the conversion of residential uses to non-residential uses shall be discouraged.

In the WNP, Policy #1 for the "Northern Residential Area" states:

The City shall recognize this area as appropriate for medium-density residential development.

In the WNP, Policy #1 for the "Land Use Element" states:

Prevent erosion of the neighborhood's residential character.

Eugene Code defines "residential character" at EC 9.0500 as:

A combination of qualities and features that gives identity to a particular area where the predominant use is housing and that distinguishes the area from other areas.

Under Land Use Policy #1, the WNP sets forth the following “Implementation strategies”:

- 1.1 *Encourage those engaged in residential development to preserve the existing single-family character through mechanisms such as block planning, alley access parcels, and rehabilitation of existing residential structures.*
- 1.2 *Amend the Zoning Ordinance to require site review approval for residential developments of four or more units.*
- 1.3 *Initiate a zoning subdistrict for the properties along the west side of Jefferson Street between 8th and 12th Avenues from R-3 Multiple Family Residential to R-3/20. (Maximum of 20 units per acre instead of 35.)¹*
- 1.4 *Discourage conditional uses that would convert residential uses to non-residential uses.*

Eugene Land Use Code

Eugene Code defines the R-2 and R-3 zones as follows:

9.2710 Purpose of R-2 Medium-Density Residential Zone. *The purpose of the R-2 Medium-Density Residential zone is to implement the Metro Plan by providing areas for medium-density residential use and encourage a variety of dwelling types. The R-2 zone is also intended to provide a limited range of non-residential uses to help provide services for residents and enhance the quality of the medium-density residential area. (Emphasis added.)*

Table 9.2750 Residential Zone Development Standards *defines the min-max density range for R-2 as 10 to 28 dwellings per net acre (du/na).*

9.2720 Purpose of R-3 Limited High-Density Residential Zone. *The purpose of the R-3 Limited High-Density Residential zone is to implement the Metro Plan by providing areas for limited high-density residential use that encourage attached one-family dwelling units and multiple-family dwelling units. The R-3 zone is also intended to provide a limited range of non-residential uses to help provide services for residents and enhance the quality of the limited high-density residential area.*

Table 9.2750 Residential Zone Development Standards *defines the min-max density range for R-3 as 20 to 56 dwellings per net acre (du/na).*

The names, purposes and density ranges (specifically the maximum densities) establish the following:

- The R-2 zone is consistent with the Metro Plan MDR designation.
- The R-3 zone is consistent with the Metro Plan “High Density Residential” (HDR) designation.

¹ The current R-2 zone allows 28 du/na, which exceeds the recommended /20 residential density range. As noted in the implementation strategy, the R-3 zone at the time the WNP was adopted was only 35 du/na; whereas R-3 now allows 56 du/na.

Similarly, the name, purpose and density range (specifically the maximum density) establish that the R-3 zone is not legally consistent with the Metro Plan MDR designation, and therefore violates Metro Plan Policy A.2.

Eugene Code defines the approval criteria for a zone change as follows:

9.8865 Zone Change Approval Criteria. *Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:*

- (1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.*
- (2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.*

...

Eugene Code defines the approval criteria for a code amendment, including changes to the names, purposes and density ranges of residential zones, as follows:

9.8065 Code Amendment Approval Criteria. *If the city council elects to act, it may, by ordinance, adopt an amendment to this land use code that:*

- (1) Is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission.*
- (2) Is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.*

...

Thus, both the Metro Plan and Eugene Code require that:

- a) When a tax lot is rezoned, the lot's new zone must be consistent with the lot's Metro Plan and refinement plan designations; and
- b) When the code that defines a zone is amended, the new zone definition must be consistent the Metro Plan and refinement plan designation(s) of all the lot's to which that zone applies.

As explained above, the R-3 zone is not consistent with Metro Plan policy A.9 and is not consistent with the WNP policies applicable to lots in the "Eastern Residential / Mixed-Use Area" and "Northern Residential Area."

Eugene’s R-3 zoning district is noncompliant on “Medium Density Residential” lots

Oregon Supreme Court in *Baker v. City of Milwaukie* (21 OR 500 (1975)) states:

“Likewise, the City of Milwaukie, upon adopting a comprehensive plan, had a duty to implement that plan through the enactment of zoning ordinances in accordance therewith.

In summary, we conclude that a comprehensive plan is the controlling land use planning instrument for a city. Upon passage of a comprehensive plan a city assumes a responsibility to effectuate that plan and conform prior conflicting zoning ordinances to it. We further hold that the zoning decisions of a city must be in accord with that plan and a zoning ordinance which allows a more intensive use than that prescribed in the plan must fail.”

The City of Eugene has not followed the requirements of *Baker v. City of Milwaukie* and therefore the R-3 zoning district is noncompliant in the “Eastern Residential / Mixed-Use Area” and “Northern Residential Area” Of the WNP.

Land Use Code Update unlawfully amended the R-3 zone

The noncompliance arose when City Council adopted the Land Use Code Update (LUCU) in 2001. LUCU amended the R-3 zone by renaming and redefining R-3 as a zone to implement the Metro Plan high-density residential range and not accompanying this change with concurrent action to prevent the R-3 zone from remaining in effect on tax lots designated as medium-density residential. This change did not meet approval criteria in EC 9.8065 (2), and thus was unlawful.

The appropriate action would have been to concurrently rezone all MDR lots as R-2, since LUCU also amended the R-2 zone by renaming and redefining R-2 as the zone to implement the Metro Plan medium-density residential range.

Corrective action

Almost a decade has passed since the MDR lots *should* have been rezoned to R-2. Such rezoning remains the proper way to address the existing noncompliance and make the subject lots’ zoning consistent with the Metro Plan and Westside Neighborhood Plan.

Although in other cases, changing a group of lots from R-3 to R-2 might raise the question of Goal 10 compliance; this is not an issue here, since the assumed housing capacity for the affected lots was based on their long-standing medium-density residential designation, not the R-3 density range. Further, since R-2 is the clear and unchallenged zone that implements the entire medium-density range, there is no argument that rezoning to R-2 would lower the assumed housing capacity for these lots.

There also should be no issue of “fairness” to property owners because the amendments to the R-3 definition were unlawfully applied to their property in the first place. The property owners are entitled to no more than what the long-standing MDR designation allows, which is set forth in the R-2 zone.

History of the Northern Residential Area

The Northern Residential Area was originally zoned in 1935 as part of the R-2 Multiple Family Residence District, which was the only residential district other than R-1 Single Family Residence District. (See Ordinance 8413.)

In 1948, the code was amended to redesignate R-2 as Two-Family Residential District, and the R-3 Multiple Family Residence District was added to the residential zones. The Northern Residential Area remained part of the R-2 Two-Family Residential District. (See Ordinance 9188.)

By 1968, the area was rezoned RG Garden Apartment to act as a transition between commercial uses on W. 7th Avenue and residential uses south of W. 8th Avenue. The district was intended to provide a high quality environment for apartment dwellers by requiring open space for use by residents. (See WNP 3-9.)

In March 1972, the “1990 Plan” was adopted and designated this area as “Medium Density Residential”, which was defined as “11-20 dwellings per acre.” The 1990 Plan was the initial version of the Eugene-Springfield comprehensive plan.

In September 1977, the 1977 Westside Neighborhood Plan was adopted. (See Resolution 2747 and 1987 WNP Appendix 2-1.) One of the Land Use Policies was:

Through appropriate zoning provisions, maintain a medium-density level of development by conserving single-family homes and ensuring that new homes and apartments will be physically compatible with existing homes and the neighborhood's existing character.

In February and March of 1982, the 1980 Metro Plan was adopted and continued the designation of this area as “Medium Density Residential”, which was defined as “Over 10 through 20 dwellings per gross acre.” This area was also designated with a “Mixed Uses” overlay. (See Ordinances 18686 and 18927.)

In March 1985, the RG District was eliminated and all property zoned RG was rezoned to R-3. (See WNP 3-9.)

On January 12, 1987, the Metro Plan Diagram was amended to remove the “Mixed Uses” overlay from this area. (See Ordinance 19443.)

On the same date, the 1987 Westside Neighborhood Plan was adopted, and this area was once again designated as “medium-density.” Ordinance 19444 contained explicit language making clear that the WNP was the legal description of the Northern Residential Area’s designation:

Section 3. The land use diagram included in the Westside Neighborhood Plan is hereby adopted as a refinement to the Eugene-Springfield Metropolitan General Area Plan diagram and the explanatory text discussing each segment of the diagram is recognized as clarifying and providing further intent of the Metro Plan Diagram.”

In April 2000, an updated version of the “1987 Metro Plan Update” was published, which folded in all the plan amendments through that date. The Plan Diagram designated the Northern Residential Area as “Medium Density Residential”, which was defined as “Over 10 through 20 dwellings per gross acre” or “Over 14.28 through 28.56 dwellings per bet acre.” This area was no longer designated with a “Mixed Uses” overlay.

In February and May 2001, the Land Use Code Update (LUCU) changed the names, purposes and density ranges for the R-2 and R-3 zones. R-2 Medium-Density Residential Zone implemented the Metro Plan MDR designation, and R-3 Limited High-Density Residential Zone implemented the lower range of the Metro Plan HDR designation.

In April 2004, the Metro Plan Diagram was revised as part of a set of “housekeeping” amendments intended to correct inconsistencies in the plan diagram with respect to refinement plans, including the WNP. The Plan Diagram wasn’t changed for the Northern Residential Area, which continued to be designated as “Medium Density Residential.”

In summary, the Northern Residential area has always been designated as “Medium Density Residential.”

History of the Eastern Residential / Mixed-Use Area

The Eastern Residential / Mixed-Use Area was originally zoned in 1935 as part of the R-2 Multiple Family Residence District, which was the only residential district other than R-1 Single Family Residence District. (See Ordinance 8413.)

In 1948, the code was amended to redesignate R-2 as Two-Family Residential District, and the R-3 Multiple Family Residence District was added to the residential zones. The Eastern Residential / Mixed-Use Area was rezoned as R-3 at that time. (See WNP 3-7.)

In 1965, the Planning Commission adopted a policy of favorable consideration for zone change requests from R-3 to commercial zoning east of Washington Street. By 1970, a significant portion of the area east of Washington Street was zoned C-2. (See WNP 3-7.)

In March 1972, the “1990 Plan” was adopted. The 1990 Plan was the initial version of the Eugene-Springfield comprehensive plan. The Metropolitan Area Plan Diagram was a hand-colored “blob” map with indistinct area boundaries, having some uncolored areas and lacking north-south streets in the Eastern Residential / Mixed-Use Area. What can be determined from this diagram is that there was a “High Density Residential” area to the west of the “Commercial” area covering downtown, and there was a “Medium Density Residential” to the west of the “High Density Residential” area. The dividing point was somewhere in the vicinity of Lawrence, Washington or Jefferson Streets. The 1990 Plan defined “Medium Density Residential” as “11-20 dwellings per acre” and defined “High Density Residential” as “Over 20 dwellings per acre.”

In March 1977, City Council established the Westside Mixed Use District to 1) maintain the primary residential use and character of the area, 2) provide for existing office and small commercial uses as well as some limited additional uses, and 3) retain major landscape features which enhance the character of the area. The City subsequently changed the zone of several tax lots between Washington and Lincoln Streets and W. 7th and 13th Avenues from C-2 Community Commercial to MU Mixed Use. (See WNP 3-7.)

In September 1977, the 1977 Westside Neighborhood Plan was adopted. (See Resolution 2747 and 1987 WNP Appendix 2-1.) One of the Land Use Policies was:

Through appropriate zoning provisions, maintain a medium-density level of development by conserving single-family homes and ensuring that new homes and apartments will be physically compatible with existing homes and the neighborhood's existing character.

In February and March of 1982, the 1980 Metro Plan was adopted and included a somewhat more clearly delineated “blob” map for the Plan Diagram. On this diagram, Jefferson Street appears to be the dividing line with the area west of Jefferson Street designated as “Medium Density Residential” and the area to the east of Jefferson Street as “High Density Residential.” In this version of the plan, “Medium Density Residential” was defined as “Over 10 through 20 dwellings per gross acre,” and “High Density Residential” was defined as “Over 20 dwellings per gross acre.” Both subareas (east and west of Jefferson St.) were also designated with a “Mixed Uses” overlay. (See Ordinances 18686 and 18927.)

In August 1984, the Planning Commission established a policy of not approving zone changes from R-3 to MU based on the finding that such zone changes would decrease the emphasis on residential use in the area by increasing the amount of non-residential uses allowed. (See WNP 3-8.)

On January 12, 1987, the Metro Plan Diagram was amended to remove the “Mixed Uses” overlay from the area west of Jefferson Street. (See Ordinance 19443.)

On the same date, the 1987 Westside Neighborhood Plan was adopted, and this area was designated as “medium-density.” Ordinance 19444 contained explicit language making clear that the WNP was the legal description of the Eastern Residential / Mixed-Use Area’s designation:

Section 3. The land use diagram included in the Westside Neighborhood Plan is hereby adopted as a refinement to the Eugene-Springfield Metropolitan General Area Plan diagram and the explanatory text discussing each segment of the diagram is recognized as clarifying and providing further intent of the Metro Plan Diagram.”

The WNP included “mixed-use” in the title for this area, but only to recognize the existing commercial uses. Policy # 1 for the Eastern Residential / Mixed-Use Area clearly states:

Although there is currently a mixture of land uses in the area, any further rezonings that would promote the conversion of residential uses to non-residential uses shall be discouraged.

In April 2000, an updated document for the “1987 Metro Plan Update” was published, which folded in most plan amendments through that date. The Plan Diagram designated the Eastern Residential / Mixed-Use Area to the west of Jefferson Street as “Medium Density Residential”, which was defined as “Over 10 through 20 dwellings per gross acre” or “Over 14.28 through 28.56 dwellings per bet acre.” This area was no longer designated with a “Mixed Uses” overlay. The Plan Diagram designated the Eastern Residential / Mixed-Use Area to the east of Jefferson Street as “High Density Residential”, which was defined as “Over 20 dwellings per gross acre” or “Over 28.56 dwellings per bet acre.” This area retained a “Mixed Uses” overlay. It appears the designation of the eastern subarea as HDR was an error because the Metro Plan had been amended by the adoption of the 1987 Westside Refinement Plan, and the text of the WNP (which supersedes the Metro Plan Diagram) clearly established the entire Eastern

Residential / Mixed-Use Area as “medium-density residential.” There were no other Metro Plan amendments that changed the eastern subarea’s “medium-density residential” designation.

In February and May 2001, the Land Use Code Update (LUCU) changed the names, purposes and density ranges for the R-2 and R-3 zones. R-2 Medium-Density Residential Zone implemented the Metro Plan MDR designation, and R-3 Limited High-Density Residential Zone implemented the lower range of the Metro Plan HDR designation.

In April 2004, the Metro Plan Diagram was revised as part of a set of “housekeeping “ amendments intended to correct errors and inconsistencies in the plan diagram with respect to refinement plans, including the WNP. The Plan Diagram corrected the error mentioned above and correctly designated the entire Eastern Residential / Mixed-Use Area as “Medium Density Residential.”

In summary, the entire Eastern Residential / Mixed-Use Area has been designated as “Medium Density Residential” since at least January 12, 1987. The current Plan Diagram’s depiction of the “Mixed Use” overlay is only a recognition of commercial uses that are “grandfathered” in, and none of the area has allowed additional commercial uses since 1984.