

**SUPPLEMENTAL TESTIMONY IN OPPOSITION TO
MEININGER ZONE CHANGE APPLICATION**

FILE Z 06-22

June 20, 2007

I. INTRODUCTION

The following statement by the designated representatives of the **Jefferson Westside Neighbors (JWN)**, a City-chartered neighborhood association, provides supplemental testimony in opposition to the above captioned zone change application.

The JWN neighborhood association encompasses the subject lot, and the JWN Executive Board voted unanimously at their May 30, 2007 meeting to oppose this zone change.

II. ADDITIONAL ITEMS

A. Correction to JWN's Opposition Testimony dated June 12, 2007

Footnote 28 on page 13 should reference prior footnote 23 (not 22).

B. Hearings Official's prior findings regarding ORS 197.178(3)

In the JWN's June 12, 2007 Opposition Testimony, we presented evidence and arguments that applicant did not submit complete information and thus has not met the requirements of ORS 197.178(3).¹

In further support of this argument, we refer to the Hearings Official's decision denying the Green Valley Glen PUD (PDT 05-6):²

"Opponents argue that the applicant may fix the standards as of the date the application was originally submitted *only* if the applicant submits *all* necessary information prior to the 180-day deadline. (See Letter from Zack P. Mittge, Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, PC, dated December 13, 2006 at 13.)

The Hearings Official agrees with opponents. The city provided the applicant with an 'incomplete letter' on October 20, 2005. That 14-page document identified deficiencies in the application that needed to be

¹ "Testimony in Opposition to Meininger Zone Change Application," dated June 12, 2007, submitted by JWN at June 13, 2007 public hearing. See section IV.A.2.

² Green Valley Glen decision at 5.

remedied before the city could deem the application complete. The applicant did not submit all of the requested additional information within the 180-day period following the September 26, 2005 submittal date. Rather, the applicant requested that the city deem the application complete on March 24, 2006. That request resulted in deeming the application complete for the purposes of ORS 197.178(1); it did not satisfy the requirements to fix the goal posts set out in ORS 197.178(3)(a)."

In the Green Valley Glenn case, the Hearings Official agreed with opponents' argument that: "applicant may fix the standards as of the date the application was originally submitted *only* if the applicant submits *all* necessary information prior to the 180-day deadline."

We make the same argument in this case, and evidence submitted in the JWN Opposition Testimony demonstrates that applicant did not submit all necessary information. Thus the Hearings Official should reach a similar conclusion in the current case, i.e., that applicant did not satisfy the ORS 197.178(3)(a) requirements to "fix the goal posts."

C. Area 15 boundary on Lawrence Street; irrelevant data from outside Area 15

Applicant relies on data and images from locations that are not in Area 15. This data is included in the following documents:

- "Dwelling Units Per Parcel" attachment to applicant's Supplemental Testimony.
- "Attachment 7 – Existing Development in Area 15, from Spring 2007 walking survey" submitted by applicant on June 13, 2007
- In a collection of photo images submitted at the June 13, 2007 hearing³

³ Here is a summary of the 32 images submitted by applicant:

1-4 Subject property (in Area 15).

5-6 Lawrence Street (no specific lots indicated).

7 NOT in Area 15. Location is in Area 18 (W. 13th Ave. Commercial).

8-11 NOT in Area 15. All locations are in Area 17 (High Density Residential).

12 Area 15. Tan house is NOT a triplex, as applicant claims. It's a duplex.

13 NOT in Area 15. Location is in Area 17 (High Density Residential).

14 Area 15. Tan house is NOT a triplex, as applicant claims. It's a duplex.

15-20 Area 15.

21 NOT in Area 15. Location is in Area 18 (W. 13th Ave. Commercial).

22-27 NOT in Area 15. All location are in Area 17 (High Density Residential).

28 Area 15. Vacant lot cannot be developed with multi-unit apartments, as applicant implies, because the lot is zoned R-1 and designated LDR.

29 Area 15.

30 Area 15. Vacant lot cannot be developed with multi-unit apartments, as applicant implies, because the lot is zoned R-1 and designated LDR.

31 Area 15.

32 Area 15. Vacant lot cannot be developed with multi-unit apartments, as applicant implies, because the lot is zoned R-1 and designated LDR.

All these documents include lots on Lawrence Street north of the Amazon canal. However, Area 15 does not include any lots on Lawrence Street north of the Amazon canal (i.e., the 1300 block of Lawrence Street and lots on W. 13th Ave. at the corners of Lawrence Street).

The residential development north of Amazon Canal is in Area 17 of the Jefferson/Far West Refinement Plan and has for many years been designated as High Density Residential and zoned R-3 (Limited High-Density Residential).

Several lots at the corner of W. 13th Ave. and Lawrence Street are in Area 18 of the Jefferson/Far West Refinement Plan and have for many years been designated as commercial and zoned as C-2 (Community Commercial).

The Jefferson/Far West Refinement Plan provides an explicit and intentional fine-grained set of subareas, each with an area-specific land use designation and policy governing how the subarea shall be developed. These subareas define boundaries separating areas of the neighborhood that have and/or are explicitly intended to have, fundamentally different characters.

Data from adjacent high-density residential and community commercial subareas is not relevant to determining the character of Area 15. Thus, the Hearings Official should ignore data and images from outside Area 15 in this decision.

D. Erroneous applicant data regarding Area 15 existing dwellings per lot

Applicant has submitted at least two documents purporting to show the number of dwellings on lots within (and outside) Area 15:

- “Dwelling Units Per Parcel” attachment to applicant’s Supplemental Testimony
- “Attachment 7 – Existing Development in Area 15, from Spring 2007 walking survey” submitted on June 13, 2007.

Applicant relies heavily on this data in attempting to establish the character of Area 15 as part of applicant’s argument that the application complies with the Jefferson/Far West Refinement Plan’s Area 15 Policy.

The “Dwelling Units Per Parcel” document is incomplete and omits more than half the lots in Area 15, as noted in our Opposition Testimony (see section IV.A.2.b).

The “Existing Development in Area 15” map contains numerous serious errors.

Residents who have first-hand knowledge of existing development have signed statements⁴ attesting that applicant’s map shows at least sixteen lots as having multiple dwellings when there is actually only a single dwelling on each of these lots.

⁴ Attachment A.

A partial listing of the locations that applicant has mischaracterized as having multiple dwellings includes:⁵

1324, 1331, 1338, 1344, 1356, 1371, 1379, 1389, 1396, 1451, 1505, 1644, 1661, 1717, and 1761 Washington Street, and 537 W. 14th Ave.

The JWN submitted correct summary data for dwellings-per-lot in Area 15 in Attachment A “Area 15 Existing Development, February 20, 2007” of Opposition Testimony. In addition to a careful physical survey, the results of the JWN survey were validated against publicly-available data provided by the Lane Council of Government’s “Regional Land Information Database” (RPLID). The JWN survey results (and RLID data) also indicate the applicant’s data has substantial serious errors.

The testimony submitted by residents and the JWN survey results clearly show applicant’s dwellings-per-lot data and is not valid for use in assessing the character of Area 15.

Applicant has the burden of proof to demonstrate compliance with applicable Metro Plan and refinement plan policies. In light of the significant level of documented errors in applicant’s “dwellings per lot” data, applicant has not met the burden of proof to establish applicant’s assertions as to the stability, quality, or character of Area 15.

Therefore, applicant has not established an essential element that is necessary to demonstrate the application complies with Metro Plan Policy A.25’s requirement to “increase the stability and quality of older residential neighborhoods” and with the Jefferson/Far West Refinement Plan Area 15 Policy’s requirement to “maintain the character of the area.”

E. Adding site-specific factors to site review criteria

In Section V. of Opposition Testimony, we explain why we believe EC 9.8865 Zone Change Approval Criteria prohibits approving a zone change with conditions. (And, therefore, a zone change application that fails to fully meet all approval criteria must be denied – it cannot be “fixed” by imposing conditions.)

In the City Attorney’s June 13, 2007 Memorandum to Shawna Adams, the City Attorney states her opinion that the Hearings Official cannot add additional specific factors to the site review criteria at the time an /SR designation is applied.

If the Hearings Official agrees with the JWN’s assertion that no conditions can be applied when a zone change is approved, then the question of adding specific

⁵ The one week extension for testimony didn’t provide sufficient time for the JWN to contact owners and residents of all lots that applicant states have multiple dwellings. However, upon discovering the extent of erroneous data, the JWN e-mailed Planning staff on Monday morning, June 18, to request staff validate applicant’s map. Planning staff refused to make any effort to check any addresses we provided as examples of invalid data.

factors to site review criteria is moot in the case of a zone change request, including the current case.

However, if the Hearings Official finds that a zone change can be approved with conditions, we believe the Hearings Official's authority to impose conditions (e.g., under EC 9.7330) includes the authority to add additional specific factors to the site review criteria.

Eugene Code has no provision that specifically prohibits a zone change condition that adds specific factor(s) to site review criteria at the time an /SR designation is applied. Thus, if any approval conditions are allowed for a zone change, then a condition that adds specific factor(s) to site review criteria is also allowed.

In her memorandum, the City Attorney cited no existing Eugene Code that directly or indirectly prohibits such a condition. Instead the City Attorney based her opinion on two points:

1. That the provision of a new list of site review criteria in the current code (e.g., in EC 9.8440) somehow means "the code no longer allows the City to create property-specific site review criteria ***."

This is simply reading into the code something that doesn't exist. Nowhere in the current version of EC 9.8440 is there any prohibition against adding specific factors to be evaluated during the site review approval process, as provided by EC 9.8440(7). And the presence of a "generally applicable" list of criteria in EC 9.8440 doesn't somehow *create* a prohibition against additional criteria.

2. Legislative commentary related to a section of code the City Attorney herself acknowledges was subsequently removed in its entirety. Obviously, the subsequent legislative action removing the code supercedes the comments referenced by the City Attorney; and therefore, these comments provide no foundation for injecting into the code a limitation that simply doesn't exist.

In summary, if EC 9.7330 provides the authority to add conditions when a zone change is approved, this authority includes adding specific factors to site review criteria.

F. Specific conditions of approval

At the June 13 hearing, the Hearings Official asked the JWN representative about specific conditions the JWN would recommend if the application were approved.

While we believe Eugene Code does not allow a zone change application to be approved with conditions, in our Opposition Testimony we have indicated under each objection to the zone change what conditions would be necessary for a zone change to satisfy the respective approval criteria.

These conditions are summarized on page 26 of our Opposition Testimony as follows:

- o The lot may not be divided.
- o Sufficient condition(s) to assure all development, including partitions (if allowed), complies with Metro Plan Policy A.25 (and all other Metro Plan policies applicable to development of this lot).
- o Sufficient condition(s) to assure all development, including partitions (if allowed), complies with Jefferson/Far West Refinement Plan’s Area 15 policy (and all other refinement plan policies applicable to development of this lot).

In our testimony, we stated the second and third conditions in general “performance” terms, rather than as a specific list of lot and development standards. As the JWN March 14, 2006 resolution⁶ states, we believe conditions related to the character of the area should incorporate the following elements:

- a. **“the character of the area”** shall mean a set of concrete, measurable characteristics that have been identified through a public process as fundamental elements of the existing residential development within the area covered by this policy. These characteristics shall include, but not be limited to:
 - i. Mass and scale, both for main structures and secondary structures
 - ii. Setbacks from property lines and adjacent structures, at grade, as well as above grade
 - iii. Lot coverage by structures and vehicle use areas (e.g., driveways and parking)
 - iv. Intensity of development (i.e., dwelling units per lot)

By specifying conditions in the form we’ve suggested, the applicant would bear the burden of proof to base their argument for approval of a site review application on *valid* data that establishes a credible description of the character of the area. This would have to include *valid* data on mass, scale, setbacks, lot coverage, and intensity of existing development.⁷

If the Hearings Official decides to impose more specific, clear-and-objective standards, we believe the standards specified in EC 9.3065(3) for the S-C/R-2 subarea of the S-C Chambers Special Area Zone provide the best available alternative. These standards are based on extensive research and public deliberation regarding the character of the S-C/R-2 subarea, which is very similar to Area 15.

⁶ Submitted at June 13, 2007 hearing.

⁷ Much of this work has already been done through the JWN’s Area 15 survey and as part of the “Chambers Revisited” project, cited in our previous testimony.

G. Growth Management Policies

Applicant references Eugene's Growth Management Policies in applicant's Supplemental Testimony. David Hinkley also submitted testimony at the June 13, 2007 hearing referencing these policies.

Growth Management Policies are clearly not included in zone change approval criteria. Nor is there any implicit requirement to meet Growth Management Policies, as City Council found in their approval of the Metro Plan amendment (MA 06-05) and Jefferson/Far West Refinement Plan amendment (RA 06-03) assigning the Low Density Residential designation to Area 15.⁸

Therefore, testimony related to Growth Management Policies is not relevant to evaluating this zone change request.

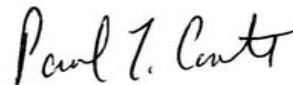
As aside, however, we find it somewhat curious that applicant introduces the Growth Management Policies into the evaluation of this request, since if these policies *were* part of the approval criteria, that would simply add *additional* criteria the zone change would have to meet. One of the applicable policies would certainly be Growth Management Policy 6, which explicitly requires "maintaining the character and livability of individual neighborhoods" – a criterion the current application fails to meet.

Respectfully submitted this 20th day of June, 2007.

Jefferson Westside Neighbors



Rene Kane
Chair



Paul T. Conte
Treasurer

⁸ Mr. Hinkley submitted testimony opposing these amendments based on the Growth Management Policies. Planning staff, the City Attorney, and the City Council all found no basis in Mr. Hinkley's argument.

ATTACHMENT A

*** E-MAILS MUST BE SENT IN BY 5:00 P.M. THIS WEDNESDAY ***

Send e-mail testimony as follows:

TO: Shawna.L.ADAMS@ci.eugene.or.us

SUBJECT: Erroneous evidence in Meininger zone change Z 06-22

June 18, 2007

RE: Erroneous evidence in Meininger zone change Z 06-22

Dear Hearings Official,

We own and/or reside at 1371 Washington St

Eugene, OR 97401, which is in "Area 15".

We wish to advise you that the "windshield survey" map submitted by the applicant miss-characterizes our property as having multiple dwellings.

*** Our home is the ONLY dwelling on this property. ***

In general, the applicant has submitted incomplete, erroneous, and extraneous data in support of her request.

We urge you to deny the request because the applicant has failed to demonstrate compliance with Metro Plan and local refinement plan policies related to maintaining the stability and character of the area, and therefore fails to meet the zone change approval criteria (1) and (2).

Thank you for your consideration.

Name: Ed Murphy

Address: 1371 Washington St Eugene 97401

*** E-MAILS MUST BE SENT IN BY 5:00 P.M. THIS WEDNESDAY ***

Send e-mail testimony as follows:

TO: Shawna.L.ADAMS@ci.eugene.or.us
SUBJECT: Erroneous evidence in Meininger zone change Z 06-22

June 18, 2007

RE: Erroneous evidence in Meininger zone change Z 06-22

Dear Hearings Official,

We own and/or reside at 1389 Washington St.

Eugene, OR 97401, which is in "Area 15".

We wish to advise you that the "windshield survey" map submitted by the applicant miss-characterizes our property as having multiple dwellings.

*** Our home is the ONLY dwelling on this property. ***


In general, the applicant has submitted incomplete, erroneous, and extraneous data in support of her request.

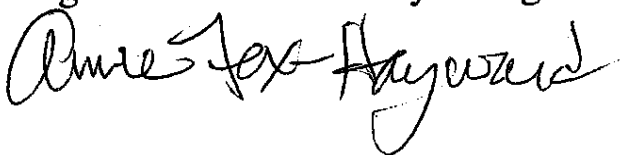
We urge you to deny the request because the applicant has failed to demonstrate compliance with Metro Plan and local refinement plan policies related to maintaining the stability and character of the area, and therefore fails to meet the zone change approval criteria (1) and (2).

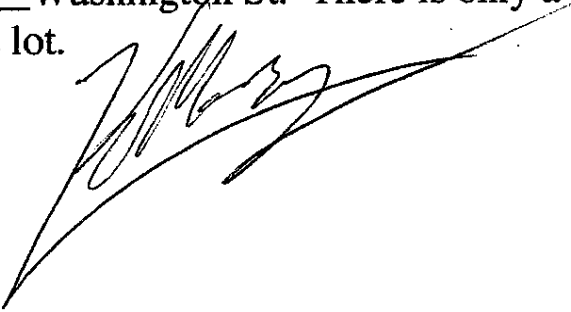
Thank you for your consideration.

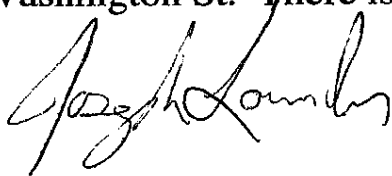
Name: Donald L. Wilson

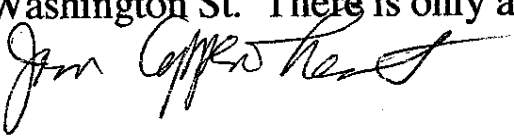
Address: 1389 Washington St.

I/we live at 1379 Washington St. There is only a single family dwelling on this lot. 

I/we live at 1451 Washington St. There is only a single family dwelling on this lot. 

I/we live at 1505 Washington St. There is only a single family dwelling on this lot. 

I/we live at 1661 Washington St. There is only a single family dwelling on this lot. 

I/we live at 1717 Washington St. There is only a single family dwelling on this lot. 

I/we live at 1344 Washington St. There is only a single family dwelling on this lot.

Diana Fulton-Mander

I/we live at 1356 Washington St. There is only a single family dwelling on this lot.

Marla R Stone

I/we live at 537 14th (on Amazon slough) — just behind 1396 Washington St. There is only a single family dwelling on this lot. *Venera Brown*

I/we live at 1331 Washington St. There is only a single family dwelling on this lot.

Alice Callahan

I/we live at 1396 Washington St. There is only a single family dwelling on this lot.

Frances Brown

I/we live at 1644 Washington St. There is only a single family dwelling on this lot.



I/we live at 1761 Washington St. There is only a single family dwelling on this lot.



I/we live at _____ Washington St. There is only a single family dwelling on this lot.

across the street from
I/we live ~~at~~ 1324 Washington St. There is only a single family dwelling on this lot. *I have been in this house and in the back yard and know the owner/resident.*



across the street from
I/we live ~~at~~ 1338 Washington St. There is only a single family dwelling on this lot. *I know the owner/occupant and know this statement to be true.*

