

Jefferson Westside Neighbors

A City-Chartered Neighborhood Association

www.jwneugene.org

July 5, 2006

Mayor Piercy and Eugene City Council

City Hall

777 Pearl Street, Room 105

Eugene, OR 97401

RE: Redesignated area of Jefferson neighborhood

Dear Mayor and City Councilors:

Over the past year, City Council has demonstrated a strong commitment to protecting the health and stability of Eugene's established neighborhoods. Council has taken several helpful steps to see that incompatible infill doesn't continue to degrade and destabilize these neighborhoods, including:

- Adopting "opportunity siting" as a primary strategy to increase density through compatible development on appropriate sites.
- Adopting the Chambers Special Area Zone, which provides infill compatibility standards for a section of the Westside neighborhood. These standards will allow a significant increase in density, while protecting the character and stability of the neighborhood.
- Directing the City Manager and staff to address infill compatibility standards as a "high priority" work item.
- Funding staff and additional resources to implement opportunity siting and infill compatibility standards.

Unfortunately, one of the most significant on-the-ground changes this year has been in the *wrong* direction – Fifteen *additional* blocks of the Jefferson neighborhood have now become exposed to the damaging and destabilizing effects of incompatible infill.

The redesignation of this single-family area to "Medium Density Residential" in the Metro Plan now allows upzonings from the R-1 zone that has been in effect for over fifty years to the R-2 base zone, which allows grossly incompatible multi-unit development.

This residential area, which is almost entirely single-family bungalows and cottages dating back to the 1920s and earlier, is much like the section of the Westside neighborhood that was thoroughly studied in the recent "Chambers Reconsidered" project. In assessing the impact of R-2 zoning on this Westside area, Planning staff stated that it was "obvious" R-2 development standards would "permit development that will result in fundamental changes to the character of the neighborhood" and cause "the complete transformation of the subarea" (See May 23, 2005 "Chambers revisited" Project Briefing Statement.) Staff also noted residents' "deep dissatisfaction with new development" allowed by the R-2 zone. This staff assessment applies equally well to the redesignated Jefferson area.

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And so, despite Council's efforts to *reduce* the threat of incompatible infill, residents of the Jefferson neighborhood now face a serious *increase* in the potential damage to their neighborhood fabric that poorly-sited, badly-designed infill can cause.

Jefferson Westside Neighbors (JWN) leadership has tried since March to work with the Planning and Development Director and the Planning Director to formulate an effective solution to this problem. Planning and Development Department (PDD) management, however, has offered little help. Meanwhile the Planning and Development Director has presented Council inaccurate and incomplete information that mischaracterizes the situation.

In an attachment to this letter, we attempt to correct the errors and misimpressions staff has conveyed to Council. The most important focus at this point, however, should not be on the past but rather on the immediate need for action so that no further ground is lost in this neighborhood.

Consequently, we are renewing the JWN membership's request that Council take action to *temporarily* retain the *status quo ante* (i.e., R-1 zoning) for this area, as it has existed for decades prior to this year. This modest, but essential, step will allow residents and Council adequate time to consider the best approach to future development in the area.

Temporarily prohibiting upzonings to the R-2 base zone has no detrimental impacts. This action will not impair a single property owner's ability to develop their property in the same way they were permitted as of the first of this year, and temporarily prohibiting upzonings will not in any way predetermine the final outcome of land use policy or zoning for this area.

In a recent conversation Councilor Papé accurately summed up why we need to address this problem without delay: "What you're saying is that we're already in a hole, and we should stop digging."

That's exactly what we're suggesting – Let's not dig the incompatible infill hole any deeper.

Based on the best information we've been able to obtain thus far, we've developed two alternatives for Council to consider. (We requested Planning staff review these alternatives prior to presenting a recommendation to Council, but the Planning Director declined our request.)

Alternative A. Council adopts the following motion:

The City Manager is directed to develop and present to City Council a definition of the neighborhood character of the area designated as "15. Low- to Medium-Density Residential" (pages 27-28) in the Jefferson/Far West Refinement Plan. This definition shall be developed by a public process involving area residents and property owners.

No zone change from R-1 to an R-2 base zone shall be considered within the respective area until at least 30 days after this definition has been approved by City Council.

This motion takes a "minimalist" approach by simply requiring that one of the specific criteria in the **Jefferson/Far West Refinement Plan** be addressed prior to approving any rezoning to the R-2 base zone. (The refinement plan policy for "Area 15" explicitly requires "maintaining the character of the area", yet there is as yet no definition of this character.)

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Alternative B. Council amends City Code EC 9.2735 Siting Requirements to read:

In addition to the approval criteria of EC 9.8865 Zone Change Approval Criteria, a property proposed for the R-2 base zone within the area designated as “15. Low- to Medium-Density Residential” (pages 27-28) in the Jefferson/Far West Refinement Plan, shall require the /SR overlay, and the /SR overlay shall include clear and objective requirements to assure development is compatible with and maintains the character of the area.

A definition of the character of the respective area shall be developed by a public process involving area residents and property owners.

No zone change from R-1 to an R-2 base zone shall be considered within the respective area until at least 30 days after this definition has been approved by City Council.

This code change may take longer to process than a simple motion, and there may not be any practical advantages over the first alternative. However, amending EC 9.2735 would make certain that any change to an R-2 base zone in the area requires an /SR (site review) overlay. (We believe the Jefferson/Far West Refinement Plan already requires an /SR overlay, but we couldn't get the Planning Director to confirm this was how Planning staff will interpret the applicable refinement plan policy.)

Neither alternative would require any *net* increase in anticipated Planning staff efforts or additional public involvement processes because developing a definition of the neighborhood character for this section of the Jefferson neighborhood can be incorporated as part of the necessary work to develop infill compatibility standards for the entire area of the Jefferson and Westside neighborhoods. Council has already directed staff, and provided funding, to work on infill compatibility standards for areas such as these neighborhoods.

We envision that a proposed set of infill compatibility standards (and possibly Metro and/or refinement plan amendments) can be presented for Council consideration *at the same time* as a proposed definition of the neighborhood character. Thus, when Council considers this proposed definition, Council can take the further step of supplanting current zoning code with new zoning (and possibly Metro and refinement plan policies) that establish a sensible long term plan for this and similar areas of the Jefferson and Westside neighborhoods.

Such an approach would accomplish what staff *should* have done in 2004 instead of sliding through the “Medium Density” redesignation as a Metro Plan “housekeeping” amendment with no substantive resident or Council involvement. The ultimate outcome of what we propose can be a *sustainable* approach to this neighborhood's future development that is broadly supported by area residents.

We aren't wed to these two specific suggestions and would welcome any alternative that can quickly and effectively achieve the essential goal of temporarily preserving the *status quo ante*. (We invited the Planning Director to offer alternative suggestions, but he declined to provide any.)

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Thank you for your consideration. Please contact either of us if we can be of assistance.

Respectfully,

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cc: Dennis Taylor, City Manager

Attachment A.

SETTING THE RECORD STRAIGHT ON THE REDESIGNATED JEFFERSON AREA

[Revised July 7, 2006*]

The current situation in the redesignated Jefferson area would be untenable no matter how it came about, and we encourage Council to focus on finding a quick and effective way to prevent further damage to the neighborhood. However, we also feel it's important to provide a more accurate factual record than Planning and Development Department staff have produced in various memos and other communications.

In simple, direct terms, the situation is this: The redesignated Jefferson area has been an attractive, healthy, single-family neighborhood for fifty years or more. Only this year, without forewarning, was the neighborhood's status abruptly changed to allow intense, large-scale, multi-unit development that is substantially out-of-character with the neighborhood's historical development pattern. This unexpected, looming threat is why residents so strongly hope Council will quickly rectify the problem.

This change was not brought about with adequate public knowledge, participation, or support. The possibility of destabilizing infill development arose only after Planning staff ushered through a Metro Plan amendment, which they characterized as a "housekeeping" change. As far as we can tell, this amendment was proposed and adopted without staff providing *any* notice to residents or City Council of the substantive effects of the change and without any meaningful involvement of residents, the Planning Commission, or Council in a decision that may drastically alter the character of the neighborhood and the lives of many families that live there.

In memos to Council and discussions with JWN board members and area residents, the Planning and Development Director and the Planning Director have yet to indicate they recognize the serious problem their organization's actions have created or the mistake Planning staff made in not adequately informing and engaging residents and City Council when the amendment was proposed.

Instead, PDD management have responded with defensive, legalistic discourse on the amendment process and have presented an inaccurate and skewed historical perspective that attempts to cast the amendment as a minor and natural step in carrying out land use policies for this area that have the long-standing support of residents and Council.

We'd like to set the record straight.

To begin with, no one has disputed that the Metro Plan amendment process met the minimum *legal* requirements. That isn't the point.

What's truly important is that this dramatic change affecting the lives of so many residents was done without *reasonable* public process and with staff ignoring numerous indications that a more open and deliberative process was essential.

Before leveling this criticism, we reviewed minutes of public meetings and requested PDD management to describe actions staff may have taken to inform residents and Councilors of the effects of this change. To date we've found no record such information was provided, and we've received no indication from PDD management that there was any attempt to keep the public and elected officials adequately informed.

* Based on information we received after the original letter was sent to Council, pages 3 and 6 have been revised to reflect that only a single rezoning to R-2/SR has occurred in the redesignated area.

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Instead, PDD management has taken the tack of assuring residents and Council that the Metro Plan “housekeeping” amendment was not particularly noteworthy and the amendment merely “aligned land use designations with previously adopted land use plans.” Consequently, there was no need to bring the amendment’s impacts to the attention of the public or Council.

In support of this viewpoint, the Planning and Development Director sent Council a memo on May 14, 2006 purportedly addressing neighborhood concerns. However, in this memo the Director misstates several crucial facts and fails to provide a complete and accurate history of land use actions in the redesignated area, as we explain below.

Incorrect statement of the Jefferson/Far West Refinement Plan policy

“When the refinement plan was adopted in 1983, it specifically changed this subarea from low density to medium density residential ...” (page 2).

“... while the neighborhood plan and legislative history clearly reflects medium density residential.” (page 3).

Both these statements are false. The refinement plan explicitly labels the redesignated area as the “Low- to Medium-Density Area” (see page 27 in the refinement plan) and graphically represents it as “Low-Medium Density Residential” on the Land Use Diagram (page 18).

The refinement plan identifies four specific residential densities: “Low”, “Low-Medium”, “Medium”, and “High.” The plan does *not* identify this area as “medium density” as the Director’s memo erroneously states. It’s especially hard to reconcile the Director’s use of “specifically” and “clearly” in stating claims that can easily be determined as inaccurate by even a casual reading of the refinement plan.

In a June 16 e-mail to the JWN Co-chairs, the Director acknowledged the refinement plan designates this area as “low-medium density residential”, but went on to explain her prior statement by claiming the refinement plan says “that area should be zoned R-2.” The refinement plan does *not* say the area should be rezoned R-2, and the Director’s continued misstatement of the basic policy for this area is unsettling.

The Jefferson/Far West Refinement Plan policy for this area is one of the most central facts in this discussion, and it’s hard to place confidence in other parts of the Director’s memo when she has the basic facts wrong. Additional errors in the memo, which we detail below, reinforce the need for caution in taking the Director’s explanations at face value.

Incorrect facts regarding zone changes

“Since the adoption of the Refinement Plan in 1983, five zone changes have been approved in the subarea in question, changing the affected properties from R-1 to R-2/SR. In order to be approved, all of these zone changes were required to demonstrate compliance with the refinement plan and Metro Plan.” (page 2).

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There were only four zone changes to R-2/SR in the Jefferson neighborhood during this period and only one of them (the “Berg” application, file Z 84-20) was in the redesignated area, as can readily be determined from the Planning Division’s Web site.

This zone change indeed *should* have been required to comply with the applicable Metro Plan designation of “Low Density” for the encompassing area; and, because the requested R-2/SR zone actually did *not* comply with the “Low Density” designation, the application *should* have been denied. Unfortunately, Planning staff erred in recommending approval of this zone change despite the fact that an R-2 base zone, *regardless of any overlay*, is not legal for any property that’s designated “Low Density” in the Metro Plan.

In preparing her memorandum, the Planning and Development Director could have established this important fact by consulting with the Planning Director who is well aware of the legal ruling to this effect from his direct involvement in the “Taylor” zone change application (file Z 04-19) that was denied January 7, 2005. In the “Taylor” case, the hearings official rejected the application and emphasized that “R-2, regardless of any overlay, implements the medium density designation and does not implement the low density designation [of the Metro Plan].”

Unfortunately, the Planning and Development Director’s memo did not include this crucial information in her discussion of previous zoning actions within the redesignated area.

Mischaracterization of the impact of the Metro Plan on zone change applications

“Under this approach, the neighborhood-specific land use diagram clarified the intent of the Metro Plan, essentially replacing it as the legally effective diagram. As such, one would only need to rely on the refinement plan for direction.” (page 2).

This and the rest of the discussion about how the “City’s procedures for plan amendments have evolved, along with code criteria” (pages 2 and 3) give the impression that for some extended period, the redesignated area was subject to valid upzonings to an R-2 base zone.

We asked the Planning and Development Director when the process and zoning criteria changed, and she replied “there is no single date that can be specifically identified.” So we examined the history of zone changes to a base R-2 zone in the Jefferson neighborhood area and found that even in the earliest case (“Berg”, file Z 84-20), which was filed November 29, 1984, Eugene Code section EC 9.678(2) (b) required that “A proposed change is consistent with the Metropolitan Area General Plan 1) applicable text, ... and 3) *applicable land use designations*. This criteria indicates that, at least from November 1984 on, the Director’s claim that “one would only need to rely on the refinement plan for direction” is incorrect.

Eugene zoning code at that time also recognized the Metro Plan as taking precedence over the local refinement plan. The hearings official’s findings in the “Berg” case specifically quote section EC 9.678(2) (c), which states: “In the event of inconsistencies between these [neighborhood refinement] plans or studies and the Metropolitan Area General Plan, the *latter is the prevailing document*.”

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The hearings official findings in next oldest R-2 rezoning case (“Malcomb”, file Z 93-41) in the Jefferson neighborhood quotes the same section of Eugene code verbatim; and in this case, both PDD staff and the hearings official discuss the specific requirement that any zone change comply with the Metro Plan’s designation of the encompassing area as “low density residential.”

The “Malcomb” case reinforces the conclusion that the Metro Plan designation was a governing policy – and was *not* “replaced” by the local refinement plan – both in this case and the earlier “Berg” case that referenced the same zone change criteria. In the “Malcomb” case, the application was for a zone change to R-2/10 and the staff recommended (erroneously, as the subsequent “Taylor” case clarified) that limiting the density to ten units per acre allowed the R-2/10 zone to meet the Metro Plan “Low Density” criteria.

For practical purposes then, rezonings to an R-2 base zone were not legal prior to the January 1983 adoption of the Jefferson/Far West Refinement Plan and have not been legal since at least November 1984. Planning staff’s response to our queries indicate they simply don’t know what the situation was between January 1983 and November 1984.

Thus, the limiting effect of the Metro Plan – whether or not it *should* have been amended earlier – appears to have been in effect for decades and is not a recent development as the memo may lead Councilors to believe. Accordingly, Councilors should appreciate that residents’ shock at the recent change in permitted zoning is based on historical *reality*, not on residents’ lack of appreciation for arcane land use policy.

Improper justification for recommending a “housekeeping” amendment

“The amendments that were made to the Eugene portion of the Metro Plan were limited to changes that aligned land use designations with previously adopted land use plans. All changes made to the Metro Plan were therefore based on previously established policy direction reflected in the adopted neighborhood plans.” (page 1)

We’ve pointed out that the Planning and Development Director was incorrect in stating the Jefferson/Far West Refinement Plan “specifically” and “clearly” designated the area as “medium density” and in stating the refinement plan said the area “should be zone R-2.” If either of these claims were true, then indeed changing the Metro Plan designation to “Medium Density” might have been appropriately handled as a “housekeeping” detail.

But these *aren’t* the facts, and changing the Metro Plan designation without also putting in place the necessary zoning code to implement the much more restrictive scope of the actual Jefferson/Far West Refinement Plan policy was a serious mistake that PDD should acknowledge and help correct.

From a reasonable reading of the applicable refinement plan policies for the redesignated area and a short walk around that part of the Jefferson neighborhood, most anyone can understand the refinement plan language for the redesignated area envisions carefully controlled developments that could be somewhat more dense than the R-1 development that existed at the time.

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The “low-medium density” designation for the area would allow single-family development to continue, while also allowing some denser developments extending into the lower range of what “medium density” zoning allowed at the time the refinement plan was written. That would have been two dwellings on many lots in the area, and no more than three on most larger lots. R-2 maximum densities have increased substantially since that era and now would allow four to six units on most lots in the area.

If PDD staff was unable to appreciate the intent of the refinement plan from reading it and observing the character of the area, they should at least have become well aware in late 1998 that residents of the area did not support unrestrained rezoning to the R-2 base zone. At that time numerous residents’ adamantly opposed the “Iverson” R-2/SR zone change application (file Z 98-14) during the public hearings process.

As part of this opposition, the combined executive boards of the Jefferson Area Neighbors (JAN) and the Westside Neighborhood Quality Project (WNQP) neighborhood associations submitted a letter on December 16, 1998 to the hearings official. The neighborhood leaders stated that “where and how to increase density within our neighborhoods is too important to be made on a parcel by parcel basis ... we are opposed to piecemeal increases in density ...” Even more to the point: “the properties [sic] R-1 Low Density Residential zone classification ... is in keeping with the Low to Medium Density designation in the adopted neighborhood refinement plan. ... *It also is in keeping with ... the intent of the drafters of the neighborhood refinement plan.*”

One of the signatories of this letter was Jon Belcher who had been a member of the Jefferson/Far West Planning Team that created the refinement plan and who was a JAN Co-chair at the time the letter was submitted. Ironically, when PDD staff presented the package of “housekeeping” amendments to the Planning Commission, they apparently neglected to inform the commissioners (as well as residents and Council) of the impact of the amendment redesignating the Jefferson area, even though Mr. Belcher had by that time been appointed to the Planning Commission.

Planning staff has not adequately prepared to process zone change applications

The foregoing sections document the errors and misimpressions in the Planning and Development Director’s memorandum to Council. The memo also neglects to apprise Council of a critical shortcoming related to evaluating zone change applications under the new designation.

The Jefferson/Far West Refinement Plan appears to require any upzoning to the R-2 base zone to include an /SR (site review) overlay, although we could not get PDD management to confirm this requirement, and they have not supported this requirement in the past. However, even assuming the /SR overlay is required, PDD apparently has no site review criteria in place, nor any definition of the neighborhood character, to assure the Jefferson/Far West Refinement Plan requirement for “maintaining the character of the area” will be effectively enforced.

The Planning and Development Director has stated the “city is exploring methods to address the very issue described in the policy.” PDD staff should have done a lot more

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than “explore” site criteria prior to recommending the “housekeeping” amendment that opened up this single-family area to multi-unit development. Staff should have worked with residents and the neighborhood association to firmly establish explicit “compatibility” criteria as a condition for approving any zone change to R-2/SR.

The absence of meaningful site review criteria in the one prior rezoning to R-2/SR that was approved in this area (improperly, as it turns out), and in three other rezonings nearby, led Commissioner Belcher to write recently that “Site review has proved inadequate to prevent inappropriate development.” (JWN newsletter, May 2006.)

Planning staff themselves have documented their own lack of understanding of what the Jefferson/Far West Refinement Plan policy for this area requires when a property is upzoned to the R-2 base zone. Staff testimony in response to the “Taylor” zone change application (referenced above) states that staff is “unclear,” and the refinement plan is “ambiguous,” about what maximum density was intended by the “Low-Medium Density” designation that the local refinement plan applies to this area.

Overall, it’s apparent that PDD staff has no idea precisely what limits should apply to R-2 upzonings that are approved under the new designation, and so it should be no surprise that residents who live in the area have tremendous anxiety over the type of development that will occur. For this reason alone, staff should have engaged residents and City Council before proceeding with the Metro Plan amendment.

The Director’s memo failed to explain to Council that the Planning Department was unprepared to establish appropriate site criteria when they recommended the “housekeeping” amendment (and they are still unprepared) because staff has developed no foundation on which to assess whether a proposal adequately maintains the neighborhood character as the local refinement plan requires.

A complete and accurate understanding of the history and circumstances related to the redesignated area reveals that Planning staff did not adequately consider all the issues and ramifications of this redesignation; that they did not have a good grasp on the proper application of existing land use policies to zone change applications in this area; and that they ignored loud and clear messages from residents and neighborhood associations that opening the doors to increased rezonings to the R-2 base zone was *not* the intent of the refinement plan and was opposed by residents.

But even if there wasn’t all the history and evidence at hand, a small dose of common sense was all that was required to appreciate that changing what’s allowed in an established neighborhood from single-family dwellings and corner duplexes on each lot to 35-foot and higher, four-plex and six-plex apartments, as allowed by the R-2 base zone, would be a drastic change warranting public involvement.

What is done is done, however, and it’s time for the Planning and Development Department Director and Planning Director to acknowledge the need to fix the problem and provide help in doing that quickly and well.