

**FINDINGS OF FACT AND DECISION OF
THE CITY OF EUGENE HEARINGS OFFICIAL**

Appeal of Planning Director Interpretation of
Jefferson/Far West Refinement Plan
“Area 15” Policy as codified in EC 9. 9.9850(17)

Area Affected: A roughly triangular shaped area bounded by Jefferson Street on the west, 13th Avenue on the north, 18th Avenue on the south, with the hypotenuse of the triangle traversing portions of Lawrence, Lincoln and Olive Streets located between 13th and 18th Avenues.

Appeal: Jefferson Westside Neighborhood (JWN) appeals the planning director’s interpretation of the Jefferson/Far West Refinement Plan Area 15 policy codified as an applicable plan policy at EC 9.9850(17). Plan policies identified in EC 9.9510 through 9.9710 apply to applications for subdivisions, partitions and site review. *See* EC 9.9500.

Relevant Dates: As part of a global review of zoning designations and land use policies within the area, the city council directed the planning director to issue an interpretation of EC 9.9850(17). The planning director issued his interpretation on November 16, 2006. On November 28, 2006, Rene Kane and Paul Conte (appellants) filed an appeal of the interpretation, on behalf of JWN. A hearing on the appeal was held on January 11, 2007, where written and oral testimony was presented. The record was closed at the conclusion of the hearing and, in accordance with EC 9.7630(1), the hearings official requested until January 30, 2007 to issue the written decision. No party opposed the request.

CONCLUSION: The planning director’s decision is affirmed in part and modified in part.

Findings of Facts and Conclusions of Law:

A. Preliminary Matter

On January 17, 2007, after the record for the appeal had been closed, appellants submitted a letter requesting that the planning director submit evidence and legal citations in support of oral statements he made at the appeal hearing. Appellants also requested an opportunity to provide additional evidence and argument in response to that new evidence.

The Hearings Official concludes that it is not necessary to re-open the record to accept additional evidence on this point. The testimony cited by appellants reflects the planning director’s understanding of case law interpreting aspirational statements included in plan policies, and the applicability of those legal decisions to quasi-judicial land use planning processes. While those statements may highlight staff’s difficulties in implementing plan policies on a day-to-day basis, they do not provide assistance in interpreting the policy at issue in this case.

B. The Merits of the Appeal

1. The Planning Director's Interpretation and Summary of Appellants' Arguments

EC 9.9850(17) provides:

“[Area 15] shall be recognized as a low- to medium-density residential area. The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area. Residential densities beyond ten units per acre shall be allowed, subject to an approved block plan or rezoning to R-2 in conjunction with site review.

“The City shall encourage block planning, infilling, and shared housing, in this area. Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.

“The City shall encourage the rehabilitation of the existing housing stock through both public and private investments.” Jefferson/Far West Refinement Plan 27-28.

The planning director interpreted EC 9.9850(17) to permit between 10 and 28 dwelling units per net acre on R-2 zoned property that is also identified for such development on a block plan or is subject to site review. The planning director rejected neighborhood arguments that EC 9.9850(17) should be interpreted to permit less than 28 units per acre, concluding that the current R-2 zoning provisions (including density standards) which apply to current land use applications do not permit a R-2 designation that lowers the density ceiling. Finally, the planning director concluded that there is nothing in EC 9.9850(17) that requires the city to limit uses that are otherwise allowed in the R-2 zone (including higher densities) merely because those uses may undermine the character of the area.¹

Appellants' statement of appeal alleges five main errors in the planning director's interpretation. First, appellants allege that the planning director erred when he failed to consider relevant plan provisions and legislative history when rendering his interpretation. Appellants note that, at the time the policy was adopted, the R-2 zone permitted up to 20 units per acre. Current R-2 densities permit between 10 and 28 units per acre. Appellants argue that the current R-2 density range is not consistent with the

¹ The director's interpretation states, in relevant part:

“[I]t is concluded that EC 9.9850(17) shall be applied as follows: First, it identifies Area 15 as appropriate for low to medium density residential development, which under current standards, would allow 0-28 units per net acre. Second, it explicitly enables densities above 10 units per acre, which is interpreted to mean 10 units per net acre, through one of two methods: 1) An approved block plan, or 2) Rezoning to R-2 with the application of site review (/SR overlay). Finally, the reference to R-2 rezonings is read to enable the full range of provisions related to the R-2 zone as identified in the Land Use Code, including maximum density, based on the standards in place at the time of submittal of a given land use application. Under the current standards, this would enable a maximum density of 28 units per net acre.” Planning Director Interpretation, 4.

policy's identification of the area as a low to medium density residential area. Appellants argue that EC 9.9850(17) is better interpreted to provide a density range that overlaps with the higher end of the low density range, and the lower end of the medium density range. If that interpretation, combined with the density maximum that was in effect in 1983, is applied to property within Area 15, appellants assert that the maximum permitted density should be no more than 14-18 units per acre. Appellants submitted testimony from persons involved in the development of the Jefferson/Far West Refinement Plan to support their arguments that such an interpretation better implements the purpose of the plan than the planning director's interpretation.

Second, appellants argue that the planning director erred in interpreting EC 9.9850(17) to allow up to 28 dwelling units per *net* acre. Appellants argue there is no support for that conclusion in the text of the policy. In addition, appellants assert that if net acreage is used, other existing development methodologies permit greater densities than is otherwise allowed in the R-2 zone.

Third, appellants assert that if current R-2 densities are fully applied, development on those re-designated properties will not "maintain the character of the area," and thus will be inconsistent with the policy.

Fourth, appellants contend that EC 9.9850(17) establishes limits on the types and intensity of development allowed in the area. In particular, appellants argue that the sentence including the phrase "maintaining the character of the area" imposes an approval standard that permits higher densities only if the higher density development maintains the character of Area 15. Appellants argue that the city should use the site review process to impose conditions of approval or other development standards that will ensure the character of the neighborhood is maintained. Relatedly, in appellants' fifth assignment of error, appellants argue that the /SR designation imposes some development restrictions on R-2 uses. Appellants assert that the proper interpretation of the EC 9.9850(17) and the city's site review standards is to require that avenues to maintain the character of the area be incorporated into site review decisions.

2. Analysis of Applicable Law

In interpreting a legislative provision, the reviewing body must first look to the text and then to the context of the ambiguous provision. If the intent can be discerned from the text and context, then the reviewer need not look to other sources, such as legislative history or maximums of statutory construction, for further illumination. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-13, 859 P2d 1143 (1993).

The question asked and answered in the planning director's interpretation pertains to the application of a refinement plan policy in a relatively limited context: land division and site review applications. It does not attempt to evaluate how the Area 15 policy, in the context of the Jefferson/Far West Neighborhood Plan, should be applied to other applications, where such plan provisions may apply. Here, the text is easily read to support the planning director's conclusion that R-2 zoning designations are permitted

within Area 15 if those properties are either subject to a block plan or site review. Turning to the next questions, whether the “low- to medium-density residential” reference in EC 9.9850(17) is to be read to lower the ceiling of permissible density, and whether the R-2 densities refer to gross or net acres, those questions are answered by the context of the EC 9.9850(17) in relation to the EC and the Metro Plan provisions that the policy implements. Finally, the context of EC 9.9850(17) as part of a group of policies that must be considered when evaluating land division and site review applications provides the answer to the question of how the city is to “explore” avenues to maintain the character of the area.²

The Metro Plan provides the policy framework for land use decisions within the Eugene-Springfield metropolitan area. Therefore, policies pertaining to residential development provide context for interpreting land use regulations intended to implement those policies. The Metro Plan land use diagram designates Area 15 as suitable for medium density residential development. Metro Plan Residential Density Policy A.9 requires the city to adopt density ranges in local zoning and development regulations that are consistent with the applicable zoning designation. Policy A.9 sets out three types of residential densities: low, medium and high. Policy A.9 defines medium density residential development as including “[o]ver 10 dwelling units per gross acre (could translate to over 14.28 units per net acre through 28.56 units per net acre).” Further, Policy A.16 requires that the city “[a]llow for the development of zoning districts which allow overlap of the established Metro Plan density ranges to * * * result in either maintaining or increasing housing density within those districts. Under no circumstances shall housing densities be allowed below existing Metro Plan density ranges.”

The zoning designations set out in the EC implement the Metro Plan’s density standards. EC Table 9.2750 provides that the R-2 maximum net density is 28 units per acre. Therefore it is reasonable to interpret EC 9.9850(17) as allowing the highest level of R-2 density the zone affords. It may be that that was not the intent when the policy was adopted in the Jefferson/Far West Refinement Plan, but that interpretation is consistent with the text and context of the Metro Plan and EC 9.9850(17).

EC 9.9850(17) provides, in relevant part, that the “[c]ity shall explore methods of encouraging an increase in residential density yet maintaining the character of the area.” Appellants read this to require two separate actions of the city: (1) to explore methods of encouraging an increase of residential density and (2) maintain the residential character of the area. In appellants view, EC 9.9850(17)’s goal of increasing residential density is secondary to the goal of maintaining the character of the area. However, appellants misread EC 9.9850(17). Grammatically, the text of EC 9.9850(17) asks the city to “explore” avenues to achieve one goal, “increasing residential density” while recognizing the separate goal of “maintain[ing] the character of the area.” The goal of maintaining the character of the area has the same importance as increasing residential density.

² Because the Hearings Official bases her decision on the first two elements of the *PGE* analysis, she does not consider appellants’ legislative history.

The planning director correctly concluded that the language cited above does not impose a definitive approval standard that can provide a basis for denial of a land division application. However, it is not true that it has no relevance to land development application. If that were the case, then that portion of the Area 15 policy would not have been included in the EC as a factor to be evaluated when reviewing land division and site review applications. While not imposing a definitive approval standard, it can be read to provide a gloss for subjective approval standards such as EC 9.8440(1) (site plan is “generally compatible” with surrounding properties.) Accordingly, the Hearings Official concludes that the planning director erred when he concluded that that portion of the policy does not provide any limitations on applications to which EC 9.9850(17) applies. With respect to land divisions, if a development intends to increase density, the city should consider alternatives presented during the development process, and if there is a choice, select the alternative that maintains the character of the area over one that merely increases density.

The planning director’s interpretation is affirmed in part and modified in part.

Dated this 30th day of January, 2007.

Mailed this ___ day of _____, 2007.

Anne Corcoran Briggs
Hearings Official

Pursuant to EC 9.7630(3), this decision is the final decision of the city on this matter. Appeals of this decision may be filed with the Land Use Board of Appeals pursuant to ORS 197.835 and OAR chapter 661, division 10.