

**APPEAL STATEMENT**  
**RE CODE INTERPRETATION OF**  
**JEFFERSON/FAR WEST REFINEMENT PLAN**  
**"AREA 15" POLICY**  
FILE CI 06-13

November 28, 2006

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**INTRODUCTION**

The following statement by representatives of the **Jefferson Westside Neighbors (JWN)**, a City-chartered neighborhood association, lists the issues on appeal and explains how the Principal Planner (on behalf of the Planning Director) erred in the decision rendered in the above captioned code interpretation.

The JWN neighborhood association encompasses the subject area, and the Executive Board voted unanimously at the November 21, 2006 Executive Board Meeting to direct the JWN Co-chairs to appeal this decision.

The Jefferson/Far West Refinement Plan was written during 1980 to 1982 by a planning team consisting of eight residents appointed by the two encompassing neighborhood associations (Jefferson Area Neighbors and Far West Neighborhood Association) and five representatives of the area business and religious community and Lane County Fairgrounds and Ida Patterson Community School.

The final draft of the refinement plan was completed in June 1982.

The plan was adopted by City Council on January 12, 1983.

At the time the J/FW Refinement Plan was adopted, Area 15 was encompassed by the Jefferson Area Neighbors (JAN) neighborhood association. A few years ago, Jefferson Area Neighbors merged with the Westside Neighborhood Quality Project (WNQP) to form the Jefferson Westside Neighbors (JWN), which is now the City-chartered neighborhood association that encompasses Area 15.

Because Eugene Planning staff have previously stated they are unclear about how to interpret the J/FW Refinement Plan that applies to the "Area 15" section of the Jefferson neighborhood<sup>1</sup>, the neighborhood association general membership voted unanimously on March 14, 2006 to state the association's intended interpretation of this policy. (See Attachment A, attached hereto and incorporated herein by reference.)

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<sup>1</sup> See "Taylor" zone change (Z 04-19) Staff Report at 3.

At City Council's direction, the above captioned code interpretation was issued on November 15, 2006.

Prior to the interpretation, the JWN co-chairs submitted the attached "Findings and Recommendations" regarding the interpretation of Area 15 policy. (See Attachment B, attached hereto and incorporated herein by reference.)

We believe the Principal Planner who issued the decision erred in multiple ways, resulting in an erroneous interpretation. The Principal Planner's decision also conflicts in critical ways with the interpretation the JWN intends.

## ERRORS

**Error 1.** The Principal Planner erred by ignoring relevant evidence in the Jefferson/Far West Refinement Plan itself and relevant evidence related to the administrative and legislative history of the refinement plan's development by the Jefferson/Far West Planning Team and adoption by City Council.

The Principal Planner asserts that:

*"As such this interpretation is limited to the policy statement listed above, as it is the only portion of the JFW plan (addressing Area 15) included in Chapter 9."*<sup>2</sup>

The Principal Planner is correct that the only code section Council directed him to interpret is EC 9.9850(17).

However, the Principal Planner is still required to consider all relevant information, including other sections of the J/FW Refinement Plan, that can help clarify the meaning of this code section that was originally written as part of the J/FW Refinement Plan and simply copied verbatim into Chapter 9.

The meaning of the language in EC 9.9850(17), including such terms as "low- to medium density", must be based on the document in which this language was created, as well as the administrative and legislative history of the refinement plan's development by the Jefferson/Far West Planning Team and adoption by City Council.<sup>3</sup>

The Principal Planner, however, mostly ignores the J/FW Refinement Plan and all the relevant history and context that illuminates the true meaning and intent the Area 15 policy.

For example, the decisions "Background" section states:

*"The JFW Plan currently designates Area 15 as Low -to Medium-Density Residential."*<sup>4</sup>

Yet the Findings section omits crucial additional content of the J/FW Refinement Plan that directly references Area 15. For example, on page 18, the J/FW

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<sup>2</sup> Decision at 1.

<sup>3</sup> See in particular ORS 174.010 and 174.020. Although these are phrased as rules of statutory construction, the precepts apply in the administrative context, as well.

<sup>4</sup> Decision at 1.

Refinement Plan presents a “Land Use Diagram” whose purpose the plan states as:

*“The Land Use Diagram and the accompanying text is meant to be used along with other policies in the Jefferson/Far West Refinement Plan and applicable City goals, policies, and plans to evaluate individual land use proposals.”*

This diagram is a color-coded map of the area covered by the plan, including Area 15. The entirety of Area 15 is colored in dark yellow, which according to the key identifies the “Low-Medium Density Residential” land use category.

Because the Land Use Diagram unambiguously shows Area 15 as “Low-Medium Density”, the term “low- to medium-density residential” used in the policy text for Area 15 must be considered to have the same meaning as the “Low-Medium Density Residential” category on the Land Use Diagram.

The “Low-Medium Density Residential” category appears in a *hierarchy* of residential categories that are listed in the following order on the Land Use Diagram:

- Low Density Residential
- Low-Medium Density Residential
- Medium Density Residential
- High Density Residential

This list clearly defines “Low-Medium” density range as a distinct category between the “Low” and “Medium” density ranges.

Staff has previously recognized that this list presents a “hierarchy” of ranges. In the “Taylor” zone change request (Z 04-19), staff stated (page 3):

*“The plan provides for 4 density designations for residential use. The Low-Medium Density Residential area is the second level in the hierarchy of identified neighborhood densities on the diagram.”*

Later in the same report (page 4), staff states:

*“The proposal, which provides densities in the range where R-1 and R-2 zones overlap in the Eugene Land Use Code, is consistent with the ‘Low-Medium Density Residential’ designation”*

As indicated by staff’s statements, and as supported by other evidence as well, the most natural interpretation is that the “Low-Medium” density range overlaps the upper portion of the “Low” density range and the lower portion of the “Medium” density range.

Although this evidence isn’t conclusive, the Principal Planner erred in ignoring it in his analysis and simply *assuming* that “low- to medium-density residential” was intended to mean “low and medium density residential.”

In arguing for his interpretation that “low- to medium-density” was intended to mean up to 28 dwelling units per net acre (du/na) *with the current zoning code’s*

“round up” provision<sup>5</sup>, the Principal Planner again rejects any consideration of zoning rules in effect when this policy was written.

Instead, the Principal Planner treats the fact that “under current code provisions” R-2 would allow 28 du/na as the sole justification for his interpretation.

But the policy for Area 15 was *not* written with *current* zoning regulations in mind, and unlike other sections of Chapter 9, the language of EC 9.9850(17) was also *not* written with the understanding that its meaning would be tied to other elements of the code the same way as most of the other sections of Chapter 9 are. The text of EC 9.9850(17) was simply injected into Chapter 9.

Where there is ambiguity, as there is in the Area 15 policy, the interpretation must rely most heavily on other elements of the refinement plan and its history.

Whether or not the Principal Planner would reach the same conclusion as the neighborhood association after thoroughly considering such relevant evidence, the Principal Planner cannot merely ignore such evidence, and must present a convincing argument that such evidence supports his conclusions.

**Error 2.** The Principal Planner incorrectly asserts the maximum allowable density as 28 dwelling units per net acre (du/na)<sup>6</sup> based on an erroneous interpretation that neglected to consider the “Low-Medium Density Residential” designation of the area on the J/FW Refinement Plan Land Use Diagram<sup>7</sup> and that misconstrued the term “low- to medium-density.”<sup>8</sup>

The Principal Planner essentially presents his entire analysis of the term “low- to medium density” in a single paragraph:

*“The first statement above recognizes Area 15 as eligible for zoning designations ranging from low to medium density residential. Under current provisions, this would enable both low and medium density zoning (R-1 and R-2 respectively), resulting in a density range from 0-28 units per net acre.”*

What’s striking about this pivotal part of the interpretation is that no evidence at all is presented to support the interpretation. The Principal Planner merely states two conclusions as if they were obvious facts, despite evidence to the contrary presented by the JWN and his own staff’s statements in the “Taylor” decision.

Further, the Principal Planner erred in failing to determine the actual density that would be allowed for Area 15 if all parcels in the area are allowed to be developed to the maximum density allowed under current R-2 standards.

The JWN co-chairs did such an analysis and the result would produce an aggregate net density of over 31 du/na. In other words, the Principal Planner’s interpretation would turn Area 15 into a de facto *High Density* area, according to current Metro Plan definitions and Eugene Code zoning standards.

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<sup>5</sup> Decision at 2.

<sup>6</sup> Decision at 2.

<sup>7</sup> J/FW Refinement Plan at 18.

<sup>8</sup> J/FW Refinement Plan at 27.

With the substantial counter-evidence that has been presented, the Principal Planner must provide a more substantive analysis to support his interpretation.

Despite the absence of any supporting facts, the Principal Planner attempts to bolster his assertion that “low- to medium-density” allows the current R-2 maximum by introducing the “red herring” that “many elements of [Eugene’s] land use regulations change over time.”

But there is no evidence at all that Area 15 policy has been changed one bit since 1983 when it was adopted. And despite, the Principal Planner’s attempt to link the “low- to medium-density” (equivalently, “Low-Medium Density” as used on the J/FW Refinement Plan’s Land Use Diagram) to a moving R-2 target, this is not how the density range is defined, nor has the Principal Planner presented any evidence that the authors of the policy or the City Council intended to link the refinement plan’s density range to R-2.

The Principal Planner errs by not recognizing the fact that the Area 15 policy places *limits* on density, regardless of how the R-2 zone has been changed; and the Principal Planner cannot just be alter the meaning of the policy by an administrative decision.

We note also that the Principal Planner erred in basing his interpretation in whole or in part on his inaccurate assessment that assigning a lower maximum density than current R-2 allows to the policy would be “revert[ing] back” to the density in place at the time of the refinement plan adoption.”<sup>9</sup>

The Principal Planner has it exactly backwards: The Area 15 policy has a meaning that was *established* at the time the policy was written and adopted. We contend the policy limits allowable density to a level significantly lower than what is allowed under current R-2 code. Whether or not this policy is a good one for the present is not a decision for the Principal Planner to make. Yet, what he has effectively done is ignore the evidence and bypass the plan and code amendment processes to inappropriately “update” the policy to suit his own perspective.

**Error 3.** The Principal Planner erred in asserting:

*“The policy ... includes no language that would otherwise limit the density allowable under R-2.”*<sup>10</sup>

The designation of Area 15 as “low- to medium density residential” does, in fact, limit the density allowable under current R-2 standards (as discussed under Errors 1 and 2, above).

In addition, the following statement in the Area 15 policy also limits the density to such levels as can still maintain the character of the area:

*“The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area.”*

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<sup>9</sup> Decision at 4.

<sup>10</sup> Decision at 3.

(See discussion under Error 6, below.)

**Error 4.** The Principal Planner erred in stating:

*“The policy contains two key statements which would apply to future land use decisions.”<sup>11</sup>*

In fact, there are four statements that apply to future land use decisions:

*“This area shall be recognized as a low- to medium-density residential 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 explore methods of encouraging an increase in residential density yet maintaining the character of the area.”*

*“Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.”*

The Principal Planner incorrectly excluded the latter two statements which bear directly on future land use decisions. We discuss the third statement under Error 6, below. We are not concerned with the fourth statement in this appeal.

**Error 5.** The Principal Planner erred in basing his interpretation in whole or in part on a claim that the following two statements are “directed at the city and not a future applicant.”<sup>12</sup>

*“The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area.”*

*“Access to housing units off of alleys shall be accommodated when not in conflict with other policies and goals.”*

This is a distinction without a difference. A policy requirement directing the City to do, or not do, something obviously applies to any relevant land use application processes, such as zone changes. We discuss the first statement under Error 6, below. We are not concerned with the second statement in this appeal.

**Error 6.** The Principal Planner erred in asserting that site review (/SR overlay), which is required by the policy for *all* R-2 upzonings, cannot restrict the development allowed by R-2 standards in any way.

The Principal Planner acknowledges that any zone change to R-2 requires an /SR overlay.<sup>13</sup>

But then with no supporting evidence presented at all, the Principal Planner in his “Conclusion” states that neither the /SR overlay, nor any other provision, can limit the “full range of provisions related to the R-2 standards.”

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<sup>11</sup> Decision at 2.

<sup>12</sup> Decision at 3.

<sup>13</sup> Decision at 2.

There is no other plausible purpose for the policy requiring site review as a requirement for an R-2 up-zone, unless the /SR overlay conditions are to constrain the allowable development in some way.

And the intended purpose is stated as clearly as can be in the second sentence of the policy: "maintaining the character of the area."

The Planning staff has affirmed and applied this precise interpretation in two prior zone change applications. In the "Taylor" case cited earlier, staff states:

*"Therefore, in the Gresset/Taylor case, the /SR Site Review overlay and a specific site review criterion relating to neighborhood character was imposed to serve as an effective means of "maintaining the character of the neighborhood [sic]" as required by this policy."*<sup>14</sup>

So, having already applied Area 15 policy in the "Gresset/Taylor" case (file Z 01-7) to require that the character of the area be maintained, Planning staff confirms this interpretation again in the "Taylor" case.

This is consistent with the interpretation explained in the attached JWN "Findings and Recommendation" and with the intent expressed by the JWN neighborhood association resolution.

The error the Principal Planner makes in this instance is that he fails to properly understand that only the first part (underlined) of the following sentence is aspirational:

*The City shall explore methods of encouraging an increase in residential density yet maintaining the character of the area.*

The second part establishes a *proscriptive* constraint that must be enforced by the City.

Thus, this sentence is properly interpreted as equivalent to:

*The City shall explore methods of encouraging an increase in residential density and shall maintain the character of the area.*

Unlike the Principal Planner's interpretation, which renders meaningless the site review (and block plan, for that matter) requirement and grossly conflicts with all the evidence of what the Jefferson/Far West Planning Team intended, this interpretation both gives a sensible meaning to the rest of the policy's statements and conforms well with all the other evidence of the plan's intent.

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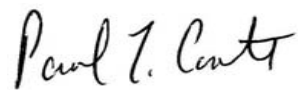
<sup>14</sup> Taylor at 5.

## CONCLUSION

As established in this statement of appeal, the Principal Planner has made multiple, critical errors in his interpretation, has failed to provide even the minimal level of supporting evidence, and has issued an interpretation that directly conflicts with recent interpretations by the Eugene Planning Division. For the foregoing reasons, the code interpretation must be suitably revised.

Respectfully submitted this 28th day of November, 2006.

**Jefferson Westside Neighbors**



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Paul T. Conte  
**Co-chair**



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Rene Kane  
**Co-chair**