

**TESTIMONY IN OPPOSITION TO AULD/JOHNSTON
PARTITION, TENTATIVE PLAN REQUEST**

FILE P 06-43

August 11, 2006

1. Introduction

Our firm represents Paul T. Conte, 1461 W. 10th Ave., Eugene, Oregon, in opposition to the above captioned application for approval of a partition tentative plan.

This application fails to meet a number of legal criteria, but at its core the application must be denied because the proposed partition flouts City Council's explicit mandate, as well as the implementing zoning regulations, to prohibit lots that are accessible only from an alley.

Not only does this application conflict with Council's prohibition against alley lots, it proposes a lot that can be accessed only by an alley that is too narrow to comply with required City street standards.

The application attempts to circumvent Council's intent by proposing an interpretation of zoning standards that renders meaningless the 20-foot wide street abutment standard for R-2 partitioned rear lots, defies common sense, and frustrates a plain reading of the law.

Further, applicants seek an exception to established street and alley standards that are of fundamental importance to applicants' stated intent to build four apartments accessible only via a narrow, unpaved, obstructed and pot-holed alley. Applicants' sole justification for this exception is their admission "applicants cannot do anything about the fact that the alley right-of-way width does not meet the standard."

Approving the proposed partition would have a profound and damaging impact on the entire R-2 zoned areas of the close-in neighborhoods, such as Westside, Jefferson, and Whiteaker. Effectively, Council's prohibition on alley lots would be voided, and hundreds of lots in these areas would be subject to partitioning into street and alley lots based on a gerrymandering ruse in drawing lot lines.

Further, the applicants assert as an integral part of their application that they intend to construct a four-plex on the alley-access-only lot, which would be grossly incompatible with adopted policies of the Westside Neighborhood Plan that encompasses the subject lot, and which would seriously erode the residential character of the surrounding area.

The following testimony presents a more detailed explanation of this opposing argument, as well as other facts on which the current partition request must be denied.

2. Burden of proof rests on the applicants.

EC 9.7085 places the burden of proof squarely upon the applicants.

9.7085 Quasi-Judicial Hearings - Burden of Proof. The burden of proof is upon the applicant. A decision to resolve the issues presented shall be based upon reliable, probative and substantial evidence in the record.

Accordingly, this request for partition approval requires applicants to prove that a lot accessible only from an alley is permitted, despite a unanimous City Council motion to the contrary, as explained in section 6, below.

Similarly, the applicants must prove an exception to street and alley standards is justified despite compelling evidence these standards are of essential importance to both Council's prohibition against alley lots and to the safe and efficient access to a proposed four-plex on the alley.

The applicants also bear the burden of proving the proposed partition and development of a four-plex on an alley lot, which will be surrounded by six single-family homes, is consistent with adopted Westside Neighborhood Plan policies to the contrary, and in the face of adamant opposition by the City-chartered neighborhood association encompassing the subject property.

3. Planning Director must base decision only on evidence in the record.

As noted at several points later in this testimony, the applicant has presented specific statements and evidence supporting their assertion the current application meets EC 9.8215 Partition, Tentative Plan Approval Criteria (1) through (6). The Planning Director must consider *only* that evidence which applicants and other parties have placed in the record for each of these criteria, respectively.

9.7085 Quasi-Judicial Hearings - Burden of Proof. The burden of proof is upon the applicant. A decision to resolve the issues presented shall be based upon reliable, probative and substantial evidence in the record.

4. Applicants assert Parcel 1 can have only alley access, now and in the future.

On page 6 of the application, under the section addressing EC 9.6815(2) Street Connectivity Standards, applicants state:

"... thus an exception to subsection (b), (c), and (d) above is being requested. The exception is being requested per EC 9.6815(2)(g)(2)(b)."

EC 9.6815(2)(g) states:

In the context of a Type II or Type III land use decision, the city shall grant an exception to the standards in subsections (2)(b), (c), or (d) if the applicant demonstrates that any proposed exceptions are consistent with either subsection 1 or 2 below: ...

Applicants' request for an exception cites EC 9.6815(2)(g)(2)(b), which states:

Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment.

In explaining their request for an exception to street connectivity, applicants state (on page 6):

"Development on adjacent properties precludes a connecting street from being constructed that would serve any properties other than the proposed site. Further, a connecting street on the subject property could not even be built because of the location of the existing single-family dwelling."

Thus, applicants insist that Parcel 1 cannot be connected to W. 13th Ave. now or in the future and will therefore always be accessible only from W. 12th Alley.

Note also the following additional sections where applicants affirm that Parcel 1 will be accessed only from the alley:

Page 3. Under (b) EC 9.6810 Block length

"Parcel 1, being designed for a multi-family development, will be accessed by the alley."

Page 9. Under (f) EC 9.6735 Public Access Required

"Parcel 1 will receive access from the alley."

Page 11. Under (3) Partitions abutting collector and arterial streets comply with access management guidelines of the agency having jurisdiction over the street.

"No new access will be taken from West 13th Avenue;"

5. Applicant asserts Parcel 1 will be developed with four units.

In their written application, applicants have repeatedly made clear they intend to develop four units on the proposed new Parcel 1. In fact, as shown below, the only reason for the partition request is to allow these four additional units.

On page 2 applicants state they intend to develop a four-plex on Parcel 1 and that Parcel 1 is “designed” for multi-family development, specifically a four-plex:

“The applicant is proposing to construct a four-plex, a permitted use in R-2, on Parcel 1”

“There is one existing single-family residence and four proposed units that will be built on Parcel 1.”

“Parcel 1 is being designed as a fourplex lot; ...”

And on page 3:

“Parcel 1, being designed for a multi-family development, will be accessed by the alley.

Not only do the applicants repeatedly state their intent, they *use* the statement of intent as the basis for several claims in their application, including density standards and lot area.

Thus, the request is for a land use action in which a four-plex development is an integral element. The request must be considered in a constructive legal manner to establish a density and usage that is based on four units on this proposed alley access lot. The Planning Director must therefore base all decisions in which the stated use of Parcel 1 is relevant – particularly access, stormwater, and consistency with adopted refinement plan policies – on the proposed four-plex development. These decisions include, but are not limited to compliance with EC 9.8215(1)(b), (c), (g), and (k) and EC 9. 8215(2).

6. Partition request fails to meet the EC 9.8215(1)(a) and EC 9.8215(1)(b) approval criteria because it fails to meet required lot standards and street connectivity standards that implement City Council’s prohibition against creating new alley lots.

A) City Council expressly prohibited lots accessible only from an alley

On October 25, 2000, City Council unanimously adopted a motion prohibiting the creation of new “alley lots”. (See [attachment A](#), attached hereto and incorporated herein by reference.)

As recorded in the work session minutes, the following motion was made and approved:

Mr. Meisner, seconded by Ms. Bettman, moved to direct the City Manager to prohibit in residentially zoned areas the creation of new flag and alley lots and any other lot size reductions except in new subdivisions of 10 or more lots, until staff evaluate and bring forward recommendations for other managed density strategies, such as asset mapping, cottage zoning, and nodal development.

The following amendment to the motion was made and passed 4-3:

Mr. Kelly, seconded by Mr. Rayor, moved to amend the motion to indicate flag lots on residential lots greater than or equal to 13,500 square feet would be permitted.

The amended motion was then passed 6-0.

Council has taken no subsequent action to revoke this prohibition, and it remains in effect.

This motion was adopted as one of several motions Council adopted during their consideration of the major Land Use Code Update (LUCU). The work session was attended by the Planning and Development Director, the Planning Director, the Senior Planner, and the City Attorney. Thus, this motion was a direct, carefully considered indication of Council's explicit intent for the land use code amendments that Council adopted in Ordinance 20224, on February 26, 2001.

From the nature of Council discussions at this work session, as well as comments recorded in minutes of meetings before and after this work session, the meaning of "alley lot" is clearly a lot that is accessible only from an alley. For example, at the September 18, 2000 Council work session on LUCU, Councilor Kelly explained in response to a question by Councilor Meisner that "by alley access, he meant a lot that only took automobile access from an alley."

This interpretation of "alley lot" was confirmed recently in an e-mail from City Councilor Betty Taylor who voted for the October 25, 2000 motion. (See [Attachment B](#), attached hereto and incorporated herein by reference.)

Council neither expressed nor intimated any intent to prohibit creation of lots that were accessible from both the street and the alley (and it would make no sense to interpret a prohibition against creating "alley lots" this way.)

Nor did Council provide the slightest indication they desired to exempt some alley-access-only lots from their prohibition solely because of some criteria unrelated to street access.

This interpretation of "alley lot" is supported by recent statements from Planning Division staff. On July 31, 2006, Mr. Conte, on whose behalf this testimony is submitted, was directed by Shawna Adams, the City planner assigned to this partition request, to consult with the Planning Division's "Planner on Duty" regarding questions Mr. Conte had raised about land use code relevant to this partition request. (See e-mail in [Attachment C](#), attached hereto and incorporated herein by reference.)

Mr. Conte subsequently met the same day with Catherine Zunno, the “Planner on Duty” and Kent Kullby, also on the Planning Division staff. During this discussion, Mr. Conte asked both Ms. Zunno and Mr. Kullby the following, specific question:

“Can I partition a street-to-alley lot to create a lot that has access only from the alley?”

Both planners responded that he could not do so. Towards the end of the same discussion, Mr. Conte reviewed several points that had been discussed, and both planners confirmed their previous response that a lot that has access only from an alley could not be created.

These Planning Division staff comments are consistent with the text of Council’s motion, and serve to reinforce that the most reasonable, if not only, interpretation of Council’s intent was to prohibit creation of lots that have only alley access.

EC 9.0500 Definitions – Alley Access Lot/Parcel also reinforces this interpretation of “alley lot”:

Alley Access Lot/Parcel. A lot or parcel abutting an alley and not abutting a street and created from the rear portion of an existing lot or parcel.

Obviously, a lot that abuts an alley, but not a street, has access *only* from the alley. This definition adds further evidence that Council’s use of “alley lots” covered lots with only alley access.

Equally important, this definition has only one criterion that must be met by lots that are *not* alley access lots: street abutment, or equivalently, lot frontage (as defined by EC 9.0500).

Thus, lot frontage is the essential requirement for a lot that is not to be considered an alley access lot. Put another way, an essential role of lot frontage is to provide street access. And therefore the code’s requirements for minimum lot frontage must have the practical effect of enabling street access, as explained in the next section. Applicants’ proposed interpretation of code; however, makes a mockery of lot frontage standards.

B) Zoning code implements the prohibition on lots with only alley access through provisions for frontage and width minimums and street connectivity.

As established in the preceding section, Council adopted a motion directly expressing its intent for the code amendments that were subsequently adopted; and with no indication that Council reversed this decision, the adopted code must be considered to implement, in some manner, a prohibition against lots with only alley access.

Although EC 9.0500 defines “alley access lot”, Eugene land use code (i.e., EC Chapter 9) has no *direct* language that prohibits “alley access lots”. Nor does the code contain any direct prohibition against “alley lots”, “alley-access-only lots”, or any other term for a lot that has access only from the alley.

(On page 1 of “Chapter 9 – Land Use Index,” there is an entry: “Alley Access Lot Standards – not allowed (See Small Lot Standards) 9.2770 – 117.” However, neither the current version of EC 9.2770, nor the version adopted in Ordinance 20224 (LUCU), makes any reference at all to “alley access lot.”)

Thus, in interpreting land use code, the Planning Director must look for other, reasonable ways the zoning code implements Council’s prohibition on lots that have only alley access. In fact, there are two mechanisms in the code that do just that:

- 1) The combined frontage and width minimums, specifically:
 - EC 9.2760 Residential Zone Lot Standards – Frontage Minimum
 - EC 9.2760 Residential Zone Lot Standards – Width Minimum
- 2) The requirement for street connectivity, specifically:
 - EC 9.6815(2)(b) Connectivity for Streets

For an R-2 interior lot, such as that proposed for Parcel 1, these three code sections prohibit creating a lot unless it meets all the following criteria:

- Frontage minimum: 20 feet
- Width minimum: 20 feet
- Street connectivity: Connection to any streets that abut a new lot created by dividing (i.e., partitioning) a lot.

Requiring a lot to have at least a 20 foot wide section connecting said lot to a street (if the main part of the lot doesn’t already abut the street) will in many situations provide an adequate surface on which to construct a driveway providing street access for one or more units on the lot. In combination then, frontage and width minimums effectively implement a prohibition against lots that *cannot* be accessed from a street. In other words, these two standards, rationally interpreted, prohibit alley access lots. This is the only logical reading of these two sections of city code.

The explicit EC 9.6815(2)(b) requirement that lots created by a partition provide *actual* connectivity, not just the *possibility* of connectivity, is a direct implementation of Council’s motion, and prohibits lots that do not provide access other than from the alley, regardless of whether access from the street is feasible.

Without either the combined frontage and width minimum requirements, or the connectivity requirement, or both, the land use code would allow creation of an alley access only lot. Accordingly, applicants' interpretation, if accepted, will impermissibly negate Council's express intent.¹

C) Parcel 1 conflicts with Council's prohibition on creating new alley lots and does not comply with the implementing code.

As described in section 4, above, applicants have asserted Parcel 1 can have only alley access, now and in the future. This is in direct conflict with Council's prohibition against creating new "alley lots," i.e., lots with only alley access.

Further, Parcel 1 fails to comply with EC 9.2760 Residential Zone Lot Standards – Width Minimum and with EC 9.6815(2)(b) Connectivity for Streets.

Parcel 1's failure to comply with EC 9.6815(2)(b) is described in detail in section 8.A, below.

Parcel 1 likewise fails to comply with the EC 9.2760 width minimum requirement because the lot is only 13.9 feet wide for a 35.5 foot portion of the segment connecting the street (W. 13th Ave.) to the main part of the proposed lot that is carved out of the rear portion of the existing lot. [Attachment D](#) shows the section of Parcel 1 that fails to comply with EC 9.2760. ([Attachment D](#) is attached hereto and incorporated herein by reference.)

Note that the 13.9 foot wide section represents over half the length of the lot segment that forms a "pole" from the street to the main part of Parcel 1, which is on the alley. Thus, the insufficient width cannot be ignored, or exempted, as a minor "jog" around an obstruction.

In any case, EC 9.2760 provides no provision for an adjustment or exception to the standard for width minimum, and thus Parcel 1's failure to comply with EC 9.2760 requires the Planning Director to deny the application.

¹ At the meeting with Planning Division staff, mentioned above, Mr. Conte asked staff to direct him to the specific city code that prohibited him from creating a lot accessible only from the alley. Staff indicated they could not cite such code, despite their previous response that such lots were not permitted. To our knowledge, no alternative to the three code provisions discussed above has been suggested as a way Eugene code implements Council's motion.

7. Partition request fails to meet the EC 9.8215(1)(a) because it fails to meet a reasonable interpretation of the required lot standards for width minimum.

A) Applicant proposes interpretation of EC 9.2760 Width minimum that conflicts with legislative intent and other sections of code.

On page 3 of the application, applicants address EC 9.2760 Width minimum requirements:

“Minimum Width

The minimum width requirement for interior lots is 20 feet per EC 9.2760. Parcel 1 will have a width of 66.9 feet, measured at the midpoint of the side lot lines. Parcel 2 will be 46.9 feet wide at its narrowest point; thus complying with the minimum lot width standard in an R-2 zone. All parcels exceed the minimum width requirement of 20 feet.”

In addressing Parcel 2, applicants use the correct and reasonable interpretation of EC 9.2760 by explaining that Parcel 2’s “narrowest point” (i.e., the lot’s minimum width) exceeds the “minimum lot width standard.” The applicants’ approach is expressed in the following sentence:

“Parcel 2 will be 46.9 feet wide at its narrowest point; thus complying with the minimum lot width standard in an R-2 zone.”

For any rectilinear lot, such as Parcel 2, which has all lot lines intersecting at right angles, and all lot lines either parallel or perpendicular to both the abutting street and alley, the lot’s minimum width is easily and unambiguously determined. Applicants recognize in their approach to establishing how Parcel 2 “compl[ies] with the minimum lot width standard in an R-2 zone”, that EC 9.2760 requires a lot’s minimum width to be at least 20 feet for an R-2 interior lot.

Like Parcel 2, Parcel 1 is a rectilinear lot, for which the minimum width is easily determined as 13.9 feet. However, consistently applying to Parcel 1 the same approach applicants used for Parcel 2 shows clearly that Parcel 1 does not comply with EC 9.2760. Had applicants followed a consistent approach with Parcel 1, the result could be stated in the following way, closely paralleling applicants’ statement (above) for Parcel 2:

“Parcel 1 will be 13.9 feet wide at its narrowest point, thus not complying with the minimum lot width standard in an R-2 zone.”

The result of following a consistent and proper approach to determining whether Parcel 1 complies with EC 9.2760 would obviously result in denial of the applicants’ partition request.

Applicants have therefore, without justification, decided to use a different, inconsistent approach to Parcel 1. This alternative, however, has no basis in law and is wholly unreasonable, particularly for rectilinear lots, such as Parcel 1.

i) **Applicants' measurement of Parcel 1 "width" has no basis in law.**

Applicants' present their claim that Parcel 1 complies with EC 9.2760 in a single sentence:

"Parcel 1 will have a width of 66.9 feet, measured at the midpoint of the side lot lines.

Applicants' refer to "side lot line", which is not a defined term in EC 9.0500. They most likely intend "lot side line", which EC 9.0500 defines as:

Lot Side Line. Any lot or parcel line that is not a lot or parcel front or rear line.

As explained below, the distance between the midpoints of the lot side lines of Parcel 1 is not 69.9 feet; and in fact, the distance between the midpoints of the lot side lines of Parcel 1 is a nonsensical way to measure the width of Parcel 1.

Applicants have actually measured Parcel 1's "width" in an altogether different manner, i.e., by measuring the lot width along the line that is equidistant from the lot front line and the lot rear line – a method that has no basis in the zoning code at all, and therefore fails to comply with EC 9.2760.

It should again be pointed out that the approach applicants have taken to demonstrating that Parcel 1 complies with EC 9.2760 is not equivalent and does not produce the same results as the proper approach they took in demonstrating that Parcel 2 complies with EC 9.2760.

Except for a perfectly rectangular lot, the width at a lot's narrowest point is not necessarily the same as the width along the line that is equidistant from the lot front line and the lot rear line. Thus, applicants seek to have two *different* interpretations of EC 9.2760 applied to the separate lots arising from the requested partition. The obvious reason for such inconsistency is that a novel, though invalid, approach is sought for Parcel 1 because Parcel 1 fails to comply under the proper approach used for Parcel 2.

In addition to the fact that applicants' approach to measuring the "width" of Parcel 1 has no basis in law, their approach also conflicts with Council's intent, and is patently unreasonable, especially for rectilinear lots, as explained in sections 7.A.ii through v.

The following explains how the applicants' method of measuring the width of Parcel 1 is not actually the distance between the midpoints of the lot side lines, as they claim.

Parcel 1 has clearly identifiable lot front and rear lines. All other lot lines are lot side lines, as defined in EC 9.0500.

Parcel 1 has a single, unsegmented lot side line on its east boundary. On its west boundary, however, Parcel 1 has a lot side line with five connected segments forming a continuous property line on that side of the parcel. (Alternately, this property line can be considered as five connected lot side lines; it makes no difference in the analysis.)

To speak of a “midpoint” of the lot side line(s) on the west boundary of Parcel 1, requires calculating the combined length of all segments (or the combined length of all connected lot side lines, if they are treated as distinct lot side lines). This length is simply the length of the entire property line on the west boundary of Parcel 1, and is 219.8 feet.

The midpoint of the lot side line(s) is halfway, or 109.9 feet along the property line, measured from either end point (i.e., from where the property line on the west intersects the lot front line or the lot rear line). As [Attachment E](#) shows, the midpoint of the lot side line(s) on the west of Parcel 1 falls on the 52.9 foot segment that *parallels* the front and rear lot lines. ([Attachment E](#) is attached hereto and incorporated herein by reference.)

In [Attachment E](#), the blue, double-arrowed line depicts the distance between the midpoints of Parcel 1’s lot side lines, which is clearly not what the applicants actually measured.

Applicants have therefore inaccurately described their own method of calculating Parcel 1’s width. In any case, applicants’ decision to use their own original method of calculating width and then using it in their claim of compliance with EC 9.2760 simply has no basis in law and must be rejected as evidence that Parcel 1 complies.

Furthermore, applicants’ use of the lot width along the line equidistant from the lot front line and the lot rear line would in any case conflict with Council intent and be unreasonable, as the following sections explain.

Before treating the applicants approach to EC 9.2760 width minimum requirements in more detail, a few more observations are in order regarding the distance between midpoints of the lot side lines (the method the applicants claimed to use, but didn’t actually use).

As can be seen in [Attachment E](#), it would defy common sense and a reasonable reading of Eugene’s land use code, to measure the width of a rectilinear lot, such as Parcel 1, as the length of the *diagonal* line connecting a point that – by any normal understanding is not even on one “side” of the lot – to another point that does lie on a side of the lot.

Using this diagonal line as the width of a lot like Parcel 1 – that has *all* lot lines intersecting at right angles, and *all* lot lines either parallel or perpendicular to both the abutting street and alley – is absurd, of course. But it would be an

unavoidable result of measuring Parcel 1's width as the distance between the midpoints of the lot side lines.

ii) Applicants' interpretation conflicts with Council intent.

Applicants interpretation of Table 9.2760 and their use of the lot width along the line equidistant from the lot front line and the lot rear line (or any equivalent approach) both ignores the legislative intent of Council's October 25, 2000 motion and relies on an interpretation of Table 9.2760 that is unreasonable on its face.

Council's intent, and the necessary role that frontage and minimum width requirements play in implementing their prohibition against creating alley lots, is covered in 6.B, above.

iii) Applicants' interpretation is patently unreasonable.

Applicant's interpretation of Table 9.2760 borders on the absurd.

Approving the way applicants arrived at their measurement for the width of Parcel 1, and their interpretation of Table 9.2760, would allow lot partition applicants to create lots with a one-inch deep frontage connected by a one-inch "pole" to the main portion of a lot that has no possibility of access other than from the alley. (See [Attachment F](#), attached hereto and incorporated herein by reference.)

Such an interpretation would effectively nullify many fundamental purposes of EC 9.2760 standards for frontage and width minimum requirements, not only with respect to alley access lots in an R-2 zone, but also related to a variety of potential lot partitions in other situations, as well. For example, "frontage minimum" becomes virtually meaningless if there is no minimum requirement for the depth of the frontage area.

(At the meeting with Planning Division staff, mentioned above, Mr. Conte provided staff with a copy of the drawing in [Attachment F](#), and asked them whether this would be permitted under the applicants' interpretation (and apparently staff's own interpretation at the time) of EC 9.2760. Mr. Luby subsequently told Mr. Conte in a phone conversation that the planners took the drawing to a staff meeting where it was discussed, and Mr. Luby advised Mr. Conte that – using applicants' proposed interpretation of EC 9.2760 – staff could not cite any lot standard that would prohibit a lot such as that in [Attachment F](#). This position was confirmed in an August 9, 2006 e-mail reply from Mr. Kullby to Mr. Conte. See [Attachment G](#), attached hereto and incorporated herein by reference. Mr. Conte requested staff apprise him if they later identified such code; and, as of this filing, staff had not cited any provision.)

Reducing "width minimum" to a single-point measurement along the line equidistant from the lot front line and the lot rear line (or any equivalent approach) would also permit a variety of other undesirable "gerrymandering" of lot lines in any residential zone.

iv) Applicants' interpretation is inconsistent with flag lot standards.

Although "flag lots" are codified only for R-1 zones, the EC 9.2775 Residential Flag Lot Standards for R-1 provide a "reasonableness" test for how EC 9.2760 Width minimum standards should be applied to lots with similar geometry and characteristics.

Flag lots consist of a narrow "pole" section connecting the main "flag" portion to the street. The flag portion is where a dwelling is located and the pole portion provides access to the dwelling.

Parcel 1 is essentially a "flag-shaped" lot. In fact, applicants themselves refer to Parcel 1's "pole" on page 8. Notably, however, Parcel 1's "pole" does not provide street access by the applicants' own admission.

EC 9.2775(3) requires that when a lot is divided (i.e., partitioned) to create a flag lot, the minimum width for the "access pole" portion of the flag lot is 15 feet. Thus, the code establishes 15 feet as the minimum width necessary for a "pole" to provide adequate street access to dwellings on the flag portion of a lot.

(At the July 31, 2006 meeting with Planning Division staff, mentioned above, Mr. Conte asked staff whether any segment of a flag lot "pole" could be less than 15 feet wide, and they confirmed this was not permitted.)

Neither R-2, R-3, nor R-4 zones provide for flag lots, despite the fact that these zones are intended for higher density development than R-1, and a stated purpose of flag lots is "to promote the efficient use of residential land." A reasonable presumption is that City Council saw no need to specifically implement flag lots in R-2, R-3, or R-4 zones because the EC 9.2760 standards provide for 20 foot frontage and width minimums (R-1 requires 50 feet), which means the R-2, R-3, and R-4 zones allow what are essentially "flag-shaped" lots with a 20 foot wide "pole" providing street access.

If the 20 foot frontage and width minimums for R-2, R-3, and R-4 are the only mechanism by which flag-like lots are allowed in these zones, then a reasonable assumption is that Council intended the code to require "pole" portions of such lots be at least 20 feet their entire length. On the other hand, given the requirements for R-1 flag lots to have "access poles" that are at least 15 feet wide their entire length, it's not reasonable to conclude Council would have intended R-2, R-3, and R-4 "flag-shaped" lots to be permitted with "poles" less than 15 feet wide at any point.

Certainly Council would not have intended "poles" in R-2, R-3, and R-4 zones to be narrow to the extremes (as depicted in [Attachment F](#)) that would be permitted under applicants' interpretation of EC 9.2760, and thus applicants' interpretation is inconsistent with relevant sections of code and should be rejected.

v) **Applicants' interpretation misconstrues "width minimum".**

Residential zoning code specifies minimum lot width in Table 9.2760 under the "Width minimum" entry.

Applicants seek to have this entry interpreted essentially as: The lot width, as measured along the line that is equidistant from the lot front line and the lot rear line, must be at least 20 feet.

But as established in section 7.A.i, above, this interpretation has no basis in law, and as established in sections 7.A.ii through iv, this interpretation conflicts with Council's intent, produces untenable outcomes, and is inconsistent with other sections of land use code.

Consequently, the "width minimum" entry in Table 9.2760 must be interpreted to give effect to Council intent as appropriate for rectilinear lots, such as Parcel 1.

As section 7.A.i also demonstrates, an alternative method of interpreting Table 9.2760 based on measuring a single lot width between the midpoints of the lot side lines also produces untenable results, especially for rectilinear lots, such as Parcel 1. (See [Attachment E](#).) This approach, although not the one actually used by the applicants, also suffers all the problems described in sections 7.A.ii through iv, i.e., it also conflicts with Council's intent, produces untenable outcomes, and is inconsistent with other sections of land use code.

It's instructive to look at other places in Chapter 9 that reference "lot width" and which use an appropriate interpretation *based on the context*. For example, EC 9.2777(2)(c) Duplex Lot Division Standards requires:

9.2777(2)(c) The average lot width is at least 40 feet.

Similarly, EC 9.2775(3)(b) Residential Flag Lot Standards for R-1 requires:

9.2775(3)(b) Lot Dimensions. The minimum average lot width is 50 feet.

In both cases, it would be unreasonable to take the "average" of any single-point value², such as applicants' suggest. Note that applying such a ludicrous interpretation of "average lot width" to the determination of minimum lot width and maximum lot width would also imply that a lot's average width, minimum width, and maximum width were all *identical*, since they would all be calculated from the same, single measurement.

Instead, the reasonable interpretation for both these sections of code is to use plane geometry to calculate an average of the various widths that a lot may have. For example, this interpretation would sensibly accommodate lots with sections having different widths, such as Parcel 1 in the requested partition.

² A perfectly rectangular lot, of course, has a uniform width its entire length, and any single width measurement will be equal to the average. However, although Parcel 1 is rectilinear, it is not perfectly rectangular, and Parcel 1 has three sections with different widths.

Planning Division staff appears to agree with this approach – at least when it comes to interpreting “average lot width.” At the meeting with Planning Division staff, mentioned above, Mr. Conte showed staff the two above sections of code and asked how “average lot width” is interpreted, and they confirmed that the single point EC 9.0500 defines for “lot width” is not what is normally used for non-rectangular lots.)

There are other instances in EC Chapter 9 where the meaning of “lot width” can be interpreted reasonably only by basing the interpretation on the specific context. (See for example several uses in EC 9.3050 Chambers Special Area Zone.)

Thus, the two words “lot width” *cannot* be mindlessly replaced everywhere in the land use code with the definition in EC 9.0500. The actual meaning of “lot width” *requires* consideration of the context in which the term is used. And likewise, the term “Width minimum” in Table 9.2760 requires consideration of the context in which the term is used and the particular situation to which the standard will be applied.

Among other shortcomings, the applicants’ fail to consider the context in which “width minimum” appears in Table EC 9.2760. As explained above, EC 9.2760 establishes standards for minimum lot frontage and minimum lot width; and both of these would be rendered untenable by any interpretation of Table EC 9.2760 that relies on a single-point measurement to establish whether a lot’s minimum width is sufficient.

Consequently the two words “Width minimum” in Table EC 9.2760 cannot arbitrarily be interpreted as requiring only that some single-point measurement be at least 20 feet for an R-2 lot, regardless of how this single-point measurement is calculated.

And thus, neither the wording of EC 9.2760 nor other examples in the code provides a sound basis to claim that Table 9.2760 should be interpreted as applicants suggest or by using the distance between the midpoints of the lot side lines, as shown in [Attachment E](#). Neither of these approaches to the minimum lot width standard makes sense in this context.

In sum, the only sensible way to interpret the “Width minimum” requirement for a rectilinear lot, in the context of EC 9.2760, and keeping in mind the essential role this standard plays in implementing Council’s intent, is that the lot’s minimum width (i.e., at its narrowest point) must be at least the specified size. In the case of Parcel 1, its minimum width must be at least 20 feet.

Since Parcel 1’s minimum width is only 13.9 feet, Parcel 1 fails to meet this standard.

B) A reasonable interpretation of EC 9.2760 Width minimum must be applied to Parcel 1.

In contrast to applicants' suggested approach, all the evidence, and a straightforward reading of the code, supports a "common sense" interpretation that Table 9.2760 establishes a standard – at least for *newly created* rectilinear lots – requiring the lot's minimum width (i.e., its narrowest point) be at least 20 feet for R-2 interior lots. Recapping, this interpretation is justified because it:

- Is consistent with the code's use of frontage and width minimums to implement Council's prohibition against alley lots.
- Is consistent with the code's apparent provision for "flag-shaped" lots in R-2, R-3, and R-4, via frontage and width minimums.
- Is consistent with the interpretation of other sections of the code, e.g., "average lot width".
- Avoids the baseless and untenable measurement of Parcel 1's lot width as the single measurement along the line that is equidistant from the lot front line and the lot rear line, as applicants suggest.
- Avoids the untenable measurement of Parcel 1's lot width as the diagonal distance shown in [Attachment E](#).
- Avoids an unreasonable outcome that would allow such lots as those in [Attachment E](#), as well as other forms of undesirable, "gerrymandered" lots.

Applicants have provided *no* evidence to support their interpretation of Table 9.2760; and, in the face of substantial evidence to the contrary, they have failed to meet the burden of proof that their interpretation is based in law or is a reasonable one to use in this case. Thus, their request for partition must be denied because it fails to comply with EC 9.2760 and is inconsistent with criterion EC 9.8215(1)(a).

It should be noted that applicants have available to them a practical means of complying with minimum lot width standards by moving the existing house a few feet to the west on Parcel 2 and providing a "pole" for Parcel 1 that is the required 20 feet for its entire length. Complying with a reasonable interpretation of minimum lot width standards places no undue burden on applicants if they wish to develop the existing lot for the significantly more intensive use they propose.

8. Partition request fails to meet the EC 9.8215(1)(b) approval criterion because it fails to comply with required standards for streets and alleys.

A) Parcel 1 fails to comply with EC 9.6815(2)(b). Street Connectivity Standards

EC 9.0500 defines “Develop” as “... to construct or alter a structure ... to divide land”

EC 9.0500 defines “Development” as “The act, process or result of developing.”

Applicants propose a development that will divide a lot and construct a four-plex on the resulting Parcel 1.

EC 9.6815(2)(b) states:

The proposed development shall include street connections in the direction of all existing and planned streets within 1/4 mile of the development site. The proposed development shall also include street connections to any streets that abut, are adjacent to, or terminate at the development site.

Parcel 1 abuts W. 13th Ave., and thus Parcel 1 is required to include a connection to W. 13th Ave.

Applicants unequivocally assert that Parcel 1 does not, and cannot, include a connection to W. 13th Ave. by their request for an exception to the requirement based on EC 9.6815(2)(g)(2)(b), which asserts that a connection to W. 13th Ave. is precluded, now and in the future. (See section 4, above.)

In support of their request for an exception to street connectivity, applicants make two distinct assertions on page 6. First they state:

“Development on adjacent properties precludes a connecting street from being constructed that would serve any properties other than the proposed site.”

In this assertion, applicants claim only that a *street that would serve properties other than the proposed site* (i.e., Parcel 1) is precluded.

Applicants *only* basis for claiming Parcel 1 can’t be connected to W. 13th Ave. via the subject property itself is because of the location of the existing single-family dwelling on the lot that is proposed to be subdivided:

“Further, a connecting street on the subject property could not even be built because of the location of the existing single-family dwelling.”

And it is precisely the location of this existing single-family dwelling that prevents the section of Parcel 1 that connects to W. 13th Ave from being 20 feet wide, as required by EC 9. 2760 lot standards. (See section 7, above.)

Applicants’ cite EC 9.6815(2)(g)(2)(b) as their basis for an exemption, which requires that:

Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment.

By the applicants' own words, however, a connection to Parcel 1 is precluded by a building *on the lot they propose to subdivide* (which is not currently vacant), *not* by a building or development on an *adjacent* lot that is preexisting.

Thus, applicants propose to create the very condition they cite as their justification for an exception. As with their approach to minimum lot width, they attempt take advantage of a problem of their own making to circumvent the plain intent of the law. As noted in section 7.B, applicants have available to them a practical means of complying with street connectivity requirements by moving the house they own a few feet west. Applicants argument for an exception to EC 9.6815(2)(g) is meritless and cannot be sanctioned.

Despite their unambiguous assertion that Parcel 1 cannot include a connection to W. 13th Ave., applicants make what appears on page 4 to be a half-hearted attempt to suggest Parcel 1 provides some form of connection to W. 13th Ave. via W. 12th Alley and then Adams or Jackson Streets. However, the second requirement of EC 9.6815(2)(b) would be virtually meaningless if "connection to any streets that abut" could be satisfied simply by some roundabout route through alleys and other streets. The only reasonable interpretation of a "connection" to a street that abuts Parcel 1 is a connection that provides direct access from the street to the property.

Even parsed at a word-by-word level, applicants cannot simultaneously suggest on page 4 that Parcel 1 provides a "connection" to W. 13th Ave. at the same time they unequivocally assert on page 6 that existing development precludes a "connection" now and in the future. The term "connection" must mean the same thing when used in this section of code, and a "connection" to Parcel 1 cannot be both provided and precluded.

Stepping back to take a broader view of this partition request, a reasonable observer can see applicants want to have it both ways in their attempt to circumvent Council's prohibition against alley lots. On the one hand, applicants seek to have Parcel 1 treated as something other than an alley-access lot by constructing a narrow "pole" of land out to street frontage; while at the same time claiming the requirement to be connected to the street on which the lot supposedly "fronts" can't be met because the "pole" is too narrow to provide access from the street to the main portion of the lot on which a four-plex will be built. And yet the only cause for the "pole" being too narrow is the location of the existing house on the original lot – a factor totally under the control of the applicants.

Applicants rely on a myopic evaluation of each of the criteria in EC 9.8215 in isolation, combined with requests for exceptions and strained interpretations of

the code. The Planning Director, however, must consider that zoning code, specifically the criteria in EC 9.8215, are meant to function as an integrated mechanism to assure a reasonable enforcement of Council’s intentions in adopting this code.

The Planning Director must thus find that Parcel 1 does not comply with EC 9.6815(2)(b,) and there is no justifiable basis upon which to grant an exception.

B) Parcel 1 fails to comply with EC 9.6840(2). Reserve Strips

EC 9.6840 states:

The city manager may require the developer to dedicate a reserve strip controlling access to a street or alley when a reserve strip is necessary to address one or more of the following:

...

(2) To prevent access to the side of a street on the side where additional width is required to meet the right-of-way standards provided in Table 9.6870 Right-of-Way and Paving Widths.

As discussed in 8.C, below, applicants assert the proposed partition does not, and cannot, comply with the right-of-way standards provided in Table 9.6870.

Notwithstanding the fact that noncompliance with EC 9.6840(2) provides a sufficient basis for denying the partition request, the applicants must at a minimum dedicate a reserve strip on Parcel 1 to provide at least 20 feet of right-away where W. 12th Alley abuts Parcel 1.

C) Parcel 1 fails to comply with EC 9.6870. Street Width

Applicants assert that W. 12th Alley is the only means of access to Parcel 1 (see section 4, above), and therefore W. 12th Alley must be treated as the primary access to Parcel 1.

Table 9.6870 specifies the following minimum widths for an alley that will serve is the primary access to a parcel:

Use	Right-of-Way	Paving
One-way travel	20 feet	12 feet
Two-way travel	20 feet	20 feet

Applicants state (page 7):

“The West 12th Alley has a 14 foot right-of-way width with approximately 9 feet of paving. ... The applicant cannot do anything about the fact that the alley right-of-way width does not meet the standard per EC 9.6870.”

Applicants make no request for an exception, nor provide any basis on which an exception should be granted or for which a conditional approval should be granted. With the applicants’ explicit admission the application does not, and cannot, comply with street width requirements, and in the absence of a request for an exception, as well as any supporting evidence in the application for an exception, the Planning Director cannot approve, even conditionally, the requested partition.

In addition to applicants’ own admission that Parcel 1 does not comply, and the lack of any argument in support of an exception, the evidence strongly supports denial of an exception in this case.

Applicants assert the alley has a 14 foot right-of-way width, which is only 70 percent of the required right away. Thus, the degree of noncompliance isn’t a minor, inconsequential issue, especially given that there are already five dwellings accessed solely from this 334-foot alley, another one that is accessed primarily from the alley, and an additional seven units that use the alley for secondary access. The addition of four units on Parcel 1 will significantly increase the number of dwellings using the alley for frequent, daily trips as their primary access.

With this level of usage, there will be numerous occasions in which a vehicle will be leaving a residence at the same time another vehicle is returning to a residence. Thus, with the proposed level of development, this alley right of way needs to accommodate two-way traffic and must be paved to a minimum of 20 feet.

Applicants state the alley is only paved to “approximately 9 feet,” which is only 55 percent of the required pavement width for two-way traffic and only 75 percent of the required pavement width for one-way traffic. Again, because of the intense development proposed for the alley, this would be a significant degree of noncompliance – even if the applicants’ claim were accurate.

In fact, the alley is not paved, other than a small section that has a thin layer of broken-down asphalt on it; and the alley actually has a difficult-to-navigate, pot-holed, obstructed, thinly-graveled surface. Thus, the degree of noncompliance is even more severe than represented in the application.

Notwithstanding the fact that noncompliance with EC 9.6870 compels denying the partition request, applicants must at a minimum be required to pave the entire alley to City standards.

9. Parcel 1 must provide an easement to comply with EC 9.8215(2)(b) approval criterion: EC 9.6500 – Easements, and criterion EC 9.8215(2) – Nonconforming Conditions.

The proposed partition provides only a 4 foot setback from the east side of the existing house on Parcel 2 to the west boundary of the “pole” section of Parcel 1. A minimum one-foot maintenance easement must be provided to meet minimum setback requirements and not create a new nonconforming situation.

10. Partition request fails to meet the EC 9.8215(1)(c) approval criterion because it fails to comply with required standards for public improvements.

A) Parcel 1 fails to comply with EC 9.6510. Stormwater Drainage

EC 9.6510 requires applicants to:

... submit documentation to the City showing the stormwater drainage facilities into which the proposed development will drain. The documentation must establish that the new development will drain into existing stormwater drainage facilities that ... have the capacity to handle the stormwater drainage that will be generated by the proposed new development ...

As established in section 5, above, applicants propose a four-plex in addition to the existing residence. This additional development will require a significant area of Parcel 1 to be covered with structures and parking areas. Applicants provide no documentation regarding the handling of storm water other than to state it will be conveyed to W. 13th Ave. via weep holes in the existing curb.

The aggregate amount of potential storm water from the area of both Parcel 1 and Parcel 2 is likely to be significant, given the intensity of additional development. Applicants must provide quantitative estimates of the amount of storm water the new development will generate and establish that existing storm water drainage facilities have adequate capacity to handle it.

In addition, since parking areas on Parcel 1 are likely to be at ground level adjacent to the alley, and thus up to 160 feet away from the W. 13th Ave. curb, getting the storm water that runs off parking surfaces to W. 13th Ave. is potentially problematic.

Applicants have provided neither adequate documentation of how the storm water will be conveyed to W. 13th Ave, nor any quantitative information on how much storm water will be conveyed and whether W. 13th Ave. facilities have adequate capacity.

Thus, the application fails to comply with EC 9.6510 and EC 9.8215(1)(c).

11. Partition request fails to meet the EC 9.8215(1)(g) approval criterion because it fails to comply with required standards for special setbacks.

A) Parcel 1 fails to comply with EC 9.6750. Special Setback Standards

EC 9.6750(2) requires a lot adjoining a street for which the planned public right-of-way width and alignment has been determined to have a setback from the centerline equal to one half the width established in EC 9.6870 plus the setback required in the zone.

Applicants have asserted that the existing width of W. 12th Alley, which Parcel 1 adjoins, is less than the 20 feet planned public right-of-way width established in EC 9.6870, and therefore applicants must recognize a setback of 15 feet from the centerline of W. 12th Alley.

Applicants have not included this provision in their application and thus it fails to comply with EC 9.6750(2) and EC 9.8215(1)(g).

12. Partition request fails to meet the EC 9.8215(2) approval criterion because it creates a new nonconforming situation.

As explained in other sections of this testimony, above, the proposed partition fails to comply with land use code requirements for R-2 lot standards (see sections 6 and 7), streets and alleys (see section 8), storm water (see section 10), and special setback standards (see section 11).

Thus, approval of the proposed partition would create one or more new nonconforming situations. Accordingly the request must be denied because it fails to comply with EC 9.8215(2) approval criterion.

13. Partition request fails to meet the EC 9.8215(1)(k) approval criterion because it fails to comply with adopted plan policies.

A) Parcel 1 fails to comply with EC 9.9680. Westside Neighborhood Plan Policies

As established in section 5, above, applicants plan to build a four-plex, with required on-site parking, on a lot accessible only from the alley. This development will occur on a lot currently occupied by a single-family home, and which will be completely surrounded by six single-family homes.

EC 9.9680 requires development comply with the following refinement plan policy (among others) applicable to this area:

- (1) Land Use Element
 - (a) Prevent erosion of the neighborhood's residential character

Although a refinement plan policy states the specific legal criterion that must be met, other content of a refinement plan is relevant in clarifying the specific intent of a policy. The intent of the members of the planning team that wrote the plan is also relevant for clarifying the intent.

In the case of the Westside Neighborhood Plan (WNP), both these resources are available, and the Planning Director must consider them in applying the criterion in EC 9.9680(1)(a).

The specific intent expressed in the WNP Land Use Element Policy 1 is reinforced by text elsewhere in the plan, including the enumerated Plan Goals, which the plan text explains “set the direction for the entire Plan.” One of these goals is:

* Ensure new development is in scale and harmony with existing neighborhood character.

Mr. Conte, on whose behalf this testimony is submitted, was an active member of the Westside Neighborhood Planning Team that wrote the refinement plan and had first-hand knowledge of the deliberations and decisions of that body. It is his direct testimony that the intent of the WNP Land Use Element Policy 1 was to protect the established single-family character of the Westside neighborhood, including the scale and other characteristic design and siting elements of existing dwellings. Mr. Conte specifically asserts that the proposed partitioning and four-plex alley development conflicts with WNP Land Use Element Policy 1 and the intent of the Westside Neighborhood Planning Team.

Note also that the WNP was adopted decades after the area encompassing the subject lot was zoned R-2, and so WNP policies must be considered to constrain the range of development allowed by R-2 to a narrower spectrum, as long as those constraints do not conflict with Metro Plan policies. In the case of EC 9.9680(1)(a), several Metro Plan policies, in fact, reinforce the same requirement to protect the character of established neighborhoods, including Policy A.9, which requires land use actions to “increase the stability and quality of older residential neighborhoods.”

Simply because the R-2 zone permits four-plexes does not automatically mean this request to partition an R-2 lot and build a four-plex on the alley complies with adopted WNP policies. The plain fact is, the proposed development is antithetical to WNP policies.

On August 2, 2006, the Executive Board of the Jefferson Westside Neighbors, the city-chartered neighborhood association that encompasses the subject parcel, unanimously adopted the motion in [Attachment H](#) (attached hereto and incorporated herein by reference), which specifically opposes the requested partition, and includes the following section:

Further, the proposed partition and use of Parcel 1 for a four-plex also fails to meet the criteria specified in EC 9.8215 (1) (k), specifically the proposed development conflicts with the Westside Neighborhood Plan polices, including 9.9680 (1) (a) "Prevent erosion of the neighborhood's residential character."

During 2004-2005, the Planning Division conducted the Oregon Department of Transportation "Chambers Revisited" project. As a result of this project, on December 12, 2005, City Council adopted code amendments to establish development standards for a section of the Westside neighborhood that is almost identical in character to the part of Westside encompassing the subject lot. (See EC 9.3050 S-C Chambers Special Area Zone).

In Attachment B of the December 12, 2005 Agenda Item Summary, Allen Lowe, the Senior Planner who directed the Chambers Revisited project, stated:

[Page 2 of AIS Attachment B]

The proposed standards are based on the physical characteristics of the "East Traditional Neighborhood (ETN)" subarea now referred to in the draft Chambers Special Area Zone, as the S-C/R-2 subarea. The subarea character is described on pages 2-5 through 2-10 of the Chambers Reconsidered Final Report: *Promoting Compatible Development in a Mature Neighborhood*. The character description is attached below.

... In general, as noted in the character description, 'dwellings are predominantly single-family structures with ... one dwelling per lot.'

On page 3 of AIS Attachment B, Planning staff calls out the importance of preventing erosion of neighborhood character and the legal requirement to protect the neighborhood character against incompatible development:

Preventing the erosion of this neighborhood character is a high priority for neighbors, and has been part of official Eugene City land use policy since the *Westside Neighborhood Plan* was approved by City Council in 1987. A number of Metro Plan policies (see section XXX, above) also support protection of neighborhood character against incompatible development.

This staff comment may restate the obvious, but it highlights that the Planning Director must apply criterion EC 9.8215(1)(k) and EC 9.9680(1)(a) using the best supported and concrete definition of "residential character" and cannot simply dismiss this requirement with generalities or by relying on R-2 standards.

Fortunately, a clear definition for “residential character” of the area encompassing the subject property can be found, not only in the previously cited WNP implementation policy and text, but also in the detailed description of the S-C/R-2 subarea.

The Westside Neighborhood Plan recognized that the subject property and the S-C/R-2 subarea (aka ETN) are part of a residential area with a uniquely recognizable character. Accordingly, both the subject property and the S-C/R-2 area were encompassed within the “Central Residential Area” defined on page 3-4 of the WNP. A walk around the subject property and the ETN confirms the near identical character of the two areas.

Therefore the Planning Director must consider documented elements of the S-C/R-2 area to be equally applicable to the subject property and its surrounding area, and he must consider these elements in determining this application’s compliance with EC 9.9680.

This description can be found on pages 4 to 8 of AIS Attachment B, provided as part of [Attachment I](#) of this document, attached hereto and incorporated herein by reference. Among the concrete elements that define the residential character of the S-C/R-2 subarea and the area around the subject property are:

- Alleys are unsurfaced and are primarily used for utilitarian access to the rear of mid-block lots.
- The original (and still characteristic) build-out was about 7-9 dwellings per net acre.
- Dwellings are predominantly single-family structures, with the following characteristics:
 - One primary dwelling per lot. Some lots have a “granny cottage” secondary dwelling.
 - Primary dwelling height: One or 1½ stories (less than 25’).
- Most houses and lots reflect the following interrelationships:
 - Many houses are close beside one another, often separated only by a narrow driveway or less. House designs (e.g., facing gabled roofs) and living patterns acknowledge this compact pattern and respect the importance of adjacent neighbors’ privacy along this interface.
 - Small front yards are semi-public spaces where residents of a house may observe or interact with pedestrians or adjacent neighbors. These areas provide a graceful transition between street life and life inside the house.
 - Most rectangular lots have private backyards with lawns, gardens, or landscaping. In this area, a house’s residents have a general sense of spatial openness, relative insulation from immediate street noise, and a fair degree of privacy from other neighbors viewing backyard activities.

On pages 7 and 8 of AIS Attachment B, the definition of the residential character of this area lists “anti-patterns”, which are development “patterns and elements that destabilize and erode the neighborhood’s character.” Specific addresses are provided as examples. This list includes:

- Excessive number of dwellings with alley access on a single block.
- Excessively large structure in back part of rectangular lot.

The above descriptions, included in Planning staff’s Chambers Reconsidered Final Report, were the result of extensive and detailed research by Planning staff, project consultants, and Westside neighborhood residents. The development of these descriptions (and the standards that arose from them) involved an extensive public involvement process spanning over sixteen months and at least a dozen meetings in which many Westside residents participated.

Thus, the Planning Director has before him the clear language of the adopted refinement plan, the first-hand testimony of one of the authors of that plan, the unanimous motion of the neighborhood association board, and the report of a contemporary Planning Division project – *all* presenting a consistent description of the neighborhood’s residential character with which the proposed partition and four-plex on the alley conflicts.

The very real impact on nearby families, and the counterproductive effects of jamming a four-plex on an alley access lot, were expressed articulately by a former resident of the Westside “Central Residential Area” who used to live just three blocks from the subject property:

“In 2003 the full-sized lot that abutted our property was subdivided³, with the alley access lot sold off to a developer who subsequently erected a massive 4-plex that towered disproportionately over all the neighboring houses. With windows and verandas directly overlooking our backyard, we lost all privacy in what had been our pleasant, private little oasis in the middle of the city and suddenly found ourselves with four new residences within mere feet of our house. This development ruined our corner of the neighborhood so effectively that all three homeowners adjoining it – ourselves included – promptly sold their homes and moved away.

We sold our house – undoubtedly for \$10,000 to \$20,000 less than it would have been worth without a 4-plex looming over it – and moved further away from downtown. We no longer frequent the small businesses & restaurants that were nearby. We now take the car for almost all of our shopping and dining.”

(This letter was submitted as testimony for the City Council public hearing on the Chambers Special Area Zone, and is provided as [Attachment J](#), attached hereto and incorporated herein by reference.)

³ Note: The lot was actually partitioned in 2000, prior to Council’s prohibition against creating alley lots, and the alley lot was developed with a four-plex in 2003.

The evidence is overwhelming that the requested partition and proposed four-plex development on the alley is incompatible with the widely recognized and thoroughly documented residential character of the encompassing neighborhood. Such a development would do irreparable harm to the adjacent property owners and the stability of this area of the Westside neighborhood. To approve such development would utterly disregard one of the central pillars of Eugene land use policy: protecting the stability and character of established neighborhoods.

As explained in section 2, above, the burden rests on applicants to establish that the proposed development complies with EC 9.9680(1)(a), and yet applicants fail to address EC 9.9680(1)(a) in any way at all. The Planning Director is therefore required to deny this application (unconditionally) for lack of compliance with the EC 9.8215(1)(k) approval criterion.

CONCLUSION

In summary, the application fails to comply with the following criterion in EC 9.8215:

- (1)(a) Lot standards
- (1)(b) Standards for Streets, Alleys, and other Public Ways
- (1)(c) Public Improvement Standards
- (1)(g) Special Setback Standards
- (1)(j) Applicable development standards for features explicitly included in the application
- (1)(k) Applicable adopted plan policies
- (2) Nonconforming situation

A central issue in this application is applicants' attempt to circumvent Council intent and code requirements prohibiting lots accessible only from an alley. If applicants want to amend the applicable criterion or zoning code, particularly those that implement City Council's express prohibition against alley lots, they are entitled to seek that relief through legislative means, rather than by a tortured interpretation of land use code.

Applicants also seek the requested partition for the express purpose of developing a four-plex on the alley, which is grossly incompatible with the neighborhood character, and thus the proposal shows utter disregard for the interests of residents who have a long-term commitment to the health and livability of the neighborhood. Neither the applicants nor the Planning Director can ignore that residents and City Council have long-established policies to prevent such abuse.

For the foregoing reasons, the application must be denied.

Respectfully submitted this 11th day of August, 2006.

Hutchinson, Cox, Coons,
DuPriest, Orr & Sherlock, P.C.

William H. Sherlock
Of Attorneys for Paul Conte

SEE ALSO: [Supplemental Testimony](#)