

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Saturday, March 6, 2021 5:57 PM
To: *Eugene Mayor, City Council, and City Manager; DRAGOVICH Jenessa L
Subject: TESTIMONY in opposition to CA 20-4

[EXTERNAL 

Please confirm receipt of the attached testimony and enter into the public hearing record.

Paul Conte

Earth Advantage Accreditations:

* Sustainable Homes Professional

* Accessory Dwelling Unit (ADU) Specialist

From: Paul Conte <paul.t.conte@gmail.com>
Sent: Saturday, March 6, 2021 5:59 PM
To: *Eugene Mayor, City Council, and City Manager; DRAGOVICH Jenessa L
Subject: TESTIMONY in opposition to CA 20-4 (with attachment)
Attachments: TESTIMONY in opposition to adoption of CA 20-4.pdf

[EXTERNAL 

Please confirm receipt of the attached testimony and enter into the public hearing record.

Paul Conte

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TESTIMONY

In Opposition to Adoption of Code Amendments in CA 20-4

Submitted by: Paul Conte
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Date submitted: 6-March-2021

Summary

Deliberation and adoption of the proposed code amendments should be deferred until the proposed code meets the following conditions:

1. The proposed code satisfies the requirement for all housing approval criteria to include at least a set of clear and objective standards.
2. The proposed code conforms to the requirements of HB 2001 “Middle Housing” dictates, and the proposed code is fully encompassed in the City’ strategy and implementation to bring Eugene Land Use Code into full conformance with HB 2001.
3. The specific revisions, below, are made to the proposed code.
4. Findings are made for conformance to the *Westside Neighborhood Plan* 1987

Proposed Code is Incomplete

The clear intent of the statutory requirement for “clear and objective” housing standards and processes is that an applicant can bring any housing proposal to the City, and the application must be subject to no discretionary standards unless the applicant requests to have the “discretionary” standards applied.

The proposed code does not satisfy that statutory requirement.

As one example, proposed housing in the Willamette Greenway must get approval for a Willamette Greenway Permit. However, the approval criteria for the Willamette Greenway permit are not at all clear and objective. Consequently, the Land Use Board of Appeals has ruled that the Willamette Greenway Permit approval criteria cannot be applied to any housing proposal, including, but not limited to Planned Unit Development applications.

The same findings in the LUBA decision on Willamette Greenway Permit would prevent any and all other discretionary requirements that are referenced in any other housing standards.

Despite having been repeatedly warned about this, the Planning Division staff refused to consider the implications. Instead, staff rebuffed this advice by claiming the City Council directed them to look only at the code in the five application types: PUDs, subdivision, partition, conditional use permit, and site review. Whether or not that claim was accurate, it was pointed out to the Planning Division staff that they should advise the City Council of this issue and seek direction to take a more comprehensive approach to ensuring Eugene’s Land Use Code met the statutory requirements

This failure to follow every thread for all housing application types will inevitably lead to more remands by LUBA, as occurred with the Lombard Apartments application.

Proposed Code Does Not Address HB 2001

The proposed code has provisions that do not conform to HB 2001. Further, the proposed code isn't consistent or compatible with the City's work on ADU and HB 2001 code amendments.

The "Middle Housing" OAR (660-046-0000 *et seq*) place many constraints on approval criteria for so-called "middle housing" in any residential zone that allows detached, single-family dwellings. In the current code, that scope includes the R-1, R-2, R-3 and R-4 base zones and numerous special area zones. When a residential or mixed-use subdivision and/or PUD application is proposed that would include plexes, rowhouses and/or cottage clusters, the approval criteria must be constrained by the Middle Housing OAR. Many of those criteria can be no more stringent than for a detached, single-family dwelling "in the same zone." Numerous requirements under EC 9.8325, as proposed, would conflict with the constraints of the OAR, for example, under EC 9.5860 Transition Standards, comprehensive plan density range, and others. There's also a structural problem in that PUD criteria may apply to applications in zones that have different criteria for detached, single-family dwellings.

There doesn't yet appear to be a well-defined framework for organizing the structure of code amendments to meet HB 2001 requirements. The next "HB 2001 Fact Sheet" that I will submit explains why "area-specific" criteria must be organized as a family of "Middle Housing" base zones (as opposed to subordinate sections of the R-1 Zone) because of the numerous "in the same zone" constraints of the OAR.

The code amendments for PUDs, subdivisions, and probably also conditional use permits and site review, need to be carefully coordinated with the base zone code amendments. One of the potentially best ways to do this would be to move housing-related PUD (and other application types) clear-and-objective standards into the base zones themselves, and to have purely "alternative" standards for PUD (and other application types).

The point in this testimony is not to prematurely recommend particular ways to organize code amendments. The point is that proceeding now with the "disconnected" amendments in this proposed ordinance will at best lead to the need for a complete "redo" later; and at worst, precede that "redo" with one or more LUBA appeals and remands.

This is the unfortunate reality, and no amount of "hand-waving" and finessing by staff can change the facts. The Council should not forget the history of staff's reassurances about the now twice remanded ADU code amendments.

Specific Revisions

The following are specific revisions that are necessary:

1. In all instances where "**S-C/R-1**" is specified, ADD "**S-JW**."

The S-C/R-1 subarea of the S-C Zone and the S-JW Zone are almost identical both in the largely detached, single-family built environment and in the housing approval criteria. There is no justifiable reason why these two adjacent zones in the same neighborhood (**Jefferson Westside Neighbors**) should be treated differently.

2. All sections of code related to street standard and connectivity, including criteria for "exceptions" and "adjustments" must be revised to ensure the following:
 - a. All new dwellings, with the exception of one detached, single-family dwelling on a lot and/or one Accessory Dwelling, including within PUDs must be required to be served by streets that provide adequate, uninterrupted, unimpeded and safe:

- i. Access to the dwellings for emergency vehicles from a fire station and an emergency medical response station (if other than the fire station); and
 - ii. Egress from the dwelling(s) to a hospital or other adequate medical treatment facility; and
- b. All new dwellings within a wildfire hazard area must be required to be served by streets that provide for adequate, uninterrupted, unimpeded and safe emergency evacuation.

Specifically, all new dwellings within the above scope must be required to be served by streets that meet the standards in either:

- a) The **Oregon Fire Code** for “Fire Apparatus Access Roads”; or
- b) The **Eugene Adopted Street Standards** for the above access and egress requirements.

Exceptions and/or adjustments cannot be allowed based on “infeasibility.” If it is “infeasible” to ensure the safety of new (and impacted current) residents, the new development should not be allowed. Note that the fundamental goals and policy of Eugene’s “Vision Zero” initiative require that “infeasibility” – *i.e.*, not profitable – not be an excuse to endanger current and future Eugene residents.

Also note well: This is not a question about whether or not the applicant would be required to provide all street improvements that would be necessary to conform. The question is strictly whether new dwellings would be allowed to be built under conditions where access did not meet either the OFC standard or the Eugene Adopted Street Standards, and therefore *emergency response access and egress was not ensured* in case of fire or medical emergency.

Previously, Planning Division staff and the City Attorney have shamefully claimed that the “Nollan-Dolan” constitutional limits on “exactions” prevent such requirements. This is utterly false. The legal ruling is that the City cannot require the applicant to actually construct street improvements beyond a *proportional* amount based on various factors. Often, this results in an applicant only being responsible for a portion of a street which a proposed development abuts. This ruling does not restrict the City from requiring, for example, that the rest of the street(s) provide the safe and adequate access; and, if that requires improvements, there are various ways those improvements can be financed. In any case, “feasibility” is not a factor in the constitutional ruling.

An easy-to-understand analogy is that a jurisdiction can require that new structures not be built on steeply sloped sites unless the proposed housing can be demonstrated to be safe from slides and sliding. The City doesn’t have to waive or reduce this requirement just because it might be “infeasible” to implement the necessary site and/or structural improvements to meet the safety standard in some particular instances.

No findings for conformance with the Westside Neighborhood Plan

There is no explanation for why the Ordinance Findings (Exhibit C) omitted the **Westside Neighborhood Plan** (1987), but conformance with that refinement plan is required for these code amendments. If the City Council were to neglect such findings, the ordinance would be remanded by LUBA to address that deficiency in the Findings.

Because such findings would be a substantive addition to the ordinance, at the very least, the record must be made open for additional testimony on the findings. For the record, I assert that the proposed code amendments do not conform to **EC 9.9680(1)(a) & (c); (3)(a) & (b); and (4)(d)**.

From: [Jefferson Westside Neighbors](#)
To: [*Eugene Mayor, City Council, and City Manager](#)
Cc: [Jefferson Westside Neighbors Board](#)
Subject: Issues with Code Amendments in CA 20-4
Date: Sunday, March 7, 2021 10:51:31 AM
Attachments: [Testimony Code Amendments in CA 20-4.pdf](#)

[EXTERNAL]

Dear Mayor and Councilors,

There are a couple of significant issues with the Code Amendments in CA 20-4 that directly concern the Jefferson Westside Neighbors area that should be addressed before any final discussion or vote.

Please see the attached testimony.

Sincerely,
Ted M. Coopman, Chair,

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Jefferson Westside Neighbors
Executive Board
Eugene, OR
www.jwneugene.org

TESTIMONY

In Opposition to Adoption of Code Amendments in CA 20-4

Submitted by:

Ted M. Coopman, Chair of Jefferson Westside Neighbors (on behalf of Jefferson Westside Neighbors)
971 W. Broadway
Eugene, OR 97402
541-844-1929
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Summary

Deliberation and adoption of the proposed code amendments should be deferred until the proposed code meets the following conditions:

1. This specific revision is made to the proposed code:

In all instances where "S-C/R-1" is specified, ADD "S-JW."

The S-C/R-1 subarea of the S-C Zone and the S-JW Zone are almost identical both in the largely detached, single-family built environment and in the housing approval criteria. There is no justifiable reason why these two adjacent zones in the same neighborhood (Jefferson Westside Neighbors) should be treated differently.

2. Findings are made for conformance to the Westside Neighborhood Plan 1987

No findings for conformance with the Westside Neighborhood Plan

There is no explanation for why the Ordinance Findings (Exhibit C) omitted the Westside Neighborhood Plan (1987), but conformance with that refinement plan is required for these code amendments.

Because such findings would be a substantive addition to the ordinance, at the very least, the record must be made open for additional testimony on the findings. For the record, we assert that the proposed code amendments do not conform to EC 9.9680(1)(a) & (c); (3)(a) & (b); and (4)(d).