



Oregon

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March 8, 2012

TO: Land Conservation and Development Commission

FROM: Jim Rue, Acting Director
Ed Moore, AICP, South Willamette Valley Regional Representative
Rob Hallyburton, Planning Services Division Manager

SUBJECT: **Agenda Item 3, March 14-16, 2012 LCDC Meeting**

CITY OF EUGENE

CITIZEN-INITIATED PETITION FOR ENFORCEMENT

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

On January 19, 2012, the Department of Land Conservation and Development (department) received a petition from Mr. Paul Conte, on behalf of the Jefferson Westside Neighborhood (JWN), a neighborhood organization chartered by the city of Eugene. The petition requests that the Land Conservation and Development Commission (commission) issue an enforcement order compelling the affected local government, the city of Eugene, to bring its land use regulations into compliance with its comprehensive plan.

In general, when considering a request for an enforcement order, the commission must determine whether there is good cause to proceed to a contested-case hearing based on substantial evidence of noncompliance pursuant to OAR 660-045-0090(6). If the commission finds there is not good cause to proceed to a contested-case hearing, it must issue an order dismissing the petition pursuant to OAR 660-045-0090(7). However, if the commission finds there is good cause to proceed, it shall issue a written decision describing the reasons for its decision and initiate proceedings toward a contested-case hearing pursuant to OAR 660-045-0090(8) and (9).

However, under the commission's rules at OAR chapter 660, division 45, the requester and the affected local government may stop the proceedings before the commission and present a proposed resolution to the matter. The city of Eugene and JWN have proposed, and the department recommends, a consent order as the appropriate means to dispose of this proceeding.

B. Staff Contact Information

If you have questions about this agenda item, please contact Ed Moore, DLCD Regional Representative, at (971) 239-9453, or ed.w.moore@state.or.us.

II. RECOMMENDATION

Adopt the proposed consent order attached to this staff report.

III. BACKGROUND

The department reviewed the petition under the provisions of ORS 197.319 *et seq.* and OAR chapter 660, division 45 (Citizen-Initiated Enforcement Orders). The petition alleges that the city is not in compliance with the Goal 2 (Land Use Planning) requirement that “City * * * plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties.” OAR 660-015-0000(2).

To be considered for review by the commission, OAR 660-045-0070 requires the department to review the petition for completeness and compliance with ORS 197.319 and OAR 660-045-0040 to 660-045-0060. If the petition fully meets the requirements of ORS 197.319 to ORS 197.324 and division 45, or if it does not fail to meet them in a way that substantially prejudices the affected local government or district or is materially deficient, OAR 660-045-0070(6) requires that the department accept the petition.

Based on the department’s review of the petition, the department finds that the petition fully satisfies the requirements of ORS 197.319 to ORS 197.924 and OAR 660 chapter 660, division 45 and has accepted the petition.

IV. DEPARTMENT REVIEW OF PROPOSED CONSENT ORDER

The city of Eugene and requester JWN have proposed a consent order as the appropriate means to dispose of this proceeding. OAR 660-045-0160(3) provides:

A proceeding under this division may be stopped at any time and disposed of through stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, or consent order must be in writing and must be signed by both the requester and the affected local government or district.

The intent of the consent order is to resolve this dispute without the hearings before the Commission or a hearings official described in OAR 660-045-0090 through 660-045-0140. Under the consent order, the City of Eugene retains the ability to address the zone designation issue as part of its Envision Eugene project. In the meantime, the consent order provides requester JWN assurance that the city will not approve development on properties designated

Medium Density Residential (MDR) in its comprehensive plan that are within the 1987 Westside Neighborhood Plan boundaries at a density that exceeds the densities allowed in their MDR comprehensive plan designation before the City adopts plan or code amendments that reconcile the Metro Plan/zoning conflict.

By agreeing to resolve this request for enforcement order proceeding by consent order under OAR 660-045-0160(3), the parties both waive their rights to a contested case proceeding before the commission and waive the right to judicial review of the LCDC consent order. OAR 137-003-0002(3).¹

IV. CONCLUSION AND RECOMMENDATIONS

Based upon the department's review of the petition submitted by JWN, the city's response pursuant to OAR 660-045-0050, and the proposed consent order, the department recommends that the commission approve the consent order resolving this matter.

Proposed Motion: In the matter of Jefferson Westside Neighborhood's petition for enforcement for the city of Eugene, I move that the commission adopt the proposed consent order.

Alternative Motions:

1. *[To reject the proposed consent order and proceed to a contested case hearing.]* In the matter of Jefferson Westside Neighborhood's petition for enforcement for the city of Eugene, I move that the commission find that there is good cause to proceed to a contested-case hearing based on the analysis and information contained in the staff report and attachments, that the commission delegate its hearings authority to a hearings officer to be selected by the director, and that the hearing be conducted on _____.

2. *[To reject the petition for enforcement.]* In the matter of Jefferson Westside Neighborhood's petition for enforcement for the city of Eugene, I move that the commission find that there is not good cause to proceed to a contested-case hearing because _____.

ATTACHMENTS

Proposed LCDC Consent Order with map attachment
Petition for Enforcement Order dated January 18, 2012 with attachments

¹ In OAR 660-001-0005(1), the commission has adopted the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedures Act. Model rule OAR 137-003-0002(3) provides:

Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.