



Fwd: #Update Duplicitous statements in EUG Planning Newsletter

From: **Paul Conte**

Date: Tue, Jul 18, 2023 at 8:55 PM

Subject: Fwd: #Update Duplicitous statements in EUG Planning Newsletter

FYI My email to a listserv of about 1,000 Eugene folks. -- Paul

Friends,

The City just emailed their "EUG Planning Newsletter," which included this deceptive:

On May 24, 2022, the Eugene City Council adopted [Ordinance 20667](#), Eugene's Middle Housing Land Use Code Amendments. The Ordinance went into effect on July 1, 2022. After it was adopted, the ordinance was appealed to the Land Use Board of Appeals (LUBA). LUBA upheld the City's ordinance. Subsequently, LUBA's decision was appealed to the Oregon Court of Appeals, and that court issued its decision on July 12, 2023.

The Court affirmed LUBA's decision on the appeal issues related to the Willamette River Greenway, and affirmed LUBA's determination that the Middle Housing approval criteria challenged by the appellants are clear and objective. However, the Court disagreed with LUBA's decision on the appeal issue related to compliance with Statewide Planning Goal 11 (Public Facilities and Services). The Court remanded the appeal back to LUBA for further proceedings. **The Middle Housing Code Amendments will remain in effect during this appeal process.**

Stay tuned to this newsletter to find the latest information, or visit our [Middle Housing Code Amendments website](#). As always, you can reach out to staff with questions and we will do our best to help you find answers.

This makes it sound like anyone who previously had a building permit or lot division approved under the so-called "middle housing" code amendments ("MHCA") should have "no worries," and that anyone who'd like to slip in an application to take advantage of the MHCA deregulation can still do it and staff will gladly cooperate with that swindle.

Anyone relying on either of those assumptions should immediately consult their own attorney because to proceed further with a "middle housing" project or application under the current circumstances would be at risk of being revoked and possibly having to remove any construction that was already done.

That's the bottom line. What follows is my current understanding based on discussions with two attorneys.

The starting point is **ORS 197.175(2)**, which has the following requirements:

(d) If [a city's] comprehensive plan and land use regulations have been **acknowledged** by the commission, [the city must] make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and

(e) [Tthe city must] [m]ake land use decisions and limited land use decisions subject to an **unacknowledged** amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment.

A 1993 Court of Appeals decision addressed subsection (d) and established the following as I believe applies to the MHCA.

Eugene's Land Use Code *prior* to the MHCA was "acknowledged."

The City Council, based on really bad advice from the City Attorney, made the MHCA effective shortly after the MHCA ordinance was adopted. But being "effective" does not mean the amended code was "acknowledged" -- because we appealed to LUBA. So the City should never have applied the amended code to evaluate building permit applications, unless they exercised subsection ORS 197.175(2)(e), which they did not appear to do.

If the Court of Appeals had affirmed LUBA's decision, we probably wouldn't have appealed to the Oregon Supreme Court, and that would have resulted in the MHCA being "acknowledged." That would make moot whether the city complied with ORS 197.175(2)(d) somewhat on the "no harm, no foul" principle. Or, viewed another way, the applications that were approved even without conforming to ORS 197.175(2)(e) would have been approved by applying code that was ultimately acknowledged.

But that's not what happened!

The Court of Appeals not only "remanded" the decision (sent back for "further proceedings," as the city so glibly says), The CoA also "reversed" LUBA's finding that the City complied with Goal 11. Because LUBA was reversed, those "further proceedings" leave LUBA *no choice* but to change their prior opinion and remand the ordinance to the city because the city didn't comply with Goal 11 requirements. The city staff knows that, but intentionally left that out of the misinformation they're providing Eugene citizens and the City Council.

The city staff will have to do the substantial work (which they negligently told councilors they didn't have to do) in order to fix the MHCA ordinance. City Council will then have to adopt a revised ordinance, which could, of course, be appealed again. Until all opportunities for appeal have been successfully resolved, the MHCA are not -- and never have been "acknowledged"; and by ORS 197.175(2)(d) the city cannot lawfully apply the new code, unless the do what's required under ORS 197.175(2)(e) for *every* application.

So to be precise: The city applied ***unacknowledged*** code provisions when they approved building permits and lot divisions based on the MHCA. And, according to the newsletter, they appear to be intending to continue to do that, despite the fact that they know once LUBA issues its remand, those amendments are then not only going to be unacknowledged, they are also not "in effect" and, arguably, never have been.

Based on how the planning staff attempted to finesse Goal 11 when they presented the ordinance to the City Council, and this latest obfuscation in the newsletter, I expect we'll see staff try every trick they can to escape accountability.

See my caustic email to the City Council below.

* * * * *

A quick word on the two assignments of error that the CoA denied ...

Goal 15 Willamette Greenway. I won't go into great detail, but essentially the City prevailed on a devious argument that resulted in there being no (as in zero) criteria that a proposal for housing would have to meet to get a Willamette River Greenway ("WRG") permit. (The city claimed it hadn't changed the WRG permit criteria, which was true; but these criteria are all "discretionary" and cannot be applied to housing proposals.) The issue will soon be all (or maybe mostly) moot because the City Council adopted a terrible new set of "clear and objective" code amendments for WRG permits that goes into effect on August 18, 2023. Of course, this ordinance might be appealed and thus run into the same issues re not being "acknowledged."

The Court of Appeals simply punted, with no explanation, on the fact that the MHCA has code that isn't **clear and objective**. One result is that the City has now interpreted the requirement for some "affordable" dwellings in a "middle housing" project in order to get a reduced minimum lot size to mean a developer must *say* they're going to provide affordable dwellings, but once the housing is built, the developer *does not actually have to provide any affordable housing at all*. Don't hold your breath for the staff to acknowledge this to elected officials or for any of our elected officials to even care.

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Things are just going to get worse and worse for neighborhoods unless citizens get engaged and vote to replace the current mayor and council.

As always, feel free to contact me if you have questions or comments.

-- Paul

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From: **Paul Conte**
Date: Tue, Jul 18, 2023 at 2:02 PM
Subject: Corruption, pure and simple.
To: *Eugene Mayor, City Council, and City Manager <MayorCouncilandCityManager@eugene-or.gov>

I won't waste words because any attempt to bring ethical behavior to this City Manager, Planning Director, and City Attorney by way of you would be futile.

But to put you on notice -- Check with your own attorneys. Any property owner, investor, or developer who reads the latest EUG Planning Newsletter would have no appropriate warning from city staff that if a party thinks they can "get in under the wire" while "**The Middle Housing Code Amendments will remain in effect during this appeal process,**" that party will be at a very high risk of having any approved "middle housing" application voided, and they could be sued in Circuit Court to require that they remove any development (i.e., construction) work they've done.

No, this isn't certain. But an ethical staff would at least describe the potential so individuals and businesses are forewarned.

But then staff would also have to admit they lied to a gullible council.

Despicable, and our elected officials turn away from holding anyone accountable.

Paul Conte

On Sat, Jul 15, 2023 at 3:39 PM Paul Conte wrote:

John,

Just hitting a couple of points ...

Presumably, the PFSP accounted for density in existing Medium and High Density Zones. It's the vast Low Density Zone areas that could not have been anticipated to in one fell swoop allow up to five times an increase in density.

I think the density in the WUI is where sufficient capacity for fire response is most threatened when the forest goes up in flames (Moon Mountain).

-- Paul