

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.1260
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

February 6, 2023

Rep. Maxine Dexter, Chair, and Members
House Committee on Housing and Homelessness

Re: HB 2889, February 7, 2023 Hearing

Dear Chair Dexter and Committee Members:

This bill should get a do-pass recommendation with amendments. It is a worthy vehicle for additional state-mandated reforms to speed up and reduce the cost of housing.

With about 40 years of experience getting housing approved in Eugene, I have been in many case studies that show how things go wrong and what could go a lot better. Here is one – the LaurelRidge PUD – 12 years in processing and appeals and yet to move dirt. The LaurelRidge PUD application in Eugene’s South Hills neighborhood is a case study of how the more dysfunctional aspects of the state’s program for implementing Goal 10 remain safely in place in Eugene. There are other case studies in Eugene, but the LaurelRidge project exemplifies several problems that ensure unreasonable cost and delay.

Appended hereto is a Summary Table showing the date of each land use application and what happened to it. This letter provides a glossy overview and extracts a list of possible improvements from the case study.

This started as a 121-acre residential site that needed a Planned Unit Development (PUD) approval in addition to Subdivision approval because of its location in Eugene’s South Hills.

The Summary Table shows that the first land use application after annexation was filed in 2012. It took three wholly different site plans to get to where we are now – an application for final subdivision plat approval pending at the City. During that decade there were: 2 decisions by the Planning Director, 6 decisions by the Hearings Official, 6 decisions by the Planning Commission, 3 decisions by LUBA, and 2 decisions by the Court of Appeals. The Summary Table walks through the date of each submittal of each application, the filing of each appeal, and the resolution of each needed approval. After more than a decade of processing, the owner is still waiting for final plat approval. Of course, no dirt has been moved, and no housing has been delivered.

Here are the major shortcomings in the Eugene program evident in this case study.

- Eugene requires a Planned Unit Development (PUD) approval for nearly all residential projects in the South Hills, which is the neighborhood with the most inventoried developable residential land and the steeper slopes. The PUD overlay zone imposes a review process that is redundant with but separate from the subdivision review process,

with separate review standards. It adds years to getting city approval to build, and it poses additional appeal opportunities. Getting LaurelRidge through the Tentative PUD process required three trips to LUBA and two trips to the Court of Appeals, as the Summary Table shows.

- Eugene's PUD process, until several months ago, prohibited using the state mandated clear and objective track if a site has 20% or greater slopes. That sentenced the applicant to review under discretionary PUD standards, which means having really no avenue to effectively appeal denials. LUBA and the Court of Appeals have determined that the right to be processed under clear and objective standards does not mean there is a right to have something approvable under clear and objective standards. See *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018), *aff'd without opinion* 296 Or App 490 (2019). This renders ORS 197.307(4) a bit hollow because it allows the City to have clear and objective standards that do not allow any approval for a particular site.
- Eugene imposes a Metro Plan Diagram that is not parcel-specific. This condemns applicants to guessing what the plan designation is in many instances. The DLCD has let the City get away with this, saying there is no state requirement for a parcel-specific plan diagram. At the LaurelRidge site the owner followed the staff's advice to combine a zone change application to R-1 with the tentative PUD application, explaining that this would be efficient. Not so, actually. After a couple years of detailed site planning, it asked for R-1 zoning for the 121 acres and proposed single and multi-family units up to the allowed density. Staff opposed the tentative PUD application because they thought some unspecified part of the site was plan designated Parks and Open Space. The HO and Planning Commission and LUBA agreed – some unknown part of the 121 acres was Parks and Open Space, so the entire application had to be denied. That was a several year, completely wasted effort, as the Summary Table shows.

The next three years were spent trying to determine the location of the boundary line between the LDR and POS plan designations so that the R-1 zoning could be applied to specific ground, and a new PUD application could be prepared for the R-1 portion. The HO agreed with the owner and the Staff's proposed line; the PC agreed in the local appeal by the neighbors; LUBA said the City had guessed wrong, and they needed to try again. On the next try the City HO drew the line to shrink the LDR area, but admitted it was all guesswork. Because the revised line was still on a generalized map, more months were needed for all the parties to agree on a metes and bounds line on a survey map. Then PUD planning could begin afresh with a surveyed line for the R-1 zoning on a survey of the entire site.

- Because the PUD standards are discretionary, owners have to largely defer to what staff want to get support at hearings. In this instance the owner in 2018 filed a new tentative PUD for 122 Single Family lots on the R-1 land. Staff recommended denial, in part for lack of a 100% survey of the thousands of the trees in the forest, which the owner's engineer determined would have cost more than one million dollars to survey and describe; the HO denied the application; everyone appealed to the PC. At that point, the

owner invoked its right under ORS 197.522 to amend any residential application on the fly; the owner said it would redesign and not return to the PC until they had staff support. The PC gave the owner a year to flesh out an amended conceptual plan to be reviewed, again, by the HO. The amended PUD site plan, which the staff would support, proposed 373 multi-family units on 38 acres on the west end of the site and preserving the 60 acres on the east in a private urban forest. That was approved by the HO, and by the PC on appeal by the neighbors. The neighbors appealed that approval to LUBA, objecting to a road through the project, required by city staff for connectivity. LUBA affirmed, as did the Court of Appeals. That left the door open for the owner to file for final PUD approval and tentative Subdivision approval in 2021. That final PUD approval by the Director was appealed by the neighbors to the HO, who affirmed. The project has submitted for final Subdivision approval, but development has not been approved yet.

The more than decade long process above for the LaurelRidge project, and other examples from Eugene, support the state mandating the following reforms to move Eugene closer to meeting its Goal 10 duties:

- The statute requiring **clear and objective standards** for review of housing should be tuned up to ensure every site proposed for housing is entitled to a path to an approval. It is pointless to mandate clear and objective standards if the City can enforce standards that can't be met, as LUBA said it could in *Dreyer v. City of Eugene*, 78 Or LUBA 391, (2018), *aff'd without opinion* 296 Or App 490 (2019).
- Eugene, and every other city, should be required to have a **100% parcel-specific plan diagram**. For decades Eugene has been saying it "has been transitioning to a parcel-specific diagram." The Metro Plan is explicit that the City is "moving toward a parcel-specific plan diagram." The plan says: "As part of this transition, the boundaries of Plan designation areas within a UGB are determined on a case-by-case basis, where no parcel-specific designation has been adopted." In addition, the Metro Plan is explicit that the parcels of land throughout the City adjacent to a boundary between two plan designations are indeterminate, thus they get to be fought over in the context of a housing development proposal. See Metro Plan at II-G-2. That is what happened at LaurelRidge. Everyone got to argue about and litigate over where the LDR plan boundary is, with all the costs and delays associated with that. The LaurelRidge situation is not special. It is just a large, flagrant example of how the lack of a parcel-specific plan diagram is a nightmare for would-be housing developers. See Metro Plan at II-G-2.
- The legislature should consider **prohibiting overlay zones** and similar reviews where housing is allowed by the base zone. Two trips through the wickets (Tentative PUD, Final PUD, Tentative Subdivision, Final Plat) doubles the time to process and the potential for appeals. Middle Housing is now mandated by state zoning laws on the same residential land in the South Hills that requires a PUD process and a Subdivision for housing allowed by the base zone. Why is it now vastly easier to do Middle Housing where single family housing is allowed than it is to do the single family housing in the first place? The entire PUD process for housing approval (or CUP process or Site Review

Rep. Dexter and Committee Members

February 6, 2023

Page 4

process) could be eliminated. Any important standards that the City now reserves for the PUD process could easily be folded in among the standards for the subdivision review process. That simple reform could take years out of the time it takes to get to a final approval to develop housing.

Sincerely,

Bill Kloos

Bill Kloos

Attached: Summary Table of LaurelRidge Timeline

| Case Study of Laurelridge PUD 121 acres in Eugene's South Hills 2007-2023, but no dirt moved yet | | |
|--|---|---|
| 2007 | Annexation: 121 acres on E. 30 th Ave. in the South Eugene Hills area; zoned Agriculture. | |
| | | Nearly all development in South Hills requires tentative and final PUD approval; then tentative and final subdivision approval. |
| 2012 | Zone change (AG to R-1) and Tentative PUD application (Z 12-2, PDT 12-2) for 533 Multi-family units and 75 Single Family lots, based on the assumption that all 121 acres is planned LDR (Low Density Residential). Applicant was forced into discretionary standards track because the code prohibited clear and objective standards track for any development grading 20% slopes. | |
| 2013 | Denied by Hearing Official (HO) | |
| 2013 | Denied by Planning Commission (PC) on appeal | |
| | Staff and HO and PC decided that not all of the site was plan designated LDR on the Metro Plan Diagram; some small part is Parks and Open Space (POS) based on generic, non-parcel specific Metro Plan; Metro Plan Diagram controls over the local Refinement Plan, which showed all of the site to be LDR. Without all of the site being planned LDR, the PUD proposal exceeded the density allowed. | |
| 2014 | Denial affirmed by LUBA on appeal. <i>Environ-Metal Properties, LLC v. City of Eugene</i> , 69 Or LUBA 33(2014), aff'd without opinion 263 Or App 714, 330 P3d 74 (2014). The Metro Plan Diagram and local refinement plan diagrams conflict: “The 1982 Laurel Hill Refinement Plan map is not property specific and does not include useful information regarding the plan designation of the entire subject property. To the extent the refinement plan map can be understood to indicate that the subject property proposed for rezoning to R-1 is entirely designated LDR, the refinement plan map conflicts with the 2004 Metro Plan Diagram, which includes sufficient referents to allow the city to determine that some portion of the subject property is designated POS.” 69 Or LUBA at 47-48. | |
| 2015 | Zone Change application (Z 15-5) to determine how much of the 121-acre site is planned LDR versus POS and change the zoning to match. Due to the non-parcel specific Metro Plan Diagram, this separate application was needed to determine how much of the site is LDR and then zone it R-1. | |
| 2015 | HO agreed with Applicant and Staff that 101 acres was planned LDR and got R-1 zoning. Neighbors contended that only 81 acres was planned LDR. The HO said identifying the boundary between LDR and POS is guesswork: “In conclusion, this present situation is not like a math or | |

| | | |
|------|--|--|
| | | science problem that if we work hard enough or look closely enough that the correct answer will appear. There is no exact correct answer. As there is no exactly correct answer, the best guess is the best I can do. As LUBA stated, we must do the best we can with the tools at our disposal, and some of those tools arguably restricted the analysis. Given the 2004 Metro Plan diagram and the metes and bounds description of the property, I believe the best guess is to align East 30th Avenue along the western edge of the property and to rotate the map of the property to align with grid north as depicted in Exhibit L and described in Exhibit O.” HO Decision at 8-9. |
| 2015 | | PC affirmed the HO decision. |
| 2016 | | In cross appeals to LUBA, it determined that the decision had guessed wrong in locating the boundary between LDR and POS plan designations. <i>Laurel Hill Valley Citizens v. City of Eugene</i> , __ Or LUBA __ (LUBA No. 2015-091, 092, March 11, 2016). |
| | | |
| | | Zone change application (Z 2015-5) on remand from LUBA. |
| 2016 | | HO set the line based on instructions from LUBA, setting the LDR/R-1 line at about 75 acres “In conclusion, while I have little confidence that the LHVC Diagram is the actual location of the LDR/POS boundary (as I had little confidence that Exhibit L showed the actual LDR/POS boundary in the prior decision), based on the directions in LUBA’s final opinion, I conclude the LHVC Diagram is more consistent with the Metro Plan than the Applicant’s Diagram.” |
| | | |
| 2018 | Reduce the LDR/R-1 boundary to a metes and bounds line agreeable to Staff and Parties. | The LDR/R-1 boundary was still a generalized line across the 121-acre site; it had to be reduced to a metes and bounds line on a survey to be the basis for an actual development application. |
| | | |
| 2018 | Tentative PUD application (PDT 18-3) for 122 Single Family Lots. Applicant told the city that if the application was denied, rather than starting over again it would invoke its right under ORS 197.522 to amend the application on the fly before the Planning Commission to address perceived shortcomings by the City. | |
| 2019 | | HO denied based on Staff and neighbors’ recommendations. “I am sympathetic to the applicant’s plight. The applicant has spent many years just trying to get housing approved on land that is clearly planned and zoned for housing. The applicant has expended Herculean efforts to satisfy, as they put it, “a field of discretionary, conflicting wickets that must be navigated, and the City has the discretion to decide whether the applicant chose the |

| | | |
|------|--|--|
| | | <p>right path through the wickets.” This is also hardly a case of an obstinate applicant who only wants to do this their own way. Numerous times, the applicant has said just tell us what you want us to do and we will do it – only to be told that is not the City’s job. While that may be true, it is nonetheless frustrating I am sure.” Decision at 45.</p> |
| 2020 | | <p>PC on appeal allowed the applicant, based on demand under ORS 197.522, to modify based on a new conceptual redesign:</p> <p>“Now that this matter is before the PC, the applicant invokes its rights under ORS 197.522 to amend the application. Our preferred amendment seeks to absolutely minimize the impact of development on the site itself by shifting to multi-family, and to minimize tree impacts in order to make whatever tree survey work is required by the PC affordable. The intent is to simplify the development proposal dramatically, in the hope of satisfying all staff objections.” Applicant Dec. 4 Letter to PC.</p> <p>The amended proposal was for 373 apartments clustered on 38 acres with 60 acres preserved as an urban forest. The PC gave the applicant a year to return with details for the conceptual plan. Referred any revised application back to the HO for initial review and decision.</p> |
| 2021 | | Tentative PUD Application to HO for revised plan under ORS 197.522. |
| 2021 | | HO and Staff recommend approval for 373 apartments clustered on 38 acres on the west and 60 acres preserved as a managed, private urban forest on the east. |
| 2021 | | PC affirmed HO decision following appeal by neighbors objecting to connectivity road connection through the project required by staff. |
| 2021 | | LUBA affirmed city decision in appeal by neighbors objecting to connectivity through the project. <i>Laurel Hill Valley Citizens v. City of Eugene</i> , ___ Or LUBA ___ (No. 2021-067, Oct 26, 2021), aff’d without opinion, ___ Or App ___ (No. A177341, Feb. 2, 2022). |
| 2022 | | Court of Appeals affirms LUBA decision on appeal by neighbors. |
| 2021 | | Final PUD (PDF 21-3) and Tentative Subdivision Application (ST 21-6) |
| 2021 | | Director approves both; neighbors appeal to HO. |
| 2022 | | HO affirms Final PUD and Tentative Subdivision. |
| 2022 | | Final Subdivision Plat applied for |
| 2023 | | Pending before Planning Director |