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Multnomah
Land Use Co-Chair
2502 SW Multnomah Blvd
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December 26, 2017

Oregon Department of Land Conservation and Development Commission
Attention: Periodic Review Specialist
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Appeal OAR 660-025-0150(6)(a)
Objection Task 5 (Ordinance 188177)
DLCD 17. Objection 5-6 – Multnomah Neighborhood Association #5

The Multnomah Neighborhood Association (MNA) is filling this appeal to Task 5 of the City of Portland 2035 Comprehensive Plan (Ordinance 188177).

The Objection (DLCD 17. Objection 5-6 – Multnomah Neighborhood Association #5) consisted of four issues. These are presented below posting the original objection first, followed by the DLCD response and then by the appeal.

The record lists James Peterson testifying as follows:
Peterson, James F Comment ID #21723 Oct 13, 2016

Issue #1 (Objection 5-6a)

If you review OAR 660-025-0130 shown below the record needs to have detailed index which the city to need provide to public and submit. The name of the submitter or the testifier is inadequate. In reviewing the testimony it appears some of the testimony is incorrectly filed and belongs with other tasks. Some testimony is being submitted for organizations or groups. In the present format the testimony needs to read to determine how or if it applies. It is unclear how the Planning and Sustainability Commission and the City Council were able to review it all. Note the Staff reports and findings are not linked to individual testimony. Note: The Multnomah Neighborhood Association has requested technical assistance under provisions of Goal 1 from Susan Anderson and Mayor Wheeler to find all the testimony for the Middle Housing Amendment for Task 4 with no response. In the present format it would be impossible for the neighborhood to find. The Oregon Department Conservation and Development will have the same problem in their review. I made this objection in Task 3. The DLCD staff made requests to the City of Portland to find testimony and records to decide on the merits of my Task 3 objection. The City forwarded a link at that time to DLCD staff and myself an extremely poor search option for the record. Unfortunately it would not find all the testimony on the Middle Housing Amendment that the Multnomah Neighborhood Association is filing an objection on. This is inconsistent with provisions of Goal 1 of OAR 660-015-0000(1) (Goal 1) requires that

citizens have a role in all phases of the planning process. The record needs to be sent back for the index to be detailed and referenced to the staff reports and findings. Then the public, Planning and Sustainability Commission and City Council need time to then review the record and then have hearings before it is submitted back to the DLCDC.

660-025-0130

3) For a periodic review task to be complete, a submittal must be a final decision containing all required elements identified for that task in the work program. The department may accept a portion of a task or subtask as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government. All submittals required by section (1) of this rule are subject to the following requirements:

(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances, resolutions, and orders; any amended comprehensive or regional framework plan provisions or land use regulations; findings; hearings minutes; materials from the record that the local government deems necessary to explain the submittal or cites in its findings; and a **detailed index listing all items in the local record and indicating whether or not the item is included in the submittal**. All items in the local record must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or commission may require a local government to submit any materials from the local record not included in the initial submittal;

DLCDC Response 5.6a

The department rejects this objection. OAR 660-025-0130(3) requires an index of the entire record partially because the city is not required to submit the contents of the entire record if it exceeds 2,000 pages, and an index enables participants and the department to identify those materials that were not part of the submittal. The index also enables participants and the department to identify where in the submittal relevant materials were included. The rule requires a “detailed” index. The objection appears to allege that a detailed index should link individual testimony with the specific elements of the staff report and findings to which it is related. For example, if there is testimony regarding the middle housing policy, then the index should link all testimony regarding this topic to the staff report and findings on this same topic. [No reasonable reading of OAR 660-025-0130\(3\)\(b\) would lead to this conclusion.](#) OAR 660-025-0130(3)(b) identifies what a submittal must include, one of which is a detailed index listing all items in the local record and indicating whether the item is included in the submittal. The city has provided a master index and a table of contents, both of which provide a detailed list of items in the local record. The department concludes that the city has submitted the required elements of a record exceeding 2,000 pages, including a detailed index of the items in the local record and the oral and written testimony from the public hearings.

Appeal 5.6a

This is inconsistent with provisions of Goal 1 of OAR 660-015-0000(1) (Goal 1) which require that **citizens** have a role in all phases of the planning process. After the objections were submitted, DLCDC staff requested that the city provide the testimony under 660-025-0130(4).

660-025-0130

(4) A submittal includes only the materials provided to the department pursuant to section (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the local government may:

(a) Provide written correspondence that is not part of the local record which identifies material in the record relevant to filed objections. The correspondence may not include or refer to materials not in the record submitted or listed pursuant to section (3) of this rule. The local government must provide the correspondence to each objector at the same time it is sent to the department.

(b) Submit materials in the record that were not part of the submittal under section (3) if the materials are relevant to one or more filed objections. The local government may not include or refer to materials not in the local record. The local government must provide the materials to each objector at the same time it is sent to the department.

The testimony the city provided under this request is indexed only by the submitter's name. It would be difficult or impossible for the public or DLCDC staff to locate testimony with only the name of the submitter using this index of the record. There is no way to tell how complete the testimony the city submitted is without reading the complete record. Thus the record needs a [detailed index](#) as required under OAR 660-025-0130(3)(b) for the citizens to review the record in a timely manner when technical assistance has not been made available. The DLCDC staff also needed a complete index in order to perform their review. This detailed index as stated above was also needed for the PSC and City Council to review the record. It was not available.

With the testimony provided under 660-025-0130(4), the city also provided inappropriate commentary. The commentary that the city submitted with the DLCDC request is inconsistent with ORS 660-025-0130 and should be considered ex parte contact. The commentary from the city needs to be removed from the DLCDC review in the DLCDC Order 001892.

It also appears that the DLCDC Order needs to be signed by the DLCDC Director. The Order needs to be signed by the Director and the DLCDC Order 001892 needs to be sent out for again with another 21 days for the objectors to respond.

Issue #2 (Objection 5-6b)

[The Comprehensive Plan Map in Task 5 is inconsistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.](#)

The Multnomah Neighborhood Association put forward a proposal that is titled Truth in Zoning and the following will clarify the issue.

After the SW Plan blew up the City of Portland decided that they would no longer do community plans but instead would change the development code to achieve more infill. The minimum lot size in the zoning code was reduced for each base zone. For example an R5 lot the minimum lot size was reduced to 3000sqft. They allowed corner lots to be duplex lots and later made changes to allowed corner lots in R5 and R7 zones to be divided if the lot was over 50 x 100 for attached dwellings. This worked for a few years but now demolitions are at record levels, the character of neighborhoods are changing and what people value about Portland is now being destroyed. Over 150 requests have been submitted requesting the Truth in Zoning proposal be incorporated into the 2035 Comprehensive Plan it would remove the exception that allows for land divisions less than the base zone. With the adoption of the Comprehensive Plan the zoning code would then need to be amended to comply. If the language remains the size of lots in land divisions would be based on minimum lot size in the zoning code. The base zone lot size in the Comprehensive Plan would then be meaningless. The Comprehensive Plan is intended to be the governing document but with the proposed language the lot size would be governed by the zoning code

Re: Truth in Zoning

The specific language shown struck below needs be removed from the general description of land use designations on page GP10-3 the 2035 Comprehensive Plan. This would preserve neighborhood character and would reduce the number of demolitions. This would remove the exceptions that allow land divisions less than the base zone. A Comprehensive map amendment would then be required for a land division less than the base zone. The approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing. The map is impossible to produce if the base zones are not defined. The City of Portland has put forth implementing the Middle Housing Amendment Policy 5.6 (P45) by proposing changing the definition of the base zone of a 100,000 single family zoned properties to multifamily. This would increase the capacity of these 100,000 properties 300%. This excess capacity would be considered Market Factor which case law has not allowed. ORS 197.015 (5) defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning is inconsistent with the definition.

The remedy is that the exception struck below be removed from the 2035 Comprehensive Plan so that the base zone defined and mapped governs. The zoning code would be required to be changed so that the base defined in the comprehensive plan governs. If the city wants to allow corner lots to be divided the base zone should be changed or other land divisions less than size permitted in the base zone a zone change would be required. New Comprehensive Plan Map consistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

Land use designations - Amendment

The Comprehensive Plan is one of the Comprehensive Plan's implementation tools. The Map includes land use designations, which are used to carry out the Comprehensive Plan. The land use designation that best implements the plan is applied to each area of the city. This section contains descriptions of the land use designations. Each designation generally includes:

- Type of place or Pattern Area for which the designation is intended.
- General use and intensity expected within the area. ~~In some cases, the alternative development options allowed in single-dwelling residential zones (e.g. duplexes and attached houses on corner lots; accessory dwelling units) may allow additional residential units beyond the general density described below.~~
- Level of public services provided or planned.
- Level of constraint.

197.015 Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

DLCD Response 5.6b

OAR 660-025-0140(2) provides, among other things, that for an objection to be valid it must "clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated." See section IV.B. The objection cites the comprehensive plan map as the relevant section of the final decision at issue. The department's review of the map (Task 5 Record at 113) does not reveal any provision that allows varying of densities. The objection does not identify what portion of task 4 with which the task 5 submittal conflicts. The department finds that this objection fails to satisfy the minimum requirements of a valid objection and is therefore invalid.

Appeal 5.6b

The deficiency as stated above is as follows:

The Comprehensive Plan Map in Task 5 is inconsistent with the approved work order for Task 4 which requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

The Comprehensive Plan Map in Task 5 is also inconsistent with ORS 197.015 (5) that defines the comprehensive plan as coordinating land use with everything associated with it. Thus allowing an exception to base zones to be defined in the zoning is inconsistent with the definition.

The remedy is that the exception struck below be removed from the 2035 Comprehensive Plan so that the base zone defined and mapped governs. The zoning code would be required to be changed so that the base defined in the comprehensive plan governs. If the city wants to allow corner lots to be divided the base zone should be changed or other land divisions less than size permitted in the base zone a zone change would be required. New Comprehensive Plan Map consistent with the approved work order for Task 4 requires a product of a Land Use Map depicting a property-specific locations and intensity of housing.

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- Type of place or Pattern Area for which the designation is intended.
- General use and intensity expected within the area. ~~In some cases, the alternative development options allowed in single-dwelling residential zones (e.g. duplexes and attached houses on corner lots; accessory dwelling units) may allow additional residential units beyond the general density described below.~~
- Level of public services provided or planned.
- Level of constraint.

Issues #3 (Objection 5-6c)

In the recent EG Zones in Mass Shelter and Housing Zoning Code Update the city of Portland changed the zoning code title 33 to allow Mass Shelters in EG zones.

This is inconsistent with the below language in the adopted 2035 Comprehensive Plan and should not be allowed. The Comprehensive Plan is the governing document to implement the zoning code so this proposal should not have come to this stage in the process. The city of

Portland also is short on available land for employment and for this additional reason it should be denied.

Policy 10.19 Mixed Employment This designation encourages a wide variety of office, creative services, manufacturing, distribution, traded sector, and other light-industrial employment opportunities, typically in a low-rise, flex-space development pattern. Most employment uses are allowed but limited in impact by the small lot size and adjacency to residential neighborhoods. Retail uses are allowed but are limited in intensity so as to maintain adequate employment development opportunities. Residential uses are not allowed to reserve land for employment uses, to prevent conflicts with the other uses, and to limit the proximity of residents to truck traffic and other impacts. The corresponding zones are General Employment 1 (EG1) and General Employment 2 (EG2).

This is also inconsistent with the current Comprehensive Plan

The remedy is to amend the zoning code title 33 not to allow Mass Shelters in EG zones.

Department Response 5-6c

The department finds this objection invalid. The city's zoning code change to allow mass shelters in the EG zone was submitted as a Post Acknowledgement Plan Amendment (DLCD file no. 010-16). The city's decision was not part of periodic review.

Appeal 5-6c

The adopted work plan requires adopting regulations sufficient to carry out the amended Comprehensive Plan. Thus Title 33 needs to be amended as part of Task 5 not to allow mass shelters in EG zones.

Task 5 Products

Ordinance of City Council adopting regulations, projects and agreements sufficient to carry out the amended Comprehensive Plan

The remedy is to amend the zoning code title 33 not to allow Mass Shelters in EG zones.

Issue 4 (Objection 5-6d)

The city of Portland since the adoption of Task 5 has had a number of major implementation projects going on after the approval of Task 5. Thus the submittal of Task 5 is incomplete. Implementation done outside of a Task limits the citizen's ability to appeal. To file an objection to a Work Task is a relatively inexpensive and easy process compared to filing a LUBA APPEAL. This is inconsistent with provisions of Goal 1.

GOAL 1: CITIZEN INVOLVEMENT OAR 660-015-0000(1)3. Citizen Influence –

To provide the opportunity for citizens to be involved in all phases of the planning process

Here is a partial list of significant projects the city has been implementing after the adopting Task 5. The Residential Infill project as being implemented affects 100,000 properties. These projects affect large areas will significant impacts on the city and should have been included in Task 5.

DOZA- Design Overlay Amendments
Residential Infill Project
Portland Central City Plan
Better Housing by Design
2035 Comp Plan Reconciliation Project
Map Refinement Project

These implementation projects should have been included in Task 5 as required in the work plan. Thus the Task 5 submittal is incomplete.

[Task 5 Products](#)

[Ordinance of City Council adopting regulations, projects and agreements sufficient to carry out the amended Comprehensive Plan](#)

The remedy is to send these projects back to be included in Task 5 or amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan.

DLCD Response 5-6d

The department rejects this objection. The work program for task 5 states, “whatever policy decisions are made, they must be carried out by sufficiently robust implementation measures.” Further, the work program identifies “possible new implementation measures,” and lists those items. The product required is: “Ordinance of City Council adopting regulations, projects, and agreements sufficient to carry out the amended Comprehensive Plan.” Portland PR Tasks 4 and 5 Page 26 DLCD Order 001892 The objection does not establish a connection between the cited list of plan amendments and the plan updates carried out in periodic review. ORS 197 establishes the jurisdiction of the commission and the Land Use Board of Appeals (see ORS 197.644 and 197.825). Goal 1 does not provide the department or commission authority to usurp the Land Use Board of Appeals’ jurisdiction for the convenience of a potential appellant.

Appeal 5-6d

The City of Portland is adopting a new Comprehensive Plan. The projects listed are significant projects amending the Comprehensive Plan and changing the zoning code to comply with the new Comprehensive Plan. The Residential Infill Project is implementing Policy 5.6. The Draft of the Residential Infill project increases the capacity almost 170,000 housing units. This almost

doubles the capacity of the 2035 Comprehensive Plan. The city of Portland is shifting to implementation of the 2035 Comprehensive Plan at this link <https://www.portlandoregon.gov/BPS/article/661511> and transitioning to the new plan at this link <https://www.portlandoregon.gov/bps/72977> . Task 5 has fallen way short of adopting regulations sufficient to carry out the new comp plan as required by the work order. Thus the submittal of Task 5 is incomplete. Implementation done outside of a Task limits the citizen's ability to appeal. To file an objection to a Work Task is a relatively inexpensive and easy process compared to filing a LUBA APPEAL. This is inconsistent with provisions of Goal 1.

The remedy is to send these projects back to be included in Task 5 or amend the work plan and add Task 6 for these and other projects that are required to carry out the Comprehensive Plan.

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