

August 28, 2017

James F Peterson
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Oregon Department of Land Conservation and Development (DLCD)
Attention: Periodic Review Specialist
635 Capitol Street NE, Suite 150
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Susan Anderson, Director
Portland Bureau of Planning and Sustainability
1900 SW 4th Avenue, Suite 7100
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Re: Objections to Task 5 (Ordinance 188177)

The Multnomah Neighborhood Association (MNA) is filing the following objections to Task 5 of the City of Portland (Portland; the City) 2035 Comprehensive Plan (Ordinance 188177).

James F Peterson submitted testimony on behalf of the MNA on Oct. 13, 2016 (Testimony #21723). In addition, other members of the MNA have submitted hundreds of pages of testimony on these objection topics.

Objection #1-Detailed index required, but not provided:

OAR 660-025-0130 (see excerpt below) requires that the City provide the public with a detailed index to the submitted testimony. The City's index for Task 5 only provides the name of the submitter/testifier and this level of detail is inadequate. In reviewing the testimony, it appears that some of the testimony is incorrectly attributed to unrelated Tasks. Also, although some testimony was submitted by individuals on behalf of organizations or groups, these groups and organizations are not identified in the index. This omission is of serious concern, since people with financial interests in the decision outcomes are not clearly identified.

OAR 660-025-0130 Excerpt

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;

In the present format, the public must actually read the testimony to determine how or if it applies to their concerns. This is extremely time-consuming and presents an undue burden on a member of the public who wishes to participate in the comprehensive planning process.

In addition, it is unclear whether the Planning and Sustainability Commission (PSC), the City Council, and the City planners (the Staff) themselves reviewed all of the submitted testimony that was relevant to any topic under review. This concern, that the Staff did not adequately review public testimony, is supported by the fact that the Staff reports and Staff findings do not reference relevant public testimony. If they had reviewed all of the public testimony, they should have cataloged it during their review.

It is noteworthy that the MNA requested technical assistance from Susan Anderson and Mayor Wheeler, under provisions of Goal 1, to find all the public testimony relevant to the Middle Housing Amendment for Task 4. This request went unanswered. Using the current index, it would be impossible for the MNA or any other interested party to find testimony submitted on the topic of interest. This is a violation of OAR 660-025-0130.

This is not a new issue. The DLCDC staff made requests to the City to find testimony and records to rule on the merits of a Task 3 objection submitted by James F Peterson. At that time, the City forwarded a link to DLCDC staff that provided an inadequate search capability for locating relevant testimony by topic from the public record. Unfortunately, the City's search capabilities did not locate all of the relevant testimony on the Middle Housing Amendment that the MNA submitted and that formed the basis for the MNA's object to that amendment. This is inconsistent with provisions of Goal 1 of OAR 660-015-0000(1) (Goal 1) that requires that citizens have a role in all phases of the planning process. Without a sufficiently detailed index to the public record, the public and the DLCDC cannot adequately review the merits of any objection.

The DLCDC will have the same problem in their review of Portland's Task 5 submittal. The DLCDC needs to send the Task 5 work product back to the City for a detailed indexing of the public record, and the City's staff reports and findings need to reference that index. Then the public, the PSC, and the City Council need time to review the record and to hold hearings on Task 5 before it is re-submitted to the DLCDC.

Objection #4- Property-specific intensity of housing missing from Task 5 Comprehensive Plan Map and this is inconsistent with Task 4 Work Order

The current Comprehensive Plan Map in Task 5 allows density to differ from the base zone densities defined in the Comprehensive Plan. This is inconsistent with the approved work order for Task 4 which requires a product of a Land Use Map depicting property-specific locations and intensity of housing.

The city is allowing the base zones to be defined in the zoning code. 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 code is inconsistent with ORS 197.015 (5).

(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.

The remedy is that any exceptions that allows density to differ from the base zone densities defined in the 2035 Comprehensive Plan be removed so that the map depicts property-specific locations and intensity of housing.

Objection #3-Mass Shelters and Housing in EG Zones

In the recent Mass Shelters and Zoning Code Update, the City changed the zoning code in 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 City 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.

Objection #4-Task 5 Implementation Measures Incomplete

Since the City adopted Task 5, they have undertaken a number of major implementation projects that should have been included in Task 5. Project implementation done outside of a work plan limits the citizen’s ability to appeal. Filing an objection to a task of a work plan is a relatively inexpensive and easy process compared to filing a LUBA appeal that would be required to object to an implementation measure outside of a work plan. This severely limits the citizen’s right to appeal and 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 adopting Task 5. Note that the Residential Infill project as being implemented affects 100,000 properties. The following projects will affect large areas and will have significant impacts on the City; they 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.

Respectfully submitted,

James F Peterson
Multnomah
Land Use Co-Chair

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