

## Appeal to the Land Conservation and Development Commission of Middle Housing Policy 5.6 in the Portland Comprehensive Plan Update

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Filed: December 26, 2017

This is an appeal to the Land Conservation and Development Commission (LCDC) under OAR 660-025-0150(6) of the Department of Land Conservation and Development's (DLCD) formal review and rejection of all the objection issues we submitted on Tasks 4 and 5 of Portland's Periodic Review. This Appeal is made on behalf of the Multnomah Neighborhood Association.

This Appeal is the first of three separate appeals to the LCDC.

- **Part 1: Appeal of Middle Housing Policy 5.6 (Task 4)**
- Part 2: Appeal of the Designation of the Multnomah Neighborhood as a "Neighborhood Center" (Task 4)
- Part 3: Appeal of the Adoption of CM2 Zoning in Multnomah Village (Task 5)

The original Objection has already been determined to be valid, as required by OAR 660-025-0150(6)(a). The standing of the appellant, the Multnomah Neighborhood Association, has already been established per OAR 660-025-0150(6)(d)(A) in each of the original objections under the heading "Party of Record," and therefore is not repeated here. The DLCD has rejected all the valid objections that were filed with the Department.

In addition to restating some of the original Objections, we are including with each issue the specific rules that have been violated so that it is clear what

governs the decision. Key sections of the DLCD decision are quoted and responded to. The DLCD has created specific sub-objection issues in their December 5, 2017 approval letter for the related Objection. While we attempted to match these topics in our appeal, we found that they were not suitable for this appeal because they were both overly broad and limiting of the issues raised. The appeal issues are presented based on the Objection number (Part #) and sub-issue letter (alphabetical).

## **Part 1: Appeal of Middle Housing Policy 5.6**

Our objection is to both to the process leading to, and final end result of, the Middle Housing Policy 5.6. Based on a review of the record for Periodic Review of the Comprehensive Plan, the City of Portland's Bureau of Planning and Sustainability (BPS) has failed to adequately inform Portland residents about the nature, magnitude, and consequences of its efforts to conduct an overhaul and up-designation of City's residentially-zoned single-family homes to allow infill beyond any actual identified housing need. The BPS has also failed to provide complete, objective, and balanced public information about their proposal. Such information is necessary for the public to understand the nature, scope, implications, and potential consequences of the proposal. The BPS generated information earlier in the process indicating that upzoning of single-family residential would not be under consideration, further confounding the public.

This Appeal is divided into four specific appeal issues, as follows:

- Appeal Issue 1.A. Lack of Adequate Information to Inform Citizens
- Appeal Issue 1.B. Lack of Need and Factual Basis for Policy
- Appeal Issue 1.C. Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner
- Appeal Issue 1.D. Lack of Adequate Response to Public Input

### **Appeal Issue 1.A. Lack of Adequate Information to Inform Citizens**

*Middle Housing* started as a vague, generalized concept that was first introduced to the Comprehensive Planning process in a February 2, 2016 memo to Mayor Hales from Principal BPS Planner Eric Engstrom titled "Middle housing options."<sup>1</sup> It is noteworthy that, at the time this memo was issued, the Periodic Review for

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<sup>1</sup> See <http://www.portlandoregon.gov/bps/article/563074>

the Comprehensive Plan had already been ongoing for more than six years since the Work Plan was approved by LCDC on September 30, 2009, and no prior official mention of a “middle housing” policy proposal had been made.

The DLCD states (page 11) that an earlier reference to the topic of “middle housing” was made in a City Council Work Session on October 8, 2015. Upon review of the Record, there is a brief mention of the middle housing concept at this Work Session. The “missing middle” housing jargon has been around since at least 2010. The mere mention of this topic in no way affects the facts of our Objection or this Appeal. No policy was proposed at this Work Session and no public reports or documents were issued indicating that a middle housing policy was under consideration. Therefore, there was nothing for the public to react or respond to.

The same October 8, 2015 staff report cited by the DLCD (Record at page 11914) states that:

*Although little change is expected to the character of Portland’s predominantly single family residential neighborhoods (they will remain single family residential neighborhoods), single family homes are expected to make up a smaller share (47 percent by 2035) of the housing mix in coming years.*

This offers a clear statement by BSC staff that upzoning of single-family neighborhoods is not under consideration in the Comprehensive Plan Update.

The other portion of this October 8, 2015 staff report cited by the DLCD states in its entirety (Record at 11916):

2. Middle housing. Some types of housing are particularly challenging to produce affordably – particularly large lot single family and high rise buildings.
  - a. Market rate development will not adequately provide for affordable housing and will leave low-income groups with fewer choices.
  - b. “Middle housing”, such as duplexes, attached housing, ADU’s, or small lot single family homes are inherently cheaper to build, but may end up [being] expensive due to the overall scarcity of housing.
  - c. There could also be a lack of options for middle income households as the price for traditional SFR houses is bid up, and there are not enough “middle housing” alternatives to pick up the slack. [Refer to the middle housing forms on the pie chart, and the lack of growth relative to the other forms].

Since the above material is quoted in its entirety, it is important to note that the last line of the citation refers to a pie chart that, in fact, shows middle housing types will increase faster than other types of housing (Record, page 11915). For example, attached SFR will more than double from 6,000 to 14,000 units over the planning period.

This material offers no suggestion that a middle housing policy is under consideration. It also provides no factual basis or evidence to support such a policy. In fact, this staff report clearly shows that the City has more than double the capacity necessary to support growth throughout the planning period of 2010-2035 (see Residential Development Capacity, Record at 11,913).

The February 2, 2016 Engstrom memo referred to earlier, reflects the first mention of middle housing as a consideration in the Comprehensive Plan Update. However, there is still no mention of possible policies. The memo states:

***What is middle housing?***

*For purposes of this memo, "middle housing" is defined as multi-unit or clustered housing types that are compatible in scale with single-family homes. Middle housing has more and usually smaller units than typical detached single-family development. Examples include row houses, townhouses, and plexes (duplexes, triplexes, four-plexes), or small garden apartments. ADUs and clusters of small cottages also could be considered middle housing.*

Based on this introduction to the topic, *middle housing* could include virtually any size or type of residential development on, or adjacent to, established single-family homes, as long as it is "compatible in scale." The term "scale" appears only to refer to building size and/or bulk, and does not address an array of other compatibility issues that should be addressed in a proper planning process.

It is important to note that the February 2, 2016 memo does not provide a balanced discussion of the topic, and instead provides only alleged benefits, which are asserted without the support of any factual evidence or basis, as required by Statewide Planning Goal 2. While the memo speculates on the potential benefits, it does not mention a single potential disadvantage or drawback.

The memo refers to "study areas evaluated by staff." A map of study areas by BPS dated January 26, 2016 does not show any study areas in Southwest Portland. One of the un-mapped options described in the preceding text associated with

the map included under "E. More flexibility in R5 – Residential Infill Project" states: "*Potential Study Areas: All R5 zones, or R5 zones near centers.*" This is an extremely broad, vague, and non-specific proposal.

No map or other information was provide to show which homes or how much of the City would be included under this option "E." There was no information about how many homes and properties would be affected. There was no analysis of the potential impact of the option on existing neighborhoods, housing affordability, or infrastructure needs, such as parkland, schools, roads, sewers, etcetera, as required by Statewide Planning Goal 2.

Therefore, as recently as February 2, 2016, an astute and highly-informed resident of the City of Portland would have no idea that their single-family home in a well-established and developed neighborhood was proposed for up-designation and eventual rezoning.

On March 18, 2016, the BPS introduced a large group of proposed Comprehensive Plan amendments that included 109 policy amendments and new policies along with many other amendments in a 112-page document.<sup>2</sup> On page 22 of this document, a major new policy was introduced. Initially referred to as "Amendment #P45," this became the new *Middle Housing Policy*, Policy 5.6. With little public outreach and awareness, this policy became the vehicle for an unprecedented, large-scale, up-designation of single-family homes around the City.

The DLCD states (page 11) that:

*The record indicates that city staff issued a report on this matter, with notification to neighborhood associations, on March 18, 2016. Task 4 Record at 11551.*

A review of the Record indicates that the "report" cited by the Department is actually the same as this list of amendments. The middle housing policy proposal is "buried" among 109 other amendments. The one-paragraph description included on page 22 with the new policy amendment surely does not constitute a "report" by staff.

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<sup>2</sup> Amendment P45 appeared on page 22 of 112 pages of the *2035 Comprehensive Plan Draft City Council Amendments*, March 18, 2016 (minor corrections through 3/29/16), by Bureau of Planning and Sustainability.

When this new policy amendment was introduced and under public consideration, there was no information available to the public about how many homes would be potentially affected and up-designated by amendment P45 (Policy 5.6). However, the figure now appears to be approximately 87,000 single-family properties, reflecting 58% of all single-family lots in the City of Portland (the City).<sup>3</sup>

The DLCDC states in their response (page 12) that:

*The city has provided findings and conclusions based on substantial evidence regarding reasons the city adopted Policy 5.6.*

However, no “substantial evidence” is cited by the Department. Instead, the Department cites and fully quotes from the Findings (DLCDC, pages 12-13) the same general list of conjecture and anecdotal information offered by the City in the Engstrom memo of February 2, 2016 claiming that middle housing will be less expensive, promote home ownership, offer access to complete communities, and offer housing choice. No evidence is offered that housing will be less expensive. In fact middle housing will likely be more expensive on a square-foot basis than the existing housing it replaces. No evidence is offered by the City for increased home ownership from middle housing. In fact middle housing units are most likely to be rental units. There is no evidence provided by the City that there is large-scale, pent-up demand for middle housing that is unmet. In fact, the largest unmet demand will be for single-family homes and for low-income housing. Neither of these will be addressed by middle housing.

In conclusion, the City offered no data, analysis, study, or technical report to provide evidence or a factual basis for this middle housing policy proposal. The staff memo provides only generalized and anecdotal statements about the possible benefits of middle housing.

Goal 1: Citizen Involvement, states:

**The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.**

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<sup>3</sup> Source: *Residential Infill Project, An Update to Portland's Single-dwelling Zoning Rules*, Discussion Draft, October 2017, page 42.

In conflict with Goal 1, there was no specific public involvement program for the Middle Housing Policy, in spite of the fact that this policy is the basis for one of the largest planning efforts in Portland's recent history, the Residential Infill Project. Also in conflict with Goal 1, the citizen involvement program did not provide the information necessary to enable citizens to "identify and comprehend the issues," as has been documented above.

The adopted Community Involvement Work Program, under "Guiding Principles" states:

**The Portland Bureau of Planning and Sustainability will provide effective tools and information in order to make effective public participation possible.**

**Information needed to make decisions will be presented in a simplified and understandable form. Assistance will be provided to interpret and effectively use technical information. Copies of technical information will be available on the Internet, at public libraries, at neighborhood coalition offices and at other locations open to the public. Translations of key documents will be available.**

**Decisions will be open, transparent and accessible. Reports containing the facts and reasons necessary to make particular decisions will be available at least twenty-one days before any Planning and Sustainability Commission or City Council hearing, and these reports will be retained for the life of the plan. All hearings venues will be accessible.**

Contrary to the Community Involvement Work Program, the City did not provide "effective tools and information" on the middle housing policy, and did not provide information in an "understandable form." The City did not provide "copies of technical information" on middle housing in any format. The City did not provide "reports containing the facts and reasons necessary to make particular decisions," as required. Therefore, the City is in clear violation of the Community Involvement Work Program.

The adopted Community Involvement Work Plan, under "Purpose" states:

**The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals**

**and organizations to effectively influence Comprehensive Plan updates.**

According to this statement, there are supposed to be “meaningful opportunities” for citizens to “effectively influence” the Comprehensive Plan update. In the case of the Middle Housing Policy, the policy was first introduced on March 18, 2016 (along with 109 policy amendments). It was adopted along with the Comprehensive Plan by the City Council on June 15, 2016, 89 days after introduction. In between, the City held a public hearing on April 14<sup>th</sup>, and continued the hearing on April 20<sup>th</sup>. These hearings started just 27 days after release of the list of amendments and represented the first and only opportunity for the public to comment on the entire list of amendments and a revised Economic Opportunity Analysis. The short 27-day period is inadequate to meet the purpose of “community involvement” and fails to provide “meaningful opportunities for individuals and organizations to effectively influence the Comprehensive Plan updates,” as required by the Community Involvement Work Program.

Goal 2 states:

**Sufficient time should be allotted for:  
(3) incorporation of citizen needs and desires and development of broad citizen support.**

The time allotted for citizen involvement was inadequate under Goal 2 and there was no “incorporation of citizen needs and desires” and no “development of broad citizen support” for the Middle Housing Policy.

Goal 2 also states:

**1. Factual Basis for the Plan  
Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.**

The City failed to provide a factual basis for the Middle Housing Policy, as required by Goal 2, making it impossible for citizens to understand the issue. The lack of “inventories and other forms of data” supporting the Middle Housing Policy is addressed further under **Appeal Issues 1.B** and **1.C**.

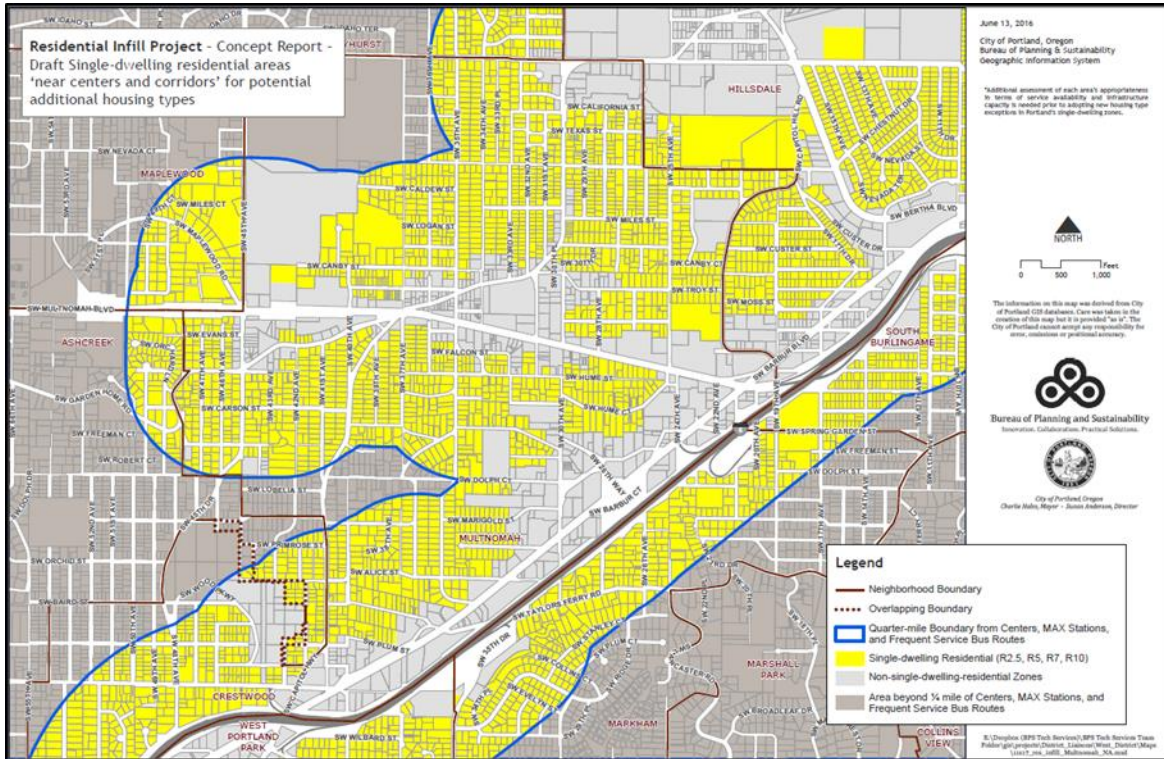
In the case of the Middle Housing Policy proposal, mapping is an essential element of the reporting and public information necessary to understand the



policy implications. The Multnomah Neighborhood Association (MNA) requested and received the only publicly-available map showing the properties affected in this one neighborhood. The map is provided in Figure 1, below. The map is dated June 13, 2016, just two days before the City Council adopted the Comprehensive Plan on June 15, 2016. It shows that most of the single-family homes in and around the MNA will be affected by this policy, if it is implemented. This map was provided far too late to be of use to citizens in the Periodic Review process.

Additional maps for the remainder of the City were not produced until June 30, 2016, fifteen days after adoption of the Plan on June 15, 2016. These additional maps show a vast area of the City would be upzoned under the Middle Housing Policy and designated as "Housing Opportunity Areas" in the Residential Infill Project (see maps under heading: *Draft Proposal Conceptual Centers and Corridors Maps* about half way down the page at <http://www.portlandoregon.gov/bps/67730>).

**Figure 1: Map provided to the MNA by BPS dated June 13, 2016**



Without these maps it is virtually impossible for the public to understand the extent and full impact of the Middle Housing Policy. This is because the effect of the Middle Housing Policy is combined with other policies and plan materials defining centers, corridors, boundaries, and distances therefrom. Given the magnitude of the impact of the Middle Housing Policy, which we now know will affect a majority of all single-family properties in Portland, a far greater amount of public information should have been provided, and considerably more effort and time should have been allocated by the City to inform and engage the public.

Goal 1 states:

**D. TECHNICAL INFORMATION**

**2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those **maps** and photos necessary for effective planning.**

In this case, mapping was clearly necessary for “effective planning,” and therefore the lack of mapping is a violation of Goal 1.

Goal 1 states:

**The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.**

The failure to provide this mapping is a clear violation of the Goal 1 requirements to provide "information that enables citizens to identify and comprehend the issues."

Goal 2 states:

**The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.**

And Goal 2 also states:

**Techniques to carry out the goals and plans should be considered during the preparation of the plan.**

The failure to provide mapping is a violation of Goal 2, requiring the consideration of implementation measures during all phases of the planning process.

For reference, the middle housing policy is provided below from the adopted June 2016 2035 Comprehensive Plan, page GP5-6:

**Policy 5.6 Middle housing.** Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.

As a late addition to the Comprehensive Plan policies, Policy 5.6 goes far beyond merely creating a new land use designation in the Comp Plan for middle housing.

It states that middle housing development should be enabled and encouraged, and that zoning is to be applied "where appropriate" to centers, corridors with frequent service transit, high capacity transit stations, and etcetera. Because the policy goes far beyond creating a land use designation, and into the actual implementation of the proposed designation, far more information and public involvement is required by Goal 1.

Goal 1 states:

**The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.**

Instead, the public was forced to evaluate the policy proposal in a very brief period without the benefit of essential information about the policy. The BPS initially issued the proposed 2035 Comprehensive Plan Draft City Council Amendments on March 18, 2016, which included the new amendment #P45 Middle Housing Policy. The Amendments were revised several times through March 29<sup>th</sup>. The City Council then held the first public hearing on the topic on April 14, 2016. There was no hearing before the PSC. This is a 27-day period from initial issue of the Amendments to the public hearing before the Council, and is far from adequate to allow meaningful public involvement.

Twenty-seven days is a very short time for public consideration of a complex topic such as the Middle Housing Policy proposal. In fact, it is so short that it precludes participation by many neighborhood associations. Neighborhood associations typically meet on a monthly basis, and any notice less than 30 days makes it extremely difficult, if not impossible, for the neighborhoods to inform residents, hold a meeting, take a representative position, and formulate comments. Neighborhood associations are operated by volunteers in a public service capacity. It seems extraordinarily inappropriate for the City to preclude their involvement in any major aspect of the Comprehensive Plan development.

Individual property owner notification is required under the adopted Community Involvement Work Program, which states:

**The approved concept plan will be used as the basis for the final plan, which will include a "physical plan" component. The "physical plan" will be the more detailed basis for revision or replacement of the**

**comprehensive plan map. Since this map serves as the basis for land use regulations, the presentation of the draft "physical plan" may require individual notice to property owners whose development opportunities would be affected by the proposed plan.**

No individual notice to property owners was given by the City to inform them that their property could be effectively rezoned under the Middle Housing Policy, which would certainly affect their "development opportunities."

City Code states:<sup>4</sup>

**Notice of pending policy decisions affecting neighborhood livability shall be given to the Neighborhood Association(s) affected at least 30 days prior to final action on the decision by a City agency.**

Surely the long list of 109 Comprehensive Plan amendments issued by the BPS on March 18, 2016 does not constitute a suitable notice of a decision affecting neighborhood livability.

## **Appeal Issue 1.B. Lack of Need and Factual Basis for Policy**

There is a lack of any factual evidence or basis for a middle housing policy developed in prior work tasks. No support for a middle housing policy can be found in the fundamental documents upon which the Comprehensive Plan is based, including the Housing Needs Analysis, the Growth Scenarios Report, and the Periodic Review Work Program. This constitutes a violation of Goal 2, which states:

### **PART I -- PLANNING**

**To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

The official basis for establishing adequate housing capacity for projected population growth is the City's Housing Needs Analysis. According to this analysis, there is no need for additional residential housing capacity through increased density or "up-designations." This analysis found that there is more than adequate existing capacity under current zoning through the 2035 planning

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<sup>4</sup> City of Portland Code and Charter, 3.96.050 Responsibility of City Agencies, Subsection C.

period. It states:<sup>5</sup>

- *Currently zoned land "capacity" in Portland is sufficient to meet housing demands - that is, enough land in Portland is currently zoned so as to be available to house the projected numbers of new households citywide and in each particular subarea. Capacity is determined not only by current zoning but also by expected redevelopment levels (vacant land plus redevelopment of existing built sites). (For further explanation of the methods for determining available land, please refer to the appendix to this report.)*
- *Land capacity for new Portland housing units is projected to range up to 189,100 units by 2035 (at the upper level of capacity, according to the calculations used by Metro), down to at least 141,191 units (the City of Portland model, with its somewhat more restrictive definitions of land development "capacity"). These figures are well above the projected need by 2035 for 105,000 to 136,000 new units, as noted above.*

According to an April 6, 2015 BPS Memo to the Planning and Sustainability Commission, on the subject of "Residential Densities: Up-Designations," under the heading of "Residential housing capacity," it states in regard to citywide capacity:

*"The vacant and underutilized land within these residentially designated areas have a combined development capacity that is double the expected growth, after considering constraints." [page 3]*

As recently as the February 2, 2016 "middle housing memo" to Mayor Hales (referenced earlier), Principal BPS Planner Eric Engstrom states:

*"The recommended Comprehensive Plan provides enough zoned capacity to meet expected housing needs over the next 20 years."*

In addition to there being no identified need for additional housing capacity, there is no identified need for "middle housing," or a different mix of housing than that which is already allowed by the draft Comprehensive Plan. According to the April 6, 2015 BPS memo on residential housing capacity:

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<sup>5</sup> See Key Findings, page 4 of *Household Demand and Supply Projections*, Planning and Sustainability Commission, July 12, 2011, available at the City's Housing Needs Analysis web page: <https://www.portlandoregon.gov/bps/59298>.

*The allowed mix of housing in the residential zones has also been examined relative to expected incomes. In general, the diversity of the housing type production should be sufficient to produce enough housing units to meet the future demand across a variety of income levels, except for the low income groups, which will have fewer choices from new development. [page 3]*

The City failed to provide factual evidence or documentation that the designation of *middle housing* was necessary to meet identified housing needs, or that low-income housing needs would be served by the policy. In fact the Middle Housing Policy, as implemented through the Residential Infill Project, may reduce the supply of affordable housing by incentivizing redevelopment of smaller, affordable, older homes with multiple, new, market-rate units, as shown in testimony provided to the City by Loren Lutzenhiser, Professor Emeritus of Urban Studies & Planning, in the form of a research paper.<sup>6</sup>

The City hired Johnson Economics to examine a very limited range of economic issues related to middle housing.<sup>7</sup> This study found that middle housing, as implemented through the Residential Infill Project, would have the effect of reducing the number of residential dwelling units developed in Portland. The policy would have the effect of reducing housing supply by almost 6,000 units over the 20-year study period. Under the scenarios modeled, the new middle housing would certainly not be low-income and would not be affordable to those who need it.

Note that the City has stated that the two reports cited above are not included in the official Task 4 Record. None-the-less, they represent empirical evidence in the City's domain that contrasts directly with the anecdotal information on middle housing presented to the public by the City.

The City's key Growth Scenarios Report of July 2015 contains no mention of "middle housing." The BPS has tried to point to pages 52 and 53 of this report to help justify their middle housing agenda.<sup>8</sup> However, these pages point to a need

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<sup>6</sup> See the analysis of the impacts of the Residential Infill Project reported in "Testimony to the Portland City Council Public Hearing on Residential Infill Project Concept Report," Nov. 16, 2016, by Loren Lutzenhiser, Professor Emeritus of Urban Studies & Planning, Portland State University.

<sup>7</sup> "Economic Analysis of Proposed Changes to the Single Dwelling Zone Development Standard," by Jerry Johnson, Johnson Economics LLC, for Bureau of Planning and Sustainability, October 17, 2016.

<sup>8</sup> See for example BPS website page associated with the introduction of the amendments including #P45 at <https://www.portlandoregon.gov/bps/article/569930>.

for low-income housing, which is not addressed by the Middle Housing Policy.

On page 53 of the Growth Scenarios Report, it states:

*Ideally these reductions in the supply of affordable single family and low-cost multifamily options would be offset by increasing the amount of land available for this kind of development in more opportunity-rich locations. For example, adding more R2.5 or R2 zoning near neighborhood centers could increase the supply of small lot single family homes, duplexes, townhomes, and low density multifamily development types. This should be a consideration as refinement plans are developed for centers and corridors.*

This mere example of upzoning to R2.5 and R2 is not the same as what is proposed with the far-reaching Middle Housing Policy, and it is important to note that the report states "This should be a consideration as refinement plans are developed for centers and corridors." The refinement plan process would indeed be a reasonable place to carefully consider sensitive rezoning and density changes to established neighborhoods. However, the City has instead proceeded to a wholesale citywide rezoning without refinement planning. It is clear that the Growth Scenarios Report is not authorizing, justifying, nor recommending the kind of wholesale rezoning that the Middle Housing Policy would enable.

Therefore, it is clear that the Middle Housing Policy is not necessary to meet the identified, projected housing needs or growth scenarios over the planning period. The policy is not founded on objective, factual evidence developed during the Periodic Review planning process. Not only did the City fail to develop a factual basis for adopting a Middle Housing Policy, it failed to acknowledge evidence indicating that such a policy was not needed, would not produce affordable housing, and would result in less housing production in general.

Thus, the policy adoption process was a failure to plan in a comprehensive manner based on actual evidence and factual findings, as required by Goal 2, which states:

**1. Factual Basis for the Plan  
Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan.**

The Periodic Review Work Program forms the basis for the Comprehensive Plan Update. As of its most recent update on April 13, 2015, the Work Program Does



not mention anything about the up-designations of residential zones or “middle housing.”

Under Task #4: Policy Choices, the Work Program makes no mention of designating centers and corridors, nor of the possibility of up-designating or up-zoning the residential areas in and near these centers and corridors. Instead, the Work Program Task #4 states:

*Subtask C – The Housing Element*

*1. The City will adopt long-term policies and shorter-term strategies for meeting identified housing needs.*

However, the actual identified housing needs were already met in the draft Comprehensive Plan without the need for the designation of centers, corridors, or middle housing. Therefore, this policy can be viewed as an unplanned and unneeded policy amendment that was not consistent with the Work Program and was not based on evidence gathered in the prior work tasks.

Under Task #5: Implementation, the Work Program lists:

*Possible new implementation measures might include:*

*3. Adjustments to minimum residential density requirements, or application of minimum density requirements to mixed use development or residential development in non-residential zones,*

No mention is made in the Work Program of the possibility of increasing density or up-designation of residential zones. There is no indication in the Work Plan that large swaths of single-family homes across the City would be rezoned to double or triple the currently-allowed density, as is now being proposed under the Middle Housing Policy.

Just before the Work Plan was amended for the last time, an April 6, 2015 BPS Memo to the Planning and Sustainability Commission, titled “Residential Densities: Up-Designations, April 14, 2015 Work Session,” indicated that there were no plans for wide-scale up-designating of residential lands. In fact the memo states:

***Why weren’t additional up-designations considered?***

*There are additional locations in the city where selective up-designations would expand opportunities for new housing, where owners and renters*

*could take advantage of proximity to the Central City and/or centers or corridors and the availability of transit, services, and amenities. Rather than address these opportunities through the citywide Comprehensive Plan update process, staff recommends that residential densities are considered through area-specific planning projects with localized and inclusive community engagement. Through these projects, we should also consider the potential for tenant displacement as a result of up-designations and/or up-zonings, and apply approaches to ensure that permanently affordable housing is available to low- and moderate-income Portlanders. [page 4]*

The Middle Housing Policy 5.6 is therefore not consistent with the Periodic Review Work Program and the supporting materials developed under prior Work Tasks. The Policy is therefore in violation of OAR 660-025-0080, which states:

**(3) A local government proposing to change an acknowledged comprehensive plan or a land use regulation under a work task must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing, as provided in ORS 197.610 and OAR 660-018-0020.**

We are not aware of any notice of a proposed change regarding middle housing policy provided to the Department 35 days in advance of the first public hearing, which occurred on April 14, 2016.

### **Appeal Issue 1.C. Lack of Plan Consistency and Failure to Plan in a Comprehensive Manner**

While the creation of a “middle housing” land use designation may be a legitimate policy in the Comprehensive Plan, the use of the policy to also direct and implement up-designation and rezoning of single-family homes across the city goes beyond the reasonable, necessary, and appropriate role and function of a single new policy amendment and creates conflicts with other policies.

The impact of the late addition of the Middle Housing Policy is greatly amplified and compounded by other policies included in the new Comprehensive Plan, including *Policy 5.5 Housing in centers* and *Policy 3.15 Housing in centers*. This issue of the compounded effect of multiple separate policies is described in our separate formal objection filed with the DLCD regarding the designation of Multnomah Village as a “center,” and is incorporated by reference herein as an

integral part of this appeal.

Policy 5.6 (Middle Housing) is inconsistent with Policy 5.5 (Housing in Centers) with regard to “family-friendly housing.” Policy 5.5 from the 2035 Comprehensive Plan, page GP5-6, reads:

**Policy 5.5 Housing in centers.** Apply zoning in and around centers that allows for and supports a diversity of housing that can accommodate a broad range of households, including multi-dwelling and family-friendly housing options.

The Middle Housing Policy, as it is currently being interpreted in the Residential Infill Project (RIP), is intended to produce multiple smaller units to replace existing single-family homes.<sup>9</sup> These smaller units would be in the form of duplexes, triplexes, cottage clusters, and accessory dwelling units (ADUs). Most of these units will be in the form of studios, one-bedroom, and two-bedroom rental units, which are not conducive to larger families, and therefore cannot be considered consistent with the family-friendly housing required in Policy 5.5. The City did not address how the housing needs of families with children would be met under the Middle Housing Policy.

The DLCDD states that the term “family-friendly” is not defined in the Comprehensive Plan, and therefore could have many possible meanings (DLCDD, page 14). However, this is not a meaningless term and is used in the policy statement for a reason. “Family-friendly housing” implies housing that can accommodate families with children. Families with two or more children typically require housing with three or more bedrooms. These families will not be served by middle housing. Regardless of the definition of “family-friendly,” the City cannot simply ignore the needs of families with children in its Comprehensive Plan housing policy.

In fact, one of the false claims made by middle housing advocates is that households with children will decline rapidly in the future, and therefore middle housing policies need not consider such households. However, the City’s own Housing Needs Analysis projects that families with children will decline only slightly over a 30-year period from 2005 to 2035 from 28 percent of households

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<sup>9</sup> See “Recommendation 4: Allow more housing types in select areas and limit their scale to the size of house allowed” on page 15 of Residential Infill Project: Concept Report to City Council, October 2016, by Bureau of Planning and Sustainability.

to 25 percent.<sup>10</sup> This hardly constitutes a remarkable transition that requires radical zoning changes. The Middle Housing Policy also seems to ignore the fact that families with children tend to have a higher poverty rate and greater need for affordable housing.

The Middle Housing Policy also represents a significant deviation from the Work Program Tasks as approved by DLCD in the original Period Review Work Program Approval Order 001773, issued on September 30, 2009. Under Task #4, Subtask C: Housing Element, the approved Work Program states:

**Adopt long-term policies and shorter-term strategies for meeting identified housing needs. Consider alternative housing conservation policies, particularly policies aimed at preserving the existing stock of affordable housing. Identify sufficient vacant, partially developed, and re-developable land will be identified to meet expected employment needs.**

While the Work Program was amended several times (most recently on 4/13/2015), the essential wording and intent of this subtask remained unchanged. Housing needs are officially identified through requirements for a "housing needs analysis," as specified in ORS 197.296(3)(b).

The creation of a new Middle Housing Policy, which includes an implementation component, represents a departure from "meeting identified housing needs." As has already been demonstrated in this Appeal, no factual basis was established under Task #3 for a need for middle housing. The Middle Housing Policy also fails to "preserve the existing stock of affordable housing," as the policy is intended to induce redevelopment of existing, modest and affordable single-family homes with new multiple dwelling units.

These failures to comply with the Work Program also undermine the public involvement process. Citizens cannot properly identify what the City is actually working on during Periodic Review, nor can they understand the evidence, factual basis, and rationale for City actions, such as the last-minute addition of the middle housing policy amendment.

The up-zoning that would result from the Middle Housing Policy creates the

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<sup>10</sup> See *Household Demand and Supply Projections Background Report* (one of five reports constituting the City's Housing Needs Analysis) page 7.

potential for a vast increase in the number of allowable dwelling units in the City, which would not be consistent with any number of other Comprehensive Plan goals and policies, the Transportation System Plan, and other infrastructure planning, and therefore compromises other elements of the Plan.

Goal 2 requirements for comprehensive planning are defined in *ORS Chapter 197 — Comprehensive Land Use Planning*, where it states:

**197.015(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 last-minute nature of the Middle Housing Policy resulted in a failure to conduct comprehensive planning. The City has still not produced an estimate of the number of additional housing units the policy would allow. Rather than address facilities and infrastructure needs associated with the policy, the City claims that they have located middle housing where adequate infrastructure already exists. However, since they are effectively rezoning 58% of the single-family lots in Portland, how is it possible to make such a claim? Of course these new middle housing units will require new parks, schools, roads and other facilities which the City has failed to plan for in a comprehensive manner, as required by Goal 2.

Therefore, the last-minute introduction of Policy 5.6 with an inadequate factual basis has violated the City’s own Work Program and failed to maintain Plan consistency, coordination, and comprehensive planning, as required by Goal 2.

## Appeal Issue 1.D. Lack of Adequate Response to Public Input

The DLCDC indicates in their response to our objection, that the City based the introduction of the Middle Housing Policy in part on the input from citizens requesting such a policy.

DLCDC, page 11:

*However, a summary discussion presented to the Portland City Council at the February 2, 2016 work session where this memo was introduced states that the middle housing memo and presentation of policy options was written "in response to interest from several council offices, and recent hearing testimony."*

Our review of the Record Index for the middle housing topic provided by the City indicates that only four individuals commented on this topic before it was officially introduced in a list of amendments on February 2, 2016. One individual commented multiple times, and one represented an organization. One of the individuals does not appear to support the Middle Housing Policy and has since expressed opposition to the RIP. The three supporters hardly constitute a groundswell of public support for a new Middle Housing Policy. It is important to note that these individuals were commenting in advance of any actual proposal, and therefore the general public would not have had any awareness that this issue was under active consideration.

The true measure of public sentiment regarding middle housing did not become apparent until after amendment P45 was introduced.

The Task 4 Record Index for the Middle Housing topic was evaluated by the MNA to determine the weight of public testimony occurring after the middle housing issue was first introduced on February 2, 2016. A total of 157 comments were received as testimony in the form of oral comments, letters, or emails. Of these, 105 were in opposition to the Middle Housing Policy and only 52 were in support. Therefore, the City received testimony that was more than two-to-one in opposition to the proposed Middle Housing Policy.

In analyzing the supporting testimony, we found that one individual testified on his own behalf nine times in support of the policy. Another individual testified five times in support. These two individuals alone generated 27% of the supporting testimony.

The adopted Community Involvement Work Program, under “Purpose” states:

**The purpose of community involvement in the periodic review work program is to provide open and meaningful opportunities for individuals and organizations to effectively influence Comprehensive Plan updates.**

According to the Work Program, public involvement is a meaningful activity that has an effect on the outcome of the Comprehensive Plan Update. We find that the City has failed to respond to the large volume of testimony in opposition to the Middle Housing Policy and the overall weight of testimony in opposition, and therefore is in violation of the Community Involvement Work Program.

Goal 2 states:

**Sufficient time should be allotted for:  
(3) incorporation of citizen needs and desires and development of broad citizen support.**

Based on the Record of public testimony, the City failed to develop “broad citizen support” for the Middle Housing Policy, in violation of Goal 2.

The City’s Findings for Task 4 state (Record, page 46)

*“Opponents of policy 5.6 viewed the policy as effectively re-zoning land.”*

This constitutes the City’s sole characterization of the public input received in opposition to the Middle Housing Policy. Their response is that the Council disagreed with this argument.

Goal 1 states:

**E. FEEDBACK MECHANISM  
2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.**

The City failed to accurately and adequately quantify, synthesize, and report the public testimony received on the Middle Housing Policy to the general public.

## Action Requested on Middle Housing Policy

***OAR 660-025-0140(2)(c) Suggest specific revisions that would resolve the objection;***

To correct the deficiencies identified in this appeal, we are requesting that the LCDC partially remand Task #4 of the Periodic Review for the Comprehensive Plan to allow for proper comprehensive planning and public involvement for the Middle Housing Policy 5.6. This would include the development of complete, neutral, and objective public information about the policy proposal. The public information would include all the evidence and factual information from Task #3 that bear on the need, or lack of need, for such a policy, including the existing available development capacity and mix of housing types. It would include available empirical data from other cities and independent economic analysis showing how the policy proposal would most-likely affect housing costs, affordability for low-income households, fixed-income households, and families with children, home ownership rates, and other socio-economic housing indicators which the policy is purported to address. It would include adequate dissemination of information – including mapping of impacted areas – to the neighborhoods, households, and property owners who would be affected. If the policy will lead directly or indirectly to a zoning change, notification of all affected owners and renters should be required. Allow adequate time for the public to review, consider, and respond to the information. Provide opportunities for the public to raise questions and obtain answers. Provide convenient opportunities for meaningful public involvement. Develop a revised final policy that is responsive to the input received from citizens.

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