

## Exceptions to DLCD Report Regarding Appeal to the LCDC of the “Center” Designation to Multnomah Village

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These are exceptions to DLCD Director’s Report of February 2, 2018 regarding our Appeal to the LCDC of the designation of Multnomah Village as a “neighborhood center” rather than a “neighborhood corridor” in the City of Portland’s Comprehensive Plan update. The exceptions are filed on behalf of the Multnomah Neighborhood Association in accordance with ORS 660-025-0160(5).

### Exception Summary

Our Appeal to LCDC is titled “**Appeal to the Land Conservation and Development Commission of the “Center” Designation to Multnomah Village in the City of Portland Comprehensive Plan Update**” and contains four main issues, which the DLCD has labeled “sub-issues.” The Appeal was renamed “**Appeal 4-7**” in the DLCD response. To avoid confusion, the DLCD numbering system for the Appeal has been adopted here. The Appeal issue headings are lettered as before (A., B., C. etc.) and have remained the same. Our exceptions are numbered under the appropriate issue letter and are provided in a summary list below for the convenience of the Commission.

#### Appeal 4-7: Appeal of Center Designation to Multnomah Village

##### Appeal Issue A. Inadequate Response to Weight of Public Testimony

A.1. Exception to DLCD conclusion that the City staff and City Council were responsive to public testimony on the issue of designating Multnomah Village as a “neighborhood corridor,” rather than a “neighborhood center” as

proposed by BPS staff.

#### Appeal Issue B. Confusing and Uncoordinated Policies

B. 1. Exception to DLCD's dismissal of our appeal issue based on the City's decision not being an actual rezoning of commercial or residential lands.

#### Appeal Issue C. Inadequate Mapping of Centers

C.1 Exception to DLCD's repeated argument that mapping was not required because actual zoning was not implemented.

#### Appeal Issue D. Compliance with Metro Code

D.1. Exception to DLCD regarding compliance with Metro Code.

## **Appeal Issue A. Inadequate Response to Weight of Public Testimony**

### **A.1. Exception to DLCD conclusion that the City staff and City Council were responsive to public testimony on the issue of designating Multnomah Village as a "neighborhood corridor," rather than a "neighborhood center" as proposed by BPS staff.**

We take exception to the DLCD's conclusion that this was an "open, fair, and transparent process" and that citizen testimony was duly considered in the process.

In reviewing the record, the idea of designating Multnomah Village as a neighborhood center originated with the BPS staff as a way to create an idealized "checkerboard" system of centers spread across the City. From the very introduction of this proposed designation, residents of the Multnomah Neighborhood presented vigorous and compelling testimony in opposition the proposal and in favor of the more-appropriate neighborhood center designation (documented on pages 3-6 of the Appeal).

The neighborhood corridor, as defined below in the 2035 Comp Plan, closely matches the characteristics of Multnomah Village:

#### **Neighborhood Corridors** [page GP3-17]

Neighborhood Corridors are narrower main streets that connect neighborhoods with each other and to other parts of the city. They have

transportation, land use, and design functions that are important at a neighborhood or district level. They support neighborhood business districts and provide housing opportunities close to local services, amenities, and transit lines. They are streets that include a mix of commercial and higher-density housing development. This policy is intended to balance the important transportation functions of Neighborhood Corridors with their roles in supporting the viability of business districts and residential livability.

**Policy 3.53 Neighborhood Corridors.** Enhance Neighborhood Corridors as important places that support vibrant neighborhood business districts with quality multi-family housing, while providing transportation connections that link neighborhoods.

Whereas, the *neighborhood center* designation reflects a higher intensity of development. Several key aspects of the *neighborhood center* designation were deemed incompatible by residents of the neighborhood. First, the center designation specifically authorizes buildings up to four stories in height, as stated in the Comp Plan under *Neighborhood Centers* [page GP3-13]:

*Lowrise development typically includes buildings up to four stories in height.*

The neighborhood association and its residents have vigorously testified that the Village should have a three-story height limit to protect its character. Therefore, the center designation would have the effect of overruling the local community on any future height limits in the Village.

The second problem with the *center* designation for Multnomah Village is that such a designation triggers other policies in the Comp Plan aimed at intensifying development and density in and around centers, whereas the *corridor* designation does not. The three policies triggered by a *center* designation include the Middle Housing Policy 5.6, the Housing in Centers Policy 5.5, and the Housing in Centers Policy 3.15, which greatly amplify and expand the potential impact area into residential neighborhoods. (This compounding effect is described on pages 6-11 of our Appeal, and is further addressed here in our exceptions under Part B.1.)

The third problem with the center designation is that regional plans under Metro's Regional Planning Framework clearly show that Multnomah Village is not designated as a center on the official mapping of centers (Title 6), and that it is

designated as a main street in the 2014 Growth Concept Map. Therefore citizens had every reason to expect the City to comply with Metro Code requirements that the City conform with the regional plan. (This issue is presented in more detail in our Appeal on pages 17-21, and here in our exception D.1.)

The main point here is that the residents of the Multnomah Neighborhood had very reasonable and legitimate reasons to be opposed to the *center* designation. And furthermore, that they did express this position effectively, consistently, and overwhelmingly in the record.

We note in our Appeal (page 5) that the Task 4 record regarding the designation of Multnomah Village shows 360 comments were received in opposition to the center designation, while only 4 comments were in support. This constitutes 99% opposition.

We find no acknowledgement, recognition, or fair and reasonable treatment of this overwhelming citizen input by the City in the record for Task 4. It appears that the decision to overrule the neighborhood testimony was a BPS staff recommendation made in a January 14, 2015 memo (mislabeled as 2014) to the PSC for a meeting on January 26, 2015. We assume the PSC relied heavily on BPS staff to accurately and reasonably synthesize the public input, as this 93-page memo was just one of five memos considered by the PSC at that meeting. On this particular topic, the memo stated in its entirety:

**Recommendation:** No Change – retain as a Neighborhood Center.  
Neighborhood requested removing Neighborhood Center designation.

This single statement cannot reasonably be considered a “synthesis and reporting of citizen attitudes” on the matter, as required by Goal 1. The DLCDC states that ultimately the City Council “had access to all arguments relating to this issue prior to making its final decision on the matter.” This might be true in theory, however it is far more reasonable to conclude that the City Council (like the PSC) relied on BPS staff to accurately summarize and report public involvement, rather than searching individually through a 20,000-page record to find and review 364 individual comments.

How is it possible that the City could literally ignore such overwhelming testimony and instead proceed with what it seems were predetermined outcomes? While we agree with the DLCDC that Goal 1 “does not guarantee a particular result” [DLCDC, page 18], we believe that the City’s response completely

failed to meet the purpose and requirements of Goal 1. If such failure to comply with Goal 1 is acceptable to the DLCD and to the LCDC, then we must conclude that Goal 1 is utterly without meaning. If we allow citizens to be ignored and taken out of the planning process, as the City has done in this case, then Goal 1 is completely unenforceable and the entire Statewide Planning Program is imperiled by the lack of a real and legitimate role for citizens in the planning process.

As stated on our Appeal we find this is a violation of the following requirements:

Goal 1 states:

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

Goal 2 states:

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

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.**

The City of Portland Code and Charter states under Section 3.96.050, Responsibility of City Agencies:

**B. City agencies shall include affected Neighborhood Associations and District Coalitions in planning efforts which affect neighborhood livability.**

## Appeal Issue B. Confusing and Uncoordinated Policies

### B. 1. Exception to DLCD's dismissal of our appeal issue based on the City's decision not being an actual rezoning of commercial or residential lands.

The response by the DLCD is similar to the one they have stated in connection with our Appeal of Middle Housing Policy 5.6, in that they argue that the City's Task 4 actions do not constitute an actual rezoning of Village commercial or single-family neighborhoods. In this case the DLCD is referring to the designation of centers and the impact on zoning of both Multnomah Village and the surrounding residential neighborhood.

We do not dispute that the action of designating Multnomah Village as a center did not implement zoning. However, it did specifically authorize and allow zoning to be applied to the Village of higher intensity (higher FAR) and of greater height (up to four stories).

Once such a designation is applied to the Village, future upzoning is entirely justified by the Plan Policies. There is no longer any argument that citizens can successfully make that the Village should not be upzoned in the future, or that surrounding single-family neighborhood should not be include in the upzoning for the Middle Housing Policy. So while the ultimate zoning designation and code language may not be adopted until a later implementation phase, the outcome is all but inevitable. Evidence of this inevitable outcome exists in our Task 5 **Appeal of CM2 Zoning in Multnomah Village**, where the City takes the very action the policies support and rezones most of the commercial area of the Village to CM2 zoning, allowing four-stories buildings.

In the current Appeal, we show how the City has combined the meanings of four separate policies to influence the meaning and interpretation of a fifth policy on neighborhood centers to achieve a compounded effect resulting in the upzoning of the Village and the likely upzoning of the surrounding single-family neighborhoods (through the Residential Infill Project).

We describe in pages 6-11 of our Appeal how Policies 5.5 (Housing in Centers), Policy 5.6 (Middle Housing), and Policy 3.15 (Housing in Centers) combine their influence with the definition of Neighborhood Centers and Policy 3.36 on the Role of Neighborhood Centers, as cited below:

### **Neighborhood Centers** [page GP3-13]

Neighborhood Centers are smaller, sometimes village-like centers that include a mixture of higher density commercial and residential buildings. Because these centers are smaller than Town Centers, there are many more of them citywide. Development in Neighborhood Centers is generally intended to be low-rise in scale, although larger scale can be appropriate in locations close to high-capacity transit stations or near the Central City. Lowrise development typically includes buildings up to four stories in height.

**Policy 3.36 Role of Neighborhood Centers.** Enhance Neighborhood Centers as successful places that serve the needs of surrounding neighborhoods. In Neighborhood Centers, provide for higher concentrations of development, employment, commercial and community services, and a wider range of housing options than the surrounding neighborhoods.

These compounded policies essentially represented a “fait accompli” or “done deal” in terms of the eventual outcomes. While not an actual rezoning, it certainly appears to create an eventual rezoning of both the Village and the surrounding single-family neighborhoods. Depending on which policies the City relies upon, the area ¼ mile from the center boundary (Policy 5.6), or the area ½ mile from the center core (Policy 3.15) should be upzoned for greater capacity. At no place in the record does the City attempt to reconcile these policies or to explain to the public how these policies could work together to create significant impact areas across the City.

No mapping is provided that would assist the public in understanding which areas would be affected and which would not. The mapping provided was exceptionally vague and generalized, as we have shown in our Appeal (pages 11-17). Even today, more than a year and half after the Comp Plan was adopted, the City still has not generated any maps showing actual final boundaries of centers. Instead, they maintain that such maps are “provisional,” leaving citizens uncertain and confused about what actions are being taken to their neighborhoods.

Therefore, we take exception to the DLCD and maintain that the designation of Multnomah Village as a *center*, rather than a *corridor*, had a profound difference in meaning because the corridor designation does not trigger four additional policies designed to increase the allowed density and intensity of land uses. The

City failed to make this distinction and failed to provide “information that enables citizens to identify and comprehend the issues,” as required by Goal 1. They also failed to comply with the Community Involvement Work Program, which requires that BPS provide “effective tools and information in order to make effective public participation possible” and also requires that “information needed to make decision will be presented in a simplified and understandable form.”

## **Appeal Issue c. Inadequate Mapping of Centers**

### **c.1 Exception to DLCD’s repeated argument that mapping was not required because actual zoning was not implemented.**

We have already clarified in these exceptions that we understand that actual rezoning did not occur in Task 4, which established policies and land use designations, such as the *center* designations. However, none of this is relevant to the matter of providing mapping of proposed centers in a manner that would allow citizens to understand how the City would be impacted by the proposed center designations. The City seemed to be satisfied with merely describing centers in their policies, and providing a generalized map showing large circles in the areas where centers were located (see Appeal Figure 3, page 13). This was completely inadequate to meet the public information requirements, as described in our Appeal (pages 11-17).

As we note in our Appeal (page 14-15), the MNA diligently requested more information about the scope, boundaries, and nature of the impacts the *center* designation could have on their neighborhood. It was not until June 13, 2016, two days before the Comp Plan was approved by the City Council, that the MNA received a map from the City showing the extent of the impact of the center designation. That map (Appeal Figure 4, page 15) showed that, in fact, most of the entire neighborhood would be impacted.

One would reasonably expect the City to have provided this sort of mapping information approximately two years earlier. Perhaps one reason that they failed to do so, was the last minute introduction of the Middle Housing Policy 5.6, which “piggy-backed” on the center designation to create large, overlapping areas of Portland neighborhoods subject to middle housing upzoning. Again, there is the problem of the compounded or cascading effects of multiple policies and last-minute new policies that the City failed to explain and convey to the

public. This is not a minor oversight. These policies formed the basis for the Residential Infill Project, which is possibly the largest land use change in Portland's recent history.

So while this action did not actually implement zoning, Goal 2 requires that "Techniques to carry out the goals and plans should be considered during the preparation of the plan." Goal 2 also requires that "The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases."

The failure to provide adequate mapping in the record is also a violation of the Community Involvement Work Program, which 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.**

As we have also shown in our Middle Housing Appeal, mapping is an essential part of the public information required in comprehensive planning. Goal 1 explicitly supports mapping: "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."

## Appeal Issue D. Compliance with Metro Code

### D.1. Exception to DLCD regarding compliance with Metro Code.

We take exception to the DLCD's support for the City position that their neighborhood center designation implements the Metro "main street" designation. There is no compelling case made in the record that a Metro main street designation can be interpreted by the City as a neighborhood center. We see no mention in the record for how BPS staff obtained any formal authorization from Metro to use a different designation for Multnomah Village. Therefore the change in designation appears to be an arbitrary interpretation by BPS staff that

violates Metro Code.

As we have described in our Appeal (pages 17-18), the City's proposed designation of Multnomah Village as a "Neighborhood Center" is not consistent with Metro regional planning for the area. According to the Urban Growth Management Functional Plan (Metro Code, Chapter 3.07.010):

**The comprehensive plan changes and related actions, including implementing regulations, required by this functional plan as a component of the Regional Framework Plan, shall be complied with by cities and counties as required by Section 5(e)(2) of the Metro Charter.**

The Plan specifically addresses centers and corridors in Section 3.07.650:

**3.07.650 Centers, Corridors, Station Communities and Main Streets Map**

**(a) The Centers, Corridors, Station Communities and Main Streets Map is incorporated in this title and is Metro's official depiction of their boundaries. The map shows the boundaries established pursuant to this title.**

**(b) A city or county may revise the boundary of a Center, Corridor, Station Community or Main Street so long as the boundary is consistent with the general location on the 2040 Growth Concept Map in the RFP [Regional Framework Plan]. The city or county shall provide notice of its proposed revision as prescribed in subsection (b) of section 3.07.620.**

Since Multnomah Village is designated as a "main street" in the 2040 Growth Concept Map, it may not be changed to a "center" merely because the City wishes to do so. The DLCD appears to argue that employment and residential density differences within Title 6 make this a reasonable change, and cites the Task 4 record at page 106 as justification. However, it is not clear how this gives the City jurisdiction to overrule Metro's regional planning.

In fact, the City Findings (record at 106) state:

*The City of Portland will, upon adoption of the 2035 Comprehensive Plan,*

*request that Metro incorporate the adopted center boundaries into the Metro Centers, Corridors, Station Communities and Main Streets Map in Title 6.*

The City Findings on this topic conclude with the statement (record at 107) that:

*There are no specific mandatory compliance standards in Title 6 that apply to this ordinance.*

However, that does not appear to be consistent with Metro Code. Any proposed revision is subject to subsection (b) of section 3.07.620, which reads:

**3.07.620 Actions and Investments in Centers, Corridors, Station Communities and Main Streets**

**(b) The boundary of a Center, Corridor, Station Community or Main Street, or portion thereof, shall:**

**(4) Be adopted and may be revised by the city council or county board following notice of the proposed boundary action to the Oregon Department of Transportation and to Metro in the manner set forth in subsection (a) of section 3.07.820 of this chapter.**

The manner for a boundary change is set for in the section below:

**3.07.820 Review by the Chief Operating Officer**

**(a) A city or county proposing an amendment to a comprehensive plan or land use regulation shall submit the proposed amendment to the COO at least 35 days prior to the first evidentiary hearing on the amendment. The COO may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the COO submits comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment, if any, that would bring it into compliance with the functional plan. The COO shall send a copy of comment to those persons who have requested a copy.**

In this case, the City has unilaterally changed both the designation of a Metro "main street," and the boundaries of the designated area, without compliance to

Metro Code.

We conclude that the City has misinterpreted Metro Code and failed to achieve the required compliance that would allow it to re-designate a Metro “main street” as a “neighborhood center” with revised boundaries in the 2035 Comp Plan. Therefore, the City’s proposed “Neighborhood Center” designation does not comply with Metro Code or the 2040 Growth Concept Map, as required.