

Exceptions to DLCD Report Regarding Appeal of Adoption of CM2 Zoning in 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 application of CM2 zoning to Multnomah Village, rather than the CM1 zoning, in Task 5 early implementation of Periodic Review. 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 on the Adoption of CM2 Zoning in Multnomah Village in the City of Portland Comprehensive Plan Early Implementation, Task 5**" and contains four main issues, which the DLCD has labeled "sub-issues." The Appeal was renamed "**Appeal 5-5**" 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 5-5: Appeal of Adoption of CM2 Zoning in Multnomah Village

Appeal Issue A. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.

A.1. Exception to DLCD conclusion that Goal 1 only requires a process and

does not require actual consideration of, or response to, public testimony.

Appeal Issue B. Failure to perform planning actions in Multnomah Village based on facts and evidence.

B.1. Exception to DLCD rejection of this issue based on its rejection of Appeal 4-6 (Appeal of Middle Housing Policy), sub-issue B.

Appeal Issue C. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.

C.1. Exception to DLCD statement that Community Design Standards implement the design review overlay.

Appeal Issue D. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning work.

D.1. Exception to DLCD statement that the Southwest Community Plan does not apply.

Appeal Issue A. Inadequate response to a long history of public input seeking to protect the character of Multnomah Village.

A.1. Exception to DLCD conclusion that Goal 1 only requires a process and does not require actual consideration of, or response to, public testimony.

We take exception to the DLCD's dismissal of our Appeal on this issue based on the Department's conclusion that Goal 1 "requires creation and implementation of a process – it does not guarantee a particular result." If Goal 1 required merely that the City of Portland create a process for collecting public input, but failed to require any response what-so-ever from the City, then the Citizen Involvement would be essentially a meaningless element of the Statewide Planning Program.

We document in our Appeal how the MNA has diligently and persistently expressed concern about building heights and development intensity for at least the past 15 years (see Appeal pages 2-5). The MNA has provided testimony on many occasions that building heights should be limited to a maximum of 35 feet, or three stories, to preserve the essential character of Multnomah Village. The

MNA has specifically requested that CM1 zoning (35 ft. height limit) be applied to replace the Village's CS (commercial storefront) zoning during the Mixed Used Zoning Project of the 2035 Comprehensive Plan implementation.

The MNA operates as the duly authorized neighborhood association for this area and follows all the rules and bylaws that apply (elections of board, selection of officers, conduct of meetings, etcetera) and strives to properly represent the neighborhood. The significance and "weight" of the MNA testimony should be considered accordingly.

The MNA position favoring the application of CM1 zoning and opposing the CM2 zoning proposed by the City, was widely supported in the larger community. As documented in our Appeal (pages 3-4), the Task 5 record of public testimony on this issue shows that of 192 individual comments received by the City, 191 supported the MNA's position requesting application of CM1 zoning, and not CM2. This constitutes truly overwhelming public testimony with greater than 99% in opposition to the City's proposed zoning for the Village.

Our Appeal also documents the results of a neighborhood petition started on June 7, 2015 asking the City Council to:

"Limit development in Multnomah Village to 2 or 3 stories, and mandate 1 parking space per rental unit."

In a short time of less than six weeks, the petition had 1,648 signatures in support and included 630 individual comments in support of the petition.

At this point, the City had received clear, unified, and overwhelming public sentiment in opposition to their rezoning proposal, and only a single individual comment in support.

In addition to the public testimony we have cited above on the application of zoning to Multnomah Village in the Task 5 Mixed Use Zoning Project, there is considerable related testimony in the record for Task 4 on this same issue that appears under the topic of designating the Village as a "neighborhood center," which is documented under our **Appeal 4-7, Appeal of "Center" Designation to Multnomah Village** (pages 3-6). The overwhelming public testimony in opposition to the "center" designation (99% of 364 comments) was based in large part on the potential for "centers" to allow four- to five-story buildings and higher development intensities – issues which later proved to be valid when CM2

zoning was proposed for the Village.

We strongly disagree with the DLCDC that Goal 1 allows the City to merely file these comments in the proper location and move on with their original proposal. It now appears that the City had a predetermined outcome for the designation of centers and their zoning. While the City did partially respond to public testimony by making an adjustment for a small area of the Village to CM1, it was not clear in the record why this response was so limited. The City's rationale for "strategically" retaining capacity for growth was not adequately justified (see page 4 of Appeal) and it did not meet the requests from citizens and the MNA to protect the quality, character, and scale of Multnomah Village.

Therefore, the question we are addressing is whether the City adequately responded to the large amount of overwhelming public opposition to CM2 zoning. We believe the City's failure to adequately quantify, synthesize, and report public testimony on this issue, as well as its failure to produce a meaningful response to this testimony, constitutes a violation of the following requirements:

Statewide Goal 1 requires:

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

The Community Involvement Work Program, 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 Community Involvement Work Program, requires that:

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

The "Citizen Involvement Objectives" of the Southwest Community Plan, state:

4. Identify, strengthen, and use communication links between the Planning Commission, City Council, city staff, and citizens throughout

the creation, development, and implementation of the Southwest Community Plan. Ensure that citizens receive responses from policymakers, including the rationale for decisions.

And lastly, while we don't agree with the DLCD that the Comp Plan should be used as a factual basis to justify itself, Goal 2.E of the 2035 Comprehensive Plan also supports this appeal issue. It reads:

Goal 2.E: Meaningful participation [page GP2-5]

Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under-served and under-represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.

Appeal Issue B. Failure to perform planning actions in Multnomah Village based on facts and evidence.

B.1. Exception to DLCD rejection of this issue based on its rejection of Appeal 4-6 (Appeal of Middle Housing Policy), sub-issue B.

In its rejection of this issue, the DLCD's only states "The reason[s] for the department's recommendation are the same as found in the discussion of the Multnomah Neighborhood Association Appeal to Objection 4-6, sub-issue b." This statement refers to Issue B of our Appeal 4-6: Appeal of Middle Housing Policy 5.6.

We have extensively responded to the above referenced appeal issue in our Exception B.1 to Appeal 4-6 (pages 5-11), which is titled "B.1. Exception to DLCD's citation of the inadequate Findings for Middle Housing Policy 5.6."

In this prior exception we provide a detailed analysis showing that the City relied on inadequate findings that were not based on facts or evidence developed in the record, and which instead were based on anecdotal information, speculation, and conjecture, which is a totally unsuitable basis for planning policies.

We maintain that the case made in our Appeal (pages 6-9) is valid, and that the

City's planning action to zone Multnomah Village as CM2 lacked an adequate need, justification, or factual basis.

We recognize that our objection to the Task 5 rezoning of Multnomah Village to CM2 zoning stems in part from the prior Task 4 designation of the Village as a "neighborhood center." If the City had been responsive to citizen involvement and designated the Village as a "neighborhood corridor" in Task 4, it is unlikely that CM2 zoning would have been applied, and our need to file this Appeal would have been obviated.

To briefly reiterate part of our Appeal on this issue, the City data and analysis from Tasks 2 and 3 show that there is existing capacity for 200,000 additional housing units, whereas forecasted growth will generate an estimate need for only 123,000 new households. This is also confirmed in the City's Findings of Fact (Ord. 188177, Vol. 1.1.A, page 41). Therefore, there is no need for the increased density allowed by CM2 zoning in the Village.

If the City is to essentially overrule the clear and overwhelming desire of citizens, as expressed in the record of public testimony, there should be compelling facts and evidence to support that decision. Instead, we find that the City has merely referred to the desire to "strategically" maintain capacity for growth, as cited in the previous exception regarding Appeal Issue A.1.

Appeal Issue C. Failure to provide the public with adequate information and facts about the lack of adequacy of design review to protect neighborhood character.

C.1. Exception to DLCD statement that Community Design Standards implement the design review overlay.

We take exception to DLCD statement that Community Design Standards implement the design review overlay that applies to Multnomah Village. The cited record (Task 5 at page 45) does not support DLCD's position.

Residents of the Multnomah Neighborhood relied on the design review overlay to protect the special values of the Village and to ensure that development would be compatible with the neighborhood. Residents believed that the language of

the “d” Design Review Overlay (see Appeal page 9) protected them from overly tall and bulky buildings that could potentially be constructed under the existing CS Commercial Storefront zoning.

However, as documented in our Appeal (pages 9-11), the City failed to report to residents that the design review overlay was essentially not applicable to any development containing any amount of housing. This is due to the City’s interpretation of “needed housing” in ORS 197.303 as being any housing and thereby allowing developers to opt for alternative “clear and objective” standards for all such developments. Design review is not considered clear and objective, and therefore may be bypassed by any development that contains any amount of housing. Without design review, the development must comply only with the base zone and the Community Design Standards. The Community Design Standards are not a comparable alternative to design review and provide no assurances that the community will have any influence regarding the nature of future development in the mixed use zones.

The issue here is that the City’s failure to inform residents about limitations of design review caused the public to continue to rely on design review as an effective tool for managing the impacts of future development. Had the public been aware that design review would essentially not apply for any development containing any housing, they would have been more pro-active in the Periodic Review process to assure that suitable replacement measures were adopted.

Therefore, the City failed to provide “information that enables citizens to identify and comprehend the issues,” as required by Goal 1, and failed to “provided effective tools and information in order to make effective public participation possible,” as required by the Community Involvement Work Program.

Appeal Issue D. Failure to direct planning actions in a manner that would achieve local goals and be consistent with past planning work.

D.1. Exception to DLCD statement that the Southwest Community Plan does not apply.

We take exception to the DLCD statement that the City “is not bound by the

language or content of the 2000 Southwest Community Plan.” The SWCP is an officially-adopted regional refinement plan that was in existence before the Period Review process began, and remains in effect today.

While it is true that the City may amend or replace such plans during periodic review, it must do so in an explicit manner. Since no effort to amend, replace, or repeal the SWCP appears in the Comprehensive Plan, the SWCP remains in effect. In fact, the SWCP is specifically listed among adopted area-specific plans in the adopted 2035 Comprehensive Plan on page GP1-13.

The SWCP states, under “Main Street Objectives” that buildings should be “appropriate for their neighborhoods” in terms of “height, scale, and design.”

The Task 5 Early Implementation of the 2035 Comprehensive Plan was a logical place to implement the SWCP through the Mixed Use Zones Project. However, the SWCP is not even mentioned in the Mixed Use Zones Project – Recommended Draft, and there appears to be no effort to apply or implement the SWCP in the zoning of Multnomah Village.

Therefore, the policies and objectives of the SWCP remain in effect and were not addressed by the City in the zoning of Multnomah Village, as described in our Appeal (pages 11-12).