

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MULTNOMAH NEIGHBORHOOD  
ASSOCIATION,

Petitioner,

v.

LAND CONSERVATION AND  
DEVELOPMENT COMMISSION  
and CITY OF PORTLAND,

Respondents.

Land Conservation and  
Development Commission  
18WKTSK001897

A168704

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**PETITIONER'S RESPONSE TO MEMORANDUM OF  
ADDITIONAL AUTHORITIES**

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Petitioner acknowledges that House Bill (“HB”) 2001 (2019) requires larger cities across the state to develop regulations allowing development of some middle housing in single family residential neighborhoods. As relevant to this case, however, HB 2001 does not change Respondent Land Conservation and Development Commission’s (“LCDC”) obligations under the state periodic review statutes. Nor does HB 2001 exempt Respondent City of Portland (“City”) from complying with the Statewide Planning Goals and the City’s own land use regulations in developing and implementing middle housing policy. HB 2001 therefore does not excuse LCDC’s failure to comply with the oversight requirements of the periodic review statutes.

Although HB 2001 requires cities over 25,000 people to allow some middle housing in single family neighborhoods, other than duplexes, the statute does not specify where middle housing must be located or how much land a city must make available for middle housing. Furthermore, the statute allows cities to regulate the “siting and design” of middle housing units. Or Laws 2019, ch 639, § 2(5). The statute therefore does not require cities to allow all types of middle housing in any particular single family area.

Moreover, HB 2001 does not exempt cities from compliance with the statewide planning goals or a city’s own comprehensive plan and zoning regulations in implementing HB 2001. The new statute therefore does not mandate or authorize the City’s middle housing policy to the extent that the

policy or its implementation is inconsistent with the statewide planning goals or other policies in the City's comprehensive plan.

In this case, Petitioner has demonstrated that LCDC failed to exercise required oversight of the City's development and implementation of middle housing policy through the periodic review process. Specifically, LCDC failed to (a) ensure that the City's middle housing policy is consistent with the City's prior periodic review work; and (b) that the policy will be implemented consistent with the statewide planning goals and other policies in the City's 2035 Comprehensive Plan. HB 2001 does not exempt either LCDC or the City from meeting these periodic review obligations, nor purport to authorize LCDC's challenged order. The enactment of HB 2001 therefore does not affect the outcome of this case.

Respectfully submitted,

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By /s/Michael J. Gelardi

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on August 29, 2019, I filed this PETITIONER'S RESPONSE TO MEMORANDUM OF ADDITIONAL AUTHORITIES with the State Appellate Court Administrator by the eFiling system. I further certify that on this date I service this Notice by the eFiling system:

Philip Thoennes  
Linly Rees

I further certify that I have this date served each participant in this case who is not being served by the appellate courts' eFiling system by mail with postage prepaid, in an envelope at the following address:

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**DATED: August 29, 2019**

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