

To: Portland Planning and Sustainability Commission  
Re: Residential Zones Testimony  
From: Susan Z. Whitney  
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Portland OR 97215  
Date: April 12, 2016

### **I Object to the Rezoning of My Property and Neighboring Properties Without Notice and a Quasi-judicial Hearing.**

My home is located on the second residential lot south of Hawthorne Blvd, and it is currently zoned R5. I am opposed to the upzoning of lots on all of the side streets along Hawthorne and Division. The proposal is to rezone the first four residential lots behind the commercial properties to R2.5, which would allow the existing early 1900s bungalows to be demolished and the lot redeveloped to modern rowhouses or duplexes.

### **Blanket Upzoning Violates the Comprehensive Plan and Oregon Law.**

Nothing in the materials prepared and provided by the City provides any reason or rationale for a blanket rezoning of all these residential properties which are currently fully developed with single family homes, most of which are owner-occupied, except to “Conform with Comprehensive Plan designations established in 1980 or amended more recently.” When I met with a planner I was told that this was the only reason. [As an aside, I was also told that the choice was between tearing down an existing historic bungalow and replacing it with a single family home or replacing it with two single family homes!]

The current Comprehensive Plan and Map, with amendments through July 2006, establishes a long-range maximum limit on the intensity of land – the Zoning Map cannot allow more intensive land uses. The Introduction to the Plan states that “there is an important distinction that need to be established about the use of the Comprehensive Plan Map.” The distinction is between “downzoning” to a more restrictive use, and “upzoning” to less restrictive uses. The Plan references *Baker vs. the City of Milwaukie, 21 Or 500 (1975)*, which requires that downzoning may be acted upon as a legislative action, rather than quasi-judicial, and may be accomplished at the time of Plan adoption as a single action.

The reverse case is different however. The Comprehensive Plan does not allow blanket upzoning. It expressly states that when the Plan Map identifies an area or parcel of land as appropriate for a less restrictive use, zoning will only be changed on a case-by-case basis, using the standard zoning procedures citing to *Maracci vs. the City of Scappoose, 26 Or App131 (1976)*. Importantly, the Plan states:

“Taking the approach of doing all ‘downzoning’ when the Plan is adopted (required by law) but not processing the ‘upzoning’ until requested, follows the

logic of the court and keeps existing uses, which are more restrictive than allowed by the Comprehensive Plan Map, from being prematurely ‘forced out’ of an area. For example, the Plan Map may designate an area as appropriate for future apartment use. If the land is currently zoned and developed for single-family houses, it would remain zoned for single family use until such time as the private market determined that it was economically feasible to redevelop the land for multifamily use and application for a zone change was submitted and approved.

“The Plan Map provides a clear description of where zoning changes may and may not be granted and up to what classification they may be approved. Applications for change must still prove that the particular parcel of land is appropriate for redevelopment at a particular time as required by the Fasano decision. The Plan Map provides guidance for these decisions at a relatively fine level of detail. Considerations such as whether the request is in the public interest at a particular time or whether there are other more suitable sites available for the use within the jurisdiction must still be proven through the quasi-judicial process of zoning.”

Upzoning all the residential lots as now proposed violates the existing express restrictions of the Comprehensive Plan and is a breach of trust to those who drafted the plan and to residents such as myself who purchased my property relying on those provisions to believe that my property and my neighbors’ properties would keep their existing R5 zoning until there was an application to change the zoning followed by a hearing.

The proposed blanket upzoning also violates Goal 3 of the November 2011 Comprehensive Plan which requires the City to:

“Preserve and reinforce the **stability** and diversity of the City's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses and insure the City's residential quality and economic vitality.”

To achieve Goal 3 the City should “Preserve and retain historic structures and areas throughout the city.”

### **The Proposed Upzoning Does Not Serve Any Recognized Public or Planning Purpose.**

What is the underlying goal of this blanket rezoning? Unless the goal is clear and clearly stated and based on accurate assumptions, the resulting zoning action is suspect.

Does the upzoning create any affordable housing? Not a single unit. Instead, it will drive prices in this area even further upward.

Does the upzoning achieve the goal of protecting the character of the neighborhood? No. The R5 zone allows the structures to be five feet higher than the R5 zone allows. This results in the skinny 3-story row houses with a tuck-in garage at street level and a tall staircase to the second story entry and small porch. These houses and their occupants are isolated from the rest of the neighborhood, which is characterized by bungalows with large porches close to the street and garages (if any) at the back of the property. Moreover, many of these new houses will be used as rentals – or worse, as a short term airbnb – by absentee landlords/owners.

Does the upzoning increase diversity? No.

Does the upzoning improve a blighted area? No.

Does the upzoning achieve greater density? Not really. If all the houses that are on the rezoned lots were replaced with two units the overall increase in density would be minimal compared to what is required in the City as a whole. Everyone can't live in the Richmond neighborhood. Everyone can't live within 50 blocks of the City Center.

Does the upzoning improve transportation? No. SE Hawthorne and SE Division are already clogged most of the time. Transit options on these streets are maxed out with cars and buses and bicycles. More and more units will be added along these two streets as developers demolish the old commercial buildings and put up 3 and 4 story mixed-use apartment buildings, many with minimal parking. Adding more housing units on the residential streets only creates more gridlock, and a bus ride becomes slow and painful, thus discouraging rather than encouraging the use of mass transit. Increasing density in the neighborhood because it's a designated transit street does not improve car, bike or bus efficiency or safety.

### **The Only Benefit of the Proposed Blanket Upzoning Will Be Increased Profits to Developers.**

There is nothing to be gained by this rezoning, except to encourage folks to sell and to encourage developers to purchase and demolish. Properties in this area are in great demand, and a greater demand will be created because two units will replace one unit, and both new units will sell for the same price as the existing unit.

Obviously the developers want to build in this very desirable close in neighborhood, not because they give a whit about improving the city or the lives of its citizens, but to make more money. Construction costs are the same whether they build in Hawthorne/Division or Lents. But only Hawthorne/Division ensures greater profits.

### **The Goal of Sustainability precludes this blanket Upzoning.**

It is very ironic that the body making this zoning decision is named the Planning and Sustainability Committee!

Replacing one house that is over 100 years old and worth \$400-500,000 with two houses that the developer will sell for \$400-500,000 each does not accomplish any city goal. There is not a single instance in inner SE where an old home has been destroyed and what replaced it was more affordable. Moreover, tearing down and rebuilding is not a sustainable practice. The old house is demolished and the carbon footprint increased for no good reason except greed. As a former construction lawyer, I am well aware that new houses are built with cheap, shoddy and unsustainable materials using inferior construction methods. These rowhouses may look really nice and shiny now, but in twenty years they will not be desirable and will be nearing the end of their useful lives. Just look at the homes in the area that were built in the 1970s. No one wants to buy those, and if they do, they are tear-downs. Not to mention that they have lead in their water systems.

The people of 2050 will not applaud what is happening to our historic and sustainable neighborhoods. They will: We don't understand why you ruined these neighborhoods and allowed inferior housing to replace all those old bungalows. We wish we had those old houses back. They were irreplaceable.

### **Other Areas Are Available and Deserving of the City's Development Focus.**

As I drive around SE Portland, I see many areas on major streets that could be developed with 3-4 story affordable apartment buildings and R 2.5 zoning and rowhouses - Foster and Lents and outer Powell Blvd; Sandy Blvd and outer Division past 82<sup>nd</sup>, and 82<sup>nd</sup> Avenue itself. Why is the City not focusing on these areas, where there are small houses on very large lots, many vacant lots, and a lack of good quality housing? The roads and the transportation systems are already there. If the developers can't make huge profits in inner SE then they will of necessity move to outer SE and NE and everyone will benefit.

Or do something bold and rezone Hillsdale and Burlingame and Multnomah and Portland Heights to allow rowhouses and skinny houses on their 10,000 square foot lots. I'm sure that the developers would be happy to tear down a small Hillsdale split level and replace it with four rowhouses and make a 300% profit.

### **Conclusion.**

Why are you trying to increase density or whatever the goal of this rezoning is by ruining the Richmond and Sunnyside neighborhoods?

Everyone can't live in the Richmond neighborhood. Everyone can't live within 50 blocks of the City Center.

My neighborhood is desirable because of its character - old Portland bungalows and neighbors that know each other. You are replacing those with inferior housing, thus ultimately making the area and the housing less desirable. It really is not comprehensible.

If my property and my neighbor's property are going to be rezoned to encourage the demolition of our beautiful, historical and sustainable houses, then I am entitled to a quasi-judicial hearing with proof that such action will serve some legitimate purpose.