



Bureau of Planning and Sustainability

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MEMO

DATE: April 21, 2016

TO: Planning and Sustainability Commission

FROM: Deborah Stein, Principal Planner

CC: Susan Anderson, Director; Joe Zehnder, Chief Planner; Eric Engstrom, Principal Planner

SUBJECT: Residential and Open Space Zoning Map Update: Preparation for April 26, 2016 Work Session

In preparation for your April 26, 2016 work session on the Residential and Open Space Zoning Map Update, this memo includes:

- **Responses to questions** that commissioners posed to staff at the April 12, 2016 public hearing on this proposal.
- **A recap of the evaluation process** that staff followed for Zoning Review Areas, excerpted from the *Residential and Open Space Zoning Map Proposed Draft* (March 2016).
- **A set of questions for PSC discussion** on April 26.
- **A summary of written and oral testimony**, received through April 12th. Testimony has been organized by major themes to facilitate your discussion. Attached are two tables: 1) testimony related to Proposed Zoning Map changes in Zoning Review Areas and in the David Douglas School District; and 2) testimony related to changes that correspond with the Recommended 2035 Comprehensive Plan Map. (*Note that the PSC's influence on the latter is limited, since Comprehensive Plan Map changes are in City Council's hands at this time.*)



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Desired outcome of the April 26, 2016 work session

Staff is seeking general direction from the PSC (nods, not a formal vote) on what staff should include in the Proposed Draft Composite Zoning Map. This map will be a compilation of all the Zoning Map layers (Residential and Open Space, Employment, Campus Institution and Mixed Use) and will be published in early June, with opportunities for public review and testimony to the PSC at a public hearing on July 12.

Because the record for testimony on the Residential and Open Space Zoning Map Update remains open through July 12, the direction that staff seeks from the PSC on April 26 would be *provisional*, since it will be based on testimony you have received to date.

We want to clearly convey to the public that you will be reviewing and deliberating on the Proposed Draft Composite Zoning Map as a whole this summer, after having heard additional testimony received between now and July. The timing of the Composite Zoning Map will allow staff to incorporate any Zoning Map changes needed to align with yet-to-be adopted City Council amendments to the Comprehensive Plan Map.

Responses to PSC's questions

Commissioners posed a number of questions to staff following testimony on April 12. Here are staff's responses:

1. **How do we respond to property owners who assert that a decision to down-zone their property constitutes a "taking?"**

It is up to a court to determine whether any land use change constitutes a "taking." Property owners are advised to consult with their own attorney if they have questions.

2. **How do we respond to a property owner who asserts that they have a Measure 49 claim?**

The City Council has an adopted process that allows a property owner to file a Measure 49 claim with the City and have the claim reviewed and decided by the City Council. (See City Code Chapter 5.75—Claims Under ORS 195 and 197). It is up to the Council and, ultimately, a court to decide whether a property owner has a successful Measure 49 claim based on a change in a land use regulation. Property owners are advised to consult with their own attorney if they have questions.

3. **How does PBOT consider unimproved street conditions in their analysis of potential zone changes?**

PBOT has very limited capital funding available for improving local gravel streets, and most potential sources of funding (federal, SDCs, etc.) are restricted to collector



streets or priority pedestrian and/or bicycle routes. City Council recently approved roughly \$1 million per year in ongoing general fund support for such purposes, but this is a very small fraction of the overall need.

Given funding constraints, PBOT expects that most local street improvements will occur through redevelopment or through Local Improvement Districts (LIDs). When redevelopment occurs, property owners are typically required to construct half-street and sidewalk frontage improvements (though soon they may be given the option of paying a fee instead). With a Local Improvement District, the property owners agree to pay all or part of the cost of the project, occasionally with a City subsidy when such funding is available.

Both redevelopment and LID formation are more likely to occur with higher zoning, because it increases the potential value of the property and decreases the per-unit cost of an LID. Therefore, PBOT generally considers the presence of local gravel streets in a neighborhood to be a good reason to have higher-density zoning, rather than a reason to have lower-density zoning.

BPS staff considers this perspective in its evaluation of zoning designations, but also considers other constraints and locational factors. There may be areas with unimproved streets where staff does not recommend higher density zoning.

4. How would a City Council decision to down-designate Eastmoreland affect any of the residential zoning decisions the PSC is reviewing?

City Council is considering a Commissioner-sponsored amendment that would change the Comprehensive Plan Map designation for the majority of the Eastmoreland neighborhood (the portion within the boundaries of the existing Eastmoreland plan district) to R7 from its current R5. City Council has not yet deliberated about this amendment, so we don't yet know what their decision will be.

If this amendment passes, staff would then amend the Zoning Map proposal so that the zoning would correspond with the Comprehensive Plan designation (R7). A decision by City Council to down-designate Eastmoreland to R7 would not conflict with or otherwise affect staff's proposal for zone changes in Zoning Review Areas, the vast majority of which are being considered for change from R5 to R2.5 zoning.

5. How do we respond to concerns expressed about “leaving affluent areas alone while middle class neighborhoods are being rezoned to higher density?”

Areas proposed for residential Zoning Map changes have a number of locational and physical criteria in common: proximity to walkable places with services and amenities, frequent transit, infrastructure availability, and a lack of development constraints. This Residential Zoning Map Update process was fairly focused; staff did not look citywide for every opportunity to accommodate a wider range of housing types and sizes. Instead, staff narrowed its focus on Zoning Review Areas (ZRAs)



where the current zoning doesn't match the Comprehensive Plan Map designation applied in 1980.

Planning decisions should always consider who is likely to benefit and who may be burdened by any land use change. In reviewing potential Zoning Map changes in ZRAs, staff did consider demographics, but only in a limited way: to assess whether there may be unintended displacement of tenants that may be prompted by a Zoning Map change, if redevelopment were to occur.

6. What are the implications of a decision to not rezone areas from R5 to R2.5? How would this affect our ability to meet our housing goals and 2035 growth projections?

2035 housing capacity is calculated based on the Comprehensive Plan map, which provides enough capacity to accommodate anticipated residential growth through the 20 year planning period. Not all of the capacity must be zoned at the beginning of the planning period, as long as the Comprehensive Plan Map allows for the zoning in the future. With the exception of ZRAs that are separately being considered for Council-sponsored amendments, Comprehensive Plan Map designations are not proposed to change in the Zoning Review Areas.

That said, the R2.5 is a zone that allows small-lot detached and attached houses (an aspect of the “missing middle”). Houses built in this zone, and the R2 zone, tend to be smaller starter homes, in comparison to the larger lots/homes in R5 and R7. Although we have adequate land for housing in the aggregate, our growth scenario forecasts suggests there will be a tight supply in some housing types. This is especially true in the middle - for the kind of entry-level small-lot housing allowed in R2.5 and R2. We have a lot of land available for apartments, and a lot of land available for larger homes on 5,000-square-foot lots, or larger. But our economic analysis suggests that most people in the region will not be able to afford large-lot housing. Unless we can make more land available for entry-level homes, many young families will continue to find limited options to meet their housing needs, with larger homes out of reach economically.

There is also a geographic element. In our housing policies, we say that we want to create more housing opportunity in close-in areas, near services. The R2.5 Zoning Review Areas are all in relatively good locations, from an access point of view. Outside of these Zoning Review Areas, much of the city's remaining supply of R2 and R2.5 zoning is in North or East Portland. In the absence of these zoning changes, we would expect to see a larger share of the middle housing built in East Portland or North Portland, because that is where the available lots will be.

7. Clarify the quasi-judicial versus legislative process question raised in testimony.



The 2035 Comprehensive Plan - Recommended Draft addresses this question in Policy 10.3 (Amending the Zoning Map): Amending a base zone may be done legislatively or quasi-judicially. This is allowed under the existing Comprehensive Plan as well.

The review body for a legislative hearing on a Comprehensive Plan Map Amendment and/or Zoning Map Amendment is the Planning and Sustainability Commission per Planning and Zoning Code (PZC) Section 33.710.040.D Power and Duties, prior to City Council action.

Through the Comprehensive Plan update and related zoning map update processes, affected property owners have been afforded due process through individual Measure 56 notices and public hearings before both the Planning and Sustainability Commission and then City Council.

Recap of evaluation process for Zoning Review Areas

Staff reviewed 42 “Zoning Review Areas” (areas where the current zoning does not match the Comprehensive Plan Map designation applied in 1980) following publication of the Residential and Open Space Discussion Draft in November 2015. Following this evaluation and community conversations, staff proposed that the zoning for 24 of these be changed to match the Comprehensive Plan Map designation applied in 1980.

In reviewing these areas for suitability and readiness for zone changes, staff considered a number of factors including infrastructure constraints and conditions, actual built densities, recent market activity, demographics and policy direction in the 2035 Comprehensive Plan. Factors were considered on balance, such that minor infrastructure shortcomings might be outweighed by other location strengths, and vice versa.

Generally, residential zones in areas with relatively strong infrastructure investments and proximity to amenities and services are proposed to change to match the long-standing Comprehensive Plan designation. The majority of proposed changes are modest in scale, such as the difference between Residential 5,000 (R5), which mostly allows single-family home development, and Residential 2,500 (R2.5) which allows single-family home development as well as duplexes and row houses.

In areas farther from centers, with more limited infrastructure and/or with other constraints (such as steep slopes), staff has generally proposed to retain current zoning. In these areas, property owners would continue to be able to request an individual zone change through a land use review process, subject to meeting approval criteria in the Zoning Code.

Specific evaluation criteria included:

- Proximity to centers
- Lack of substandard streets, water system constraints, and other infrastructure barriers
- Terrain



- Transportation capacity
- Existing development that exceeds the allowable density in the current zone (typically a legacy of less restrictive zoning in the past)
- Lot sizes that are smaller than allowed in the current zone
- Underlying plats and/or alleys
- Properties that have zoning in place to match the Comprehensive Plan, approved through owner-initiated Land Use Reviews
- Existing development allowed through lot confirmations
- Low potential for displacement of tenants as a result of redevelopment

Questions for PSC discussion

General issues raised in testimony

1. The following issues were raised in testimony received to date. Does the PSC agree that any of these should be the basis for modifying staff's proposals for residential Zoning Map changes?
 - a. Increased potential for demolition of existing homes
 - b. Effect of redevelopment on neighborhood character and scale
 - c. Pressures of redevelopment on parking and local traffic
 - d. Effect of zone changes on property values or taxes
 - e. Potential impact of a zone change on the racial composition in neighborhoods that are experiencing gentrification
2. Does the PSC generally support proposed Zoning Map changes in the David Douglas School District, recognizing the temporary reduction of development potential on affected properties?
3. There are locations in SE Portland (Woodstock, Chavez, Caruthers and a few others) with R5 zoning and a Commercial/Mixed Use Comprehensive Plan designation (some applied in 1980 and some newly proposed). The zoning in these locations has not been proposed for change in either the Mixed Use Zoning Project or the Residential and Open Space Zoning Update. Should the Composite Zoning Map consider Zoning Map changes in these locations to either Mixed Use, or to match the adjacent higher density residential zone? (Staff will provide examples on April 26th to inform this discussion.)

Area-specific issues for PSC discussion

4. **Rose City Park** (proposed change from R5 to R2 and R1 near the 60th Ave MAX Station)



- Does the PSC support retaining the R5 zoning/pattern in this area? Staff's proposal to change to R2 and R1 would allow a slightly higher density option that would (a) legalize nonconforming multi-plexes in the current R5 zone, (b) provide options for various housing types, and (c) result in transportation-related improvements that depend on higher density zoning.

5. Rose City Park - Euclid Heights (proposed change from R5 to R2.5)

- Does the PSC support retaining R5 zoning in order to preserve existing character and recognize the 20% slope? Staff's proposal to change to R2.5 was based on the area's service-rich location (within ½ mile of Hollywood/42nd Ave Transit Center and proximity to Providence, a major employer).

6. Woodstock - SE Henry Street (proposed change from R5 to R2.5)

- Does the PSC support retaining R5 zoning here, in response to testimony? SE Henry Street is a dead end without an approved turnaround, and residents are concerned about fire safety and constraints on emergency response. Staff has consulted with the Portland Fire and Rescue, and will share information with the PSC at the work session.

7. Maplewood - SW 45th and California (proposed change from R7 to R1 to correspond with Recommended 2035 Comprehensive Plan Map)

- Does the PSC support retaining R7 zoning here, in response to testimony? This would require a property owner to apply for a quasi-judicial Zoning Map Amendment and would require additional public process.



Overview of Testimony on Proposed Residential and Open Space Zoning Update

The following tables present a general overview of key themes and categories that stood out in testimony received on the Proposed Draft of the Residential and Open Space Zoning Update, as of April 12 2016. The full record of testimony received up to April 12, 2016 is available through e-files (<http://efiles.portlandoregon.gov/Record/8824031/>). Additional testimony continues to be received in anticipation of the hearing on the composite zoning map, scheduled for July 2016.

Table 1: Zoning-Only Changes

Theme	# of Pieces of Testimony	Primary neighborhoods identified in testimony	Sample testimony excerpts
In support of Zoning Map change in Zoning Review Areas	41 total (submitted by 9 individuals or groups)	<ul style="list-style-type: none"> • Buckman • Concordia • Hosford-Abernathy • Mt Tabor • North Tabor • Overlook • Piedmont • Richmond • Rose City Park • Sunnyside • Woodstock • Citywide 	<p>"I support this modest change to increase the housing possibilities near the Clinton MAX station." (Hosford-Abernathy)</p> <p>" My wife and I would like to continue living here after we retire, and the only practical way to afford that is build a smaller home on our lot and rent out or sell our current home." (Richmond)</p> <p>" ... Portland is growing at a rapid rate and it is becoming increasingly difficult to find housing to rent or purchase closer in. The rents are incredibly high and there is much competition to even get into a home. The Comprehensive Plan states that it wants to focus growth on centers and corridors." (Richmond)</p> <p>"These properties have sat for decades with a Comp Plan designation higher than the zone, with little movement. Changing the zone will perhaps encourage a few more property owners to take advantage of the higher zone, and add a few more units here and there in the neighborhood. With the plan to get to 20% of the new housing units within the neighborhoods, this is the least that can be done." (Richmond)</p> <p>"Yes! This is a great place to increase density. Please consider R2 instead of R2.5" (Overlook)</p>

Theme	# of Pieces of Testimony	Primary neighborhoods identified in testimony	Sample testimony excerpts
<p>Concerns about potential impacts of redevelopment</p> <ul style="list-style-type: none"> ● Parking ● Loss of trees ● Increased traffic ● Changing character 	<p>62 total (submitted by 54 individuals or groups)</p>	<ul style="list-style-type: none"> ● Creston-Kenilworth ● Mt Tabor ● Overlook ● Piedmont ● Richmond ● Rose City Park ● Sunnyside ● Woodstock ● Maplewood 	<p>"I am in favor of the zoning change on my block with the caveat that something needs to be done about aggressive commuter parking in our neighborhood. It is increasingly difficult for neighbors to park on their street near their homes due to commuter parking, particularly since during weekdays parking is only allowed one side of the street." (Sunnyside)</p> <p>"In the last eight years I have watched the destruction lovely trees, the filling up of so many yards with skinny and tall houses, and the demolition of smaller houses with replacement by large houses that are absent any yard and that barely fit into the resulting space. These houses do not fit in with the existing one and two story old Portland homes next door. The obliteration of yards that heretofore had been neighborhood green spaces is sad and makes the neighborhood less healthy with its increase in air and noise pollution because of the diminished plant life." (Sunnyside)</p> <p>"I am concerned about the increase of traffic on narrow SE 74th if the proposed change at 74th-76th and Thorburn is adopted. Doubling the residential density from R5 to R2.5 will greatly increase traffic on those already dangerous intersections, especially left turns from Thorburn." (Mt. Tabor)</p> <p>Concerns about no required parking from new higher density development near LRT station; general opposition to going from R5 to R1 or R2 and changing the character of largely SF neighborhood (Rose City Park)</p> <p>"We are not against density. In fact, we worked closely with our next-door neighbors when they converted their double-car garage into an accessory dwelling unit (ADU). However, we are against a practices that has become too common in our city: throughout Portland, developers have torn down single-family homes and built cheap dwellings—with two to eight units apiece without parking—which consume resources and further contribute to congestion and environmental pollution." (Piedmont)</p> <p>"I oppose this upzoning change to this degree, from R7 to R1. This is too extreme of a change, does not fit the rest of the surrounding streets or</p>

Theme	# of Pieces of Testimony	Primary neighborhoods identified in testimony	Sample testimony excerpts
			neighborhood. Traffic is a high concern in the specific location as is bike and pedestrian safety." (Maplewood)
Development constraints weren't considered	23 total (submitted by 20 individuals or groups)	<ul style="list-style-type: none"> • Mt Tabor (4) • Richmond (1) • Rose City Park (3) • Woodstock (15) 	<p>"Current Fire Code prohibits this type of street for new development, and the City of Portland should not allow more density on a street that is substandard with regard to its own public safety code. The Portland Fire code states: "Dead end fire apparatus access roads in excess of 300 feet in length shall be provided with an approved turnaround (OFC 503.2.5 & D103.1)." This dead end block of SE Henry Street qualifies as an access road, and there is nothing anywhere along its length that meets approved turnaround standards of any type." (Woodstock)</p> <p>General concerns about lack of infrastructure (unimproved streets) and already unofficial park and ride areas near LRT station. (Rose City Park)</p>
Concern that rezoning proposals aren't applied evenly	27 total	<ul style="list-style-type: none"> • Creston-Kenilworth • Mt Tabor • Overlook • Piedmont • Richmond • Rose City Park • Sunnyside • Woodstock 	<p>"We find it perplexing that the city has proposed to <i>down-designate</i> some Eastmoreland neighborhoods...it is well known that the City of Portland is in the midst of an affordable housing shortage; it seems a strange proposition to reduce capacity in this established neighborhood and put further pressure on the city's housing market as a whole. " (Overlook)</p>
Concerns about displacement, access to housing, affordability	21 total	<ul style="list-style-type: none"> • Hosford-Abernathy • Mt Tabor • Richmond • Rose City Park • Piedmont 	<p>"Retaining single family residences and lower density units will encourage stabilization of property value and rents in this area. This also can help to preserve neighborhood diversity and reduce the unintended consequences of new development trends and the involuntary displacement of renters in the area affected." (Rose City Park)</p> <p>"It is well known that communities of color, immigrants, and the poor have historically inhabited North and Northeast Portland neighborhoods. Traditionally, these communities have lacked the clout to resist arbitrary</p>

Theme	# of Pieces of Testimony	Primary neighborhoods identified in testimony	Sample testimony excerpts
Concerns about property value and development potential	6 total	<ul style="list-style-type: none"> • Creston-Kenilworth • Hosford-Abernathy • Richmond • Woodstock • Hazelwood 	<p>proposals such as this one that impact the quality of life in their neighborhood. " (Piedmont)</p> <p>"I believe this zoning change would have a negative impact on our property values and neighborhood. It would do nothing to solve the city's affordable housing problem, while adding a new risk factor for our street that would compromise our re-sale value." (Hosford-Abernathy)</p> <p>"This would downgrade the usage of my lot, restrict the options to develop, and lower the value considerably." (Hazelwood)</p>
Concerns about scale, compatibility of new development	12 total	<ul style="list-style-type: none"> • Irvington • Mt Tabor • North Tabor • Overlook • Richmond • Rose City Park • Sunnyside • Woodstock 	<p>"...RH to R1.... will make the FAR and height limitations in the Broadway area compatible with the Irvington Historic District, and especially the criteria used to evaluate new construction. These changes will assure that new construction will be compatible with the transition to the residential portion of the neighborhood. These changes should also reduce conflicts between neighbors and developers, and the developers will know what to expect in terms of mass, scale, and size." (Irvington)</p>

Table 2: Testimony Related to Zoning Based on Changes in Recommended Comprehensive Plan

Theme	# of Pieces of Testimony	Neighborhoods identified in related testimony	Sample testimony excerpts
<p>In support of Recommended Comp Plan and corresponding zoning</p>	<p>27 total</p>	<ul style="list-style-type: none"> ● Bridlemile ● Brooklyn ● Buckman ● Creston-Kenilworth ● Eliot ● Hillsdale ● Hosford-Abernathy ● Marshall Park ● Richmond ● Sellwood ● Sunnyside 	<p>"The site currently functions like it is R1, but I'd hate to limit it in the future. The proximity to the Lone Fire open space and to amenities on 28th as well as Belmont makes me think it could be zoned for a higher capacity. This is true of the entire stretch between 26th and 30th on SE Stark. (Belmont/Sunnyside)</p>
<p>Opposition to down-designation related to property value or development potential</p>	<p>15 total</p>	<ul style="list-style-type: none"> ● Ashcreek ● Brentwood-Darlington ● Bridlemile, ● Brooklyn ● Eliot ● Forest Park ● Marshall Park ● Powelhurst-Gilbert ● Sellwood ● St Johns 	<p>"The proposed zoning changes effectively cut the value of our property in half...This is just the property value, and does not even consider the added value that we would receive after building and selling the homes...." (Ashcreek)</p> <p>"Please consider the entire risks for Eliot residents of the zone change. Several of our residents are not in support of this change due to the potential increased taxes but our LUTC has considered the costs of loss of old homes and found this shift to R2.5 to be the best alternatives for that purpose. We are supportive of the LUTC efforts and wish you to also consider the other perspectives of those concerned and vulnerable residents." (Eliot)</p>
<p>Opposition to down-designation (and down zoning) related to uneven development</p>	<p>1 total</p>	<p>St. Johns</p>	<p>"If this zoning change goes through I will be a single family house, on property zoned for less density, sandwiched between a restaurant, a 7 unit apartment complex, on a truck route. This is an awful solution...I encourage you to leave the zoning as it is, allowing for flexibility in development options as the street evolves. Do not fossilize a poor transportation and zoning choice." (St Johns)</p>

Theme	# of Pieces of Testimony	Neighborhoods identified in related testimony	Sample testimony excerpts
Opposition to down-designation related to need for housing access, affordability	10 total	<ul style="list-style-type: none"> Brentwood-Darlington, Eliot, Buckman Sellwood-Moreland 	<p>"I currently rent in Brentwood and am shocked that the city would consider downzoning my neighborhood in the middle of a housing crisis. I would like the change of buying in some proximity to family and my stepdaughter's school in this neighborhood. If the city permits nothing but large unattached houses in this area, it will become one more neighborhood in the city that is designed to push out its middle-income and poor residents." (Brentwood-Darlington)</p> <p>"Request that my current R2 zoning be left in place, rather than be changed to the proposed R5. My reasoning for this related to the current status of the parcel immediately adjacent to the east, which is in the process of developing into a 5-story apartment building. This change, and the proposal of R1 on the neighboring 2 blocks of 13th, causes me to think it is not unreasonable for my parcel to develop at R2 density." (Sellwood-Moreland)</p>
Opposition to upzoning in area with nonconforming density.		Buckman/Sunnyside	<p>"Please bring non-conforming apartment buildings into compliance on a property-to-property basis, rather than the blanket changes that also affect existing single-family homes." (Buckman/Sunnyside)</p> <p>"The proposed changes will allow currently conforming single family homes to have four story apartment buildings constructed immediately adjacent. The scale of the buildings that will be allowed outright in the proposed zoning do not belong in an area with historic single family residences." (Buckman)</p>

Table 3: Geographic distribution of testimony

District	Total # pieces of testimony	Percent of Total	Total # individual testifiers
North	10	5.3%	8
Northeast	39	20.6%	24
Southeast	118	62.4%	66
East	7	3.7%	6
West	13	6.9%	12
Citywide/Other	2	1.1%	2
Total	189	100.0%	118

