

*Have Private Backyards
Been Outlawed in the
Portland Metropolitan Area?*

by John Glennon
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About the Author

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Have Private Backyards Been Outlawed in the Portland Metropolitan Area?

1. INTRODUCTION

Anyone searching for a new home in the Portland metropolitan region will find a puzzling contrast between the supply of land and the size of yards in new residential lots. On the periphery of the region, there is an abundance of underutilized vacant land that easily could be converted to housing with decent-sized yards. Yet, most of that land lies fallow, while virtually all new residential developments tend to be apartments, condominiums, row houses, or detached single-family houses on tiny lots. Anyone with children hoping to find a backyard big enough to put in a pool or toss a Frisbee likely will have to find a house built decades ago.

This paper is an attempt to determine if the apparent disappearance of private backyards is merely an illusion or the result of specific policy choices by government. The author has closely examined zoning codes for all three local counties, as well as a representative cross-section of incorporated cities, to see if the traditional suburban yard has been outlawed. For the purpose of this survey, “traditional” lot size is defined as roughly 4-5 units/acre (an acre is 43,500 SF).

While there is some variation among jurisdictions, it does appear that the absence of standard-sized backyards among new home products is real and deliberate, the result of conscious policy choices made by legislators, state land use regulators, and regional overseers at Metro.



A new development in Beaverton

In a geographically large, lightly populated state that is roughly 98% open space, the policy focus on high-density urban development throughout the entire metro region is somewhat surprising. Most young parents, seeking a moderate amount of private yard space at a reasonable price, probably would be shocked to learn that the price of buildable land has been deliberately inflated through government rationing, and that the backyards they are seeking have been outlawed.

This paper provides details on where, why, and how backyards have been eliminated and suggests some ways to moderate land use regulations.

Background

Top-down planning is transforming the lives and choices that residents of the Portland metropolitan area have related to housing. In 1973, the state of Oregon passed strict land use regulations to address the perceived need for conservation of farmland and forestland and the containment of urban centers. Goal 2 of *Oregon's Statewide Planning Goals and Guidelines* states the intent “To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land...”¹ This goal has had serious implications for property owners and developers, since they have had to undergo such planning processes with government involvement when making their own plans for land use.

In the Portland area, Metro, the tri-county regional government, oversees this process and dictates growth and development in the Portland metropolitan region in order to “...address climate change, ensure equity, create jobs, and protect the region's quality of life.”² The way that Metro is addressing these broad topics is by “directing growth into centers, corridors and employment areas designated in the 2040 growth concept.”³ The 2040 growth concept is a model that serves as an outline for growth in the Portland Metropolitan region and establishes goals about how Metro believes the region should be developed. Metro has decided it is necessary to substantially increase the residential density of the region to achieve the above goals.

A “traditional” suburban development used to contain about 5 units per acre. These types of neighborhoods allowed for plenty of open “green space” for residents to recreate in and experience a connection to nature on their own property. Many people prefer these neighborhoods for a variety of reasons, such as having room for kids to play outside in a safe environment, gardening, or simply for the peace and quiet that extra room affords. Respect for this preference is quickly eroding as Metro attempts to make it more difficult and costly to live the “American Dream.”

2. METRO REGIONAL GOVERNMENT

Metro is the regional government that oversees land-use planning in the tri-county area. It is a unique regional

government because it is made up of 7 elected Councilors who each represent a different district within the metropolitan area, with the exception of one councilor who is elected at large. In 1970, Metro was responsible for solid waste planning, and then in 1976 it also gained responsibility for what is now called the Oregon Zoo. Since then the agency has grown and its current responsibilities include land use planning, transportation planning, open space, Oregon Zoo, convention and performance venues, and solid waste and disposal.⁴

“...[T]he absence of standard-sized backyards among new home products is real and deliberate, the result of conscious policy choices made by legislators, state land use regulators, and regional overseers at Metro.”

Despite a substantial increase in its power over the years, residents still overwhelmingly think Metro is primarily responsible for solid waste disposal. Metro conducted a survey to find out how much people know about their responsibilities and found that “Of the group, 64 percent said that Metro was responsible for recycling, waste management, and garbage disposal, and 12 percent recognized Metro’s responsibility for coordinating regional planning.”⁵

Not only are a substantial percentage of residents unaware of Metro’s main role, but the survey also found that “72 percent of respondents reported that they had heard of Metro.” This means that over a quarter of the population is unaware that Metro even exists.

Metro has a complicated set of requirements contained within its Urban Growth Functional Plan which provides local planners with a framework for how to develop their own comprehensive plans, in a top-down effort to enforce density on all new developments within its jurisdiction. From 1995 to 2010 Metro set exact targets that needed to be met, such as 10 units per acre to meet regional housing needs (which is what some towns still have in their comprehensive plans). According to Ted Reid, a planner from Metro, that rule had to be modified because “...Metro staff heard a number of concerns from local government staff—that it was time consuming and staff intensive to produce an annual report on changes to housing and employment capacity as well as a biennial report on actual density per net developed acre, that it was impossible to calculate an accurate employment number, that there was no consistency in how each local government calculated their zoned capacity...”⁶ These problems extend beyond the scope of setting exact targets and are inherent in

attempting top-down planning, but this has not hindered Metro from continuing most of its activities.

Now Metro has a new rule, adopted in December 2010, that calls for no loss in housing capacity, which means that each city or county must either increase or maintain its housing capacity to fulfill the purpose of achieving a “...compact urban form and a ‘fair-share’ approach to meeting regional housing needs.”⁷ In this instance, “fair-share” refers to a city that has “under-utilized” land or large lots and therefore is not making a big enough sacrifice to take on the growing population of the region. This broad way of forcing density requirements allowed Metro to cut down on planning activities.

The rule for no loss in capacity was also supposed to allow developers more flexibility to create developments at a range of densities depending on demand, environmental constraints, and the amount of public services in an area. In order to develop an area with a lower density than what typically would be accepted by Metro, developers can apply for a “density transfer” to ensure that a community’s overall housing capacity is maintained. “Density transfers” allow developers to transfer density requirements from one area to another so that not all developments have to be a uniform density and a range of housing choices can be produced.

Although it is good that developers are being given more choice in how they can develop certain neighborhoods, it also causes unrealistic plans to be made and can worsen the shortage of affordable housing. This is because developers can get around actually developing the high density areas by developing the low density areas first and then pushing off development for the remaining areas until land becomes expensive enough to justify the construction costs of high density development. There is a requirement that these high density developments have to be market feasible within the next 20 years for the “density transfer” to be awarded,⁸ but market feasibility is just based on Metro’s projections.



This open space near Elmonica light rail station must be filled in with high-density housing to comply with zoning requirements.

Metro does still require that each zone that has dwelling units have a minimum density in place with the exception of mixed-use zones, and according to the Functional Plan, if

the city did not adopt a minimum density requirement before March 16, 2011, then the minimum density must automatically be 80% of the maximum potential density of that area.⁹ This is a vague way to define a minimum density because the document does not specify how a maximum density is calculated. In reality, the 80% requirement seems to be more of a guideline, despite the fact that it is written as a binding requirement. Ted Reid, the Metro planner, explained that in practice this requirement is not really followed, and he seemed unaware that it was even in the document. He said that Metro expects cities to continue to designate minimum densities in keeping with conditions placed on Urban Growth Boundary expansions. The conditions of Urban Growth Boundary expansions is that there are enough units in each development to meet the region's housing needs based on the housing need analysis performed by Metro.

Real Estate and High Density Construction Costs

The costs of the 2040 plan include real estate prices which are bid up due to decreased supply and the increased costs of building higher density residential areas on lands where the market price does not justify the high density development. Planners have been told this by economic experts before, but seem to ignore the recommendations.

For example, in a memo drafted by *Johnson Reid, LLC*, an economic consulting firm,¹⁰ to Colin Cooper, the Hillsboro Planning Supervisor, regarding a proposed Hillsboro development called AmberGlen, Bill Reid concluded, "Mid-rise and high-rise development are frequently challenging in a suburban location because the significant increase in construction costs per unit with steel and concrete materials are rarely justified by attached residential price levels in the suburbs."¹¹

Despite this technical advice, the AmberGlen plan still calls for a density higher than what the market likely will bear.

Strange Development Pattern Symbolizes Penalty for Last Users In

Since most of the development in the Portland area took place before the 2040 Plan was enacted in December 1995, new developments have to take on most of the new high-density capacity. This has created a strange pattern of development where many outlying areas are denser than Portland itself. For example, Southwest Portland is very suburban and located much closer to downtown than Beaverton or Hillsboro, yet those cities are much denser and further away from Portland city center. In fact, many neighborhoods in the inner east side are less densely populated than current and future developments planned for

outlying areas of Washington or Clackamas counties.

In the past, consumers had the option of living on the periphery of development in exchange for lower land costs and more private space; but today new homeowners not only have to live farther away from Portland's center, but they have to live in denser developments as well. Since people who made development decisions before the 2040 plan was enacted were capable of designing desirable neighborhoods, even Metro has conceded that change should be limited.

According to Metro, "If you live in an established neighborhood, whether it is in the heart of Portland or in Gresham or Beaverton, your neighborhood should continue to look and function like it does now."¹² This promise is similar to the one President Obama made when he said, "If you like your doctor, you can keep your doctor," and in both cases, the promises turned out to be false.

Not only are new Portland-area neighborhoods uniformly being developed at high densities, many older neighborhoods are being changed through the process of infill and redevelopment. All over Portland, lawn signs are now visible urging politicians to "Stop the Demolition," a reference to the hundreds of older homes that have been torn down and redeveloped in recent years, often at much higher density.



These are the government-approved backyards for a new "suburban" development on the Tigard-Beaverton border.

Decrease in Lot Sizes

Implementing the 2040 plan has caused the average lot size in the Portland metropolitan area to decrease substantially over a relatively short period of time. In 1996, only a year after 2040 was enacted, researchers at Portland State University performed an analysis of lot sizes¹³ in the Portland area and found that in Washington County the average lot size was 9,000 square feet, or roughly 5 units an

acre. The analysis also separated how lots were zoned into small, medium, and large, with small lots ranging from 5,000 square feet to 7,000 square feet, medium lots were 7,001 to 10,000, and large lots were 10,001 to 40,000 square feet.

Today, most new single-family residential neighborhoods only allow up to 7,000 square feet, and most of the future housing capacity is for multifamily units with even less private yard space. Developers and local regulators now refer to what was once average (around 9,000 square feet) as “executive” housing, implying a policy bias that views large backyards as an elite amenity.

3. CITY PROFILES

The following sections are profiles of the variety of housing products available in cities across the Portland Metropolitan region. Although not all the cities under Metro's jurisdiction are included, these cities provide a glimpse of how the 2040 plan has been adopted by local jurisdictions and the implications for future development in these areas as the plan is carried out. The following cities are located in all three counties of the tri-county area, and have a range of population sizes and diverse demographics that reflect the population of the region as a whole.

Portland

Portland has led efforts to increase density and therefore already has seen some of the negative effects such as more congestion, lack of parking space, and higher costs. The city has since revamped its original plans in light of previous mistakes.

Tom Armstrong, supervising planner for the Bureau of Planning and Sustainability for the City of Portland,



Redevelopment in North Portland near the Yellow MAX Line. Such projects are often out of scale with older homes but this is unimportant to zoning officials.

explained that instead of rezoning entire neighborhoods located near light rail lines, they are now zoning in more targeted areas along busy commercial corridors and in centers as well as requiring that only 1 in every 4 units built have an off-street parking space. Armstrong believes that the complete infrastructure systems in these areas will make development more feasible for mixed-use development. Finally, Armstrong said that since the city is mostly built out, allowing for higher density development is about “creating the opportunity to live” in new mixed-use developments.

“Not only are new Portland-area neighborhoods uniformly being developed at high densities, many older neighborhoods are being changed through the process of infill and redevelopment.”

Portland has taken some crucial steps in addressing previous problems associated with planning, but is not doing enough to address future problems that will result from newer plans such as a continued increase in congestion that is imminent—unless people dramatically change their habits from driving to something else, as planners claim will happen in the long run.

When I asked Armstrong whether or not there were areas where single-family housing that had 5 units per acre would still be developed in Portland, he said that would be very limited and confined to tear-downs and possibly the Gateway area. This is interesting since Gateway was declared by Metro to be a future regional center. According to the plan, it is supposed to serve as a type of “second downtown” for the city of Portland due to the transportation connections and the “under-utilized” space in the area.

During 2013 a series of articles in *The Oregonian* gave an update on how plans have been working out in the area and reported, “Despite years of planning, Gateway remains largely suburban in feel.”¹⁴ Residents of the area did not call for a regional center and a complete remake of their neighborhood, but were more concerned about getting some basic infrastructure that has long been lacking in the area, such as sidewalks and parks.

Another article in *The Oregonian* quotes Armstrong saying, “Gateway has lots of zoned capacity. It doesn't have a zoning problem, [but] we need to look at other ways to

incentivize the market to achieve what's in the Gateway Plan.”¹⁵ For some reason the city thinks achieving what is in the plan is more important than what market forces (preferences of residents and developers) call for, and therefore public money must be spent to realize political goals.

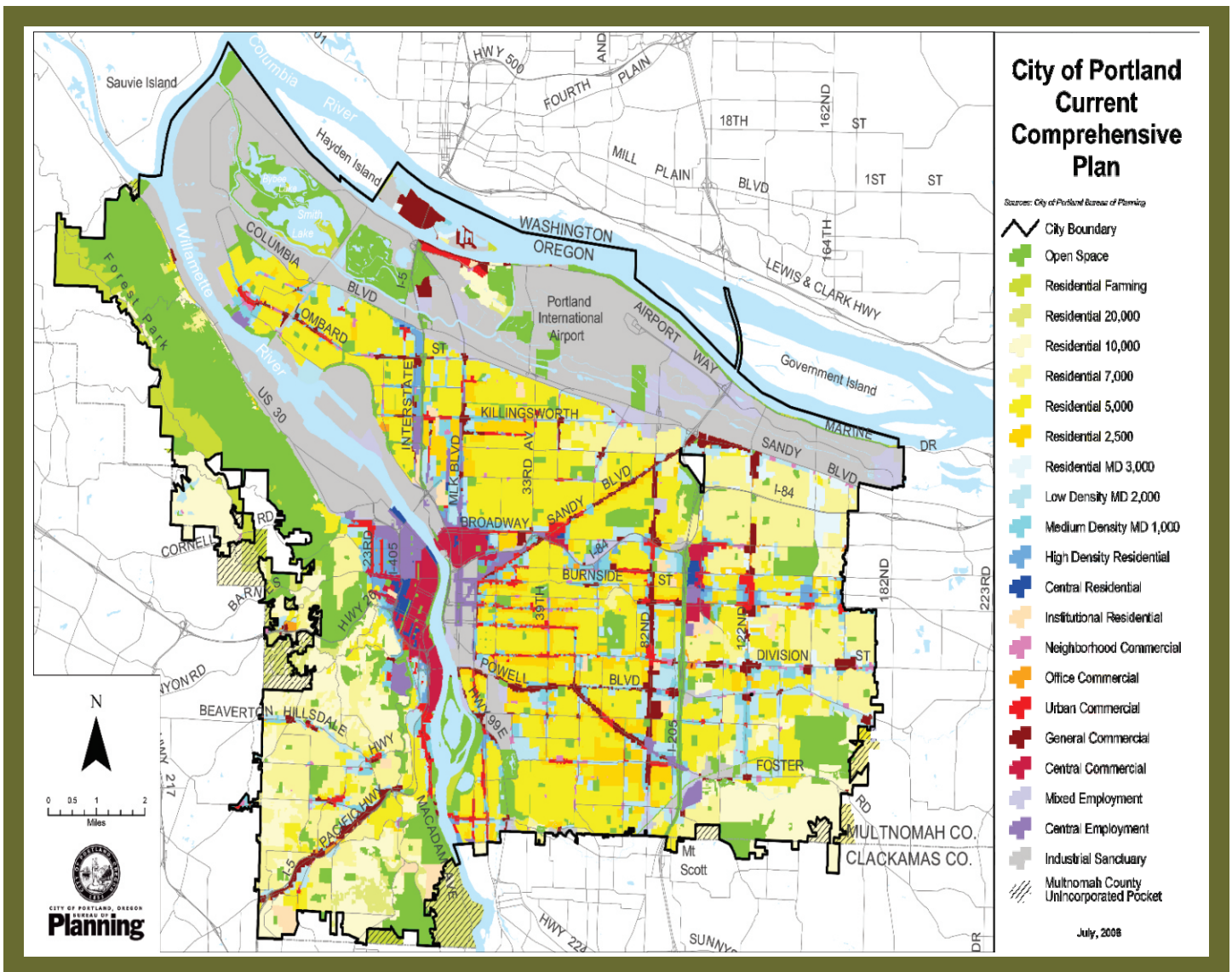
In the same article Eric Engstrom, a principal planner for the Bureau of Planning and Sustainability, says, “We are doing the right thing in terms of preserving [nature], but we're putting more people further away from nature....By 2035, more people will be less likely to have a tree in their backyard.”

In the comprehensive plan for Portland, the city describes the change in the trend for housing, “From the late 1980s until 1995, most residential units permitted in Multnomah County were for single-family homes. Since then most permitted units are multifamily. This was verified by Tom Armstrong, who estimated that roughly 85% of the new housing capacity would be for multifamily developments.

By definition, then, *most new residential units in Portland will not have private backyards of any kind.*

The comprehensive plan also emphasizes the importance of “Transit-Supportive Density” which calls for “...minimum residential densities of 15 units per acre within one-quarter mile of existing and planned transit streets, Main streets, town centers, and transit centers. Establish average minimum residential densities of 25 units per acre within one-half mile of light rail stations and regional centers.”

Finally, in areas where single-family homes are already established as part of the neighborhood's character, the city plans to “...use other methods to increase densities such as encouraging infill through accessory units in single-family zones or increased density on long-vacant lots.” This means that there will be no private backyard near any of the city's remaining thoroughfares and few remaining areas where private backyards will be allowed. These main thoroughfares also connect existing single-family neighborhoods, as well as the rest of the city, and will



become increasingly congested as they are lined with high-density developments. There will also be serious parking problems near these streets which are likely to spill over into the adjacent neighborhoods.

The zoning map on page 5 shows the composition of density in Portland. Light yellow areas represent 5-unit-per-acre developments and are found in the Southwest and far Northwest sections of the city, as well as outer areas of the Northeast and Southeast districts. Medium density areas are found in the older neighborhoods of the city around downtown and in Inner Southeast and Inner Northeast Portland. High density residential development is located downtown, in the Pearl District, in South Waterfront, and increasingly in designated transit corridors on the East Side.

“Hillsboro has been cited by Metro as one of the main areas where there is potential for densification... However, Metro admits that local preferences... have not been tested.”

Hillsboro

Currently, two residential long-range planning projects are underway in Hillsboro: AmberGlen and South Hillsboro. The lowest designated density for the AmberGlen project is mixed-used medium density which allows for a minimum of 8 dwelling units per acre, but allows for up to 11 units per acre.¹⁶ So there are no traditional suburban areas within the project, and most of the project has been planned for high-density use. Given the context of the area, which is located 21 miles from the central business district in Portland, high-density development does not make sense, and the land under the project is not worth enough to bear the higher cost of mid-rise and high-rise structures.

The second project, South Hillsboro, does allow for some low-density development. About 32% of the project has been zoned to allow for 5 dwelling units per acre, 28% has been zoned for 13 units per acre, 4% has been zoned for high density at about 19 units per acre, and 2% has been zoned for mid-rise which would have 25 dwelling units per acre. The rest of the project has been zoned for mixed-use urban residential which makes up 7% of the project and will have a density of 18 units per acre. Any remaining land has been designated as open space, public facilities, and flood plains. So although low-density development has the greatest amount of space allocated to it, it will only constitute 22% of the total units in a traditionally suburban area.¹⁷

Hillsboro has been cited by Metro as one of the main areas where there is potential for densification because it has been classified as a regional center. However, Metro admits that local preferences for densification in any of the areas that they have cited as high growth potential have not been tested: “...full recognition of that density on the part of the public has not been tested in very many places since the original visual preference work by Metro.”¹⁸

Wilsonville

Wilsonville is a community that brushes up against the Urban Growth Boundary in Clackamas County and still has a lot of room for growth. However, Wilsonville does not plan to allow for much suburban development despite its location. According to analysis of its housing,¹⁹ Wilsonville's stock of single-family housing only makes up 52% of the total housing inventory, compared to 70% of the Portland metropolitan region. The long-range planning for the city does not suggest that the trend for Wilsonville will change. According to the same report, the density of single-family dwellings has an average of 7.6 units per acre, and multifamily dwellings have an average of 18.5 units per acre.

In its comprehensive plan, the city describes how Metro's plan has changed its own planning efforts: “For example, properties that were previously designated for residential development at 7-12 units per acre are now planned for 10-12 units per acre.”²⁰ The plan also states that Wilsonville is trying to achieve a residential density for the city of 10.8 units per acre.

According to Katie Mangle, manager of long-range planning in Wilsonville, planners have focused on keeping the plan flexible so that development would occur and the market would work. Mangle also said that she did not believe that Wilsonville would not have become the center that it became without pushing that development into a smaller area, since Wilsonville brushes up against the Urban Growth Boundary. It is certainly true that Wilsonville has probably developed quite differently, with a lot more need for multifamily housing, than would have happened under normal market settings.

Milwaukie

Milwaukie already has a relatively high density of 4,206 people per square mile and has actually seen a decrease in density of -1.2% from 2000-2010. Their comprehensive plan makes the objectives of the future of development for the city very clear: “...to locate higher density residential uses so that the concentration of people will help support public transportation services and major commercial center and foster implementation of the Town Center Master

Plan.²¹”

Thus, according to planners, the new Milwaukie light rail line does not exist to serve people; the people must change to serve light rail.

Despite the clarity of its planning document, Milwaukie has allowed for more suburban development in its plan, perhaps because the city already has a relatively high population density and is mostly developed. Therefore, current residents want to protect the character of their neighborhoods.

About 24% of the land in the city is zoned R-10, which allows for a residential lot of 10,000 square feet or roughly 5 units per acre. Although slightly smaller than traditional suburban lots, 58% of the city has been zoned for R-7, or 7,000-square-foot lots, which translates roughly to 6 units per acre.

Ryan Marquardt, then the senior planner from Milwaukie, confirmed that they are not trying to greatly increase the density of the city. Like Tom Armstrong of Portland, Marquardt emphasized that there is not supposed to be a universal increase in density, but instead density should only increase in targeted areas that are served by transit. Marquardt admitted that higher densities possibly could have an impact on quality of life.

West Linn

West Linn is one of the higher-income cities in the area with a median household income of \$72,010, and is more likely to have residents who are primarily interested in low-density, single-family development. West Linn's comprehensive plan,²² like other plans in the region, talks



High-density developments tend to be auto-hostile. In this new Beaverton project, parking spaces have been deliberately undersized so that the pickup trucks owned by many Oregonians cannot fit into one space.

about the need to allow for denser housing through re-zoning efforts. However, actual attempts to make the city denser seem to be limited to the words embodied in that document.

“Thus, according to planners, the new Milwaukie light rail line does not exist to serve people; the people must change to serve light rail.”

In a letter to Chris Deffebach, the Long Range Planning manager at Metro, from Bryan Brown, the Planning Director at West Linn, Brown reiterated their desire to cooperate with Metro but then goes on to state, “There is broad consensus that the City's existing land use pattern is satisfactory and there is little City wide support for the expansion of, or intensification of, any areas (residential, commercial, or industrial) within the City.”²³

According to a planner at West Linn, Metro never responded to that message. Apparently, West Linn will not force change upon its own citizens simply to comply with the Metro 2040 plan.

West Linn also has multiple neighborhood plans with goals that do not seem to match the goals of the city plan and certainly not the 2040 plan. This contradiction reinforces the desires of current residents to maintain a suburban environment in their community. All the neighborhood plans except one state a desire to maintain the low-density residential character of their neighborhoods while allowing for limited areas of higher density growth.

For example, Bolton has limited areas that allow for a maximum of 10 units per acre, while Marylhurst and Park Crest both state desires to maintain their current low densities without defining exactly what that is. Robinwood allows for some higher mixed-use densities limited to commercial corridors.

The only neighborhood with a plan that will allow for higher densities is Sunset, and it is probably because the neighborhood is already medium density.

It is interesting to note that when decisions are made at a more local level, compliance with the 2040 plan becomes more difficult because people want to maintain the often low-density residential character of their neighborhoods.

Tigard

On the outer fringe of the metropolitan area, Tigard is one of the cities identified by Metro as an area with high potential for growth. It has been designated a regional center and has a town center where the majority of its growth and high density projects will be concentrated: “The city shall maintain the low-density residential character of its existing single-family residential neighborhoods and more intense urban land uses in its regional and town centers...”²⁴

Tigard also must reach an overall average density of 10 units per acre to be in compliance with the 2040 plan. The city plan states, “Since 1994 the overall density of residential construction citywide has been 6.8 dwelling units per acre. It is expected that more attached residential units will be constructed through redevelopment and infill as remaining single-family residential land is developed.”

This is inconsistent with their goal of protecting existing neighborhoods from changes in density. In order to reach their goal of 10 units per acre, Tigard would have to drastically change the current cityscape. The city also admits that market conditions have prevented high-density mixed-use development in its so-called “regional and town centers.”

The vast majority of new planned developments are for lots smaller than the typical suburban 5-units-per-acre threshold. In Tigard any R zone under the number 3.5 meets this criterion.

“[Beaverton] understands from past experience that if it allows for more choice in its zoning code, people will consistently choose yards that are not in compliance with Metro requirements.”

Beaverton

This suburb of Portland is one of the main economic centers in the area, in part because the Nike corporate campus is nearby in unincorporated Washington County. Like other cities with similar characteristics, Beaverton was required to average 10 units per acre by 2040 before the rule change to no loss in capacity before 2010. The city was on target to reach and surpass those requirements due to the shortage of

housing on the west side of the metropolitan area, despite an abundance of open land near the city outside the Urban Growth Boundary.

The comprehensive plan for Beaverton is blunt about necessary actions needed to achieve the 2040 plan, while explaining past problems in achieving the desired density: “In April 2000, 200 parcels were designated low density residential totaling 89 acres. Overall, the area yields 356 persons, fewer than envisioned by the regional model. To limit the City's deficit in its regional share of population, **expansion of the low-density residential areas must be prohibited.**”²⁵

So, going forward, the city has made it clear that there will be **no new low-density residential developments.** The city understands from past experience that if it allows for more choice in its zoning code, people will consistently choose yards that are not in compliance with Metro requirements.

This stringent method of zoning is especially prominent in the Beaverton Creek Station Community plan, where an average of 24 units per acre is designated for the development overall, a minimum of 20 units per acre anywhere within the project, and finally a 30 unit per acre minimum for areas of the development that are within 400 feet of a light rail station.²⁶

Other communities within Beaverton such as Downtown Beaverton²⁷ and Merlo Station Community²⁸ were not quite as stringent, but still looked to incentivize maximum use of the land through mixed-used zoning designation and density “bonuses” for developers, which allow developers to develop at a higher density than what is normally allowed as long as a certain percentage of the development is allocated to “affordable” housing.

In addition to these designations, the area surrounding Downtown Beaverton has been completely reserved for medium- and high-density residential developments.



Vertical housing helps local jurisdictions meet their Metro density mandates.

Oregon City

Oregon City is a typical suburb that has been dubbed by Metro as a Regional Center due to its proximity to I-205. Like many other cities in the region, Oregon City will be running into trouble keeping up with the density requirements designated by the 2040 plan. According to a 2005 city document, “After accounting for expected future accessory dwelling units and environmentally constrained land, the overall density of residential units in Oregon City and within the Urban Growth Boundary was not sufficient to meet the dwelling unit target established by Metro.”²⁹

Oregon City said that it planned to address this problem by continuing to make code amendments which would increase densities in targeted areas. The City also called for expansion of the Urban Growth Boundary in specific locations. The city will continue to encourage “mixed-use development” which allows for higher residential zoning.

I also spoke with a planner from Oregon City who said that “we [Oregon City planning department] do believe that the city will and should become more dense” and admitted that many residents do not necessarily realize that. The planner also stated that there have been problems achieving the intensity of development that has been allowed by the zoning code since the market is not yet ready for that development. She justified the high zoning for these types of areas because she said that planners are thinking about a much longer period of time than developers.

4. UNINCORPORATED AREAS

Typically, unincorporated areas allow for more flexibility for landowners since they do not have a city to set restrictions on their property, in exchange for lower taxes and fewer public services. Due to the Urban Growth Boundary, the unincorporated areas in the Portland metropolitan area are controlled so as not to allow for any growth outside the boundary and only to allow relatively high-density growth inside the boundary. Unincorporated areas are still bound to the Metro 2040 plan, so developers planning to build housing in these areas must work closely with Metro to make sure their plans are in compliance.

Areas that are currently unincorporated sections of these three counties are important because they contain substantial amounts of land necessary to build more single-family homes.

Measures 37 & 49

Property owners in unincorporated areas have been able to avoid some of the regulations imposed by Metro by filing a Measure 37 claim. Measure 37, which was passed in 2004,

required the state of Oregon to compensate certain property owners whose properties saw a reduction in the value of their land due to environmental or land use regulations. If the state did not compensate an owner making this claim after 2 years, then the claimant was free to use property in any way allowed under the regulations that were in place when the property was purchased.³⁰

In 2007, the legislature referred Measure 49—designed to overturn most aspects of Measure 37—to Oregon voters. The measure passed. Among other things, Measure 49 was aimed at cutting down on the suburbanization that was taking place in unincorporated Washington and Clackamas counties from 2004-2007. A document produced by the state of Oregon discusses some of the effects of Measure 49: “...a bigger Measure 49 story in Washington County may be the avoidance of sprawling rural residential subdivisions in the western hills....”³¹

“The passage of Measure 37 showed that despite planners' claims that preferences in housing are changing..., many potential homeowners in the Portland area... would choose a home with a larger yard if that option existed.”

A timber company which owns large tracts of land in Washington County was planning to develop until Measure 49, which reduced each tract of land to 3 housing units. Clackamas County also saw a lot of activity with Measures 37 and 49, but had no large landowner to dominate the development like the timber company in Washington County. Therefore, the development was more sporadic and less clustered into traditional suburban parcels.

Interestingly, Measure 49 significantly reduced density on lands that had previously been subject to Measure 37 claims. The same report concluded, “The average number of new dwellings authorized per valid claim [for Clackamas] under Measure 49 is 1.7; under Measure 37 the average number of new dwellings requested, or for which waivers were issued, for these same claims was 18.”

The passage of Measure 37 showed that despite planners' claims that preferences in housing are changing to smaller, more compact development, there are still many potential homeowners in the Portland area who would choose a home with a larger yard if that option existed. There are also the

unintended consequences of limiting development with Measure 49 outside the Urban Growth Boundary. Now there are people living on larger lots than what they would have demanded under normal market conditions, and there will be no opportunity for commercial development in these areas due to the sparse population. This will force residents in these areas to drive longer distances.

In addition to these problems, eventually many of the areas developed under Measure 49 will have to be added to the Urban Growth Boundary and developed in order to maintain a 20-year supply of buildable land. When these areas are being urbanized they will face the problem that occurred in earlier neighborhoods, where the last developers in will have to develop at very high densities to reach density targets for these areas.



With the encouragement of local planners, this large backyard in NW Portland was filled in with new homes and a driveway.

Unincorporated Multnomah County

There is very limited space for development in the unincorporated areas of Multnomah County. There were a few comprehensive plans written for the West Hills Rural Plan Area,³² East of the Sandy River,³³ and West of the Sandy River.³⁴ All of these areas were outside of the Urban Growth Boundary, and therefore only allowed for very large lots that are supposed to be used for rural purposes. The other area is the Columbia River Gorge Scenic Area,³⁵ where residential development is also constrained.

The Multnomah County comprehensive framework plan mentions the importance of providing residents with a variety of housing because people's preferences vary considerably. However, the plan then designates preferred ways of housing residents on smaller lots to promote "efficient land use" and provide for more affordable housing, even though higher density developments are more costly to build.³⁶

Ironically, the plan states the main goal for public policy as "...a reduction in housing related costs. Because housing is a basic need, the public-sector should continuously re-evaluate its regulations to ensure that they promote the best interests of the community and do not create unnecessary costs."³⁷

It is interesting that the ostensible goal of public policy is to bring about a reduction in housing related costs when higher costs are necessary to serve the other main goal: developing densely populated, multiuse, transit-oriented developments.

Unincorporated Washington County

There are a few community plans for unincorporated areas in Washington County. The Aloha-Reedville area has many areas that are currently 5-6 units per acre, so there is a slightly better chance to get a house with a yard than in many of the incorporated areas. Of course, much of this housing stock is already built. However, the Aloha-Reedville plan states, "Existing conditions report residential density zoning and existing housing stock in Washington County is not suited for larger families or group living facilities."³⁸ So, there already seems to be a shortage of "family" housing in the area.

Another area is West Bull Mountain, composed primarily of medium density and limited low density.³⁹ This is another community looking to offer a "variety" of densities, which means that there will be a lot of options for multi-family dwellings, while single-family dwellings on large lots will be constrained.

Finally, there is the Bethany community plan, which has

been one of the most contentious because it required an expansion of the Urban Growth Boundary and because its remote location from Portland made planners wary that it would become a traditional suburban development where residents would be auto-dependent. To address these concerns, planners promised that there would be a “variety” of housing types and access to transit and infrastructure for pedestrians and cyclists.

The Bethany community plan⁴⁰ has a limited amount of land zoned for R-5 or 5 units per acre, but a substantial amount of the development is zoned for R-6 or 6 units per acre. Once again, even though a good proportion of the land is zoned for lower density developments, in terms of the number of units available, there will still be a lot of medium- and high-density housing ranging from 9 to over 25 units per acre in areas of the development located near urban services. Before this development was approved, it was completely rural since it was outside the Urban Growth Boundary.



High density is mandated near light rail in order to create ridership for the train. But most residents drive, resulting in parking shortages.

Unincorporated Clackamas County

There are more traditionally suburban areas in Clackamas County than in the previous two counties. The majority of the county is zoned for R-10, which is 5 units per acre, and R-8.5, which is roughly 6 units per acre.⁴¹ It is questionable whether new development will occur this way as well because of the need for compliance with the 2040 plan where, like the other counties in the area, density in any future developments will be determined by the same formula.

Community development plans within the county are all designated for densities higher than the suburban standard of 5 units per acre, except the Mount Hood community plan.⁴² Other community plans claim to provide for a variety of densities but simply redefine what “standard” density is

in order to give the impression that there will be traditional sized lots.

“Given the current political environment, incremental changes will have to take place in order to move from centrally planned housing in the Portland Metropolitan area to a more market friendly arrangement that allows for choice.”

A new development located right outside the Urban Growth Boundary near West Linn called Stonehenge will feature lots that are 1 acre each. This was also the site for the 2013 “Street of Dreams.” The abnormally large lots were made possible through a Measure 37 claim. According to *The Portland Tribune*, “The Stonehenge estates will take up just a portion of the roughly 55 acres that Hoff owns in the area, where the prospect of dense residential and commercial development has seen more than a decade of debate. Although the regional government has designated the Stafford and Borland area between Lake Oswego, Tualatin and West Linn for eventual urban scale development, the cities of Tualatin and West Linn have hired attorneys to fight it.”⁴³

This area is an example of multiple governments trying to use their political power for opposite agendas, all against property owners. Tualatin and West Linn are concerned about more congestion and being located farther from the countryside and would like to retain the rural character of the area, whereas Metro would like to eventually see dense development of the area because of its proximity to I-205.

5. CONCLUSION

Private backyards in the Portland metropolitan region have not been completely outlawed, but will become an exclusive amenity that only current homeowners and wealthier residents will be able to enjoy as they make up a smaller and smaller proportion of the overall housing stock.

Current and long range planning efforts by multiple cities and unincorporated county areas in the Portland metropolitan area show that there will be very limited opportunities for new home owners to build a house on a traditional suburban lot that has only 4-5 units per acre.

Those who prefer to have a larger yard will have to look in the areas that have already been developed.

Demand for single-family housing with a typical suburban lot size is not likely to decrease. However, new supply is virtually saturated if the current 2040 plan and the Urban Growth Boundary remain in place. This means that prices for these homes likely will rise faster than incomes.

The goals set by comprehensive plans are broad enough that it is difficult to challenge them. Nearly any public policy action can be justified through use of amorphous phrases such as “livable,” “sustainable,” “equitable,” and “environmentally friendly.” It is hard to measure or even define such concepts, but they are commonly used and unchallenged by the mainstream as desirable. Therefore, using such words in the objective section of a city plan allow unpopular actions to be continued without evaluation. When performance is measured and the plans are shown to be infeasible, the technical advice is often ignored, since it hinders government planners from achieving these broad objectives.

Not only are the goals broad, but they conflict with each other. Fostering higher density around the region, while protecting existing neighborhoods, exacerbates the situation for new homebuyers. Since residents were content with the generally low-density character of their neighborhoods, they do not want this to change. This means that new entrants into the market will bear a disproportionate amount of the costs generated by the 2040 plan. It is possible that there will be conflict among the different levels of government in the future, as the date for hitting certain targets draws nearer. The goals in neighborhood plans, which mainly emphasized low-density developments, often differed from the plan of the city and Metro to increase density.

Councilors at Metro, city council members, and county representatives have little accountability to the public despite being elected officials. There are two reasons for this. First, there are so many officials and governments that it is a full time job to keep up with the responsibilities of all these levels of government and the various initiatives that they are attempting to achieve. This creates a situation where residents do not know who the officials are and have to take the goals that they are promoting on faith.

The second problem is that almost all of the leadership agrees that intensive land use regulation and planning is how the future of the region should be shaped. This seems to have led to groupthink, where ideas that produce bad results are repeated over and over due to a lack of debate on these ideas.

Planners, who are not elected officials, are also not accountable to the public and agree that planning is

necessary because they have an interest in being employed. When developers are in charge of the process, it is imperative that they produce good results and desirable products. Otherwise, they go out of business. Planners do not have to turn a profit and usually demand more public money to “correct” any mistakes they have made in the past with more planning.

Recommendations

Given the current political environment, incremental changes will have to take place in order to move from centrally planned housing in the Portland Metropolitan area to a more market friendly arrangement that allows for choice. The first step is to challenge assumptions that are made about the need for an Urban Growth Boundary—and whether higher density is even achieving the goal of protecting the environment—and making it known that the trade-off for implementing the 2040 plan is that fewer and fewer people will be able to afford living in single-family homes with private backyards. Here are a few specific steps that should be taken now:

- Require Metro to provide clear and evidence-based reasons for requiring high density housing. Currently, Metro cites the need for conserving land even though Oregon is 98% undeveloped. Metro also claims that public services are more efficiently used in more densely planned areas, but they rely on a study performed by 1000 Friends of Oregon, an advocacy group with a vested interest in urban densification. Metro should provide empirical evidence from the Portland region to support its claims that higher density is more cost-effective for the provision of public services.
- Require Metro to complete an audit on the success of the 2040 plan to ensure that it is really furthering the goals it sets out to complete, which includes providing affordable housing and protecting quality of life. If the audit shows that implementation of the plan has not been effective, Metro should be required to take steps to ameliorate the problem.
- Governments should be required to perform technical analysis on projects that include very high densities; and if they are not financially feasible, the cities should be required to revamp their plans to allow projects that are feasible.
- In the 2040 plan Metro should be explicit about the implications of fulfilling the plan so that residents realize that a much smaller segment of the population will be able to afford single-family homes.

Ultimately, Metro should stop attempting to plan developments and force people to choose among options they do not want. Metro should allow residents to decide what type of home they would like to live in and where they would like to locate the home.

Developers should be allowed to study these choices and create communities that people demand and allow them to profit from giving consumers what they want. This will also increase affordability of housing in the region and better serve the needs of lower-income residents. Allowing residents a “true” variety of choices for housing is critical for something this fundamental, personal, and subjective. Future residents should not be discouraged or barred from the American dream of a private yard.



Planners are opposed to private open space but public open space is acceptable in small portions.

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