

Meeting: Build Small Coalition
Date/time: September 24, 2020, 10:00 a.m. – noon
Place: Zoom virtual meeting

Attendees

Jill Cropp, Evan Manvel, Elizabeth Decker, Eric Ridenour, Kol Peterson, Ezra Hammer, Sean Green, Don Edging, Dan Rutzick, John Miller, Andrew Morphus, Eric Ridenour, Ethan Stuckmayer, Patty Morgan, Douglas McLeod, Eli Spevak, Nate Ember, Susan Brown

Metro staff

Rebecca Small, Ted Reid, Clint Chiavarini, Megan Gibb, Laura Dawson-Bodner

I. Introductions and updates

Rebecca welcomed all and began with a review of the Coalition's priorities and work. Since January 2020, the Coalition prioritized and worked on the following:

- Educate electeds on barriers to middle housing (priority #1)
- Tours for Fannie Mae/Freddie Mac (priority #2)
- Tours for elected officials (priority #3)
- Right-size parking requirements (priority #6)
- Support 4-plex development (priority #7)
- Weighing in on House Bills 2001-2003 (priority #8)

Priorities that would require funding were taken off the table as the Coalition has no budget this year because of cuts at Metro and reduced revenue from other partners. These priorities were shelved: city housing policy tracker, middle housing design contest and updating the ADU audit.

Rebecca invited those present to think about priorities going forward, including:

- Creating an image library of modern examples of missing middle housing that could be used to educate media, governments and practitioners
- Pursuing changes in condo laws

Rebecca invited introductions and updates.

Jill Cropp, Studio Cropp Architecture, works on infill housing and middle housing.

Ted Reid, Metro, has been focusing on HB2001, HB2003 and rule making.

Sean Green, contractor, is on the Development Review Advisory Committee at the City of Portland Bureau of Development Services.

Patty Morgan is coordinator of Build Small Live Large conferences.

Elizabeth Decker, Jet Planning, has been working on code issues and is tracking draft OARs and middle housing code updates.

Eric Ridenour, PSU, is here to listen.

Ethan Stuckmayer DLCD, is a senior housing planner on the rulemaking advisory committee.

Don Edging, DLCD, is a housing policy analyst.

Evan Manvel, DLCD, works on the transportation growth management program and said they recently put out a guide to street parking. They are launching climate and equity rulemaking in Roseburg, Newberg, Grants Pass and Silverton.

Dan Rutzick, City of Hillsboro, is Project Manager for Witch Hazel comprehensive planning and is monitoring HB 2001 and expansion areas. How can we provide information on housing types available?

Andrew Morphus, Roost Homes, designs, remodels and completes energy retrofits. He is chair of the HBA Home Performance Council. October is Housing Month and they will provide content for industry, consumers. The two-day Build Right conference will present high performance homes, science and sustainable practices and forecasting issues.

Douglas McLeod, broker and developer, builds smaller sized homes including ADUs.

John Miller, HOST Development, is working on portable ADUs for backyards.

Kol Petersen, ADU consultant, will host the upcoming Earth Advantage webinar on HB 2001 and RIP. He is focusing on tiny houses on wheels as legal dwellings and on appraisals of ADUs.

Ezra Hammer, HBA Portland.

Clint Chiaverini, Metro Data Resource Center, supports land use planning at Metro and is updating data on the region's affordable housing inventory.

Megan Gibb, Metro, Land Use and Urban Development manager.

Eli Spevak, Orange Splot.

Nate Ember joined the meeting later.

Susan Brown, Umpqua Bank, joined the meeting later.

II. Residential Infill Project

Eli gave an update on the residential infill project. He noted that the Build Small Coalition started out as the Tiny House Society before being hosted by DEQ and then Metro. Accessory dwelling construction has increased from 20-30 in a year to one a day thanks to people taking initiative and working on the issues.

The RIP came out of the City of Portland's comprehensive planning process. The recommendation was for more housing options. It was unclear if there would be follow up. This group saw the need to work on the single family zoning issue.

Finding early adopters who will share their stories of how housing choice affects their lives is key. AARP has been a fantastic partner. Three years later, people can now make their living working on ADUs. The reasons for smaller housing choice change over time. DEQ initiated work on smaller homes from an energy efficiency standpoint, and then advocacy shifted to affordable housing. Now, with COVID, seniors don't want to live in shared living situations.

Once HB 2001 passed, RIP became more of a sure thing. RIP was not appealed to LUBA, which saved money and time. When Oregon passes land use laws, there needs to be an organization willing to steward the laws. 1000 Friends has historically taken on this role, but everyone should be vigilant for misuses or abuses of the laws.

The Water Bureau is trying to levy a fee. Obstacles will surface. The inability to subdivide lots, the condo liability issue and system development charges – all will create a skewed product. Let a triplex be called a house with two ADUs. The city will need to fund code updates. Study what Tigard did! Respond quickly.

Kol commented that involvement in rulemaking early on was good and would be worthwhile going forward. RID has not been challenged. Will the timeline change to earlier than August 2021? Eli responded that the timeline could change. The Housing Bureau is swamped due to COVID. The deadline to legal challenges has closed.

Ethan asked about the letter sent to the City of Portland to address displacement and gentrification. Kol said not much has happened.

Ezra said the HBA has a proposal that would allow additional square footage every five years. Give the same to developers at the beginning of the construction process and use this to fund displacement. HBA worked with Sightline Institute and the proposal could raise up to \$4.5 million.

Eli shared a letter concerning code updates. He would like occupancy requirements to change, allow more homes on small lots, eliminate household size definitions, allow micro-kitchens and adopt new rules for moveable temporary and/or extremely low-income housing. RID does not help with really low income housing. Eli concluded with comments about other parts of the country. On the west coast, all require ADUs. In Boston, they are allowed if the house was built before 1900, and if the ADU is for a relative. Willingness of states to step in really helps; Oregon, California, Washington and Vermont are active. We are fortunate to have our land use system even though it is not perfect. Cities are required to map housing needs, zone for them and adopt clear and objective standards.

Comments and questions included:

- City of Portland's Shelter to Housing Continuum project will remove barriers to retain old SROs, extend emergency provisions and adjust siting requirements. It is geared towards people who are otherwise on the street.
- There is need for the state as a partner to build SROs as BOLI costs can be an issue.
- Shelters are not defined as housing. Do we want to define as housing?
- RIP: beyond two units, run into additional hurdles. Break down the barrier between two and three units.
- Sprinklers are not required in townhouses if there are firewalls. How many sites will allow townhouse configuration?
- Use one internal ADU plus one additional ADU structure.
- Link: allowing tiny homes on wheels (THOWs) as ADUs: [Tiny Home on Wheels permit checklist](#)
LA., San Diego, and a few other large cities have passed the same code.
- Al Burns, project lead on the Shelter to Housing Continuum project, recently gave a presentation to the Portland BDS advisory committee.

Action: Rebecca will draft a letter regarding the water meter issue and will request individual signatures.

III. HB 2001 Model Code update

Ted Reid said DLCD has done an excellent job managing a complex process. Recent controversies include how to define areas around cities to allow middle housing.

Kol and Ethan gave an update on the timeline.

September 25, 2020: The first hearing for large and Metro cities; will include OARs for HB2003.

October 8, 2020: The Joint Rulemaking Advisory Committee and Technical Advisory Committee meetings.

October 12, 2020: Technical Advisory Committee for HB 2003, Technical assistance projects will begin as rules are adopted. This part needs to wrap up June 30, 2021.

November 12 or 13, 2020: Deadline for public hearing comments for both agenda items

December 31, 2020: Deadline for rules to be adopted.

With the current wildfire and housing emergencies, it is not clear what future technical assistance might be available. Regarding compliance, cities need to provide notification to the Department of Land, Conservation and Development. DLCD will review and provide comments to cities. DLCD has no enforcement authority. When cities adopt, the code will include DLCD comments. Once the Department adopts the rules, cities must act on the rules. The LUBA process does not change.

Action: Ethan will check with the DOJ attorney to confirm information that coalition members are requesting.

Comments and questions included:

- DLCD will know which cities are adopting the model code within the next 12-24 months
- What was the impetus with the last minute changes to HB 2001? What problems were they trying to solve?

Ethan:

Model Code pathways:

The minimum standards process – fit with existing land use.

Process initially was subjective – could exclude housing, but process DLCD suggested was unclear and was a heavy lift to cities.

The performance metric pathway provides more clarity. The tradeoff is we can allow those housing types in a larger area of city. Provides a clear indication, metrics to strive for, clarity and flexibility.

The timing of the performance metric pathway is unfortunate and is late in the game. DLCD's job is to provide to the commission a workable solution to implement.

- There are concerns about the performance metric approach perpetuating systemic racial discrimination. Encourage DLCD to keep that at the forefront.

IV. Oregon's Condo Defect Law

Rebecca said the impact of CDL has been to decrease developers' interest in condominiums because of 10 year liability and higher likelihood of a frivolous lawsuit. To compensate for increased risk, developers, builders and architects take on additional insurance and utilize more robust – and expensive -building styles. The cost of compensating for the additional risk make it financially infeasible to construct anything other than large buildings with higher-end units rather than the smaller (middle-housing range) projects with “entry-level” condos that would be accessible to moderate-income households and/or first time homebuyers.

Rebecca said the current law allows a homeowners association to proceed with litigation up to 10 years after a project is built. Lawsuits can result in lucrative settlements and so there is an active community of lawyers who seek out HOAs to pursue opportunities for litigation. However, with the 10-year window, issues of routine maintenance can be conflated with defect. Secondly, an HOA

board can have as little as three people, and this small group can pursue litigation. Also, HOA boards are considered fiduciary so if they do not follow up with litigation against the developer, the tenants could sue the people on the HOA board. These conditions create an undue amount of pressure on HOA boards to pursue litigation as more of a precautionary step than out of demonstrated reason. Especially since the recession but even before, condos built were primarily higher-end and more expensive, preventing first time homeowners from getting in.

Several states have taken steps to refine their CDL to curtail frivolous lawsuits while still maintaining pathways for legitimate litigation against defective workmanship or design. In Washington, they define what specifically can be litigated. In Colorado, they took away the burden of financial responsibility from HOAs to decrease the chance of frivolous litigation and also changed requirements. There must be more than 50% of residents willing to move forward. Another idea is to reduce the number of years. In Oregon it is 10 years, consistent with about half of the states, while others have 4, 6 or 8 years.

Comments included:

- This could be a powerful way to increase higher density housing.
- Condos are the last to be built in a good cycle and the first to stop in a bad cycle. Townhomes are built in same amount of time as duplex so could be a way forward.
- There is a Fannie Mae selling guide:
[Fanny Mae Selling Guide](#)
- If building on a flood plain, all units are required to have insurance. The HOA has to obtain insurance on the structure and owners need homeowner insurance. Underwriting is not affected as long as there is no litigation in play.
- Architects and contractors in addition to developers must carry much higher insurance if they are building condominiums.

Rebecca is pulling together data here and in other states.

V. Adjourn

The meeting was adjourned at 11:55 a.m.