

# Cudgels and Collaboration: Commercial Development Regulation and Support in the Portland, Oregon-Vancouver, Washington Metropolitan Region

Edward J. Sullivan\*

## I. INTRODUCTION

The Portland-Vancouver Metropolitan Region often appears to be a planner's heaven. The area sits on both sides of the Columbia River and includes four counties with thirty-two cities.<sup>1</sup> From a planning perspective, the region contains two fairly sophisticated state planning systems:<sup>2</sup> (1) a regional planning system that applies only on the Oregon side of the

---

\* Edward J. Sullivan is owner of Garvey Schubert Barer, Portland, Oregon. Member, Oregon, Washington, and District of Columbia bars. B.A. St. John's University (N.Y.), 1966; J.D., Willamette University, 1969; M.A. (History), Portland State University, 1972; Urban Studies Certificate, Portland State University, 1974; M.A. (Political Thought), University of Durham, 1998; Diploma in Law, University College (Oxford), 1984; LL. M. University College (London), 1978. The author acknowledges the assistance of Carrie A. Richter, Garvey Schubert Barer, Portland, Oregon, J. D., Northwestern College of Law, Lewis and Clark College, in the preparation of this article.

1. Population breakdowns for each county in 2003 are:

Clackamas County, OR	353,450
Multnomah County, OR	677,850
Washington County, OR	472,600
Clark County, WA	363,400

Population breakdowns for the five largest cities within the Portland-Vancouver Metropolitan Region in 2003 are:

Portland, OR	545,140
Vancouver, WA	148,800
Gresham, OR	93,660
Hillsboro, OR	79,340
Beaverton, OR	79,010

OREGON BLUEBOOK, CITY AND COUNTY POPULATIONS, available at <http://bluebook.state.or.us/local/populations/populations.htm> (last visited Apr. 24, 2005); Clark County, Wa., *Frequently Asked Questions*, at <http://www.co.clark.wa.us/aboutcc/faq.html> (last visited Apr. 24, 2005).

2. In an effort to preserve the state's resource-based economy, particularly farmland, in 1973 the Oregon Legislature adopted Senate Bill 100. Senate Bill 100 created a state agency, the Land Conservation and Development Commission, charged with adopting state planning standards—called goals—and determining whether local plans and their implementing regulations were consistent with state policy. See OR. REV. STAT. §§ 197.010, 030 (1987).

In 1990, Washington adopted the Growth Management Act mandating that “growth” counties—twenty-nine of the thirty-nine including Clark County—and the cities within the growth counties must adopt plans to accommodate growth consistent with statewide standards. Rather than created by state agency, the standards are articulated within statute. See WASH. REV. C. § 36.70A.020 (2004). See also Brent D. Lloyd, *Accommodating Growth of Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act*, 36 GON. L. REV. 73 (2001); Richard L. Settle, *Washington's Growth Management Act Goes to Court*, 23 SEATTLE U. L. REV. 5 (1999); Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. PUGET SOUND L. REV. 867 (1993).

River<sup>3</sup>—and allowing sufficient freedom for most local governments to undertake creative planning and land use regulation; and (2) a second state planning system which, in the case of Clark County's cities, requires plan consistency and conformity with state policy.

Nevertheless, this region has not been immune from commercial and retail marketing phenomenon that tends to change commercial patterns towards large-scale malls and big box stores. The first of the large malls in the region, the Lloyd Center, began in the early 1960s as the product of an urban renewal project. Since 1960, four large shopping malls in excess of approximately 4.5 million square-feet have been established in the region.<sup>4</sup> More recently, the area has also seen a proliferation of big box stores.<sup>5</sup>

The arguments for and against big box stores and large shopping malls are no different in the Portland-Vancouver Metropolitan Region than they are elsewhere. The arguments concern such diverse topics as the role of regulation in the marketplace, provision of public services and facilities, social and economic displacement of residences and jobs, and the provision of goods and services created by retail marketing techniques.

This paper catalogs the response of the Portland-Vancouver region to these phenomena. The reader will note that this response is not limited to the regulatory side of planning, but contains a fairly high quotient of "positive planning," i.e., planning and regulations designed to give the

---

3. The Metropolitan Planning Commission was organized by Portland and the three urbanized counties in 1957. The modern Metro is an expanded version of the original Metropolitan Service District that area voters approved in May 1970. Voters approved the present-day Metro in May 1978. See OR. REV. STAT. Ch. 268. art. XI, Section 14(4) of the Oregon Constitution provides that Metro "shall have jurisdiction over matters of metropolitan concern as set forth in the charter of the district." OR CONST. Article XI, Section 14(4). The expanded agency went into operation on January 1, 1979. See CARL ABBOTT & MARGERY POST ABBOT, A HISTORY OF METRO: HISTORICAL DEV. OF THE METRO. SERV. DIST., at <http://www.metro-region.org/article.cfm?articleid=2937>.

4. Lloyd Center, the largest shopping mall in the Portland Metro area, contains 1.5 million square-feet of retail space. GLIMCHER REALTY TRUST, GLIMCHER PROPERTIES, at <http://www.glimcher.com/pages/properties/state.jsp> (last visited Apr. 24, 2005). Washington Square was constructed in 1974 with 800,000 square-feet and expanded in 1993 to include 1.3 million square-feet. WASHINGTON SQUARE MALL, ABOUT US, at [http://www.shopwashingtonsquare.com/controller/site/about\\_us](http://www.shopwashingtonsquare.com/controller/site/about_us). Clackamas Towne Center opened in 1981 and contains 1.2 million square-feet. CLACKAMAS TOWN CENTER, ABOUT US, at <http://www.clackamastowncenter.com/html/Mallinfo.asp> (last visited Apr. 24, 2005). Pioneer Place opened in 1992 and contains 313,000 square-feet of retail space. See PIONEER PLACE, SHOP & DINE, at <http://www.pioneerplace.com> (for details on the retail opportunities) (last visited Apr. 24, 2005). These suburban regional malls preceded Metro's current version of regional planning and have been designated "regional centers" as a concession to reality, even though they would not likely be approved as such had they not already been in existence.

5. There are three Wal-Mart superstores within the Portland-Vancouver metropolitan area, one in Portland and two in Vancouver. WAL-MART, STORE FINDER, at [http://www.walmart.com/cservlet/e/ca\\_storefinder\\_results.gsp](http://www.walmart.com/cservlet/e/ca_storefinder_results.gsp). The second largest discount retailer, K-Mart, has six superstores within the Portland metro area and one in Vancouver. K-MART, STORE FINDER, at <http://www.kmart.com/storlocator/jsp> (last visited Apr. 24, 2005).

commercial landowner the option to be creative in framing a development. On the Oregon side of the river, the regional planning authority, Metropolitan Service District (Metro), has generally striven to limit large scale retail development to certain “regional centers” designated in conjunction with the cities and counties that make up the region.<sup>6</sup> Moreover, Metro has prohibited large stores in areas where they might damage the economic development of the region.<sup>7</sup>

Within these broad parameters, some cities in the Portland portion of the region<sup>8</sup> have developed their own plans and regulations to deal with targeted commercial development. Collaboration between governments and entrepreneurs facilitates quality development consistent with the market. This collaboration often includes the choice of a consultant to propose a detailed plan and land use regulations for the area. Following the preparation of the consultants report, the city will hold a hearing on the draft plan and proposed regulations. Assuming that the hearing goes well, the plans and regulations will ultimately be adopted. If the market is well researched, it is time for the implementation, photo opportunities, and articles in planning journals.

That is not to say that there have not been any conflicts in Portland. Recently, Home Depot challenged the authority of Portland to regulate the minimum floor size—a challenge that proved unsuccessful.<sup>9</sup> The City of Hillsboro turned down a Wal-Mart development for non-compliance with its zoning regulations and Wal-Mart was unsuccessful on appeal.<sup>10</sup> Finally, there was a well publicized battle between the Cities of Tualatin and Lake Oswego over the impacts of the Bridgeport Village Development.<sup>11</sup> While

---

6. See *infra*, note 20, 21.

7. As part of Metro’s 2040 Urban Growth Management Functional Plan, adopted in 2002, Metro required local governments to plan to accommodate seven regional centers. See PORTLAND, OR., URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN § 3.07.610 (2004), available at <http://www.metro-region.org/article.cfm?ArticleID=274>. These areas were to be the focus of compact development, containing no less than 60 persons per acre, redevelopment, high-quality transit, and multi-modal street connections. See *generally id.* §§ 3.07.610–650 (2004). The prohibition of big box stores has been limited, however, to Regionally Significant Industrial Areas and Industrial Areas.

8. Although counties may allow for development of urban areas, the lack of a tax base to provide public facilities and services for urban uses has militated towards inclusion of urbanized sites within cities. This is often done through urban services agreements between cities and counties so that, as a practical matter, most such developments are undertaken within cities.

9. Home Depot, U.S.A., Inc. v. City of Portland, 37 Or. LUBA 870 (2000), *aff’d* 10 P.3d 316 (Or. Ct. App. 2000), *rev. denied*, 19 P.3d 355 (Or. Ct. App. 2001).

10. Wal-Mart Stores, Inc. v. City of Hillsboro, 47 Or. LUBA 256, *aff’d without opinion* 95 P.3d 269 (Or. Ct. App. 2004).

11. The Bridgeport Village Development was a collaborative effort through an intergovernmental agreement between the cities of Tualatin, Tigard, and Washington County. The City of Lake Oswego elected not to participate. See Part IV, *infra*.

resolved, the controversy illustrates what can happen even in a coordinated system.

Vancouver, Clark County, and the other cities of that county recently have been the fastest growing portion of the region. This has particularly been true following the construction of the I-205 freeway around Portland, which included a much needed second bridge across the Columbia.<sup>12</sup> This area of Washington must, under the state's Growth Management Act (GMA), adopt a coordinated plan with other governmental agencies, adopt land use regulations, and make land use decisions consistent with that plan.<sup>13</sup> The location of intense retail commercial areas requires coordination of public facilities and services<sup>14</sup> with particular emphasis on "concurrency" for transportation facilities.<sup>15</sup> The constellation of these requirements brings the reality of the relative scarcity of commercial land and a need to apply sufficient public resources to these developments.<sup>16</sup>

The Oregon portion of the region has even more complex planning requirements. City, county, and regional plans must be coordinated and "acknowledged" to comply with applicable state-wide planning goals, which are the standards for land use planning and implementation in Oregon.<sup>17</sup> In addition to goal-orientated compliance, the urban portion of the region in Oregon is subject to consistency review with Metro's planning requirements. The first regional government in Oregon, the Metropolitan

---

12. A new era dawned for Clark County when the Interstate 205 Glenn Jackson Bridge opened on December 15, 1982, after five and a half years of construction. On opening day, the governors of Oregon and Washington joined ribbons to mark completion of the 11,750-foot bridge of gracefully curved concrete. Suddenly, remote parts of east Clark County were within minutes of a freeway link to Oregon. Attracted by lower housing costs, people started moving into the county in droves. The explosive growth continued in east Vancouver during the 1990s. In 1997, the average number of daily crossings on the I-205 Bridge eclipsed the I-5 Bridge for the first time. With the annexation of a large chunk of eastern Clark County, Vancouver became the fourth largest city in Washington. CLARK COUNTY, WA., FREQUENTLY ASKED QUESTIONS, at [http://www.co.clark.wa.us/aboutcc/proud\\_past/I205bridge.html](http://www.co.clark.wa.us/aboutcc/proud_past/I205bridge.html) (last visited Apr. 24, 2005).

13. WASH. REV. C. §36.70A.040 (2004). Washington has thirteen state planning goals but local comprehensive plans need not address all of the goals. For example, economic development is Goal 7, but it need not be addressed when planning for growth. WASH. REV. C. § 36.70A.070 (2004); see also *supra* note 2 (discussing the Washington Growth Management Act).

14. WASH. REV. C. § 36.70A.070(1), (3).

15. WASH. REV. C. § 36.70A.070(6)(vi)(b). As a practical matter, most developments must have the required transportation improvements in place or funded within two years of the grant of land use approval.

16. Although Vancouver and Clark County have not had the controversies that have been evident in Oregon, the area has had significant retail commercial activity. See, e.g., Final Order, Hazel Dell Towne Center, Clark County File No. CUP2002-00002/CPZ2002-0008/PSR2001-00104 (Aug. 2002).

17. See Edward J. Sullivan, *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100*, 77 OR. L. REV. 813 (1998) (for a description of the Oregon planning system).

Planning Commission, was created in 1957.<sup>18</sup> Following the passage of a state constitutional amendment to allow municipalities to deal with matters of regional concern,<sup>19</sup> Metro has been empowered by its charter<sup>20</sup> and state law<sup>21</sup> to undertake and enforce regional planning and land use controls. Notwithstanding these state and regional controls, most planning and land use regulations are local products; cities and counties determine the specific planning vision for their communities consistent with state and regional policy, and identify the steps necessary to achieve that vision. This flexibility of planning and regulation has created an atmosphere by which the downtown transit mall and the provision of light rail lines, in place of additional road corridors, has improved the quality of life in the region.

There are two state planning regimes in the Portland-Vancouver region. This paper will deal with their negative and positive effects in responding to the issues raised by the changing face of retail development and markets in each state.

## II. THE CUDGELS

To meet the challenges of new retail paradigms—such as malls and big box stores—communities have the option of looking to limits on such development, as well as working with development interests to assure that projects work both for the entrepreneurs and the community. The following are some examples from the Portland-Vancouver region setting limits on retail commercial development.

### *Preserving Blocks of Industrial Land*

Retail commercial centers and buildings pose a threat not only to the

---

18. CARL ABBOTT & MARGERY POST ABBOTT, A HISTORY OF METRO: HISTORICAL DEV. OF THE METRO. SERV. DIST., at <http://www.metro-region.org/article.cfm?articleid=2937> (last visited Apr. 24, 2005).

19. In 1971, the legislature established and funded the Portland Metropolitan Study Commission (PMSC) which functioned from 1963 to 1971 and substantially transformed the structure of government in the Portland area.

The preamble of the Act creating the PMSC asserted that the growth of urban and suburban populations had created problems of water supply, sewage disposal, transportation, parks, police and fire protection, air pollution, planning, and zoning that “extend beyond the individual units and local government and cannot adequately be met by such individual units.” METRO CHARTER, IN ABOUT METRO, available at <http://www.metro-region.org/article.cfm?articleid=211>. The legislation allowed each of the thirty-eight legislators representing Multnomah, Clackamas, Washington, and Columbia counties to appoint one member of the Commission. Their charge was to prepare “a comprehensive plan for the furnishing of such metropolitan services as . . . desirable in the metropolitan area.” *Id.*

20. The Metro Charter was approved by popular vote in 1992 and amended in 2000. *Id.*

21. OR. REV. STAT. §§ 268.010–.990 (1997).

appropriate use of commercial land, but also to the amount of open industrial land. The issue arises when the land use category may include both commercial and industrial uses, or when the designation includes the right to allow for retail use as part of an industrial use.<sup>22</sup> In these cases, land economics may cause retail chain store owners to exert pressure on local officials to “interpret” a predominately commercial use to be allowable in a designated industrial area. If the issue only revolves around the validity of the use, the new development may be underway before there is time to launch a challenge to it. Because the interpretation may have occurred only at the building permit stage, there may have been no opportunity for the public to become aware of the application or to respond to it.

To avoid such conflicts, Metro has designated “Regionally Significant Industrial Areas” (RSIAs), i.e., those areas in large blocks and designated industrial on Metro’s Framework Plan.<sup>23</sup> Metro has required its constituent cities and counties to do the following in RSIAs:

1. Set out a specific plan and zoning designation for those specific areas;
2. Review and revise land use designations applicable to such sites to limit the size and location of new structures so that no more than 3,000 square-feet is used for a specific retail use (oriented towards providing this use of service to those within the industrial area only) and not more than 20,000 square-feet in the aggregate;<sup>24</sup>
3. Assure that such uses do not reduce peak performance on main Roadway Routes and Roadway Connectors shown on Metro’s freight network map (November 2003) below standards set in the 2004 Regional Transportation Plan (RTP) or require added road capacity to prevent falling below the standards;<sup>25</sup> and
4. Regulate land division in such areas so that parcels under fifty acres may be divided into smaller parcel sizes if allowed by local regulations; however, for

---

22. For example, a hardware store storage use might be read to support a mega-market hardware store. To some extent, this imprecision is derived from state law. *See generally* Marcott Holdings, Inc. v. City of Tigard, 30 LUBA 101 (1995).

23. PORTLAND OR., METRO CODE § 3.07.420(A) (2004).

24. *Id.* § 3.07.420(B).

25. *Id.* § 3.07.420(C).

larger parcels, such division may not result in a parcel under fifty acres and must be done in accordance with a master plan, though smaller lots may result at forty percent of the land that has already been developed with industrial uses or used as accessory to industrial uses.<sup>26</sup>

The Metro Code contains exceptions addressing existing land divisions and non-industrial uses pertaining to drawing maps, implementing regulations,<sup>27</sup> or for covering special situations. These include divisions to provide public service facilities, to protect the natural resource, to divide a non-conforming use, or to allow financing.<sup>28</sup>

Metro has similar authority with respect to industrial lands not within the RSIA designation. The pattern is similar to RSIA industrial lands protection:

1. While no specific plan designation is required, local governments must review regulations for industrial areas and revise them to limit new commercial buildings to those that serve the needs of the area primarily, and are limited to no more than 5,000 square-feet of sales or service area or an aggregate of 20,000 square-feet.<sup>29</sup>
2. As with our RSIA lands, new buildings containing commercial uses are limited so as not to interfere with the efficient movement of freight along Main Roadway Routes and Roadway Connectors shown on the same freight network map referred to above.<sup>30</sup> Other measures specifically authorized include: access restrictions to such routes and connections, siting limitations, and traffic thresholds<sup>31</sup> for non-conforming uses. These measures are to be considered in drafting the map and enforcing the regulations.<sup>32</sup>
3. Limitations on land divisions and exceptions are

---

26. *Id.* § 3.07.420(E).

27. *Id.* § 3.07.420(A), (E), (F).

28. *Id.* § 3.07.420(E), (F). Notwithstanding these regulations, Metro has never taken formal enforcement action to preserve industrial lands.

29. *Id.* § 3.07.430(A). The exceptions for public use airports, industrial training areas, and RSIA areas are contained here as well.

30. *Id.* § 3.07.430(B).

31. *Id.*

32. *Id.* § 3.07.430(A), (D), (E). As of the present date, there is no case in which Metro has been required to act to enforce its regulations.

similar to that for RSIA's.<sup>33</sup>

Finally, in order to resolve conflicts over the introduction of retail commercial uses into its "employment areas,"<sup>34</sup> Metro has required cities and counties to "limit new and expanded commercial retail uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Employment Areas."<sup>35</sup> To that end, a city or county may not approve a gross leasable area (or lease a retail sales area) of more than 60,000 square-feet if any lot or parcel or a combination thereof is supported only by a street.<sup>36</sup> If the land was not within an employment area designated by the Metro map, the local government may allow commercial retail uses in excess of 60,000 square-feet if the local government allowed such uses before January 1, 2003. Metro also requires that transportation facilities be adequate by the time the use comes on line and the local comprehensive plan provides for adequate transportation facilities to serve the employment area over the planning period.<sup>37</sup> Finally, a local government may allow retail commercial use over 60,000 square-feet if the use will generate an increase of no more than twenty-five percent in site-generated traffic over the industrial uses allowed.<sup>38</sup>

### III. GRESHAM CIVIC NEIGHBORHOOD

Gresham is a rapidly growing city located east of downtown Portland.<sup>39</sup> Its growth has been spurred by an ambitious economic development, the annexation program, and the fact that it is one terminus of the Metropolitan Light Rail Transit Program (MAX) which allows one to travel between downtown Portland and Gresham City Hall in forty minutes. When the city decided to assist in the development of a largely vacant 130 acre parcel, which includes City Hall and two light rail stations, it decided to remove a regional shopping center designation from one of the parcels and to develop the remainder as a Transit Oriented Development (TOD) under the State's Transportation Planning Rule (TPR)<sup>40</sup> instead. These State TPR objectives

---

33. *Id.* § 3.07.430(D).

34. In addition to mapping Regionally Significant Industrial Areas, Metro has also mapped Employment and Industrial Lands. PORTLAND, OR., ORDINANCE 04-1040B, Exhibit C (Jun. 24, 2004).

35. PORTLAND, OR., METRO CODE § 3.07.440(A) (2004).

36. *Id.* § 3.07.440(B).

37. *Id.* § 3.07.440(D).

38. *Id.* § 3.07.440(E). *See infra* Part VI.

39. The city has grown from 39,044 in 1960 to 94,250 in 2004. CITY OF GRESHAM, OR., GRESHAM DEMOGRAPHICS, available at <http://www.ci.gresham.or.us/departments/cedd/cp/demographics/demographics.asp> (last visited Apr. 24, 2005).

40. The Transportation Planning Rule (TPR) requires that cities, counties, metropolitan planning organizations, and the Oregon Department of Transportation (ODOT) exercise their planning



reinforced Metro's planning efforts so that the plan set out the following goals and objectives.

1. Reduce automobile trips by capitalizing on transit opportunities, and by the creation of an environment which encourages people to walk.
2. Create a circulation system that favors safe and efficient access by and between all modes.
3. Respond to the central location of the project within the City of Gresham by including a wide range of uses and activities developed to urban densities. Uses should complement those already established nearby.
4. Investigate and implement cost-effective measures to reduce automobile travel.
5. Provide effective connections to adjacent neighborhoods with bike routes and footpaths.
6. Maximize potential transit ridership through an appropriate mix and density of uses developed in the Civic Neighborhood, and by providing easy access to transit.
7. Set a precedent for sustainable development in regional centers.<sup>41</sup>

Because the generally undeveloped area included City Hall, it was called the Gresham Civic Neighborhood and has as its hallmark pedestrian and bicycle transportation connections.<sup>42</sup> A key purpose of the Gresham

---

obligations to provide a safe, convenient and economic transportation system. OR. ADMIN. R. 660-012-0015(4) (2004). Under the rule, all local governments must prepare and adopt a TSP. *Id.* The TSP must evaluate the existing land use controls, facilities, and services to determine how it should go about meeting the overall transportation needs. *Id.* When development is proposed, the local government can determine the precise location, alignment, and preliminary design of the improvements included within the TSP. *Id.* Another critical element of the TPR is coordination. Under Administrative Rule 660-012-0015(1), ODOT must prepare its TSP in a matter consistent with the state land use agency (LCDC) and acknowledged comprehensive plans. OR. ADMIN. R. 660-012-0015(1) (2004). The regional TSP, prepared by Metropolitan areas or counties, must be consistent with the adopted elements of the state TSP and local TSPs must be consistent with regional TSPs and adopted elements of the state TSP. Probably the most notable feature of the TPR is that it requires every local government to take measures to enhance pedestrian, bicycle, and transit travel, while at the same time, it requires local governments to reduce reliance on the automobile. For areas inside a Metropolitan Planning Organization, the rule requires a 15% reduction in total automobile vehicle miles traveled per capita within thirty years following adoption of the TSP. OR. ADMIN. R. 660-012-0035(2) (2004). For the Portland metropolitan area, the rule also requires evaluation of alternative land use designations, densities and designs. *Id.*

41. GRESHAM, OR., ORDINANCE 1366, App. 38, 1 (Jul. 11, 1995) [hereinafter Gresham Ordinance].

42. *Id.* The city, along with Metro, Tri-Met, Portland General Electric, and a development firm sponsored a mixed use program for the area with the goals of reducing residential auto trips by 10%, office trips by 30%, and retail trips by 35%. *Id.*

Civic Neighborhood Plan was to show that the development of mixed uses at high densities was feasible, particularly if a multi-modal friendly environment offering advantages not found in conventional suburban developments was created.<sup>43</sup>

The notion was to locate work and shopping opportunities closer to residents. The result was a project that won the Professional Achievement and Planning Award from the Oregon Chapter of the American Planning Association for the innovation, transferability, quality implementation, professionalism, and community contribution of this project.<sup>44</sup> The first phase opened on November 15, 2000, and consisted of 297,055 square-feet of retail and office space and 662 residential units.<sup>45</sup>

The Civic Neighborhood Plan uses transportation to support desired land uses. The area is bisected by Tri-Met's light rail line which is, in turn, supported by a grid street network with pedestrian approaches oriented towards two light rail stations. The existing "Gresham City Hall" station is located in the southeastern portion of the Civic Neighborhood, and the future "Civic Drive" station sits in the very center of the neighborhood.<sup>46</sup> The land uses for the plan area are arranged so that the highest intensity of uses and floor area ratios are located nearest to the light rail station.<sup>47</sup> The entire area is zoned for mixed use so that housing is mixed with office and retail commercial areas.<sup>48</sup> The land use intensities for the residential component of the program is far greater than would have occurred in a suburban residential setting typical of a bedroom community like Gresham. These uses reinforce the investment made in retail and office uses.

The Gresham Civic Neighborhood Plan is implemented through a series of land use districts that illustrate its transit supportive nature:

1. Transit Development District—Medium Density—Civic (TDM-C). This district includes areas with good

---

43. *Id.*

44. Press Release, Gresham Community & Economic Development Department, *Gresham Station Receives Planning Award* (Aug. 23, 2001) at <http://www.ci.gresham.or.us/departments/cedd/awards.asp>.

45. Gresham Ordinance, *supra* note 41, at 6. One of the developers of this project was Center Oak Properties, L.L.C. which also played a role in the Bridgeport Village Development discussed *infra*.

46. See also GRESHAM, OR., DEV. CODE § 4.1247A (2003) (providing a map of the Gresham Civic Neighborhood Functional Street Classification, which shows the placement of the rail stations within the city); Gresham Ordinance, *supra* note 41 at 15–16 (summarizing the intended and existing light rail stations in Gresham).

47. Gresham Ordinance, *supra* note 41, at 7. Street design and classification support this transit oriented approach. GRESHAM, OR., DEV. CODE §§ 4.1244, 4.1247.

48. *Id.* However, the map shows a predominant use in each case. Note that the City Hall occupies 50,000 square-feet of space and another 90,000 square-feet of office space is expected in the second phase.

access to existing and future light rail stations and abutting arterial streets where larger buildings are encouraged with parking behind, under, or to the sides of the structure.<sup>49</sup> Mixed use and multi-family developments with a minimum density of 24 units per acre are encouraged.<sup>50</sup>

2. Transit Development District—High Density—Civic (TDH-C). This district includes land around existing and future light rail stations.<sup>51</sup> Parking is permitted in the same manner as the medium density designation.<sup>52</sup> Mixed use and multi-family uses are also allowed with a minimum of thirty units per acre.<sup>53</sup>

3. High Density Residential—Civic (HDR-C). This district applies to land within walking distance of the light rail stations, though it is normally further from those stations than the TDH-C designated lands and is to be developed in a minimum density of twenty-four units per acre.<sup>54</sup>

4. Moderate density residential—Civic (MDR-C). This district applies to other lands within walking distance of the light rail station. It has a minimum density of seventeen units per acre.<sup>55</sup>

The dimensional requirements for these districts contain no minimum lot size, comparatively little residential and commercial parking requirements, and a floor area ratio supporting higher buildings in the more intense land use designations.<sup>56</sup> The design standards for these districts discourage blank walls in favor of windows at the ground floor level and

---

49. GRESHAM, OR., DEV. CODE §§ 4.1210, 4.1220. Primary uses in this district include commercial, retail, and service uses occupying the ground floor and all or a portion of the second floor.

50. *Id.*

51. GRESHAM, OR., DEV. CODE §§ 4.1211, 4.120. Primary uses in this district include office buildings, retail, and service uses. Freestanding retail uses are also permitted up to 10,000 square-feet. *Id.* § 4.1211.

52. *Id.* § 4.1211.

53. *Id.* § 4.211.

54. GRESHAM, OR., DEV. CODE §§ 4.1212, 4.120. Residential uses are the primary use, but permitted secondary uses include neighborhood commercial uses, small offices, and parks. Certain other office commercial uses are permitted, but freestanding retail uses are limited to 10,000 square-feet.

55. GRESHAM, OR., DEV. CODE §§ 4.1213, 4.120. Mixed use and neighborhood commercial uses are allowed to occupy all the buildings so long as the underlying residential densities are met. § 4.1213. Unlike the other residential designations, this district has a maximum residential density of 30 units per acre. § 4.1230.

56. GRESHAM, OR., DEV. CODE § 4.1230. Most of the designations have a 40-foot height limit, and all except for the MDR-C allow up to 80 feet if built-in fire protection systems are provided. *Id.*

design variations on street-facing facades.<sup>57</sup> Moreover, as part of its transit supportive role, building entrances must be oriented toward the street, adequately illuminated, and provide protection from the elements.<sup>58</sup> Auto dependant uses are limited to perimeter sites within the neighborhood in order to limit auto movements and facilitate pedestrian movements.<sup>59</sup> Site appearance is enhanced through architectural design review guidelines, which, despite their name, are binding.<sup>60</sup> Street trees and open space<sup>61</sup> are

---

57. GRESHAM, OR., DEV. CODE § 4.1235.

58. GRESHAM, OR., DEV. CODE § 4.1236. Moreover, drive-through uses are discouraged in the civic neighborhood and allowed only when subordinate to another permanent use. GRESHAM, OR., DEV. CODE § 4.1239.

59. GRESHAM, OR., DEV. CODE § 4.1238.

60. As set out in GRESHAM, OR., DEV. CODE § 4.1242(G), these guidelines include the following:

(1) Buildings should promote and enhance a comfortable pedestrian scale and orientation. Facades should be varied and articulated to provide visual interest to pedestrians. Within larger projects, variations in facades, floor levels, architectural features, and exterior finishes are encouraged to create the appearance of several smaller buildings.

(2) Upper stories should be articulated with features such as bays and balconies.

(3) To balance horizontal features on longer facades, vertical building elements, such as stairs to upper stories and building entries, should be emphasized.

(4) Buildings should incorporate features such as arcades, roofs, porches, alcoves, porticoes, and awnings to protect pedestrians from the rain and sun.

(5) Special attention should be given to designing a primary building entrance which is both attractive and functional. Primary entrances should be clearly visible from the street, and incorporate changes in mass, surface, or finish to give emphasis to the entrance. All building entrances and exits should be well lit.

(6) Certain buildings, because of their size, purpose, or location should be given special attention in the form of ornamental building features, such as towers, cupolas and pediments. Examples of these special buildings include theaters, hotels, cultural centers, and civic building.

(7) Buildings located at the intersection of two streets should consider the use of a corner entrance to the building.

(8) Exterior building materials and finishes should convey an impression of permanence and durability. Materials such as masonry, stone, stucco, wood, terra cotta, and tile are encouraged. Windows are also encouraged, where they allow views to interior activity areas or displays. However, glass curtain walls, reflective glass, and painted or darkly tinted glass should not be used.

(9) Where masonry is used for exterior finish, decorative patterns (other than running bond pattern) should be considered. These decorative patterns may include multi-colored masonry units, such as brick, tile, stone, or cast stone, in a layered or geometric pattern, or multi-colored ceramic tile bands used in conjunction with materials such as concrete or stucco.

(10) Preferred colors for exterior building finishes are earthtones, creams, and pastels of earthtones. High-intensity primary colors, metallic colors, and black should be avoided.

(11) All roof and wall-mounted mechanical, electrical, communications, and

also regulated, as are views, so that nearby hills and Mt. Hood can be seen.<sup>62</sup> Further, to assure that there are “eyes on the street” for security purposes, a high level of pedestrian activity is encouraged around the civic neighborhood light rail station most times of the day.<sup>63</sup> In addition, a public plaza with a mix of active uses is required for the areas adjacent to these places.<sup>64</sup>

The Gresham Civic Neighborhood has begun opening its second phase to provide for the Gresham Station North light rail facility. This phase will consist of approximately 250,000 square-feet of Class A office space, 400,000 square-feet of retail space, 1,600 homes and additional uses.<sup>65</sup>

---

service equipment, including satellite dishes and vent pipes, shall be removed or screened from public view by parapets, walls, fences, dense evergreen foliage, or by other suitable means.

(12) For buildings designed to house most types of retail, service, or office businesses, traditional storefront elements are encouraged for any façade facing a primary pedestrian street. These elements include:

- (a) Front and side building walls placed within 10 feet of abutting street right-of-way boundaries;
- (b) Clearly delineated upper and lower facades;
- (c) A lower façade containing large display windows and a recessed entry or entries;
- (d) Smaller, regularly spaced windows in upper stories;
- (e) Decorative trim, such as window hoods, surrounding upper floor windows;
- (f) A decorative cornice near the top of the façade;
- (g) Piers or pilasters, typically of masonry.

(13) Individual windows in upper stories should conform with the following guidelines:

- (a) Glass area dimensions should not exceed 5 feet by 7 feet. (The longest dimension may be taken either horizontally or vertically).
- (b) Windows should have trim or molding at least two inches wide around their perimeters.

(14) Ornamental devices, such as molding, entablature, and friezes, are encouraged at the roofline. Where such ornamentation is present in the form of a linear molding or board, the band should be at least 8 inches wide.

(15) Arbors or trellises supporting living landscape materials should be considered for ornamentation of exterior walls. Any such feature should cover an area of at least 100 square-feet, and include sufficient plantings to achieve at least 30% coverage by plant materials within three years.

61. GRESHAM, OR., DEV. CODE §§ 4.1240, 4.1241.

62. *Id.* § 4.1243.

63. *Id.* § 4.1248(A). The standard for these uses is set out in Section 4.1248(B), i.e., retail, service, commercial, professional offices and community service uses, which are required on the ground floor with primary customer entrances oriented towards the light rail station and the public plaza with no off-street parking and loading permitted.

64. *Id.* § 4.1248(B)(1), (2). Above the ground floor, professional offices, commercial service or residential uses are required. *Id.* § 4.1248(B)(3).

65. Center Oak Properties, *Properties, Gresham Station North*, at <http://www.centeroak.com/properties/greshamstationnorth.html> (last visited Apr. 24, 2005).

Additional shops and restaurants are planned.<sup>66</sup> By all measures, the development is a success.

#### IV. RECYCLING THE COUNTY ROCK QUARRY—BRIDGEPORT VILLAGE

Near the Interstate-5 Freeway, the main north-south route from Portland to San Francisco and about ten miles south of downtown Portland, is a former rock quarry and landfill owned by Washington County, the so-called Durham Quarry. Proximity and access to the freeway made the site a prime candidate for redevelopment, particularly in the light of the relative immobility of the regional urban growth boundary.<sup>67</sup>

Since the quarry was mined out, Washington County, the owner of the facility, had no use for the land, so it asked for development proposals. The winning proposal came from Opus Northwest, LLC, a Minnesota company that partnered with Center Oak Property, LLC, to spend \$200 million to construct a 500,000 square-foot shopping center called Bridgeport Village. The shopping center contained restaurants, a multiple-screen cinema, and both retail and office space on twenty-seven acres.<sup>68</sup> Because the area was within two jurisdictions, bridging the cities of Tualatin and Tigard, the two cities and Washington County agreed to enter into an Intergovernmental Agreement specifying that the City of Tualatin should handle most of the development permitting.<sup>69</sup>

The Tualatin Development Code (TDC) sets out the background for the Bridgeport Village development, noting that the city has limited area designated primarily for intense commercial development, and that the

---

66. *Id.* The office space includes a state-of-the art health center and surgi-center, a 45,000 square-foot fitness facility, and a high school for 750 gifted students. The site will also include a second light rail station with thousands of passengers every day. Upon completion, Gresham Station North will be the largest mixed-use project in the state with over 400,000 square-feet of retail, 1600 homes, and 250,000 square-feet of office space.

67. When it was created in 1983, the Metro UGB included 228,952 acres and has increased by only 27,175 acres since that time. Because the site was designated "General Commercial" in the applicable plans, it was not subject to Metro's "big box" limitations. *See supra* § II of this paper.

68. Jeanie Senior, *New Mall's in the Bag*, PORTLAND TRIB., Nov. 12, 2004, at Business Section, available at <http://www.portlandtribune.com>. The demographic profile provided by a consultant showed an average household income of approximately \$75,000 to \$100,000 in the area. The featured store was a Crate & Barrel. *Id.*; *see also* BRIDGEPORT VILLAGE, PROJECT INFORMATION, at [www.bridgeport-village.com](http://www.bridgeport-village.com) (boasting the first Crate & Barrel built in Oregon). The complex is more correctly termed a "lifestyle center" which is often a destination for amusement and recreation, in addition to retail commercial uses. Tualatin wanted a well-designed, pedestrian-oriented, urban-scale development with traffic impacts no worse than for the existing area and centered these objectives as part of its design requirements. Of the 1,800 parking spaces, 1000 were placed in a parking structure at the rear of the site.

69. Intergovernmental Agreement among the Cities of Tigard and Tualatin and Washington County, May 14, 2002. One major issue, sign permitting, is handled by the individual cities.

twenty-eight acre Durham Quarry site was the only remaining large undeveloped site.<sup>70</sup> The city decided to preserve existing light industrial uses that were established in the area in the 1970s, but because there was a surplus of industrial lands, the city re-designated some of the adjacent area to a General Commercial classification.<sup>71</sup> This commercial land was again redesignated in 2002 to a Mixed Use Commercial Overlay District as part of the Bridgeport Village proposal, subject to site and design review requirements.<sup>72</sup> The TDC set high expectations for this area:

The purpose of this district is to recognize and accommodate the changing commercial/residential marketplace by allowing commercial and residential mixed uses in the Durham Quarry Site and Durham Quarry Area. The initial application of the District is only to the Durham Quarry Site. Possible future application of the Mixed Use Commercial Overlay District is the Durham Quarry Area through the Plan Text Amendment process. Retail, office, business services and personal services are emphasized, but residential uses are also allowed. A second purpose is to recognize that when developed under certain regulations commercial and residential uses may be compatible in the General Commercial District. The Mixed Use Commercial Overlay District allows flexibility in the uses permitted for properties in the Durham Quarry Site and Durham Quarry Area.<sup>73</sup>

To ensure that these specific goals were met, the city adopted a zoning chapter applicable only to the Durham Quarry property, called the Mixed Use Commercial Overlay District.<sup>74</sup> That zoning district allows a wide variety of housing, commercial, and office uses, and transportation

---

70. TUALATIN, OR., DEV. CODE § 6.010 (1)–(4) (2003); *see also* TUALATIN, OR., DEV. CODE § 57.010 (2002).

71. *Id.* § 6.010(5)–(6).

72. These site and design requirements for the Mixed Use Commercial Overlay District (contained in TUALATIN, OR., DEV. CODE §§ 57.005–900 (2002)) exceed those generally applicable to other commercial areas of the City. Similarly, the City of Tigard redesignated the eight acres on the northern part of the site which lay within that City from an Industrial Park to a Mixed Use Commercial (MUC) classification. The regulations of the two cities were identical and the redesignations were done in the light of the Bridgeport Village proposal.

73. TUALATIN, OR., DEV. CODE § 57.010. As a result of the design requirements, the site was generally developed in two-story structures. Aside from an 80,000 square-foot cinema, all other buildings are no greater than 40,000 square-feet.

74. Chapter 57 of the Tualatin Code sets out the details of the regulations of the Mixed Use Commercial Overlay District. *See, e.g.*, TUALATIN, OR., DEV. CODE § 57.040. The site was entirely a commercial development. Residential uses were never proposed and office development was planned only for the second floor of two-story structures. Interview with Doug Rux, City of Tualatin Community Development Director (Feb. 18, 2005).

facilities.<sup>75</sup> The city generally requires approval by the city's Architectural Review Board (ARB) for all large development projects and, following approval, requires construction to be in accordance with the approved plans.<sup>76</sup>

The ARB is authorized to place conditions on approvals to protect the public from potentially deleterious effects of a proposal, fulfill public service and facility needs created by the proposal, or otherwise carry out the city's Code.<sup>77</sup> The city's Mixed Use Commercial Overlay District contains specific design,<sup>78</sup> landscaping, and screening requirements<sup>79</sup> applicable only to the Bridgeport Village site. The focus of the district's Design Standards is to create a "high-quality mixed use area, providing a convenient pedestrian and bikeway system and utilizing streetscape to create a high quality image for the area."<sup>80</sup> The design regulations speak to mass and density of buildings, proximity of more intensive uses to transportation facilities, pedestrian and bicycle access, landscaping, parking, and building design.<sup>81</sup>

The elements of the Tualatin Development Code enhance the goals and objectives of the city's plans to assist the location of desirable commercial development, particularly when the site had been a mined out quarry. There might be some lessons learned from the experience, however, according to the Community Development Director:

1. There was insufficient emphasis on useable second story space for significant office or residential use;
2. The surrounding area must be included in a plan, as the impacts (particularly transportation impacts from a large retail commercial use) reach far beyond the site itself; and
3. To prevent a "sea of asphalt" parking lot

---

75. See TUALATIN, OR., DEV. CODE § 57.020. Other residential, civic, and commercial uses are permitted by conditional use. See *id.* § 57.030. As noted, neither office nor residential uses were attempted on the site.

76. TUALATIN, OR., DEV. CODE § 73.040(1).

77. TUALATIN, OR., DEV. CODE § 73.055 (2002).

78. Sections 57.050, 57.200, and 57.300 of the Tualatin Code apply detailed standards relating to front facades and main entries, roof lines, trim details, mechanical equipment, and parking where more than half of a structure is devoted to residential use. TUALATIN, OR., DEV. CODE §§ 57.050, 57.200, 57.300 (2002).

79. Section 57.400 requires maintenance of landscaping, including pruning and revegetation as a condition of a certificate of occupancy, in addition to detailed buffering and screening requirements. *Id.* § 57.400. Maximum landscape coverage is 10% of the site. *Id.* § 57.050(2)(g). See also *id.* §§ 73.310–.390.

80. *Id.* § 57.200. This section also requires conformity to these provisions and provides a conflict resolution process before the ARB if other city standards are inconsistent.

81. See *Id.* The streets are laid out in a quadrant with structured parking behind.



appearance, serious consideration must be made for underground parking.<sup>82</sup>

Nevertheless, the development was undertaken as part of a public-private partnership in which the private side put up much of the infrastructure funds, but did well from the deal.<sup>83</sup> The public side was able to sell an otherwise nonperforming asset and work cooperatively to resolve a longstanding problem with the use of a well-located parcel.

## V. THE STREETS OF TANASBOURNE

In central Washington County, a short thirty minute trip from downtown Portland, the western suburb of Hillsboro contains a “lifestyle center mall” development<sup>84</sup> known as The Streets of Tanasbourne. The Streets of Tanasbourne was part of an 850 acre master plan development originally undertaken by Standard Insurance Company and approved by Washington County in 1983; however, this seventeen acre parcel was undeveloped when the site was annexed to Hillsboro in 1987.<sup>85</sup> In 2000, Hillsboro approved a retail development, but again the site was undeveloped. After a change in the developer, the project is now marketed as a “lifestyle center,” and was approved in 2004 to include 386,000 square-foot open air center retail space and higher end retail and restaurant uses.<sup>86</sup>

---

82. Interview with Doug Rux, City of Tualatin community development director (Feb. 18, 2005). While housing was an allowed use, its suburban location off a freeway in a sea of retail uses rendered housing infeasible. Moreover, there were other viable suburban office sites available, so the market was not competitive.

83. The parcel was sold in 2004 to a company owned by the California Public Employees Retirement System for \$170 million, the highest dollar real estate deal in the Metro area. Opus put up all infrastructure funds (about \$8.5m). There was no direct publicly subsidized public infrastructure. OR. BUS. J., Jan. 28, 2005.

84. “Lifestyle centers” are a “boutique” shopping concept typically located near affluent residential neighborhoods that feature fancy stores aimed at well-to-do consumers. See Parija Bhatnager, *Not a Mall, It's a Lifestyle Center* (Jan. 12, 2005), available at [http://money.cnn.com/2005/01/11/news/fortune500/retail\\_lifestylecenter/](http://money.cnn.com/2005/01/11/news/fortune500/retail_lifestylecenter/) (stating that “unlike the massive, windowless 800,000 square foot suburban malls anchored by a discount or department store, lifestyle centers tend to be smaller, around 50,000 square-feet. They're often open-air venues—like a cute little village—and are devoid of an anchor store.”). These retail malls are smaller than traditional shopping malls. They are rarely enclosed, and have streets and sidewalks in lieu of the pedestrian amenities associated with malls.

85. Interview with Deborah Raber, Hillsboro Planning Supervisor (Mar. 7, 2005). The original master plan indicated 2 million square-feet of retail and office space, 4,000 residential units, and a 550-room hotel. *Id.* The particular 17 acre site at issue was once scheduled to be developed as a hospital facility.

86. See Lindsay Gordon & Skip Rötticci, *Portland Real Estate: Coming Up Roses?* (Feb. 2005), available at <http://www.westernrebusiness.com/articles/FEB05/highlight2.html>. The center is anchored by a Meier & Frank department store (80,000 square-feet) and an REI outdoor clothing and adventure equipment retail store (40,000 square-feet) and has a three level parking garage adjacent to the department store. *Id.* The department store was the first built in the region by Meier & Frank in more

Several features distinguish the Tanasbourne retail center from others discussed in this article. For example, this development is not located on or near major transportation arterials (as are Bridgeport and Cascade Station) and it is not directly accessible by the region's light rail system (such as Gresham Civic Neighborhood or Cascade Station). Moreover, the project did not require rezoning, but was approved as a design review application in a commercial zone.<sup>87</sup> It is estimated that, due to the close proximity of many of the region's large employment centers such as Nike and Intel Corp., the number of people that live within a five mile radius of the subject site is between 200,000 and 250,000 people.<sup>88</sup> Another feature is the "spine" that unifies the majority of the site favors pedestrians over cars, and is constructed to look like a small town "Main Street."<sup>89</sup> Hillsboro planning staff also worked with the developer to assure that the western edge of the site, which abuts high density residential uses, was pedestrian-friendly and inviting to the adjacent residential uses.<sup>90</sup>

The Streets of Tanasbourne opened in October 2004. At this early stage it is difficult to tell if the development has been a success. Two pads remain to be built, but Hillsboro staff has facilitated development of these sites by approving parking variances to allow increased square footage for these pads without further increases in on-site parking.<sup>91</sup> If success is gauged by providing pedestrian-friendly retail uses to a major employment area that—up to this point—was starved for a large town center development, then The Streets are bound for success.

---

than twenty years. *Id.*

87. See FIELD PAOLI, RETAIL PROJECTS, THE STREETS OF TANASBOURNE, available at <http://www.fieldpaoli.com/site/pages/tanas.html> (displaying pictures of the anticipated project) (last visited Apr. 24, 2005).

88. Gordon & Rotticci, *supra* note 87. The adjacent Tanasbourne neighborhood has a density of 22 units per acre. No housing is provided as part of this project.

89. The "Main Street" design extends upward on this sloped site, connecting to a fountain and plaza area at an intersection. Interview with Deborah Raber, Hillsboro Planning Supervisor (Mar. 7, 2005). Stairs from the plaza extend to the northwestern corner of the site, where a strong pedestrian link is provided across the adjacent street and the adjacent high density residential neighborhood. *Id.*

90. To do this, the department store and parking garage were designed to increase the visual and textural variety, the sidewalks were widened on both sides of the street, and landscaping was installed to soften the taller structure. The site designers also took advantage of the slope of the site to construct most of the lowest level of the garage below grade, thereby reducing its height and allowed a skybridge connection to the second floor of the department store. Interview with Deborah Raber, Hillsboro Planning Supervisor (Mar. 7, 2005).

91. In return, The Streets management has worked with owners of surrounding theaters and office parks to provide employee parking and shuttle service during holiday peak hours. *Id.*

## VI. PORTLAND'S CASCADE STATION PROJECT AND THE CHANGING RETAIL MARKET

In 1978, Congress cancelled an appropriation to build the Mount Hood Freeway connecting Portland to its sister city to the east, Gresham, and authorized the use of those funds to build a light rail system to connect those two cities.<sup>92</sup> Ground was broken in 1981 for the fifteen-mile section and in the 1990s a further extension of MAX (as the light rail system operated by the Tri-County Metropolitan Transit District, or Tri-Met) connected Portland to the City of Hillsboro, to the west.<sup>93</sup> MAX was a transportation success for the region.

In 1997, Tri-Met, the Port of Portland (which operates Portland International Airport or PDX), and the City of Portland considered construction of a MAX spur of 5.5 miles, to connect the Portland-Gresham line with the airport in order to provide direct access to the city centers of those cities, as well as Hillsboro. Because there were no federal funds for this extension, the Portland Development Commission, the city's urban renewal agency—though a separate municipal corporation—entered into an agreement in 1999 with Cascade Station Development Corp. (CSDC), a company in which Bechtel Construction Co. had a dominant role.<sup>94</sup> The agreement called for CSDC to construct the spur in return for CSDC's option to receive a long-term lease and exclusive development rights to a 120-acre "gateway parcel" adjacent to PDX and the I-205 Freeway with a direct connection to Clark County, Washington.<sup>95</sup> The spur was opened in September, 2001 and CSDC anticipated the retail, employment, and entertainment uses contemplated for the area.<sup>96</sup> However, the parcel did not

---

92. ADAM J. BENJAMIN, PORTLAND MAX LIGHT RAIL: SYSTEM OVERVIEW, *available at* <http://world.nycsubway.org/us/portland/max.html>.

93. *Id.*

94. To avoid characterization of the transaction as a loan (which might create legal problems), the exchange of development rights on the site in return for \$14 million in future payments, counsel for the Portland Development Commission termed the agreement a "subordinated contingent profit-sharing interest." Nigel Jaquiss, *The Swedish Solution?*, WILLAMETTE WEEK, Feb. 23, 2005, *available at* <http://www.wweek.com/story.php?story=6029>.

95. The arrangement was finalized in a development agreement among CSDC, the Port of Portland, which owned the site, and the City of Portland. Letter from Ingrid Stevens, Vice-President, Portland Planning Commission, to Mayor Potter and Members of the Portland City Council 1 (Dec. 21, 2004), *available at* <http://www.portlandonline.com/shared/cfm/image.cfm?id=68323> [hereinafter Cascade Station Report]. One of the developers of this site was Center Oak Corp., which also had a hand in both the Gresham Civic Center and Bridgeport Village. *See supra* §§ III, IV of this paper. The Washington connection was important—since Oregon does not have a sales tax, and Washington does—so there is a brisk retail shopping business for those parts of Oregon nearest to Washington.

96. According to the Cascade Station Staff Report by the Portland Planning Staff, the site was to be the beneficiary of 7000 new jobs, along with consequent ridership increases for Tri-Met. CSDC

market well at all. Although “shovel-ready” for development for three years, there was limited market interest in the site for several reasons:

1. There was no large anchor tenant, although stores below 60,000 square-feet were allowed;
2. Because the site was adjacent to PDX, residential uses were not permitted under FAA regulations, so the site lacked foot traffic and a residential market base;
3. The site was impacted by the fallout of 9/11 on business generally and airport related business in particular;
4. Lack of critical mass exacerbated a market downturn and created a negative reputation for the property;
5. The market downturn was reflected in a fifteen percent regional office vacancy rate (which was even greater outside the central city); and
6. The downturn in the heretofore-booming technical area negatively impacted the site.<sup>97</sup>

As a result, in 2004-05, the Portland Planning Bureau staff, along with the developers and other public agencies, recommended some changes to the approved plans and development agreement among the city, PDC, and the developer. The reconfiguration is illustrated by the following table:

<u>Allowed Land Uses</u>	<u>1999</u>	<u>2005</u>
Office	1,325,000 SF	1,115,000 SF
Retail and Theatre	500,000 SF	807,000 SF
Hotel	1,200 Rooms	250 Rooms
Gas Station (1 facility)	12 Fueling Positions	12 Fueling Positions <sup>98</sup>

The controversial part of the proposal was the allowance of up to three big box stores (60,000 square-feet each). Smart Growth theory attempts to limit such facilities because of their effect on land use and transportation patterns. As noted above, Metro had already prohibited most of such facilities in Employment Areas as of September, 2003 unless—as found in this case—the development did not increase site-generated traffic more than

---

had contributed \$42 million to build the line, in addition to annual development and property maintenance costs and was in a lease with PDC until 2084, with an option to extend to 2098. Cascade Station Staff Report (on file with author).

97. *Id.* at 3.

98. *Id.* at 4.

twenty-five percent over the underlying use, and parking standards were met.<sup>99</sup> The city council thus approved these changes.<sup>100</sup>

In approving these changes, the Portland City Council revised its policy for the Cascade Station area to read as follows:

**5.13 Cascade Station/Portland International Center**

Encourage the development of Cascade Station/Portland International Center (CS/PIC) as a high quality, vibrant mixed-use employment center and gateway to Portland via light rail from Portland International Airport and Interstate 205. Design and development of CS/PIC will create jobs, capitalize on unique infrastructure: Park Blocks and light rail, provide a variety of uses including, office, retail, industrial, hospitality, and entertainment uses, be pedestrian-oriented, and complement its location at Portland International Airport.<sup>101</sup>

While the revised plan and regulations have not yet received Federal Aviation Administration approval, such approval is anticipated. Capacity of adjacent transportation facilities was a concern during the revisions. However, the city retained a transportation consultant and accepted the report generated from the resultant study.<sup>102</sup> The study provided a process for review of transportation capacity through a Transportation Impact Analysis.<sup>103</sup>

Site and design review for the CSDC property is governed simultaneously by the development agreement. The agreement provides for joint public-private review of development proposals by CSDC, the Port of Portland (charged with operating the airport) PDC, by City planning and construction agencies, and a public review of the subarea master plans that make up the subject property.<sup>104</sup>

Whether it was wise to allow big box stores to improve the economic prospects of an assisted development in return for the construction of a light rail extension remains to be seen.<sup>105</sup> There is a question as to whether big

99. PORTLAND, OR., METRO CODE § 3.07.440(E) (2004); *see also* Cascade Station Staff Report, *supra* note 97, at 5 (addressing Metro criteria).

100. PORTLAND OR., ORDINANCE 179,076 (Feb. 17, 2005).

101. Portland Comprehensive Plan, Policy 5.13. In addition, the city amended its development regulations and zoning map for the site and approved revisions to the development agreement previously entered into with the Port of Portland and CSDC.

102. One of the results of the study was a table of equivalent uses for transportation capacity purposes under PORTLAND, OR., CITY CODE §§ 33.508.220, .230 (2004), as well as Table 508-1.

103. *Id.* § 33.508.220(C).

104. *See id.* § 33.508.230. This section contains detailed requirements with respect to building height, street floor windows and awnings, setbacks, building entrances, landscaping and required amenities, parking, and relationship to the light rail stations in the area.

105. *See* Dylan Rivera, *Ikea Outside the Box for Cascade Station's Uses* (Jan. 21, 2005), available at <http://www.oregonlive.com> (speculating on the history of Cascade Station and whether the

box stores play any role in the region outside of downtown areas, because of their general inconsistency with pedestrian and transit orientation requirements for commercial centers, as well as urban design considerations which encourage entrances to be close to street fronts and parking to be hidden behind the retail structure. Indeed, it can be argued that big boxes are also inconsistent with city centers because of their orientation to the auto and their detraction from desirable downtown retail patterns. In this case, the freeway and light rail infrastructure was present while the residential base was not.

The Cascade Station project would not have met Smart Growth criteria because residential uses were prohibited from being close to PDX. Instead, a destination shopping center with up to three big box stores resulted. Perhaps the policy reversal from the original Cascade Station plan was necessary to provide for the comfort of future partners in joint public-private ventures, but the Cascade Station experience seems to show that the bottom line trumps all other considerations.

## VII. CONCLUSION

The Portland-Vancouver Metropolitan Region demonstrates the relative certainty that comprehensive planning and coordinated land use regulation give developers, as well as the flexibility such policies give to municipalities to achieve public policy objectives.

Regarding mega-malls and big box stores, the state and regional systems at work in at least the Oregon portion of this region prevent retail giants and mall developers from playing one jurisdiction against another. Moreover, both the planning culture and surrounding jurisdictions would suspiciously look at a single municipality breaking with the policy of the region. Generally, there is little resistance to the size limitations and prohibitions on retail uses applicable throughout the region. Criticism of the regional approach centers around the failure of the region to “walk its talk” on the use of transportation planning as the basis for new retail center—neither Bridgeport Village nor The Streets of Tanasbourne are located near light rail lines, nor are they regional centers on Metro’s plan. In fact, neither development is at the heart of the existing commercial center of the city they serve, but provides a suburban, auto-oriented retail opportunity without housing. A fairly good argument can be made that these uses tend to take away from the vitality of downtowns and regional centers.

The bigger story, however, is the use of positive planning wherein

---

Swedish furniture outlet would find the area desirable).

regulators, economic development advocates, property owners, planners and others collaborate for a desirable development and revise plans and regulations to meet that vision. The Gresham, Tualatin, and Hillsboro developments saw the full force of local governments to support these development efforts. The Cascade Station story has not been completed, but appears to be headed in the same direction.

The Pacific Northwest is a place where many planning efforts, both good (including mandatory comprehensive planning and coordination between plans and regulations) and bad (governmental payments for regulations) are derived. The responses to large malls and stores seem to fall on the side of meritorious planning.