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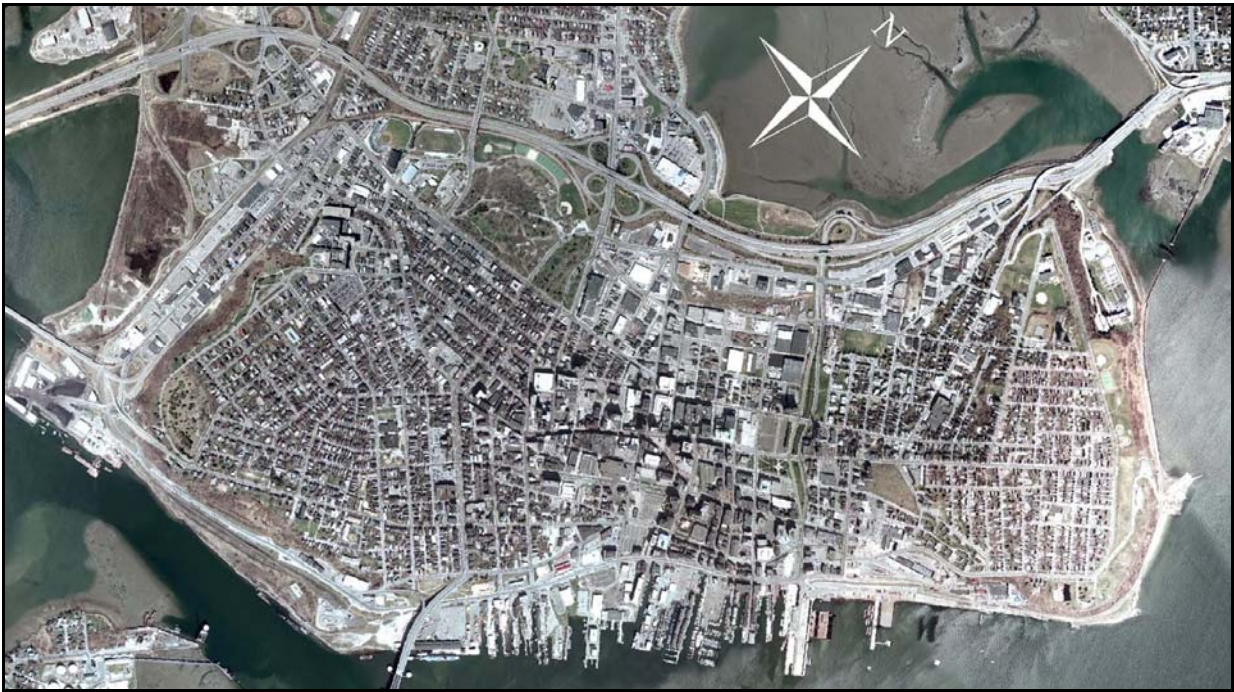
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Portland ME: Affordable Housing v. Open Space¹



A case from the library of “smart growth” leadership case studies prepared by the New England Environmental Finance Center, available at efc.muskie.usm.maine.edu/docs

Abstract. Amid an acknowledged “affordable housing crisis”, a first-time developer approaches the City to release part of a tax-acquired property, promising a smart-growth development that would provide sorely needed starter homes for working families. The case highlights the complications of balancing competing interests in Portland ME. It shows where rational planning fails in the presence of strong neighborhood opposition, a disjointed city staff structure, and the absence of political will among City Councilors. It highlights the need for champions within local government when a project evokes competing interests. It demonstrates the extent to which “words matter” to policy outcomes, and who gets to define them – in this case, in the fateful difference between “preservation” and “conservation.” Finally, it suggests that NIMBY responses to development proposals may depend as much upon *how* and by *whom* it is put forward as by *what*.

¹ Prepared by Patrick Wright with the assistance of Brett Richardson for the New England Environmental Finance Center’s “Next Communities Initiative,” Richard Barringer, ed., Edmund S. Muskie School of Public Service, University of Southern Maine, Portland ME, May 2008. Aerial photo of the Portland peninsula courtesy of the Maine Office of GIS. Copyright © 2008 by the Muskie School of Public Service.

Portland. Portland is a city composed of an urban peninsula, inner-ring suburbs, and several offshore islands. The peninsula is densely developed, centered on the vibrant downtown with its historic Old Port, working waterfront, and arts district, surrounded by four distinct, high density, suburban neighborhoods. According to the city's comprehensive plan, Portland has a population of just over 64,000 people served by 31,864 housing units. The plan notes a trend towards smaller household occupancy rates and a modest increase in population. The surrounding residential suburbs in Cumberland County show a similar trend towards smaller households, but a much greater increase in population, an indicator of sprawl.

The implementation section of the Portland comprehensive plan states the need for an additional 4,267 housing units, based on population projections. The plan recommends several approaches to reaching this goal, including infill development, senior citizen housing, creation of affordable housing units, and importantly, support of market rate, single family starter-homes for middle income citizens.²

The Land Bank. As the public perception grows that Portland is near to being completely built-out, there is felt need to protect or preserve open space for the benefit of both human and natural populations.³ In 1998, an off-peninsula development in Councilor Tom Kane's district carved out a woody area long used by neighbors for passive recreation. The issue grew contentious, and Kane sought a mechanism to anticipate and avoid such conflicts in the future.

In the following year, at the urging of now-Mayor Tom Kane, a Land Bank Commission (LBC) was established to identify and inventory undeveloped land, public and private, with significant conservation value. Its official website states that the LBC

is responsible for identifying and protecting open space resources within the City of Portland. The Commission seeks to *preserve a balance* between development and *conservation* of open space important for wildlife, ecological, environmental, scenic or outdoor recreational values. The Commission responsibilities include: working for the acquisition and conservation of open space within the City; recommending to the City Council on a priority basis acquisition or conservation of significant properties; and the pursuit of gifts and funds from private and public sources for the acquisition of open space as approved by the City Council.... It is engaged in an ongoing effort to proactively protect properties from development through easement, deed restriction, or acquisition. (emphasis added)

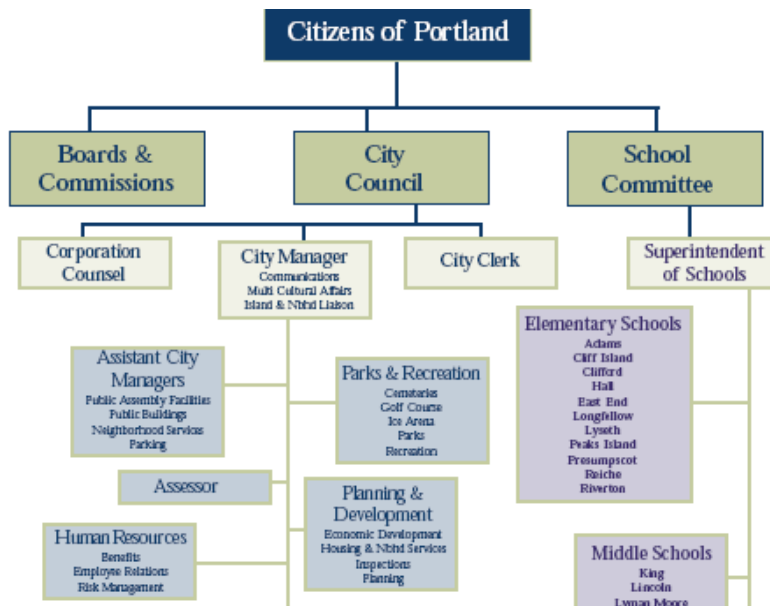
² The comprehensive plan is available online at <http://www.portlandmaine.gov/planning/complanbook.asp>

³ A recent analysis of Lewiston-Auburn ME found 12,185 acres of vacant and currently zoned residential land that could accommodate at least 8,000 new housing units. See www.brookings.edu/metro/maine.

Specifically, the LBC was created by the City Council “to ensure the conservation and preservation of limited open space with important wildlife, ecological, environmental, scenic or outdoor recreational values.”⁴ It is authorized to inventory vacant lands within the city and set priorities among them on the basis of their value for conservation and/or preservation, and of any threat to them, according to standards established by the Council. Today it annually presents to the Council a “registry” of these properties, prioritized by quality and imminence of threat.

Within the City’s departmental organization (see chart below), the LBC is accountable to the City Manager, and was originally assigned to Larry Mead, Assistant City Manager and former Director of the Parks & Recreation Department; today, after Meade’s departure to become manager of a nearby town, it reports to Denise Clavette, the City’s Parks & Recreation Director. It is chaired by Roger Berle, the highly-respected past president of Portland Trails, member of the State’s Land for Maine’s Future board, and a dedicated conservationist; he is in the last of three terms as chair.

The source of the LBC’s influence is the reputation of its member and their skill in lobbying Council members and the general public. They recently petitioned successfully for an annual appropriation of some \$50,000 to leverage the purchase of properties for the City, for which Council approval remains necessary.



⁴ See Ord. No. 659-86, § 1, 6-16-86, Article III-A, Portland Land Bank Commission.

The Parcel. A 35 acre parcel of undeveloped land in the off-peninsula Ocean Avenue neighborhood surrounding a capped landfill had been acquired by the City through tax delinquency. The parcel was recognized by the Land Bank Commission and placed on its high priority (but not *very* high priority) list for protection. In Spring 2006, a developer approached the City with a proposal to devote a portion of the parcel to affordable housing for city residents. According to Larry Meade, the proposal promptly sent the parcel to the top of the LBC's priority list for protection.

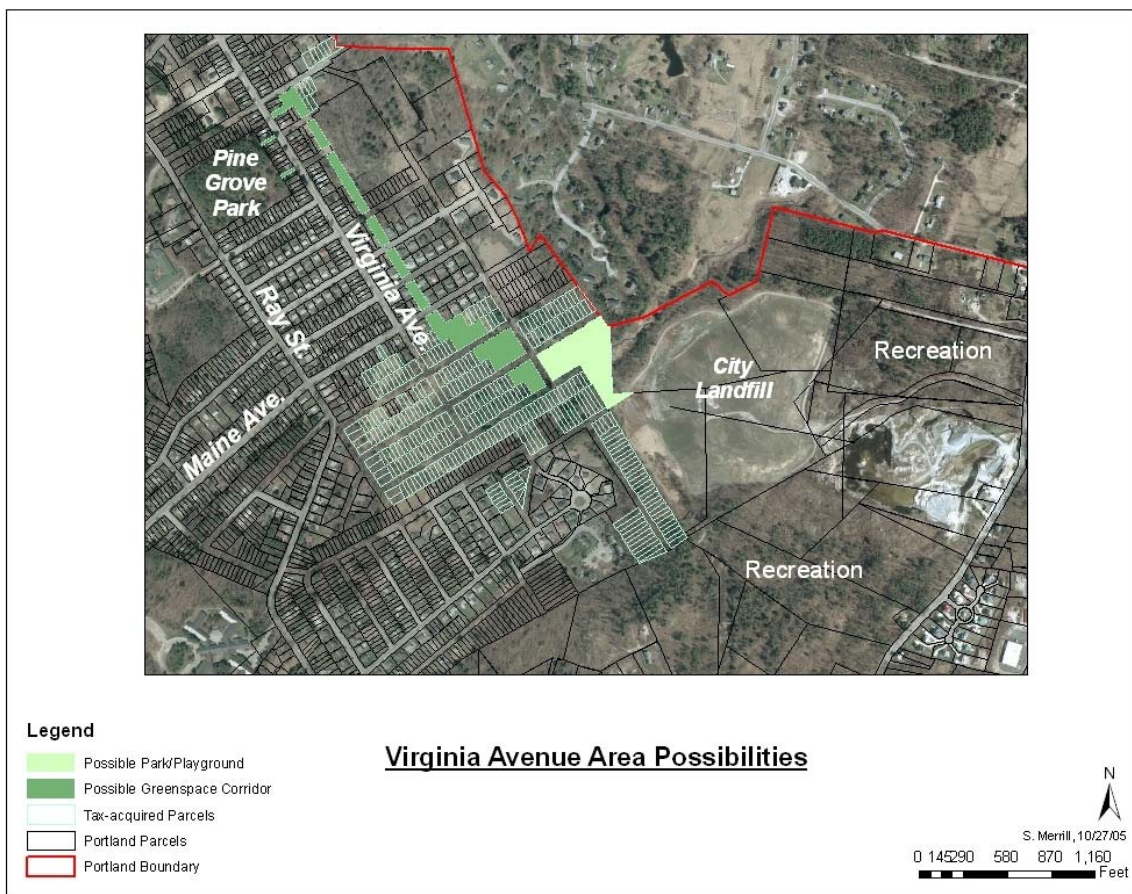


Aerial Photo Courtesy of Maine Office of GIS and Google Earth

The parcel is the largest contiguous tract of undeveloped land in the city, valued from a conservation perspective for its unique features: its proximity to the Casco Bay Estuary and mix of meadowland, mature tree growth, and wetlands make it excellent sanctuary for bird life. As a result, the Maine Audubon Society would back protection of the parcel, and environmentalists championed its diverse wildlife habitat within the city.

The Developer. The first-time developer, Sam Merrill of nearby Pownal ME, is a trained wildlife scientist and was previously executive director of a prominent, mid-coast Maine land trust. The concept plan he presented to the City (see below) proposed to balance open space and wildlife habitat with 220 appropriately-sited, affordable housing units.

As neighborhood and conservation opposition mounted, however, and especially upon the arrival of an updated wetlands map, the developer’s proposal was scaled back to between 70 and 150 units, built on the most suitable land along the Virginia Avenue side of the parcel.



Note: Map prepared by the prospective developer to open conversations with the City and stakeholders. It shows 1) the "paper streets" that were part of the City's earlier vision for residential development of the area; 2) a possible green corridor to connect existing open spaces; and 3) a possible new playground location. Subsequent environmental analyses showed wetland configurations would dictate locations and densities of any development.

The developer’s revised proposal might have generated the optimum value for the site: critical habitat would be preserved along with the recreational opportunities treasured by

neighbors; and the City would be closer to its goal of more family-oriented, below-market housing units within the city limits. Ultimately, however, the housing proposal failed due to a confluence of local and environmental interests that overrode the broader public interest in the express City goal.

The Neighbors. Even in its reduced form, the neighbors opposed the proposed development. For years they had relied on the parcel for various forms of active and passive recreation. Their collective voice spoke out to preserve the land. City Councilor Cheryl Lehman, who represents the district, became their champion.



Access point to recreational resource treasured by neighbors

Photo by Patrick Wright

In an interview a year later, Lehman recalled several reasons that the development proposal did not suit the land. It was, in a word, too “conceptual.” The developer, on the other hand, had purposefully submitted the proposal in concept form, expecting to flesh out details through a consensus-building process with neighbors and other stakeholders, once the City had given preliminary approval. Lehman’s response was, “The only thing the neighbors would have told him is, “We want open space!”

Lehman was also concerned that the developer had no prior experience in housing development. Though he was partnered on the project with a well-established affordable housing group, his inexperience was one more roadblock for Lehman and the neighbors. Finally, Lehman complained that the proposed development form – “cluster” housing – would be out of keeping with the first-wave suburban character of the neighborhood.

When asked for her solution to the affordable housing issue in Portland, Lehman offered that the Greater Portland region *as a whole* needs more affordable, single family, “starter”

homes; and that it should be built outside the City of Portland, where undeveloped land is more plentiful and less expensive.

The Project Champions. Despite push-back from the neighbors, the developer's proposal appeared to be gaining traction. He had built a coalition in its support, including the Trust for Public Land and the popular Portland Trails organization.

Leading the support for the project was Karen Geraghty, at-large City Councilor and chair of the Council's Housing Committee. Working against the project was that its future occupants, or beneficiaries, were not yet personally identified and present, much less organized. While there are advocates for affordable housing, they were not as passionate or well-organized as the citizens in the neighborhood. When Geraghty spoke out for the project, it was without an organized citizens' group behind her to "beat the drum".

Other Council members became project champions, as well, though the developer did not secure a champion on the City Hall staff. Wendy Cherubini, the City's housing specialist and advocate at the time, left early in the project for another position outside city government. Lee Urban, the City's Director of Planning and Development, was generally aware of the project proposal, but remained largely uninvolved in discussions with City Councilors and others about the proposal.

The debate between Councilors Geraghty and Lehman became heated at times. At what would be the final Council meeting on the proposal, Lehman moved that before the Council might make a decision, the neighbors should have another series of meetings to clarify their position about housing development in the area. Despite the City's well-documented need for affordable housing, the rest of the Council was unwilling to stand against Lehman and the neighbors; so, development of the City-owned land was tabled. It subsequently became clear that the issue could not be resolved before current Council terms expired; and Geraghty had decided not to seek re-election to the Council.

By mid-2006, the developer had dropped the proposal, citing the additional investment of time and money needed to see it through. The uncertain will of the Council to pursue new housing within the city limits presented too much risk for him to continue.

Postscript. In February 2007, following the election of new City Council members, Councilor Lehman and the Land Bank Commission suggested that the Virginia St. parcel be placed into the City's Land Bank; the motion passed unanimously. In response, at-large Councilor Jill Duson, now chair of the Housing Committee, moved that the Land Bank set aside the most build-able portion for future consideration as housing; the motion failed, 5-2. While the designation of the parcel as a holding of the Land Bank does not place the land into permanent preservation, its designation is another political barrier to its development.

TEACHING NOTES:

Important ideas illustrated in the Portland case include:

1. Organization and accountability matter: The placement of the Land Bank in the City's organization compromised the opportunity to advance the express needs of the City.
2. Public leadership matters. The loss of the Housing Committee chair's leadership compromised the project. Where was the head of the Planning and Development Office?
3. Influence matters. Potential influence is made actual only through its skillful, concerted application. How else might the developer have exerted influence? Were "back channels" used effectively in this case?
4. Words matter! As Benjamin Disraeli is quoted as having said "It is by words that we govern;" and how words are interpreted matters. For 100 years there has been maintained a distinction in land management circles between "preservation" (or, maintenance in its original or existing state) and "conservation" (or, planned use according to established principles, as "wise use" or "multiple use"). How did the preservation community come to capture the Land Bank?
5. Planning does not equal implementation. Why did the City's comprehensive plan intentions, so clearly stated, not translate into policy "on the ground?"
6. Timing matters. Turnover on the Council came at a bad time. The are needed through successive administrations.
7. Trust is the coin of the realm when it comes to overcoming resistance to change. Did the developer enjoy trust? How might he have gained it?
8. Are NIMBY'S always what they seem? Public recreational use of the Virginia Ave. property occurred spontaneously, without planning on the City's part, and became a rallying-cry for opponents to development. As open land becomes increasingly scarce in Portland's inner suburbs, access to recreational opportunity is increasingly valuable, and any threat to it is likely to meet resistance. How might the developer have overcome this resistance?