

## References Regarding “Upzoning” Single-Family Neighborhoods

Updated: August 12, 2021

### 1. **The Missing Middle Housing Study (September 2018)**

by Montgomery County Planning Department &  
Maryland-National Capital Park and Planning Commission

[https://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](https://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

A thorough and comprehensive study of so-called "Missing Middle Housing.

The study sums up numerous evidence-based conclusions, which contradict the idea that so-called “Missing Middle Housing” is a panacea, including:

- “Key to all of these [‘Missing Middle Housing’] strategies is a clear understanding of where it is most appropriate to introduce this type of housing. The most ideal locations for Missing Middle housing typologies are at the following locations:
  - Along major transportation corridors, where Missing Middle housing can serve as a transition between busy thoroughfares and neighborhoods on internal streets.
  - At the edges of single-family residential neighborhoods adjacent to other more dense uses and building typologies, so as to provide a transition between land uses.
  - Within a certain distance of transit and transportation alternatives such as bus, bus rapid transit, Metro and Purple Line light rail.
  - A limited number of typologies within single-family neighborhoods, e.g. accessory dwelling units or duplexes.”

The study's recommendations are quite clear, and well-supported by evidence and analysis in four critical regards:

- Market-rate (unsubsidized) “Middle Housing” is predominantly limited by the "barbell" effect of risk-versus-return for housing developers (see page 19)
- Market-rate "Middle Housing" does not inherently lead to significantly improved "housing affordability." (see page 22)
- "Middle Housing" improves transportation efficiency only when located near transit. (see throughout, e.g., pages 21 & 22)
- Only a limited number of typologies should be allowed within single-family neighborhoods, e.g. accessory dwelling units or duplexes at densities in the 8-14 units/acre range. (see pages 6 and 24)

### 2. **State of the Nation’s Housing (2019)**

by Joint Center for Housing Studies of Harvard University

<https://www.jchs.harvard.edu/state-nations-housing-2019>

This Harvard study reinforces the widely understood fact that the largest group of "housing cost-burdened" households and the households most severely stressed occur in the "Extremely Low Income" and "Very Low Income" categories. In addition, these studies establish that market-rate solutions, especially with small multi-unit structures, will not address these households' needs to any significant degree.

Excerpts: “Households with incomes under \$15,000 continue to have the highest burden rates, with 83 percent paying more than 30 percent of income for housing, including 72 percent paying more than 50 percent.”

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“[L]ow-rent units are increasingly concentrated in older buildings, which puts them at a greater risk of loss from the stock and their residents at greater risk of displacement.”

The data and analysis also make clear that there isn’t a single “housing market,” that responds like commodities, such as soybeans. Instead there are huge differences depending on region and local areas. Reviewing the maps reveals how misguided it was to legislate the “one-size fits all” upzoning to housing and income conditions as wildly disparate as Portland and Eastern Oregon cities.

### **3. *Measuring Housing Affordability: Assessing the 30 Percent of Income Standard***

by Christopher Herbert, Alexander Hermann, Daniel McCue;  
Joint Center for Housing Studies of Harvard University

<https://www.jchs.harvard.edu/research-areas/working-papers/measuring-housing-affordability-assessing-30-percent-income-standard>

This Harvard study provides detailed data and analysis to confirm that the commonly used criterion – a household is “housing-cost burdened” when they spend more than 30% of their household income on housing – isn’t an accurate metric. Obviously, a household with a million dollar income can afford to spend much more than \$300,000 per year in mortgage payments and not be “housing-cost burdened.” Similarly, a household with \$15,000 annual income may be “housing-cost burdened” if they must spend \$3,000 (i.e., 20%) of their income on rent.

The authors confirm that a more realistic criteria is – a household is “housing-cost burdened” when the “residual income” left after housing costs is less than the local costs for taxes and basic necessities. This study’s analysis for three different cities concludes that the “30%” criterion overstates the percentage of high-income households, and understates the percentage of low-income households, that are actually “housing-cost” burdened.

The study doesn’t extend to analyzing how this more accurate metric affects the analysis of the supply of housing that’s affordable to the households in an area. However, it’s a direct step to conclude that the “residual income” metric would amplify the relative proportion of “housing-cost burdened” households among the “Very Low Income” (VLI) and “Extremely Low Income” (ELI) categories. (See *The Gap Report 2019* by the National Low-Income Housing Coalition, below.)

### **4. *The Gap: A Shortage of Affordable Homes (2021)***

by the National Low Income Housing Coalition

[https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2021.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf)

The definitive annual data report and analysis of the true “housing crisis.” The most striking conclusions from the national analysis is that 92% of the deficit in available “affordable housing” (using the “30% of income” criteria) falls on “Extremely Low Income” (“ELI,” less than 30% of Area Median Income ) households and “Very Low Income Household” (“VLI,” Less than 50% of AMI), and there is a surplus of available “affordable housing” for all household above 80% of the local AMI. Data for the Eugene metro area are similar.

The inescapable conclusion is that building new housing that is affordable only to households with at least 80% AMI annual income would only increase the surplus of affordable housing for higher-income households and would not reduce the deficit of affordable housing for lower-income households. And yet Oregon’s House Bill 2001 leaves rental costs or purchase price of all new housing that would be allowed by the forced upzoning entirely to developers and investors.

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Excerpts: “The private market provides too few homes affordable to the lowest-income renters. What extremely low-income renters can afford to pay for rent does not cover the development and operating costs of new housing, and it often is not sufficient to provide an incentive for landlords to maintain older housing.”

“We must build the political will for a large-scale and sustained commitment to affordable housing programs designed to serve the lowest-income families, those with the greatest and clearest need.”

“Absent public subsidy, the private market is unable to produce new rental housing affordable to these [ELI and VLI] households, because the rents that the lowest-income households can afford to pay typically do not cover the development costs and operating expenses of such housing. New rental housing, therefore, is largely targeted to the higher-price end of the market.”

Unfortunately, HB 2001 does nothing to provide the essential subsidies to address the true housing crisis.

### 5. ***Blanket Upzoning—A Blunt Instrument—Won't Solve the Affordable Housing Crisis***

An interview with UCLA and London School of Economics Professor Michael Storper in *The Planning Report*, March 2019

<https://www.planningreport.com/2019/03/15/blanket-upzoning-blunt-instrument-wont-solve-affordable-housing-crisis>

A highly qualified expert discusses his (and other) research that thoroughly demolishes the HB 2001 premise that blanket upzoning and letting the market determine what gets built and where will improve affordability for lower-income households, among whom all of the true need exists.

Excerpts: “The ‘housing as opportunity’ school of thought ... claims that the housing crisis in our major prosperous metropolitan regions is principally due to restrictive zoning and regulations. It follows by arguing that that we can solve this crisis through widespread upzoning, which it claims will increase the supply of housing in these prosperous regions, and that this overall supply increase will have a trickle-down effect by increasing affordability for lower income people and families.

“Our analysis shows that blanket upzoning is likely to miss its affordability target .... Blanket upzoning is a blunt instrument, whereas people’s housing needs are diverse.”

“[L]ocations [that] are likely to attract big increases in housing construction ... are areas with strong attractiveness. It will favor those who can pay the price of housing in high-demand areas—marginally improving the housing prospects for highly skilled people at the upper end of the income distribution.

“What it’s not going to do is solve the housing crisis for the middle classes and lower-income people.”

“A recent paper by Yonah Freemark at MIT [note: see reference below] showed that upzoning in Chicago served to increase land values. We could anticipate that effect, because upzoning means that landowners can count on being able to construct more in the future. But what upzoning did not do in Chicago, and is not likely to do anywhere, is create incentives for housing construction in the areas where middle-class and lower-income people most need it for the prices at which they need it.

“That’s the problem with blanket upzoning: It doesn’t actually require housing to be created for these groups. It just allows upzoning itself to be created wherever you want, and for market speculation to dominate. The market will naturally respond best in areas with the greatest returns on upzoning—mostly

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places with dense, white-collar employment where high-income people will want to live to be closer to their jobs.

“This is how blanket upzoning produces the consequence of displacement. Skilled people with high incomes—those who would benefit most from upzoning—are going to move into upzoned neighborhoods and crowd out the middle- and lower-income people who are living there. This displacement is exactly the opposite consequence of what the authors of upzoning bills claim they want to produce.”

“[B]lanket upzoning would likely give us the same kind of ugly incursions of bad urbanism, without the positive side of higher density, which is clustering, walkability, and lively streets.”

“What concern me are top-down approaches that dictate to a local community how to produce greater density and in exactly what ways.”

“The core debate in California housing policy is with people who think that untargeted upzoning is a lever that will increase supply in vast metropolitan areas and produce widespread affordability while somehow avoiding the problems of displacement and bad urbanism. But affordability and supply are not the same thing.”

“Bills like [California] SB 827 and SB 50 [note: and Oregon HB 21001] are essentially about trickle-down economics. The logic is that by creating more aggregate supply, every part of the demand curve—every different group demanding housing—will somehow benefit. I don’t think there’s any evidence in favor of that proposition.”

“We should set general goals and allow communities to meet them in different ways, rather than imposing centralized solutions.”

### **6. *MIT study that the YIMBY narrative on housing is wrong***

by Tim Redmond in 48hills, January 29, 2019

<https://48hills.org/2019/01/yimby-narrative-wrong/>

Excerpt: “The Yimby narrative – that higher density in US cities will bring down housing prices – doesn’t work in real life, a dramatic new study from an MIT doctoral student suggests. ... In fact, the study, released today, shows that – at least in Chicago, where author Yonah Freemark compiled the data – upzoning for greater density leads to increased housing costs.”

The research paper is at the following reference.

### **7. *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction***

By Yonah Freemark, Department of Urban Studies and Planning, **Massachusetts Institute of Technology**

<https://urbanaffairsreview.com/2019/03/29/upzoning-chicago-impacts-of-a-zoning-reform-on-property-values-and-housing-construction/>

Abstract: “What are the local-level impacts of zoning change? I study recent Chicago upzonings that increased allowed densities and reduced parking requirements in a manner exogenous of development plans and neighborhood characteristics. ... I demonstrate that the short-term, local-level impacts of upzoning are higher property prices but no additional new housing construction.”

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### **8. Does Upzoning Boost the Housing Supply and Lower Prices? Maybe Not.**

By Richard Florida (author of *New Urban Crisis*) in *CityLab*, January 31, 2019

<https://www.citylab.com/life/2019/01/zoning-reform-house-costs-urban-development-gentrification/581677/>

Discusses Yonah Freemark’s research (see previous reference) and other research.

Excerpt: “[T]he markets—and neighborhoods—for luxury and affordable housing are very different, and it is unlikely that any increases in high-end supply would trickle down to less advantaged groups. Another economist who is more pro-market than I am, Tyler Cowen, has similarly argued that the result of liberalizing zoning codes to allow for taller buildings will likely be more luxury housing and more profits for landlords and developers.

### **9. LSE researchers conclude: “Build baby build” is no answer”**

By Michael Mehaffy in *Livable Portland*, October 18, 2019

<http://livableportland.org/2019/10/18/lse-researchers-conclude-build-baby-build-is-no-answer/>

Connects the research of Yonah Freemark, Andrés Rodríguez-Pose of the London School of Economics (LSE) and Michael Storper, of LSE, UCLA, and Sciences Po in Paris. (See next reference for the LSE research). Relates this to the experiences with the “Residential Infill Project” (“RIP”) upzoning in Portland, Oregon.

Excerpt: “For Portland, this would suggest de-emphasizing the “build baby build” approach, and the “shove density down their throats” approach — which are both likely to fail, and to produce unhelpful political backlash — and instead, focusing on a more even-tempered and polycentric approach to development across the region — exactly as was advocated in the Metro “Centers and Corridors” report, fulfilling the **Metro 2040** plan’s vision of a polycentric network of walkable, compact, transit-served places across the region.”

### **10. ‘Build More Housing’ Is No Match for Inequality**

by Richard Florida in *CityLab*, May 9, 2019

<https://www.bloomberg.com/news/articles/2019-05-09/-build-more-housing-is-no-match-for-inequality>

Discusses the “Housing, Urban Growth and Inequalities” research published in the *Urban Studies* journal by Andrés Rodríguez-Pose of the London School of Economics (LSE) and Michael Storper, who divides his time among the LSE, UCLA, and Sciences Po in Paris.

Abstract: “... We posit that there is no clear and uncontroversial evidence that housing regulation is a principal source of differences in home availability or prices across cities. Blanket changes in zoning are unlikely to increase domestic migration or to improve affordability for lower-income households in prosperous areas. They would, however, increase gentrification within metropolitan areas and would not appreciably decrease income inequality. In contrast to the housing models, we argue that the basic motors of all these features of the economy are the current geography of employment, wages and skills.”

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### **11. *The Neighborhood Is Mostly Black. The Home Buyers Are Mostly White***

By Emily Badger, Quoc Trung Bui and Robert Gebeloff in the April 27, 2019 issue of *The New York Times*

<https://www.nytimes.com/interactive/2019/04/27/upshot/diversity-housing-maps-raleigh-gentrification.html>

Another on-the-ground examination of how upzoning exacerbates the “gentrification” pressures on neighborhoods of color.

Excerpt: “In city after city, a map of racial change shows predominantly minority neighborhoods near downtown growing whiter.”

As the upzoning forced by HB 2001 produces replacement of lower-value homes in neighborhoods of color or poorer neighborhoods, the high rents and condo prices of the new housing is mostly purchased by white households because of the income disparity between white and black (or Hispanic) households.

### **12. *Housing, Urban Growth and Inequalities***

by Andrés Rodríguez-Pose and Michael Storper in *Urban Studies* journal

<https://doi.org/10.1177/0042098019859458>

Excerpts: ““The affordability crisis within major urban areas is real, but it is due less to over-regulation of housing markets than to the underlying wage and income inequalities, and a sharp increase in the value of central locations within metro areas, as employment and amenities concentrate in these places.”

“Income inequality is greater within our cities than across our regions. Upzoning will only exacerbate this.”

### **13. *How Housing Wealth Transferred From Families to Corporations***

by Richard Florida in CityLab, October 4, 2019

<https://www.citylab.com/life/2019/10/single-family-house-rental-recession-homeowner-management/599371/>

Describes how growing numbers of single-family homes shifting from owner-occupied housing to investment vehicles for large corporations.

Excerpts: “More than \$220 billion in housing wealth has been transferred from Americans who once owned, or would have owned, homes to large corporations.”

“[This phenomenon] turns out to be more than just a simple shift from owners of single-family homes to renters of urban apartments. It has been bound up with the broader financialization of housing—the transformation of housing from shelter into yet another investment vehicle.

This is *exactly* what HB 2001 incentivizes – *not* affordable housing.

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### **14. How a 40-year-old federal law is speeding gentrification**

By Diego Zuluaga July 24, 2019 on *Politico*

<https://www.politico.com/agenda/story/2019/07/24/gentrification-credit-discrimination-000937>

Describes how Federal funding is being diverted to high-end redevelopment, rather than helping improve underserved, poorer neighborhoods, as intended.

Excerpt: “...in Washington, D.C., most CRA lending appears to be going not to the underserved but to the people gentrifying their neighborhoods.”

The misuse of these kinds of funds just provides fuel for redevelopment and displacement of lower-income neighborhood residents.

### **15. Minneapolis’s Residential Upzoning Risks Unintended Consequences: Interview with Alissa Luepke Pier**

Interview in the June 17, 2019 issue of *The Planning Report*

<https://www.planningreport.com/2019/06/17/minneapolis-planning-commissions-alissa-luepke-pier>

Commissioner Luepke describes the dysfunctional process that resulted in Minneapolis, MN adopting its own version of HB 2001.

Excerpts: “The policy took as its starting point that more units automatically equals more affordability, and there wasn’t any interest in delving into whether or not that was actually a factual equation on which to base major decisions. The policy does not cite any research to support its assertion, nor does it even lay out any aspirational goals regarding the extent of the impact they hope to achieve (such as in anticipated added units, or even in theoretical decreases to housing costs). Without any sort of concrete metric, it is impossible to analyze the policy’s effectiveness in achieving its goal of improved housing affordability. That is convenient when what one is proposing is a vague, one-size-fits-all solution with no real statistical support linking it to its presupposed conclusion.”

“The consequences of a policy like this on a community like mine are far too harmful to be glossed over in the name of innovation. Let me be clear: Adoption of this policy without adequate safeguards will cause great, long-term harm to low income families and communities of color, and there is no way to undo the damage once Pandora’s box has been opened.”

“We’re seeing investors come in, run the housing stock into the ground, treat the tenants like garbage, and immediately take all their rental income—money that could be invested in the community—out of the neighborhood. This is an immediate capital flight from the community, leaving local residents without the expendable income to invest in local opportunities or support local businesses.”

This article describes exactly the type of uninformed, zealotry that led to passage of HB 2001. There isn’t any evidence to support the HB 2001 proponents’ claims; but, as Commissioner Luepke states, the results will harm poorer families and benefit wealthy investors.

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### ***Portland trumpeted rosy numbers for controversial infill plan while burying a dimmer forecast***

By y Brad Schmidt and Elliot Njusin on the March 11, 2019 issue of the *Oregonian*

<https://www.oregonlive.com/portland/2019/03/portland-trumpets-rosy-numbers-for-controversial-infill-plan-buries-dimmer-forecast.html>

This investigative reporting reveals how city planners who’ve “drunk the Kool-Aid” cannot be trusted to provide decision makers unbiased, carefully vetted data and analysis.

Excerpts: “Portland planners publicly overstated by five times the number of new homes they expect a controversial infill plan could create over the next two decades.”

“What’s more, the plan isn’t expected to deliver those new homes to the inner eastside neighborhoods as planners have stated, an analysis of those numbers shows. Instead, it would disproportionately steer a majority of new units to poorer neighborhoods east of 82nd Avenue, where the risk of displacing residents is high.”

The “daylighting” of the true figures documents that displacement from upzoning will hit poorer neighborhoods the hardest. But here’s the way the lead planner ducked accountability:

Excerpt: “‘It’s a major step in removing the regulatory barriers, but not the market barriers,’ said Morgan Tracy, a lead planner on the project.”

Here’s the actual truth hidden in that finesse: “Barriers to investors and developers redeveloping poorer neighborhoods and neighborhoods of color have been removed, which will admittedly cause displacement, because the market isn’t going to be able or willing to produce affordable housing even with the upzoning.”

Excerpt: “[A]reas east of 82nd Avenue stand to collectively gain about 2,000 new units, or more than half all of the units citywide projected under the infill plan. That’s because land prices are lower, increasing the odds a given lot will be redeveloped.

“The potential for displacement is greatest in neighborhoods where development is more likely and there’s a higher proportion of low-income renters, according to the city’s analysis.”

These areas are, of course, where lower-income households can currently afford to live, but who will be displaced by redevelopment.

### ***16. Washington Floods Expose a Double Threat: Old Drains and Climate Change***

By Christopher Flavelle in the July 9, 2019 issue of *The New York Times*

<https://www.nytimes.com/2019/07/09/climate/washington-dc-floods.html>

Describes how one city’s old infrastructure cannot handle the more intensive redevelopment that has occurred.

Excerpt: “Updating that infrastructure will be enormously expensive, experts warn, not just in Washington but around the country.”

This puts the lie to the assumption that the cost of “infill” development and redevelopment in older neighborhoods is less expensive than providing infrastructure to additional bare land. HB 2001 makes this looming problem even worse because it prevents cities from planning where housing will be built for growing populations.

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### **17. Turns out, millennials love cars as much as anyone else**

By Christopher Knittel in May 17, 2019 in *MarketWatch*

<https://www.marketwatch.com/story/turns-out-millennials-love-cars-just-like-everybody-else-2019-05-17?mod=opinion>

Contrary to the belief that new housing, such as Accessory Dwelling Units (ADUs) or smaller apartments won't need adequate parking, the in-depth research reported in this article predicts that younger renters and homeowners are still going to own and use cars.

Excerpt: “[T]he common consensus is that millennials are fundamentally disrupting a variety of industries due to their divergent preferences. However, such claims have not been explored rigorously and limited data have been used to support those hypotheses.”

“[W]e estimate vehicle ownership rates and annual miles traveled controlling for confounding variables such as income, household size, urbanity and education. We find there is no evidence of a difference in vehicle ownership. In contrast to conventional wisdom, millennials actually drive more miles per year.”

“Many millennials report they prioritize environmentally friendly products, but our study shows that the so-called “Green Generation” does not exhibit significantly different preferences when it comes to transport. This does not inherently mean millennials do not consider the environment in their car-buying decisions, but for many millennials having a vehicle may not be a choice.”

HB 2001 ignores such data and prohibits cities from requiring any off-street parking for ADUs, regardless of the density or configuration of the surrounding neighborhood.

### **18. Secrets of the World’s Most Livable City**

by David Dudley in *CityLab*, October 4, 2019

<https://www.citylab.com/equity/2019/10/most-livable-cities-vienna-social-housing-transit-mobility/600922/>

A wonderful description of how an intelligent, evidence-based housing program can succeed without destroying existing neighborhoods.

Excerpt: “‘A livable city is a city where people live because they want to, not because they have to,’ Vassilakou said. That translates into an emphasis on children and families, and making sure that the city can accommodate their needs: ‘A city that is good for children is good for everybody.’”

That pretty much sums it all up. Tragically, HB 2001 is all about benefiting investors and, perhaps in some way, wealthier households. There is nothing in HB 2001 that will be good for families, and the impacts will actually drive families out of our cities because both housing costs and other expenses are greater for families than for households without children or other dependents.

### **19. Eugene Citizens’ Guide to the 2019 Oregon House Bill 2001**

By Paul Conte (PDF document)

<https://trusttheneighbors.files.wordpress.com/2019/08/eugencitizensguidetohb2001.pdf>

This document provides a detailed and careful guide to the terms and impacts of HB 2001. The conclusions in this paper are based on the evidence in the references above.

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### Videos

1 – 3. Video clips of statements by Commissioner Andre Baugh, who led the four Portland Planning & Sustainability Commissioners who opposed the Residential Infill Project (“RIP”), Portland’s version of HB 2001. Commissioner Baugh is an expert on Fair Housing and displacement. Baugh also submitted written testimony opposing HB 2001.

<https://youtu.be/sFwSk6wQFoU> “we are displacing minorities and they can’t come back in, because there is - even though we’re creating more housing through RIP, the housing is not affordable to them”

[https://youtu.be/M\\_Wwk5cizug](https://youtu.be/M_Wwk5cizug) RIP is “institutional racism”

<https://youtu.be/WB46fJW-rk0> RIP displacement disparities violate the Fair Housing Act

Watching Commissioner Baugh is so refreshing after suffering through all the gibberish emanating from the YIMBY echo chamber.

4 & 5. More video clips from the Portland RIP hearings

<https://youtu.be/yves2mcYMks> An incredible presentation using mapping data to show that blanket upzoning will harm low-income households for the benefit of redevelopment.

<https://arcg.is/CKK9i> Here you can view the slides of the different map layers and examine the evidence in detail.

<https://youtu.be/N-Qgli4xRHA> Powerful, evidence-based analysis that RIP upzoning, like HB 2001, will lead to displacement.

6. At the “Demand Affordability” YouTube channel, there are a lot of RIP-related videos are posted, as well as a few videos on other related topics.

[https://www.youtube.com/channel/UCFU87GOaMoHjib7T6K\\_PTzA](https://www.youtube.com/channel/UCFU87GOaMoHjib7T6K_PTzA)

7. We can look at Portland to see exactly what the market has already done to older, single-family neighborhoods. There’s an excellent webpage by a woman in Portland with a video that shows a long series of “before and after” pictures of the older, affordable single-family homes demolished in their Sunnyside neighborhood. Visit the following page and watch the (sad) video.

#### **Demolishing Portland: A Gallery of Lost History**

[https://unitedneighborhoodsforreform.blogspot.com/2016/08/who-let-unicorns-out\\_15.html](https://unitedneighborhoodsforreform.blogspot.com/2016/08/who-let-unicorns-out_15.html)

8. One of the best “reality” checks is this short video of a Portland developer’s perspective:

<https://youtu.be/O3LnoZTx3A>

As the developer says: “I know how to make the most money by tearing down your neighborhood ...” Look carefully at the three alternatives he shows around 1:34 in the video.

9. The results of blanket upzoning of Seattle's single-family neighborhoods ...

<https://m.youtube.com/watch?v=iEJ8tfplZcs>

This the future that HB 2001 will bring unless citizens act.