



January 12, 2017

LONG RANGE PLANNING
ISSUE PAPER NO. 2017-01

Updating the Standards of CDC Section 430-72 (Infill)

For Presentation at the January 24, 2017 Board Work Session

Issue

The Washington County Committee for Community Involvement (CCI) submitted a 2016 Long Range Planning Work Program request for an update of Community Development Code (CDC) Section 430-72, Infill.

The request arose out of a Hearings Officer's decision for Casefile 13-082-S. The Hearings Officer found that the single family detached housing proposed on the development site for Casefile 13-082-S constituted "needed housing" as defined in state law. The Hearings Officer found that, in his opinion, the CDC 430-72 standards may not be applied to land use decisions for "needed housing," because the standards are not "clear and objective" and are thus prohibited by the "needed housing" requirements of state law. The CCI requested an update of the CDC 430-72 standards to make them "clear and objective," based on a concern that the Hearings Officer's finding for Casefile 13-082-S invalidated the standards and prohibited staff from applying them to subsequent applications.

Staff has continued to apply the standards to infill development proposals since the decision was issued for Casefile 13-082-S, and County Counsel has noted that a Hearings Officer's decision on a specific casefile does not have the effect of invalidating a CDC provision. County Counsel, however, concurs with the Hearings Officer's finding that the existing CDC 430-72 standards do not appear to be clear and objective. The state's "needed housing" rule, ORS 197.303 - 197.307, is a requirement for jurisdictions to meet the need for housing within the Urban Growth Boundary at particular price ranges and rent levels. The Department of Land Conservation and Development (DLCD) has interpreted this requirement to include *all* types of housing, from detached single family homes to government assisted housing, at all price ranges and rent levels. The rule was added into state law to enact several policies, including linking a demonstration of need for housing to a requirement to allow the housing in zones with sufficient buildable land. The "needed housing" rule requires local governments to apply only clear and objective standards to the development of needed housing. County Counsel expressed the opinion that if the CDC 430-72 standards were ever appealed based on non-compliance with the "needed housing" rule, the standards would be unlikely to withstand that appeal.

Staff met with the CCI Code Subcommittee at their regular meeting on May 13, 2016, and asked if the subcommittee had additional concerns about CDC 430-72. The subcommittee members expressed concerns about the *privacy* impacts of infill development on existing, surrounding homes. The subcommittee members requested that CDC 430-72 be amended to add specific measures to mitigate for potential privacy impacts.

Recommendation

Staff recommends that CDC 430-72 be amended to:

- Remove subjective and discretionary language from the standards so they will comply with the state’s “needed housing” rule; and,
- Add a requirement for infill development to provide one of the following clear and objective privacy enhancement measures along the side and/or rear lot lines adjacent to properties developed with existing homes:
 - A landscape buffer (evergreen hedge with a minimum height of 6 feet); or,
 - A sight-obscuring fence with a minimum height of 6 feet.

Background

The Infill and Redevelopment Code Handbook, a 1999 publication funded by the Transportation and Growth Management Program, the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development, defines “infill” as the development of vacant or remnant lands passed over by previous development in urban areas.

However, the term “infill” is used in a more specific, circumscribed way in the County’s Comprehensive Framework Plan for the Urban Area (CFP) and the CDC. CFP Policy 19 (Infill) and CDC Section 430-72 (Infill) both describe infill as development on R-5 and R-6 lands that are 2 acres or less in size.

Washington County appears to be one of only three local area jurisdictions that have specific residential infill development standards. The other two jurisdictions are the city of Gresham and the city of Vancouver, Washington. The city of Portland is currently evaluating draft proposals for the development of residential infill standards.

The current text of CDC Section 430-72 is shown in Attachment A.

I. CDC Section 430-72: History and Background

The standards of CDC Section 430-72, Infill, were added to the CDC via C-Engrossed Ordinance No. 279 in 1984. Per the “Intent and Purpose” statement of CDC Section 430-72, the standards are intended to provide a means of developing vacant, bypassed lands of 2 acres or less in areas designated R-5 and R-6, and to ensure that new development is compatible with existing developed areas, with a particular emphasis on privacy. Several of the development standards within the section make references to “providing maximum privacy” and “maintaining privacy” of surrounding existing dwellings.

CDC Section 430-72 has been modified since its adoption. The most recent modifications were made in 2005, in response to a December 2004 request from the CCI for amendments to

“...ensure that infill development is compatible with existing development.” A-Engrossed Ordinance No. 645 (2005) added the following requirements to CDC 430-72:

- Submittal of additional information with the infill development application: a site plan showing the locations of setbacks of proposed dwelling units, a screening and buffering plan, and an off-site analysis; and,
- Installation of all required landscaping and fencing between proposed infill units and adjacent dwelling units prior to building occupancy and/or final building inspection approval.

The CCI’s 2004 requested amendments were to:

1. Require infill development applications to include preliminary building and site plans;
2. Require infill development applications to provide on-site screening and buffering;
3. Require infill development applications to address building orientation and other attributes, including the location of front, side and back yards, building height, deck height, and window placement;
4. Limit the allowed building height, building footprint size, building square footage, and garage square footage of the proposed infill development, based upon the existing development patterns in the neighborhood in which the infill is planned; and,
5. Require infill development applications to provide on- and off-site traffic calming measures.

In response to the CCI’s request, Long Range Planning staff completed Issue Paper No. 8, *Enhancement of Design Standards*, in February 2005. The issue paper recommended:

- Making limited changes to the submittal requirements for infill development, consistent with Item 1 in the above list of the CCI’s requested amendments.
- Not making the more prescriptive changes recommended by the CCI in Items 2 through 5 above. Such changes appeared to be too restrictive, given the role that residential infill development plays in the County’s planning program.
 - Infill within the R-5 and R-6 districts is a development type that the County and region want to encourage, because it makes more efficient and economic use of existing public facilities and services, and helps the County implement the housing and minimum density requirements of Metro’s Urban Growth Management Functional Plan.
 - Issues pertaining to traffic calming are more appropriately handled through the review of the transportation impacts of the development, and not through the standards of CDC Section 430-72.

The Board directed staff to file an ordinance addressing staff’s recommended changes in Issue Paper No. 8. A-Engrossed Ordinance No. 645, adopted in October 2005, made those recommended changes. There have been no further changes to CDC Section 430-72.

II. 2013 Hearings Officer Decision and CCI Work Program Requests

In 2013, the County's Hearings Officer issued a decision for Casefile 13-082-S, a request for a subdivision approval in the R-5 District. In his decision on this case, the Hearings Officer found that single family detached housing proposed on the development site constitutes "needed housing" as defined by ORS 197.303(1)(a).

ORS 197.303(1)(a) defines "needed housing" as:

"...housing types determined to meet the need shown for housing within an urban growth boundary...including at least the following housing types: Attached and detached single family housing and multiple family housing for both owner and renter occupancy..."

Furthermore, ORS 197.307(4) states that:

"...a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing...The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

Therefore, in his decision for Casefile 13-082-S, the Hearings Officer found that:

- The County may only apply clear and objective standards, conditions and procedures regulating development on this site.
- The infill development requirements of CDC Section 430-72.3.A are not "clear and objective" criteria.
- Requirements that a development "consider the orientation, landscaping and buffering of proposed uses..." and "provide maximum privacy to surrounding existing and future residential structures" require the exercise of discretionary judgment and subjective determinations. Therefore the infill requirements of CDC Section 430-72.3.A are prohibited by state law.
- Even if the County imposed clear and objective conditions to ensure compliance with these standards, the standards themselves are subjective and are therefore prohibited (35 Or LUBA at 160).

In 2014, the CCI submitted a Work Program request in which they expressed concern that the Hearings Officer's finding in Casefile 13-082-S invalidated the CDC Section 430-72 standards, and prohibited the County from applying them to infill development proposals. Since the Hearings Officer's finding stated that the CDC Section 430-72 standards could not be applied because they were not "clear and objective," the CCI requested that the CDC Section 430-72 standards be updated to be "clear and objective." The Board designated this topic as a Tier 2 issue in Long Range Planning's 2015 Work Program. In November 2015, the CCI submitted a 2016 Work Program request in which they again asked for an update to the standards of CDC Section 430-72, and it moved up to a Tier 1 issue in Long Range Planning's 2016 Work Program, with a commitment to complete an issue paper in 2016 about this topic.

During the development of this issue paper, research revealed that Current Planning staff has continued to apply the standards of CDC 430-72 to infill development proposals since the issuance of the Hearings Officer's decision on Casefile 13-082-S.

Staff asked County Counsel the following questions about CDC 430-72:

1. Did the Hearings Officer's findings about CDC 430-72 in Casefile 13-082-S prohibit the County from continuing to apply those standards to subsequent land use applications?

Counsel Response: The Hearings Officer's decision on Casefile 13-082-S relates only to that casefile, and does not make binding law or invalidate CDC 430-72. The decision bodies having the ability to invalidate the County's CDC are limited to the Land Use Board of Appeals (LUBA), the Court of Appeals, and the Supreme Court. Therefore, the Hearings Officer's decision in Casefile 13-082-S does not prohibit the county from continuing to apply the standards of CDC 430-72 to subsequent applications.

2. Does CDC 430-72 comply with the "needed housing" requirements of ORS 197.303 and 197.307?

Counsel Response: The CDC 430-72 standards are largely subjective and discretionary, rather than clear and objective. ORS 197.307(4) requires a local government to apply only clear and objective standards, conditions and procedures regulating the development of needed housing. Therefore, if the CDC 430-72 standards were ever appealed based on non-compliance with the "needed housing" requirements, the standards would be unlikely to withstand the appeal.

Based on Counsel's feedback, staff recommends that the CDC 430-72 standards be amended because they do not appear to comply with the "needed housing" requirements of ORS 197.307. Staff's recommended amendments are discussed in the Analysis section of this issue paper.

III. CCI Code Subcommittee Feedback

On May 13, 2016, staff met with the members of the CCI Code Subcommittee at their regularly scheduled meeting and reported that an issue paper was being developed about the CCI's work program request for CDC Section 430-72.

Staff asked the subcommittee members if they had additional concerns about the infill standards of CDC 430-72. The subcommittee members expressed concerns about the *privacy* impacts of infill development on existing, surrounding homes, and requested that the following requirements be added to CDC 430-72 in order to mitigate for potential privacy impacts:

- Evaluation of window placement on infill dwellings;
- Restrictions on the building height of infill dwellings; and,

- Inclusion of building elevations as part of the infill development application submittal.

It is unclear to staff whether existing property owners adjacent to proposed infill development share the privacy concerns expressed by CCI Code Subcommittee members. A review of the approximately 26 infill development applications approved in 2015 found only one application in which an adjacent property owner submitted a comment letter expressing a privacy concern. This sample suggests that adjacent property owner concerns about the privacy impacts of infill development are fairly uncommon.

For reasons explained in more detail below, staff recommends against adding requirements for evaluation of infill dwellings' window placement, restrictions on infill dwelling height, and inclusion of building elevations as part of the infill development application. These requirements would make the standards more restrictive and could potentially result in one or more of the following adverse impacts:

- An increase in the complexity of the application review process;
- A reduction in the likelihood that infill development will occur;
- A reduction in the affordability of infill homes; and/or,
- Noncompliance with ORS 197.307(4), a subsection of the state's "needed housing" rule, which states that standards, conditions and procedures applied to needed housing may not have the effect of discouraging needed housing through unreasonable cost or delay.

CCI Code Subcommittee members also expressed an interest in applying the CDC 430-72 standards to R-5 and R-6 properties that are larger than 2 acres in size, and to development sites in higher density residential districts. For reasons explained in more detail below, staff recommends against applying these standards to a broader array of development sites. However, if the Board wishes to take a broader look at infill requirements in the unincorporated urban area, all of the CCI Code Subcommittee's concerns and requests could be part of that discussion.

Staff notes, however, that infill is a development type that the County, region and state want to encourage for the following reasons:

- Regional and state policies are designed to direct new residential infill development to less dense neighborhoods within the Urban Growth Boundary.
- Residential infill development within existing urban Washington County neighborhoods is desirable because it allows for more efficient and economic use of existing public facilities and services.
- Residential infill development on smaller land parcels in the urban area is an important element in helping the county implement the housing and minimum density requirements of Metro's Urban Growth Management Functional Plan.

Therefore, staff believes that if any new restrictions on infill development are proposed, they would need to be balanced by the relaxation of other infill standards, so that infill development within the county continues to be encouraged.

The CCI Code Subcommittee's specific requests and concerns regarding CDC 430-72 are described below, followed by staff responses:

- a) Interest in requiring an evaluation of the window placement on new infill homes, to prevent the windows of new homes from having direct views into the windows of adjacent existing homes.

*Staff Response: This request and those in Items b) and c) below, reflect concern about potential **privacy impacts** of infill development and its compatibility with surrounding, existing homes. While understanding this concern, staff recognizes that imposing requirements for window placement, building height restrictions or submittal of building elevations as part of single family residential infill development applications could result in adverse impacts. These include increasing the complexity of Current Planning's application review process, reducing the likelihood that infill development will occur, and/or reducing the affordability of infill homes.*

As noted earlier in the Background section, the CCI made a request in December 2004 for changes to the infill standards, including regulation of window placement, limiting the building height of infill homes, and requiring infill development applications to include preliminary building plans. Staff recommended against those proposed changes in a February 2005 issue paper, concluding that they appeared to be too restrictive given the role that residential infill plays in helping the County implement the housing and minimum density requirements of Metro's Urban Growth Management Functional Plan. The Board concurred and did not move forward with those types of changes. Staff continues to believe that such proposed changes are too restrictive.

Staff recommends against amending the CDC 430-72 standards to require an evaluation of window placement on new infill homes for the following reasons:

- *Such evaluation would require an applicant to submit information about the window placement of adjacent, existing homes as part of a development application. This could potentially result in a more complex development application submittal, the need for a more expensive house plan, and/or the need for a more customized house, which could potentially increase home construction costs and home prices. Given current housing affordability issues in the region, these are not desired outcomes.*
- *An evaluation of infill homes' window placement could result in a more complex staff verification and review process. Given limitations on Current Planning staff resources and the relatively large number of applications subject to CDC Section 430-72 that are processed by Current Planning each year, increasing the*

complexity of the staff verification and review process for these applications would likely add time and costs to the process.

- b) Interest in requiring a maximum building height for new infill homes that is less than the maximum building height allowed in the development site's land use district. The CCI Code Subcommittee was of the opinion that new infill developments do not nestle their homes within the existing site grades, but typically re-grade sites and locate new homes on the highest grade. In their opinion, the first story of the new infill home is often at the same level or higher than the tallest story of the existing homes on adjacent properties, which results in privacy impacts.

Staff Response: Staff recommends against amending the CDC 430-72 standards to limit the building height of new infill homes to less than the maximum height allowed in the R-5 and R-6 districts for the following reason:

- *A height restriction on infill homes below the 35-foot maximum allowed in the R-5 and R-6 land use districts could limit infill homes to less than 2 stories, and this could have a negative effect on infill development. A CCI Code Subcommittee member with a real estate background expressed the opinion that the lot sizes required to comply with the CDC's minimum density requirements in the R-5 and R-6 land use districts are too small to allow for a one-story home that has sufficient floor area to be marketable.*

- c) Interest in requiring infill development applications to include building elevations of future infill homes.

Staff Response: The majority of development applications subject to the infill standards of CDC 430-72 are land divisions (subdivisions or partitions). Typically, land division applications do not require building elevations or address building design. Building elevations are not required until prior to the approval of a building permit, which occurs after a land division application has been approved and the subdivision plat has been recorded.

Staff believes that the CCI subcommittee's interest in requiring building elevations as part of infill development applications is to give adjacent property owners information about future infill homes' height and window placement. With that information, adjacent property owners could decide whether they wished to submit comments about potential privacy impacts during the application's public comment period.

Staff recommends against amending the CDC 430-72 standards to require submittal of building elevations for the following reasons:

- *At the time that an infill application (land division) is submitted, an applicant may not have determined the specific plans or elevations for future homes on the proposed lots. Requiring an applicant to commit to building elevations of future infill homes at that point in the process may not be reasonable.*

- *If building elevations were included as part of the infill application submittal and adjacent property owners expressed privacy concerns on the basis of infill homes' building height or window placement, it is not clear what Current Planning could do with that information.*
 - *As noted in Item D, staff recommends against across-the-board or case-by-case height restrictions on infill homes below the 35-foot maximum allowed in the R-5 and R-6 land use districts, because such height restrictions could have a chilling effect on infill development.*
 - *As noted in Item C, staff recommends against requiring an evaluation of infill homes' window placement, because such evaluation could potentially increase home construction costs and home prices, and could increase the complexity of the staff verification and review process for infill development applications.*
- d) Concern that CDC 430-72 is applicable only to development on sites of 2 acres or less, and interest in expanding its applicability to larger development sites.

Staff Response: The Infill standards' applicability to sites of 2 acres or less in the R-5 and R-6 districts was part of the standards when they were initially adopted in 1984 via C-Engrossed Ordinance No. 279. Although staff was unable to locate a description of the 1984 legislative intent for the Infill standards, staff's assumption is that the standards' applicability was limited to sites of 2 acres or less within the R-5 and R-6 districts for the following reasons:

- *A proposed development is considered "infill" if the size of the development site is relatively small, and is surrounded by existing development.*
- *The R-5 and R-6 districts have the county's lowest developed urban residential densities. Newer infill development is more likely to differ from the developed character of these lower-density areas than from areas with higher-density urban residential designations.*
- *The Infill standards were applied to the R-5 and R-6 districts to allow the opportunity to mitigate potential differences in character between new infill development and existing development in these two lower-density residential districts.*

Staff recommends against applying the Infill standards to development sites larger than 2 acres for the following reasons:

- *The Infill standards' maximum 2-acre size threshold for "infill development" may be somewhat arbitrary, but staff has no factual basis upon which to conclude that it is unreasonably small.*
- *As the size of a development site increases, at some point it ceases to be "infill development" and instead becomes simply "new development."*
- *As the size of a development site increases, there is more opportunity for subdivision lots to be laid out in a manner that is compatible with the pattern of*

adjacent existing development, and less need for regulations, such as the Infill standards, to promote such compatibility.

- e) Concern that CDC 430-72 is applicable only to sites in the R-5 and R-6 districts, and interest in expanding its applicability to higher density urban residential districts (R-9 and above).

Staff Response: Staff recommends against applying the Infill standards to higher-density residential districts (R-9 and above) for the following reasons:

- *The higher-density residential districts have higher minimum densities than the R-5 and R-6 districts, so the size and development potential of individual subdivision lots in these higher-density districts is already more constrained.*
- *Subjecting the subdivision of land in higher-density residential districts to the additional requirements of the Infill standards would further constrain the development of homes on these lands.*

IV. Problematic Infill Application Examples from the CCI

At the CCI Code Subcommittee's May 13, 2016 meeting, staff requested examples of development applications that were subject to the standards of CDC Section 430-72 and were problematic when developed.

A CCI Code Subcommittee member provided two 2015 examples of problematic applications at the meeting. One application proposed development on a site larger than 2 acres, so the infill standards of CDC Section 430-72 did not apply. For the reasons discussed previously in the staff response for Item III.d, staff recommends against expanding the applicability of CDC 430-72 to include sites larger than 2 acres. The other application proposed development on a site with an R-24 land use designation, so the infill standards of CDC Section 430-72 did not apply. For the reasons discussed previously in the staff response for Item III.e, staff recommends against expanding the applicability of CDC 430-72 to include sites having higher density residential land use designations.

On May 20, 2016, the CPO 3 Chair submitted two letters to staff that described three approved applications that the Chair considered to be problematic. However, the Chair's stated concerns with these applications are not related to the standards of CDC 430-72 (Infill), and are instead related to parking and access requirements, which are addressed by other CDC standards.

V. Background Summary

The key information covered in the Background section of this paper is summarized below.

The CCI's Work Program request, and staff's recommended response:

- The CCI requested an update of the CDC 430-72 standards to make them "clear and objective," based on a concern that the Hearings Officer's finding for Casefile 13-082-S invalidated the standards and prohibited staff from applying them to subsequent applications.

- Current Planning has continued to apply the standards to infill development proposals since the issuance of the 2013 decision containing the Hearings Officer’s finding.
- County Counsel has noted that the Hearings Officer’s decision relates only to that casefile and does not invalidate CDC 430-72, but concurs that several portions of the CDC 430-72 standards are discretionary and subjective.
- County Counsel has expressed the opinion that if these standards were ever appealed based on non-compliance with the “needed housing” rule (ORS 197.307), the standards would be unlikely to withstand the appeal.
- Based on Counsel’s feedback, staff recommends that the CDC 430-72 standards be amended because they do not appear to comply with the “needed housing” requirements of ORS 197.307.

The CCI Subcommittee’s concerns and requests, and staff’s recommended response:

- Concern about *privacy* impacts of infill development on existing, surrounding homes.
- Request for the addition of the following requirements to CDC 430-72:
 - Evaluation of window placement on infill dwellings;
 - Restrictions on the building height of infill dwellings; and,
 - Inclusion of building elevations as part of the infill development application submittal.
- Staff recommends against making the additions requested by the CCI Subcommittee, because they could result in the following potential adverse impacts:
 - Increase in the complexity of Current Planning’s application review process;
 - Reduction in the likelihood that infill development will occur;
 - Reduction in the affordability of infill homes; and/or,
 - Noncompliance with ORS 197.307(4), a subsection of the state’s “needed housing” rule, which states that standards, conditions and procedures applied to needed housing may not have the effect of discouraging needed housing through unreasonable cost or delay.

Although staff recommends against the CCI Subcommittee’s requested additions, staff agrees that specific privacy promotion measures need to be added to CDC 430-72. Such measures should be clear and objective, and should not result in any of the potential adverse impacts noted above. Staff recommends the addition of two clear and objective measures to promote privacy between infill development and existing homes, and these are discussed in the Analysis section below.

Analysis

The existing CDC 430-72 standards are shown in Attachment A. The standards state that building orientation, setbacks, landscaping and fencing will be considered as approaches to provide or maintain privacy. However, these standards are subjective and discretionary, and do not provide clear and objective requirements for the provision of privacy. For example, CDC 430-72.3.A reads,

“When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures.”

This language is not clear and objective, because it does not state **how** the building orientation, landscaping and buffering of proposed uses will be considered, or **how** maximum privacy will be provided.

Staff recommends removing this language and other subjective language within the CDC 430-72 standards, and replacing it with clear and objective standards that will comply with the requirements of ORS 197.307, the “needed housing” rule. Based on a review of other local jurisdictions’ infill development standards, staff recommends limiting the required privacy measures in CDC 430-72 to specific requirements for landscaping and fencing, described further below. These measures can be written as clear and objective requirements, and appear unlikely to result in adverse impacts such as discouraging infill development or reducing the affordability of infill homes.

I. Require landscape buffers between infill development and adjacent existing homes.

The existing standards of CDC 430-72 allow for the consideration of landscape buffers as a privacy measure, but do not require them. CDC Section 411 (Screening and Buffering) contains landscape buffer requirements for new development, but does not require proposed R-5 and R-6 infill development to provide landscape buffering if the development is adjacent to existing developed or vacant R-5 and R-6 lands.

However, staff believes that a landscape buffer requirement for infill development could promote privacy by screening views between infill properties and adjacent existing homes. A landscape buffer requirement has the additional advantage of being a clear and objective standard, thus providing certainty to infill development applicants and adjacent property owners.

The CDC Section 411 buffer types consist of a combination of canopy trees and shrubs. Staff does not recommend these buffer types as a landscape buffer requirement for R-5 and R-6 infill development because:

- The canopy trees required by CDC Section 411 would have insufficient room to thrive in the R-5 and R-6 districts’ 5-foot side yard setbacks.
- Canopy trees placed in side or rear yard setbacks could negatively impact adjacent properties by excessively shading neighbors’ yards.
- Canopy trees are generally deciduous and do not provide visual screening during the winter months after their leaves have dropped.

Instead, staff recommends a buffer of evergreen shrubs with a minimum height at maturity of 6 feet, spaced to form a continuous screen, as the appropriate landscape buffer type to promote privacy between R-5 and R-6 infill development and adjacent properties.

II. Require sight-obscuring fencing between infill development and adjacent existing homes.
The existing standards of CDC 430-72 allow for the consideration of fencing as a privacy measure, but do not require it. CDC Section 411 contains fencing requirements for new development, but does not require proposed R-5 and R-6 infill development to provide sight-obscuring fencing along shared property lines if the development is adjacent to existing developed or vacant R-5 and R-6 lands.

However, staff believes that a requirement for a minimum 6-foot tall sight-obscuring fence could promote privacy by screening views between infill properties and adjacent existing homes. A fencing requirement has the additional advantage of being a clear and objective standard, thus providing certainty to infill development applicants and adjacent property owners. Another advantage is that this screening method takes up very little room on an infill development site.

Each of the above measures would promote privacy by screening views between the first floors of existing homes and infill homes, and would be much less onerous for infill developers than other potential privacy enhancement measures such as limiting the height of infill dwellings below the maximum building height for the district.

Summary and Staff Recommendation

Residential infill is a development type that the County, region and state want to encourage. Regional and state policies are designed to direct new residential infill development to less dense neighborhoods within the Urban Growth Boundary. Residential infill development within existing urban Washington County neighborhoods is desirable because it allows for more efficient and economic use of existing public facilities and services. Residential infill development on smaller land parcels in the urban area is an important element in helping the County implement the housing and minimum density requirements of Metro's Urban Growth Management Functional Plan.

The CDC 430-72 standards apply to the infill development of properties that are 2 acres or less in size within the R-5 and R-6 districts. The standards' intent is to ensure to the extent practicable that new development is compatible with existing developed areas, with a particular emphasis on privacy. However, the standards do not include specific measures to promote privacy. The CCI Code Subcommittee expressed concerns about the privacy impacts of residential infill on adjacent, existing homes and requested the addition of specific measures to promote privacy.

Several of the CDC 430-72 standards are subjective and discretionary, but the state's "needed housing" rule, ORS 197.307, states that standards applied to "needed housing" must be clear and objective.

For the above reasons, staff recommends that CDC 430-72 be amended to:

- Remove subjective and discretionary language from the standards so they will comply with the state's "needed housing" rule; and,

- Add a requirement for infill development to provide one of the following clear and objective privacy enhancement measures along the side and/or rear lot lines adjacent to properties developed with existing homes:
 - A landscape buffer (evergreen hedge with a minimum height of 6 feet); or,
 - A sight-obscuring fence with a minimum height of 6 feet.

430-72 Infill

430-72.1 Intent and Purpose

The intent of this Section is to provide a means of developing vacant or underdeveloped, bypassed lands of two (2) acres or less in areas designated R-5 and R-6 by the applicable Community Plans of the Washington County Comprehensive Plan. This Section is intended to ensure, to the extent practicable, considering the allowed density of each district, that new development is compatible with existing developed areas through Development Review that emphasizes building orientation, privacy, buffering, access and circulation and provides for notification to adjacent property owners. Application of the requirements of this Section shall not preclude development to the density allowed by each district.

430-72.2 Applicability

The requirements of this Section shall apply to all properties designated by the applicable Community Plan as R-5 or R-6 which contain two (2) acres or less (excluding existing rights-of-way).

430-72.3 Development of land required to be processed through the infill provisions shall meet the following:

- A. When developed through a subdivision, consider the orientation, landscaping and buffering of proposed uses in order to provide maximum privacy to surrounding existing and future residential structures; or
- B. For all other development (i.e., partitions, development review for attached units) the following standards shall apply:
 - (1) Complies with the intent and purpose of this Section;
 - (2) The applicant shall provide a plan of complete development of the subject property and potential development of adjacent vacant parcels to the density allowed by the district;
 - (3) Parcelization or placement of dwellings shall not preclude development of the subject site and surrounding properties to the density allowed by the district. Consideration shall include but not be limited to:
 - (a) Access;
 - (b) Circulation; and
 - (c) Building location;
 - (4) Buildings shall be oriented to provide maximum privacy to surrounding existing and future residential structures;
 - (5) Maintain the setback requirements of the primary district unless the Review Authority determines, as part of the initial approval, that it is necessary to modify the setbacks to provide more privacy to existing and proposed structures; and
 - (6) Landscaping and fencing may be required to maintain the privacy of existing dwellings on adjacent properties.

- C. All required landscaping and fencing between the proposed infill dwelling units and adjacent existing dwelling units shall be installed in accordance with the approved development plans prior to building occupancy and/or final building inspection approval.

430-72.4 Submittal Requirements

In addition to all other submittal requirements, applications shall include:

- A. Site plans showing locations and setbacks of each dwelling unit and, if applicable, detached garage on each new lot or parcel;
- B. A screening and buffering plan showing all existing landscaping and buffering and any additional landscaping and buffering, including fencing, needed to maintain the privacy of existing dwellings on adjacent parcels. The screening and buffering plan may be incorporated into the individual site plans described under Section 430-72.4 A. above; and
- C. An Off-Site Analysis as required by Section 404-1 that includes setbacks of the proposed dwelling units on the subject property from existing dwelling units on adjacent parcels.