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Honorable Jay McGowan, Mayor
City of Cle Elum
119 West First Street
Cle Elum, WA 98922

Gary Berndt, Chairman
Cle Elum Planning Commission
City Hall – Attn: City Planner
119 West First Street
Cle Elum, WA 98922

Re: Manufactured/Mobile Home Community Zoning Study

Dear Mayor McGowan and Chairman Berndt:

We are writing on behalf of Kittitas County Unincorporated Area Council, a Washington nonprofit corporation ("KCUAC") comprised of a wide range of local residents with interests in long-range community planning in the greater Cle Elum area.[1] The purpose of this letter is to support a request that the Cle Elum Planning Commission confirm current ordinance prohibitions on Mobile Home Parks, Manufactured Housing Communities and Manufactured/Mobile Home Communities.

We have also been asked to address planning processes, state legislation and municipal liability related to planning actions. With this letter, we hope to provide a few of our thoughts and opinions on the zoning issues related to manufactured mobile home communities.

**Current Statutes of Mobile Home Parks are Prohibited in all Zoning Districts Under Cle Elum Zoning Ordinance.**

Our comments begin with the current zoning status of manufactured/mobile home communities. City of Cle Elum zoning ordinance does not currently authorize "mobile home parks" or "manufactured home parks" in any zoning district. Neither land use is listed as a permitted or conditional use in any district. The zoning ordinance also fails to provide a definition for either "mobile home park", "manufactured

[1] KCUAC has been an active participant in land use matters and previously commented on municipal changes to permit procedures and amendments as well as providing extensive comments on Sun Communities application to amend the adopted Bullfrog UGA Master Plan. Countless members have provided both written and oral comment on a range of land use issues and matters.

housing community" or "manufactured home park". In the absence of specific authorization, the use is prohibited within the city.[2] Larry Stauffer's request to confirm the prohibition is consistent with the zoning ordinance.

Under the current zoning ordinance, the planning director is authorized to permit uses that are not described within the zoning ordinance provided the use is consistent with the comprehensive plan. CEMC 17.04.030 provides as follows:

> The planning director may permit in a district any use not described in this title which is deemed by the planning director to be in general keeping with the uses authorized in such district and is consistent with the provisions of the comprehensive plan. Such decisions by the planning director may be appealed per provisions of Section 17.100.120.

It is important to recognize, however, that a comprehensive plan is only a guide and cannot allow a use specifically prohibited by a zoning ordinance. *Citizens of Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 874, 947 P.2d 1208 (1997). A decision on the introduction of an intensive use such as a "mobile home park" or "manufactured housing community" should not be made on an *ad hoc* basis by the planning director but should rather be the product of an informed study and analysis that engages and activates public participation.

If the City is to entertain a change in the law, it should be through established planning processes. That process begins with the Planning Commission. Under Washington law, moratoria and interim regulations are valid zoning tools. RCW 35A.63.220; and *Sprint Spectrum L.P. v. City of Medina,* 924 F. Supp. 1036 (W.D. Washington 1996). The authority for code cities to utilize planning moratoriums is specifically authorized by statute. RCW 35A.63.220. The moratorium may be enacted on an emergency basis provided that a public hearing is conducted on the proposed moratorium within at least sixty (60) days of the adoption of the emergency ordinance. The city council is not required to refer the moratorium to the planning agency. A moratorium may be effective for up to one year provided a work plan is developed for related studies. *Id.* The adoption of the moratorium precludes any processing of applications during the study period.

As a final point, a question has been posited with respect to vesting of land use applications. Property owners have "vested" rights in only limited circumstances. While Washington's vested rights doctrine originated at common law, "...it is now statutory." *Town of Woodway v. Snohomish County,* 180 Wn.2d 165, 173, 322 P.3d 1219 (2014). A property owner obtains vested rights only upon the filing of a building permit or subdivision application. RCW 19.27.095 (Building Permits); and RCW 58.17.033 (Subdivision Applications). In all other circumstances, a land use application is subject to changes in the law. Vested rights do not extend to proposed planned mixed use development, amendments to subarea plans, conditional use permits or other similar applications. And most specifically, a municipality does not incur

[2] City of Cle Elum zoning ordinance section related to "Recreational Vehicles, Recreational Vehicle Parks, and Camping" includes definitions for "mobile home" "park model recreational vehicle', and "recreational vehicle park." CEMC Ch. 17.51.

a liability with respect to changes in the law.

To summarize these points, the current zoning ordinance prohibits "mobile home parks" and "manufactured home parks". Any effort to amend the zoning ordinance must follow established planning processes and the city has authority to impose a moratorium on land use applications during a period of review, study and analysis. The city make take these actions without concern or risk of liability either threatened or sought by a property owner.

**Existing Mobile Homes are Protected as Nonconforming Uses.**

City of Cle Elum recognizes that *mobile homes* are considered *nonconforming structures* by definition and are governed by CEMC Section 17.08.300. This ordinance provision is further recognized under planning provisions related to Recreational Vehicles, Recreational Vehicle Parks, and camping (CEMC Ch. 17.51. A "recreational vehicle park" or "RV park" is permitted but carries clear criteria for location and placement of recreational vehicles. There are no comparable provisions for mobile home parks or manufactured housing communities.

Local ordinance provisions are supplemented by state law. The state legislature has provided protections for mobile and manufactured homes placed in manufactured/mobile home communities that were legally in existence before June 12, 2008. RCW 35.21.684(2). City of Cle Elum has recognized this statutory mandate and protected legal placement of mobile homes through the nonconforming use provisions of the zoning ordinance. CEMC 17.51.010(B). Additional protections are provided to mobile and manufactured homes which allow placement consistent with standards applicable to stick built homes. *Id.* There is no statutory mandate, however, requiring zoning for "mobile home parks" or "manufactured home parks."

A city or town is further constrained with respect to placement of individual mobile and manufactured homes and must act in a nondiscriminatory manner that is equally applicable to all homes. RCW 35.21.684(1).[3] These provisions go on to provide that "...[a] city or town is not precluded ... from restricting the location of a manufactured/mobile home in a manufactured/mobile home community for any other reason including, but not limited to, failure to comply with fire, safety or other local ordinances or state laws related to manufactured/mobile homes." RCW 35.21.684(2).

The scope of municipal authority is further clarified through RCW Ch. 35.63 – Planning Commissions. RCW 35.63.160 specifically recognizes that the authorization and approval of a "new manufactured housing community" is a discretionary determination for the local municipality.

> (1) After June 10, 2004, *a city may designate a new manufactured housing community as a nonconforming use,* but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

[3] Similar protections are afforded to use of a recreational vehicle or tiny house with wheels when used as a primary residence in a manufactured/mobile home community. RCW 35.21.684(3). These rules relate to placement of individual homes and do not address mobile home parks or manufactured housing communities.

RCW 35.63.161(1). This provision is consistent with the current Cle Elum zoning ordinance which recognizes that preexisting mobile home parks shall retain a status as a nonconforming use. It is also consistent with the current prohibition on new mobile home parks and manufactured housing communities since the city has not elected to designate such land uses as a nonconforming use.

The reference to "nonconforming use" is relevant. The courts have consistently recognized that "...nonconforming uses are uniformly disfavored ..." and "...limit the effectiveness of land-use-controls, imperil the success of community plans and injure property values." *Rhod-A-Zalea & 35th Inc. v. Snohomish County,* 136 Wn.2d 1, 8, 959 P.2d 1024 (1998). Municipalities possess the constitutional authority to enact and modify zoning regulations in the exercise of their police power. Wash. Const. art. XI, §11; and *McNaughton v. Boeing,* 68 Wn.2d 659, 662, 414 P.2d 778 (1966). Local legislative actions are protected under state law:

> That is to say, the courts will not disturb legislative or administrative action in zoning unless beyond doubt it is an abuse of discretion or an excessive use of power, or unless it has no relation to the evils to be remedied or to the public health, safety, morals, order, general welfare or other proper object of the police power. If reasonable minds may differ as to whether or not a particular zoning restriction has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the restriction must stand as a valid exercise of the city's police power.

*Boeing,* 68 Wn.2d at 664.

The GMA recognizes that land use planning is a "bottom-up" approach that allows local cities and counties the authority to make decisions based on their local needs in order to harmonize planning goals. *Lewis County v. Western Washington Growth Management Hearings Bd.,* 157 Wn.2d 488, 511, 139 P.3d 1096 (2006). The legislature has recognized that "...the ultimate burden and responsibility for planning, harmonizing the planning goals of [GMA], and implementing a county's or city's future rests with that community." RCW 36.70A.3201. We are requesting that the city exercise that authority and responsibility through its established planning process.

**Manufactured/Mobile Home Parks Introduce Significant Land Use Impacts.**

Mobile home parks and manufactured housing communities are a unique land use. The land use is premised upon land ownership in a single entity with lease or rental arrangements with occupants of the residential units. The legislature has recognized such uses are subject to potential abuse. The abuses associated with this ownership led to the legislature's adoption of the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA") – RCW Ch. 59.20. Similar abuses led to legislation related to

management, conversion and termination of mobile and manufactured home developments.[4] The only point is that this type of development has led to legal and policy complications over the years.

From a land use perspective, Manufactured/Mobile Home Parks present a wide range of impacts and issues based on size, location, use and ownership structure. The intense development introduces significant compatibility issues, adversely impacts adjacent property values, and results in elevated requirements for public services. The point is not to debate these issues at this time but simply point out that long-term planning is designed to study and evaluate these issues before making a final land use determination.

The land use review should also consider and address the nature of potential mobile home parks and manufactured housing communities. As an example, the potential development can range from small neighborhood parks to massive destination facilities. Sun Communities' recent land use application proposed a massive a manufactured home park providing more than 600 residences designed to provide facilities to resort guests and the travelling public. The proposal did not address the needs of the local community but rather only facilitated the development of a destination resort. The public cost was loss of land for planned local residential ownership; disruption of long-term planning for growth projections for the community; and placing pressures on other areas of the city to accommodate the contemplated growth. The absence of clear zoning provisions created confusion, uncertainty and lack of guidance for long-term land use planning. While it may be appropriate to consider smaller parks that offer affordable housing options, large commercial resort developments service are inconsistent with sound community planning.

**Support of Zoning Text Amendment.**

We support Larry Stauffer's proposal to provide an ordinance definition for "Mobile Home Parks, Manufactured Housing Communities and Manufactured/Mobile Home Communities. We would propose, however, that the definition be modified to provide as follows:

> "Mobile Home Park", "Manufactured Housing Community", or "Manufactured/Mobile Home Community" means any real property which is developed for the placement of two or more mobile homes, manufactured homes, or park models on a single parcel of land for the purpose of rental to others as a residential unit or temporary or seasonal uses.

[4] Both the legislature and courts have been actively involved in determinations and requirements related to manufactured/mobile home parks and ownership. See, e.g. RCW Ch. 59.20 – Manufactured/Mobile Home Landlord Tenant Act; RCW Ch. 59.21 – Mobile Home Relocations Assistance; and RCW Ch. 59.22 – Office of Mobile/Manufactured Home Relocation Assistance. The courts have been equally busy with these issues including the following cases: *Guimont v. Clarke,* 121 Wn.2d 586, 854 P.2d 1 (1993) (holding statute requiring mobile home park owners to pay some tenant relocation costs was unconstitutional); *Manufactured Housing Communities of Washington v. State of Washington,* 142 Wn.2d 347, 13 P.3d 183 (2000) (holding provision of mobile home park residential ownership act relating to right of first refusal to be unconstitutional); and *Lawson v. City of Pasco,* 168 Wn.2d 675, 230 P.3d 1038 (2010) (holding mobile home statute did not preempt city ordinance prohibiting placement of recreational vehicles in mobile home parks).

The addition of the definition should be coupled with a confirmation that such land uses are prohibited under the city zoning ordinance. If the city wishes to reconsider its current zoning ordinance, the appropriate process would be to undertake a review of the ordinance through established planning procedures. This procedure could include a moratorium on any applications for a mobile or manufactured home park.

As a final point, the city is authorized to engage in long-term land use planning on these matters. A property owner does not have a vested right in current zoning and any land use application would be subject to changes in the law unless the application involved either a building permit application or a subdivision application. The city has no responsibility or liability with respect to changes in land use regulation under such circumstances.

We appreciate your consideration of our proposal and opinions with respect to this important issue.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.

James C. Carmody