

1 CITY OF CLE ELUM
2 PLANNING COMMISSION MEETING
3 **DRAFT - Meeting Minutes**
4 February 15, 2022 6:0pm Zoom Meeting
5

6 **1. Call to Order & Roll Call**

7 Chair Berndt called the meeting to order at 6:02pm.

8 Commission members present: Chair Berndt, Commissioner Torrey,
9 Commissioner Kurtz, and Commission Fluegge

10 Commission members absent: None

11 Staff present: Meagan Hayes and Gregg Dohrn

12 **2. Set Agenda**

13 A motion was made by Commissioner Torrey and seconded by Commissioner Kurtz to
14 accept the agenda as presented; none opposed. Motion carries and the meeting agenda is
15 set.

16 **3. Adoption of Minutes**

17 *The February 1, 2022 meeting minutes were not available during the scheduled meeting.*
18 *They will be presented to the Commission during the next regular meeting.*

19 **4. Staff Report**

20 a. Mr. Gregg Dohrn, Designated City Planner

21 i. City Council update

22 Mr. Dohrn provided the Commission with a general update to recent City
23 Council activities. Most recently, the City Council adopted a Resolution
24 accepting the Transfer of Rights and Responsibilities regarding the New
25 Suncadia Development Agreement, which was originally approved in 2002
26 and extended in 2017 by the City Council. More updates will be provided as
27 they come available.

28 ii. Annual docketing process

29 Mr. Dohrn provided the Council with notice that the annual docketing
30 process, as required by the Washington State Growth Management Act, will
31 be initiated in the coming weeks. Generally, the docketing process offers
32 opportunity for the public and the city to “docket” or “request” development
33 code amendments and/or amendments to the policies or maps within the
34 Comprehensive Plan between periodic review cycles. During this process the
35 City will solicit and request amendments from the public and the city. The
36 submitted dockets will be presented to the Planning Commission for
37 consideration, and the City Council will adopt the final docket work plan. At
38 this point, the Mayor intends to submit a docket item to initiate a
39 comprehensive review on housing policies across the Comprehensive Plan
40 and the Development Regulations. Additionally, the code change request
41 submitted by Mr. Larry Stauffer will be reviewed and considered as a formal
42 docket request, as directed by the Mayor. The memo presented is herein
43 attached for the record.

44 **5. Unfinished Business**

45 a. Draft Critical Areas Ordinance Review and Discussion

- 1 i. Mr. Dohrn shared consensus with the Commission that utilizing the County's
2 recently amended Critical Areas Ordinance (CAO) is a supported idea due to
3 the benefits of regional planning efforts and consistency across jurisdictions.
4 Mr. Dohrn presented questions for additional drafting guidance, which are
5 fully described in the memo attached herein (*note – the questions for clarity*
6 *are clearly spelled out in the attached memo. The “answers” provided here*
7 *are in response to the direct questions posed within the staff memo*).
- 8 o Regarding Critical Aquifer Recharge Areas (CARA's): Many
9 communities have selected to “treat” the entire community as a CARA
10 to protect the entirety of the watershed, versus treating different
11 groundwater sources as more critically than others.
 - 12 a. The Commission was supportive of treating the entire
13 community as a CARA and offered guidance to staff to
14 incorporate language within the draft CAO.
 - 15 o Regarding Wetlands: the County CAO only requires a Critical Areas
16 Report when a development is adjacent to a known or suspected
17 wetland. Then, the development is only permitted to the extent that the
18 development will not create a loss to the wetland value.
 - 19 a. The Commission was supportive of the direction and protection
20 measures presented within the County's CAO.
 - 21 b. A caveat was added by the Commission that the developer or
22 project proponent is responsible for completing a Critical Areas
23 Checklist to enable them to adequately identify the Critical
24 Areas within the vicinity of the development area.
 - 25 o Regarding Habitat Management Plans
 - 26 a. The Commission offered the same support and direction as
27 provided above.
 - 28 b. A caveat was added by the Commission that the developer or
29 project proponent is responsible for completing a Critical Areas
30 Checklist to enable them to adequately identify the Critical
31 Areas within the vicinity of the development area.
 - 32 i. In leau of the checklist, Commissioner Torrey
33 suggested that the project sponsor may submit a letter
34 or email from WDFW demonstrating stream type and
35 necessary preservation efforts.
 - 36 o Regarding classification of streams
 - 37 a. Commissioner Torrey shared concerns that the presented
38 mapping was not sufficient in identifying all streams within the
39 City that should be managed and protected.
 - 40 b. Staff will coordinate with Commission Torrey to provide
41 additional direction and suggestions for protection efforts.
 - 42 o Regarding Best Available Science: this discussion was tabled due to
43 limited time for the meeting.
- 44 ii. Planning staff will incorporate the suggested language and revisions to the
45 draft CAO as directed by the Commission and present at the next regular
46 meeting for further review and discussion.

1
2 **6. Next Meeting Agenda Development**

3 a. The next agenda will include review of the Critical Areas Ordinance.

4 **7. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

5 *Email received from Dorrie Monie on 2-10-2022 incorporated into the agenda and added*
6 *to these minutes for the record.*

7 Larry Stauffer, 2661 Lower Peoh Pt. Rd., Cle Elum, WA

8 Mr. Stauffer commended Commissioner Torrey for obvious efforts in previous
9 discussions. Mr. Stauffer referenced a letter he submitted from his attorney the previous
10 day via email (the letter received is attached to these minutes for the record). Mr. Stauffer
11 stated that he did not feel he should continue down the path of the code amendment he
12 was pursuing if this was going to lead to a dead end and he wasn't sure who he should
13 ask, given the incoming application cited by Mr. Dohrn at the last City Council meeting.

14 Beth Marker, no address provided.

15 Ms. Marker requested clarification on the state and county growth projection numbers.
16 Staff responded they will provide that information after the meeting.

17 David & Kathy Gusdorf, 841 Kokanee Loop, Cle Elum, WA

18 Mr. and Mrs. Gusdorf offered no formal comment but offered their concerns regarding
19 the process and would like to know when these comments will be addressed.

20 Chris Mayer, 31 Maple Lane, Ronald, WA

21 Mr. Mayer shared concerns about "kicking the can down the road" regarding Mr.
22 Stauffer's proposal. He stated that the public deserves to have a say in this and deserves
23 an answer. He stated this is not the right thing for Upper Kittitas County.

24 Raven Hill, 427 Cleveland Ave, South Cle Elum, WA

25 Ms. Hill echoed the testimony presented by Mr. Stauffer.

26 Larry Sullivan, no permanent address in Cle Elum

27 Mr. Sullivan echoed the concerns presented by Mr. Stauffer and requested that the
28 Commission read and consider the letter submitted by Mr. Stauffer.

29 Jeff Kluth, 101 Forest Lane, Cle Elum, WA

30 Mr. Kluth echoed previous testimony and stated that the public deserves action and
31 response to these issues.

32 Tiffany Chrisman, 815 Lincoln Ave., South Cle Elum, WA

33 Ms. Chrisman echoed the testimony provided above.

34
35 *All messaging from the Zoom meeting is herein attached and incorporated into the*
36 *record by reference.*

37 **8. Commissioner Comments and Discussion**

38 a. Chair Berndt – WUI Updates

39 i. Commissioner Berndt shared a brief update. He has been working with Fire
40 Chief Mills and the Mayor to create the fire advisory committee.

41 Commissioner Berndt shared a listing of the members of the Committee.

42 Commissioner Berndt stated that he will be attending the Kittitas County Fire
43 Adaptive Community meetings monthly and will be working to update the
44 Community Wildlife Protection Plan. Commissioner Berndt will only offer
45 future updates as progress is made.

- 1 b. Commissioner Torrey – Hanson Pond Update
2 i. Commissioner Torrey provided an update to the Hanson Pond project. The
3 technical committee reviewed different alternatives and made a selected on
4 the final conceptual design. The Kittitas Conservation Trust (KCT) has met
5 with FEMA and learned that the partial funding they were going to receive
6 from FEMA needs to address the sewer outfall piping. KCT will be updating
7 their alternatives to address that specification to protect the outfall pipe up to
8 the 500’ flood event. It is anticipated the committee will be meeting again
9 soon to review these additional design revisions. KCT also applied for a
10 Floodplains by Design grant through the Department of Ecology.

11 **9. Commissioner Comments and Discussion**

- 12 a. Commissioner Kurtz – no additional comment.
13 b. Commissioner Fluegge – clarified the next agenda and expectations from Planning
14 staff.

15 **10. Adjournment**

16 Chair Berndt called for a motion to adjourn. A motion was made by Fluegge and
17 seconded by Torrey to adjourn the regular meeting of the Cle Elum Planning
18 Commission at 7:29 pm; none opposed. Meeting adjourned.

City of Cle Elum
119 West First Street
Cle Elum, WA 98922



Phone: (509) 674-2262
Fax: (509) 674-4097
www.cityofcleelum.com

Date: February 15, 2022

To: Cle Elum Planning Commission

From: Gregg Dohrn and Meagan Hayes

Copy To: Mayor McGowan and the Cle Elum City Council

The Washington State Growth Management Act requires that that cities such as Cle Elum periodically review and update their Comprehensive Plans and Development Regulations. This periodic update must include a review of the of the regulations to preserve and protect environmentally sensitive areas, commonly known as critical areas, as well as an analysis of the population allocated to the city based on the most recent ten-year population forecast provided by the state Office of Financial Management. These periodic reviews also typically include a review and update of the goals and policies in the Comprehensive Plan as well the Future Land Use and Official Zoning Maps. The City initiated a periodic review process in 2017 and upon completion of the review and update of the critical areas regulations that is currently underway, this mandated periodic review will have been completed. The next required periodic review and update must be completed by the City before June 30, 2026.

In addition to these mandated periodic reviews, the City is required to establish a public participation program that allows for the continuous review and amendment of the City's Comprehensive Plan and the Development Regulations that implement it. However, state law provides that the City may amend its Comprehensive Plan no more frequently than once a year, except in very limited circumstances. As a result, many cities have established a process to solicit proposed amendments from the public once a year, typically in the early spring. Proposed amendments submitted through this annual update process are subject to a preliminary evaluation and a decision is made as to which proposals are accepted for a more thorough evaluation known as "docketing". Docketed proposals are then further evaluated by the City Staff and the Planning Commission to assess their individual and their cumulative impacts. These potential amendments are circulated for public review and comment and upon review of an environmental assessment, the Staff analysis, and public comments, the Planning Commission makes a recommendation to the City Council. The City Council then reviews the Planning Commission's recommendations and acts on the proposed amendments before the end of the calendar year.

Historically the City of Cle Elum has accepted proposed amendments annually through March 31, which typically provides enough time to complete the review process before the end of the calendar year. In keeping with this practice, the following schedule has been tentatively established to consider amendments to the Cle Elum Comprehensive Plan and Development Regulations in 2022:

Public Notice Soliciting Proposed Amendments

Thursday, February 24, 2022

| | |
|---|-------------------------|
| Public Notice Soliciting Proposed Amendments | Thursday, March 3, 2022 |
| Deadline for Submitting Proposed Amendments | Friday, April 1, 2022 |
| Report to Planning Commission on Proposals Received | Tuesday, April 5, 2022 |
| Staff Recommended Schedule for Processing Applications | Tuesday, April 19, 2022 |
| SEPA GMA Review Public Review and Comment | TBD |
| Presentation of Staff Report to the Planning Commission | TBD |
| Planning Commission Review and Discussion | TBD |
| Planning Commission Public Hearing | TBD |
| Planning Commission Recommendation to City Council | TBD |
| City Council Review of Planning Commission Recommendation | TBD |
| City Council Action | TBD |

At this point, we can anticipate that there may be at least two proposed amendments that will be docketed for consideration in 2022. The first is a proposal that has been presented to the Planning Commission by Mr. Larry Stauffer to amend the City's Development Regulations governing manufactured housing. The second is a request from Mayor McGowan that the Planning Commission initiate a comprehensive review of the City's Comprehensive Plan and Development Regulations in accordance with the provisions of House Bill 1220 approved by the legislature and Governor Inslee this past summer, that now requires local governments to plan for and accommodate housing that is affordable to all income levels.

We will advise you as other potential amendments arise and in the interim, we will continue to focus our efforts on finishing the review and update of the City's Critical Area regulations.

City of Cle Elum
119 West First Street
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Date: February 9, 2022

To: Planning Commission Chair Gary Berndt and the Cle Elum Planning Commission

From: Gregg Dohrn and Meagan Hayes

Subject: Revised Draft Critical Areas Regulations

In previous meetings we have discussed utilizing the regulations recently adopted by Kittitas County as the basis for updating the City's regulations to protect environmentally sensitive areas, known commonly as critical areas. While there are some obvious distinctions to be made to account for the character of the urban areas within the City and the largely rural areas within the unincorporated county, there are several potential benefits to such an approach, including:

1. Many of the critical areas present in the city, start and/or continue into the unincorporated county, such as streams or fish and wildlife habitat areas.
2. The qualified specialists that would prepare critical areas reports for the County, in many instances be preparing similar reports in the City.
3. A regional approach will promote consistency and more readily enable peer to peer consultation.

In reviewing the draft critical area regulations presented to the Planning Commission last Spring, there appears to be a degree of consistency between those regulations and the regulations recently adopted by the County governing development activities in frequently flooded areas and in geological hazard areas, as a result, we should be able to make the necessary adjustments. We see however some very different approaches with respect to the protection of critical aquifer resource areas, wetlands, and fish and wildlife habitat areas. As a result, we have prepared the following questions to help facilitate a discussion at your February 15th meeting. We will use this information to revise the County regulations for your review at a subsequent meeting.

1. The draft Critical Areas regulations reviewed by the Planning Commission last spring assumed that the entire City is a critical aquifer recharge area unless a hydrologic study demonstrates otherwise. The regulations then distinguished between areas having a high, medium, or low aquifer recharge potential. The

intent of these regulations was to prevent contaminants from entering an aquifer or significantly adversely affecting the recharge of an aquifer. The regulations then established more stringent standards for certain development activities in areas of medium or high recharge potential. For instance, the regulations established more stringent standards for vehicle salvage yards, new landfills, and underground injection wells when located over medium or high potential recharge areas that would not apply to areas with low recharge potential.

Question 1a: *Is the Planning Commission comfortable with this general approach, that land uses known to have the potential to contaminate groundwater, are only required to submit a special hydrological study if located over a higher medium recharge potential area, and not required to if located over a low recharge potential area?*

Question 1b: *Are there any areas within the City where protecting the groundwater is any less important than other areas?*

Question 1c: *Since the entire City is an aquifer recharge area, why not simply require that uses having a significant potential to contaminate the groundwater must comply with the local, as well as the state and federal standards to protect the groundwater, regardless of where they are proposed within the City?*

2. The draft Critical Areas regulations reviewed by the Planning Commission last spring required that a wetland assessment prepared by a qualified wetland specialist be prepared for projects within 200' of a known or suspected wetland. Under their new regulations, the County may require the Project Sponsor to identify, delineate, and rate wetlands within 250' of a proposed development and development activities that do not impact wetlands, or their buffers are permitted. Under the new County regulations proposed development activities that would alter a wetland or buffer may only be permitted if there is no net loss of wetland function and values. A critical areas report is only required by the County when a proposed development is located within or adjacent to a known or suspected wetland.

Question 2a: *Is the Planning Commission comfortable with the general approach taken by the County, that provides a strong incentive for Project Sponsors to design projects to avoid or minimize impacts to wetlands and their buffers, and to only require a wetlands report if a proposed development will impact a wetland and the associated buffer?*

3. The draft Critical Areas regulations reviewed by the Planning Commission last spring required that a habitat management plan be prepared by a qualified biologist for projects situated with 200' of a known or suspected fish and wildlife habitat conservation area. Under their new regulations, the County requires a habitat management plan if a proposed development is located within or

adjacent to a known or suspected fish and wildlife conservation area, and the County may waive this requirement on a case-by-case basis.

Question 3a: *Is the Planning Commission comfortable with the general approach taken by the County, that a habitat management plan is required only for projects within or adjacent to fish and wildlife conservation areas?*

Question 3b: *Is the Planning Commission comfortable with the general approach taken by the County, that the requirement to prepare a habitat management plan for fish and wildlife habitat conservation areas may be waived on a case-by-case basis if the City determines that there are no potential direct and/or indirect impacts on designated species or habitats that would result from the proposed development?*

Question 3c: *Would it be appropriate for the City to provide the resource agencies and the public with an opportunity to comment prior to waiving the requirement to prepare a fish and wildlife habitat report?*

4. In general terms, maps that identify the location of known or suspected critical areas are provided as a resource to help facilitate the design of development activities and do not relieve a Project Sponsor from the obligation to evaluate and identify critical areas on their property. A copy of a map highlighting the location and classification of streams is attached. A question has been raised about the classification of the Town Ditch in its entirety as a fish bearing stream. This question can be resolved by the City requesting that an interagency team of natural resource experts conduct a study of the Town Ditch and make a recommendation on its classification.

Question 4a: As you look at the attached map, do you see streams that may have been overlooked , or do you have any questions about the location or classification of streams?

5. State law requires that critical areas regulations be based on “Best Available Science”. If the City is going to adopt critical area regulations that are based on the County’s critical areas regulations, an argument can be made that the City should adopt the Best Available Science Report prepared for the County so that there is a consistent basis to preserve and protect critical areas that in many instances are jointly managed by the City and the County (See attached). For Planning Commissioners with special knowledge and expertise in this area, here is a bonus question:

Question 5a: Do you have any concerns or reservations with adopting the attached Best Available Science Report adopted by Kittitas County as the basis for the City’s critical areas regulations? If so, please explain.

From: [Planning](#)
To: [Meagan Hayes](#)
Subject: FW: Larry Stauffer"s proposed ordinance change for 47 degrees North Mobile home Park
Date: Thursday, February 10, 2022 7:32:56 AM

From: Dorothy Monnie <dorrie311@gmail.com>
Sent: Thursday, February 10, 2022 5:18 AM
To: Planning <planning@cleelum.gov>
Subject: Larry Stauffer's proposed ordinance change for 47 degrees North Mobile home Park

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

My name is Dorrie Monnie and I've owned my home at 311 West 2nd St., Cle Elum since 1986. I'm writing to encourage the Cle Elum Planning Commission to move quickly to prohibit new trailer parks within the City. This strategy seems both prudent and timely since it is my understanding that such a prohibition is already insinuated in the city building code when taken in its entirety. It needs to be clearly stated and now might be the Commission's only opportunity to clarify this, but only if they move quickly. So please move quickly!

I've never been a citizen who has opposed growth. I don't oppose growth today. But let's be careful. Our precious spaces will undoubtedly be developed. Let's not fill them with trailer parks.

Respectfully,

Dorrie Monnie
509 260-0646
dorrie311@gmail.com

LARRY STAUFFER
2661 LOWER PEOH POINT RD.
CLE ELUM, WA 98922
stauffer@Lynden.com

February 17, 2022

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

Re: Manufactured Home Parks/ Comprehensive Plan adjustment

Please consider this a follow-up to discussions held during the Planning Commission meeting on February 15, 2022. I request that this letter be entered into the record and held-up for discussion at the next Planning Commission meeting scheduled for March 1, 2022.

On or about December 13, 2021 I submitted a request for the City to consider an ordinance confirming and clarifying that Manufactured Home Parks are prohibited within the City of Cle Elum. That request was further supported by legal counsel James Carmody in his letter dated February 14, 2022 (copy attached). As Mr. Carmody discussed in detail within his letter, the City of Cle Elum zoning ordinance does not currently authorize Manufactured Home Parks in any zoning district.

During the Planning Commission meeting, Gregg Dohrn proposed that my requested ordinance be set-aside and contemplated as a proposed change to the City's comprehensive plan. It was stated that a review of the comprehensive plan and adjustments thereto would occur later this spring.

To be clear, I am not requesting any kind of change to the comprehensive plan. I am requesting a clarifying ordinance that is consistent with current zoning and the comprehensive plan.

If the City believes my proposal to be in conflict with current zoning and comprehensive plan and is suggesting that modification to the comprehensive plan is the only means by which they will address my request; I ask the City to provide its analysis as to why that is the case. Specifically, I request that the City identify any provision contained in Mr. Carmody's letter that they to believe to be factually incorrect.

Based upon Mr. Carmody's analysis, we don't consider this an especially gray area, but to the extent that the City views it as such, will the City be requiring any future applicant for a Manufactured Home Park to submit for a comprehensive plan amendment to explicitly allow such Parks in the City?

We strongly believe that if the City has any doubt about the use being discussed, it should be the burden of future applicants of a Manufactured Home Park to process the required amendments to the City's comprehensive plan and/or code changes necessary to explicitly allow its proposed use. Furthermore, those amendments and changes should be processed and concluded prior to consideration of such application.

Timely analysis, answers and comments from the City to the points made herein are critical to how we move forward on the matters at hand. I request your immediate response.

Thank You



Larry Stauffer

MEYER, FLUEGGE & TENNEY, P.S.

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February 14, 2022

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 may 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

00:15:45 City of Cle Elum: FYI - the Live Stream service does not appear to be working tonight.

00:17:35 Gary Berndt, Commission Chair: darn

00:24:26 City of Cle Elum: All - livestream service technical difficulties have been restored. The meeting is now livestreaming. Thank you for your patience.

00:24:51 City of Cle Elum: Have been resolved*

00:27:04 BethMarker: How many proposals were advanced in 2021 for full review? Just to better understand the historical context.

00:28:23 City of Cle Elum: There will also be a posting developed on the City website to include the memo, public memo, application and submittal guidance.

00:31:21 City of Cle Elum: For additional information regarding House Bill 1220:
<https://app.leg.wa.gov/billsummary?BillNumber=1220&Year=2021&Initiative=false&Type=EmailBlastContent&Id=def616e4-4aaa-4eec-81bd-8be0b10958c1>

00:31:39 City of Cle Elum:
<https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Passed%20Legislature/1220-S2.PL.pdf?q=20220215181944>

00:35:48 City of Cle Elum: For background information on the Growth Management Act:
<https://mrsc.org/Home/Explore-Topics/Planning/General-Planning-and-Growth-Management/Comprehensive-Planning-Growth-Management.aspx>

00:54:48 City of Cle Elum: The questions in the memo were for staff and PC discussions and review. We won't rework this specific memo but we will incorporate the appropriate language into the draft CAO per your responses.

00:55:55 City of Cle Elum: At this point staff is just seeking guidance. We will incorporate suggestions and only request action after additional review and public hearing.

01:00:42 City of Cle Elum: I do have the current draft Critical Areas Checklist from the County and will continue to communicate with them as they finalize their draft.

01:01:15 City of Cle Elum: @Elizabeth Torrey, it came through clearly and I have it noted down. Thank you.

01:03:46 Elizabeth Torrey, Commission Vice Chair: Thank you

01:07:49 City of Cle Elum: I am going to scroll quickly to get to the map. Please hold tight. Thank you.

01:10:33 City of Cle Elum: I am going to scroll back up to the memo. Please bear with me. Apologies!

01:12:02 City of Cle Elum: We will follow up on this. @Elizabeth Torrey I will reach out to you directly to brainstorm options, given your expertise in this realm. Thank you!

01:13:38 Elizabeth Torrey, Commission Vice Chair: Ok, thanks.

01:14:22 Elizabeth Torrey, Commission Vice Chair: Since Gregg is out of time, I will write my request for Q5: please share the BAS memo that you would like us to review. The county has quite a few versions on their website and I want to understand which one the Planning Commission should review.

01:18:02 Tiffany Christman: I can't either

01:19:27 City of Cle Elum: @Tiffany no worries, I will write down your name here and ask Chair Berndt to call on you next.

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|----------|--------------------|-------------------------|
| 01:24:56 | City of Cle Elum: | I will send a link here |
| 01:36:37 | Tiffany Christman: | I've love to hear it |
| 01:40:51 | City of Cle Elum: | mhayes@cleelum.gov |