

June 2, 2020

Kenneth Katzaroff

Admitted in Washington and Oregon

T: 206-405-1985

C: 206-755-2011

KKatzaroff@SCHWABE.com

BY HAND DELIVERY

Nicholas Green
City Manager
City of John Day
450 East Main Street
John Day, OR 97845

RE: Local Appeal of Ordinance No. 20.180.01 and Local Appeal of Ordinance No.
20.185.06

Dear Nicholas Green:

Enclosed please find two appeals documents, one for each ordinance being appealed.

Please call me at 206-405-1985 with any questions.

Sincerely,

/s/ Kenneth Katzaroff

J. Kenneth Katzaroff

JKKA

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Admitted in Washington and Oregon

T: 206-405-1985

C: 206-755-2011

KKataroff@SCHWABE.com

Mr. Nicholas Green
City Manager
City of John Day
450 East Main St.
John Day, OR 97845

RE: Appeal of Planning Commission Decision – Ordinance No. 20-180-01 Amending
the John Day Development Code to Strengthen and Clarify Enforcement
Provisions within the Code
Our File No.: 135966-252955

Dear Mr. Green:

This office represents Riverside Home Park, LLC (“Riverside”). As described below, this letter constitutes the local administrative appeal of certain action erroneously taken by the John Day City Planning Commission (“Planning Commission”) on May 12, 2020, including the adoption of a recommendation to the City Council to adopt Ordinance No. 20-180-01.

Riverside has standing to appeal as it was entitled to notice of John Day’s intent to implement an ordinance that could apply to its property. Riverside has not received a separate notice of the Planning Commission’s decision, or applicable appeal provisions for such, despite having requested in writing to receive all notices, but files this appeal in an abundance of caution. Riverside is in receipt as of June 2, 2020, of notice of the City Council’s adoption of Ordinance No. 20-180-01, which lists the deadline to appeal as June 10, 2020.

I. Introduction

Riverside is a lawfully established, non-conforming manufactured home park located adjacent to the John Day River and includes roughly 23.08 acres and 158 spaces for manufactured or mobile homes.

The City of John Day (“John Day”) is in the midst of an ambitious development plan to revitalize its economy. As part of its aggressive plan, John Day has begun to target Riverside because it does not fit into John Day’s vision. In its attempts to force Riverside to shut down, John Day and its City Council have violated the John Day Municipal Code. While Riverside

supports John Day's plans to revitalize its economy, but it should not be done at the expense of its residents, and it cannot be done by violating the law.

II. The Unlawful Passing of the Ordinance

In a Staff Report dated May 11, 2020, John Day staff recommended that the Planning Commission recommend that the City Council adopt Ordinance No. 20-180-01 which purported: "to clarify compliance provisions, redefine violations as a nuisance rather than a misdemeanor, and provide provisions for remediation." The Staff Report stated public notice had been mailed to all affected property owners on April 14, 2020 and notice was posted in the Blue Mountain Eagle on April 22 and April 29, 2020.

Riverside's counsel was not sent notice of the Ordinance, despite having requested all notices and correspondence be sent to the same.

On May 12, 2020 John Day held a joint hearing of the City Council and the Planning Commission. Although John Day purported to hold these meeting separately, there was no meaningful separation of the hearings. Instead, the Ordinance was adopted by both the City Council and Planning Commission simultaneously.

However, the adoption by the Planning Commission was invalid because the Planning Commission violated the Type IV hearing and notice procedures of the John Day Development Code. The specific violations include, but are not limited to:

- Failing to hold two hearings, one before the Planning Commission and one before the City Council, before adopting the ordinance, as required by Section 5-4.1.050(D)(1).
- Failing to give notice to Riverside (a property owner whose property would be impacted by the Ordinance) within the required timeframe as required by Section 5-4.1.050(D)(2)(a)(1).
- Failing to adhere to Section 5-4.1.050(D)(2)(d) that requires requires "The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least forty-five (45) days before the first public hearing at which public testimony or new evidence will be received."
- Failing to provide adequate notice as to what was being contemplated, .e.g., notice to "amend the development code to strengthen and clarify provisions related to code enforcement" in no way purports provisions of the code to allow for the revocation of final and binding land use decisions or that new penalties, including daily fines, are also proposed.

Mr. Nicholas Green
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III. Conclusion

John Day cannot adopt a land use ordinance without following its own Development Code procedures. The failure to follow its own code and state law render this adoption void. Riverside has been prejudiced by the improper means John Day attempted to use to adopt the Ordinance. If the John Day intends to adopt the Ordinance in the future, Riverside respectfully requests that it follow the applicable provisions of the Development Code and state law. This requires new notice and a new hearing before the Planning Commission.

Sincerely,

/s/ J. Kenneth Katzaroff

J. Kenneth Katzaroff

JKKA

cc: Garrett Chrostek, Attorney for Respondent

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June 2, 2020

J. Kenneth Katzaroff
T: 206-405-1985
kkataroff@schwabe.com

Mr. Nicholas Green
City Manager
City of John Day
450 East Main St.
John Day, OR 97845

RE: Appeal of Planning Commission Decision – Ordinance No. 20-185-06 Amending
the John Day Development Code to Revise Code Language Related to
Manufactured Homes
Our File No.: 135966-252955

Dear Mr. Green:

This office represents Riverside Home Park, LLC (“Riverside”). As described below, this letter constitutes the local administrative appeal of certain action erroneously taken by the John Day Planning Commission (“Planning Commission”) on May 12, 2020, including the adoption of Ordinance No. 20-185-06.

Riverside has standing to appeal as it was entitled to notice of John Day’s intent to implement an ordinance that could apply to its property. Riverside has not received a separate notice of the Planning Commission’s decision, or applicable appeal provisions for such, despite having requested in writing to receive all notices, but files this appeal in an abundance of caution. Riverside is in receipt as of June 2, 2020, of notice of the City Council’s adoption of Ordinance No. 20-185-06, which lists the deadline to appeal as June 10, 2020.

I. Introduction

Riverside is a lawfully established, non-conforming manufactured home park located adjacent to the John Day River and includes roughly 23.08 acres and 158 spaces for manufactured or mobile homes.

The City of John Day (“John Day”) is in the midst of an ambitious development plan to revitalize its economy. As part of its aggressive plan, John Day has begun to target Riverside because it does not fit into John Day’s vision. In its attempts to force Riverside to shut down, John Day and its City Council have violated the John Day Municipal Code. While Riverside

supports John Day's plans to revitalize its economy, but it should not be done at the expense of its residents, and it cannot be done by violating the law.

II. The Unlawful Passing of the Ordinance

On May 12, 2020, the John Day Planning Commission voted to recommend the City Council adopt Ordinance No. 20-185-06 which purported: "first, to clarify the requirements and standards for manufactured dwellings; second, to conform with state requirements and incorporate language that is consist[ent] with state and federal codes; and third, to establish requirements for future mobile home park development to provide basic amenities for residents including open space and street lighting." The Staff Report stated public notice had been mailed to all affected property owners on April 14, 2020 and notice was posted in the Blue Mountain Eagle on April 22 and April 29, 2020.

Also on May 12, 2020 John Day held a joint hearing of the City Council and John Day Planning Commission. Although John Day purported to hold these meeting separately, there was no meaningful separation of the hearings. Instead, the Ordinance was adopted by both the City Council and Planning Commission simultaneously.

Riverside's counsel was not sent notice of the Ordinance, despite having requested all notices and correspondence be sent to the same.

However, the adoption by the Planning Commission was invalid because the Planning Commission violated the Type IV hearing and notice procedures of the John Day Development Code. The specific failings include, but are not limited to:

- Failing to hold two hearings, before adopting the ordinance, as required by Section 5-4.1.050(D)(1).
- Failing to give notice to Riverside (a property owner whose property would be impacted by the Ordinance) within the required timeframe as required by Section 5-4.1.050(D)(2)(a)(1).
- Failing to adhere to Section 5-4.1.050(D)(2)(d) that requires requires "The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least forty-five (45) days before the first public hearing at which public testimony or new evidence will be received."
- Failing to provide adequate notice as to what was being contemplated, .e.g., notice does not purport to or provide notice that additional permitting requirements for placement of manufactured dwellings will be contemplated or adopted, thermal envelope requirements, or prohibitions on short term rentals.

Mr. Nicholas Green
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III. Conclusion

John Day cannot adopt a land use ordinance without following its own Development Code procedures. The failure to follow its own code and state law render this adoption void. Riverside has been prejudiced by the improper means John Day attempted to use to adopt the Ordinance. If the John Day intends to adopt the Ordinance in the future, Riverside respectfully requests that it follow the applicable provisions of the Development Code and state law. This requires new notice and a new hearing before the Planning Commission.

Sincerely,

/s/ J. Kenneth Katzaroff

J. Kenneth Katzaroff

JKKA

cc: Garrett Chrostek, Attorney for Respondent

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