

August 28, 2020

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VIA E-MAIL

City of John Day
Planning Commission
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RE: Comments on Proposed Text Amendments AMD-20-08; AMD-20-09
Our File No.: 135966-252955

Dear Chair Boethin:

Thank you for the opportunity to submit comments regarding the City of John Day's (the "*City*" or "*John Day*") proposed text amendments, AMD-20-08 and AMD 20-09. Our office represents the Riverside Home Park LLC ("*Riverside*"), which may be directly and negatively impacted by the proposed text amendments. We ask that the Planning Commission review these comments and recommend that the City Council not adopt the proposed amendments at this time.

Riverside is a manufactured home park that provides roughly 15% of the housing supply for John Day and has been a valid and existing use since the 1960s. Riverside houses some of the poorest residences in the City, and indeed, in all of Oregon. Riverside provides a vital function in providing a safe place to live for many people who have been negatively impacted by the increasing cost of housing in Oregon, and most recently, the coronavirus epidemic, COVID-19, that continues to severely impact our economy. In recent years, Riverside has worked hard to upgrade the park and provide a better living situation for its tenants. This has been a relatively slow process. It is complicated and requires careful compliance with state law, including issues regarding landlord-tenant rights, equal housing, and the state's manufactured housing statutes. In the last 12-months alone, this has meant an investment of almost \$100,000 in upgrades.

We offer the following comments to highlight some of the issues and look forward to electronically addressing the Planning Commission at its September 1st, 2020, meeting.

These comments address the text amendments both general and with respect to Riverside's use. As an overarching comment, Riverside's manufactured home park qualifies as "needed housing" under ORS 197.303 and ORS 197.307. This means that only clear and objective standards, conditions, and requirements may be applied to Riverside. To the extent the text amendments seek to adopt standards that are not clear and objective—many of which are

not—they may not imposed against Riverside or any other development that qualifies as “needed housing.”¹

Additionally, Riverside is troubled by the City’s proposed text amendments, many of which simply do not comply with state law and may lead to violations of substantive procedural and due process rights, if adopted as currently drafted.

AMD-20-08 – Ordinance to Strengthen and Clarify Enforcement Provisions within the Code:

- 5-1.2.100.B: “Violations” should not be “deemed” a nuisance. This raises significant due process concerns, and is ambiguous and subjective in nature. A violation needs to be adjudicated through a code enforcement or other hearing and may not be “deemed” to exist or “deemed” to be a nuisance. Further, a technical violation of the code which results in no land use impacts cannot be a nuisance.
- 5-1.2.100.C.3: Prior notice of a violation is not a violation. This raises significant due process concerns. As with any violation, a violation of the law must be adjudicated to have any impact or effect. A prior alleged “notice” of a violation is insufficient to afford due process under both the federal and state constitutions.
- These provisions leave no exception for valid and existing non-conforming uses, which must be recognized under state law.
- Administration is overly broad; allows the city to delegate to *any person* to “enforce.” If the City seeks to allege violations of the code or development permits, that person needs to have expertise in the matter and a clear appeal route that protects the rights of any alleged violator.
- Vicarious liability is wholly inappropriate. Being punished for an invitee’s actions raises due process issues, particularly because the code provides for fines. The person responsible for an adjudicated violation is the only one who should be punished. Further, this raises foreseeable issues regarding private contracting, landlord-tenant, and other issues that the City has no business encroaching on.
- Revocation of a permit is wholly inappropriate. The entire reason for code enforcement is to seek compliance with the code and to protect the health and safety of the general public. Using revocation as a punishment for uses the City simply does not like, but are authorized under state law and local code, leads to potential abuses of this authority. Code compliance is sufficient. The only other revocation code that we are aware of at this

¹ To the extent necessary here, we remind the City that Riverside is a valid and existing use, and no code provision designed to “punish” existing uses may be imposed because they are *ex post facto* penalties in violation of the Oregon state constitution and violate the “goal post rule” found at ORS 227.178(3)(a).

time, permits revocation only in the instance of material false information provided as part of a land use application – and not for mere technical or other violation of the code.

AMD-20-09 – Ordinance to Revise Code Language Related to Manufactured Homes and Manufactured/Mobile Dwelling Parks:

- It is unclear whether the City believes that this will apply to valid and existing parks, such as Riverside. As a legal matter, it cannot.
- The new requirements including in this amendment do not comply with Oregon’s Needed Housing Statutes; they are ambiguous and subjective. Therefore, even if the City adopts this amendment, it may not be imposed.
- This amendment appears to conflict with state law, including allowing citing of home parks. It is also internally inconsistent, requiring individual lots to cite a dwelling but allowing parks which are not required to be on individual lots.
- Requiring “100 feet of play area” for each child is impossible to regulate and violates the needed housing statutes. What happens when new kids move in or out, or if there are no kids and a new family moves in? No reasonable way to comply with this provision and will result in constant drain of city resources with code enforcement proceedings.
- It appears that the City is attempting to prohibit the use of spaces for short-term rentals. I do not believe that that is the intent, and if it is, notice for this amendment was not adequate. Further, John Day gains significant resources as a result to tourism, including that via mobile and recreational vehicles. This amendment, apparently, seeks to block such activity.

We ask that the Planning Commission thoughtfully review these comments and recommend that the City either abandon the proposed text amendments, or send them back to planning staff to redraft.

Yours very truly,

/s/ Kenneth Katzaroff

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