



DATE: 11/18/2020
TO: John Day Planning Commission
FROM: Nicholas Green, Chief Planning Official
RE: Supplemental staff report to AMD-20-10 (Code Enforcement)

Staff wish to enter the following into the public record:

- 1) **DLCD Notice requirements.** The City provided 41 days of the first evidentiary hearing to the Department of Land Conservation and Development (DLCD), which meets the State requirement in OAR 660-018-0022. DLCD only requires 35-day notice for post-acknowledgment plan amendments. However, our code has a 45-day requirement, which our 41-day notice fell short of by four (4) days. Staff report should be amended to reflect this discrepancy and enter the enclosed email from DLCD into the record as their official review of this Amendment (**Enclosure 1**).
- 2) **Comments on Proposed Text Amendments AMD-20-10; AMD-20-11 Our File No.: 135966-252955.** Subject document from Riverside Home Park received on 11/18/2020 via email shall be entered into the official record (**Enclosure 2**).
- 3) **Deferral of First Evidentiary Hearing.** Riverside Home Park has requested we defer the first evidentiary hearing in order to provide the 45-day notice:
 - a. Proposed date to defer Planning Commission's first evidentiary hearing: **Tuesday, January 12, 5 P.M.**
 - b. If Planning Commission refers the ordinance to the city council, final hearing before the city council would be held **Tuesday, February 9, 5 P.M.**
- 4) **Public Comment.** Planning Commission may wish to receive public comment prior to the deferral decision to register any additional participants in the meeting who intended to speak for or against the proposed amendment, so that they may receive notice of the postponement.

From: [LeBombard, Josh](#)
To: [Nicholas Green](#)
Subject: RE: Staff Reports for Code Amendments [IWOV-pdx.FID4468764]
Date: Tuesday, November 17, 2020 8:07:16 AM

Nick,

Good talking with you yesterday. This message is simply to confirm that we have reviewed the proposals (Local Files AMD-20-10 & 11; DLCDC File 009-20 & 010-20) and do not have any comments. Furthermore, we can confirm that your notices were received on October 8th, 41 days in advance of the hearing, which complies with the 35-day noticing requirements in Oregon Administrative Rule 660-018-0020 (copied below) and Oregon Revised Statute 197.610.

Cheers,
Josh

[660-018-0020](#)

Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation

*(1) Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless circumstances described in OAR 660-018-0022 apply, the local government shall submit the proposed change to the department, including the information described in section (2) of this rule. **The local government must submit the proposed change to the director at the department's Salem office at least 35 days before holding the first evidentiary hearing on adoption of the proposed change.***



Josh LeBombard

Southern Oregon Regional Representative | Community Services Division
Pronouns: He/Him/His
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From: Nicholas Green [mailto:greenn@grantcounty-or.gov]
Sent: Monday, November 16, 2020 4:18 PM
To: LeBombard, Josh <jlebombard@dlcd.state.or.us>
Subject: FW: Staff Reports for Code Amendments [IWOV-pdx.FID4468764]

Josh –

See below. If you can send me your email by 4 PM tomorrow, I will include it in my supplemental staff report.

Nice talking today,



November 18, 2020

Kenneth Kataroff

T: 206-405-1985

C: 206-755-2011

KKataroff@SCHWABE.com

VIA E-MAIL

City of John Day
Planning Commission
450 East Main St.
John Day, OR 97845

RE: Comments on Proposed Text Amendments AMD-20-10; AMD-20-11
Our File No.: 135966-252955

Dear City:

Thank you for the opportunity to submit comments regarding the City of John Day's (the "*City*" or "*John Day*") proposed text amendments, AMD-20-10 and AMD-20-11. Our office represents the Riverside Home Park LLC ("*Riverside*"), which may be directly and negatively impacted by the proposed text amendments. Based upon representations made by City Manager, Nick Green, Riverside understands that AMD-20-10 will be shelved and re-noticed and a hearing on that amendment will take place at a later date. Therefore, the balance of this comment letter addresses only AMD-20-11.

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.

Riverside applauds the City's efforts to increase economic vitality and drive new investment into John Day. That said, any amendments to the development code or adoption of additional land use ordinances would have one effect: an increase in burdensome regulation-ultimately leading to an increase in development costs. As the City moves forward in seeking additional investment, it would be wise to consider these increased costs (and therefore this text amendment), and whether it is appropriate given the City's overarching goals. We submit that it is not.

Beyond the above comment, we have the following specific comments:

- 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. Page 4 of the Staff Report, under the numeral ii. Section G, recognizes that it does not apply to existing parks, such as Riverside. With that understanding Riverside does not object.
- Floor Plan. The amendment seeks to require floor plans be a minimum of 1,000 square feet. This precludes the use of new single-wide manufactured dwellings. Given the increased cost of housing and increased interest in pre-fabricated dwellings, we request that this square footage be modified to require a minimum of 800 square feet instead of the 1,000, as drafted.
- Issues related to Needed Housing and Clear and Objective Standards.

Several new requirements violate Oregon's Needed Housing Laws. *See* ORS 197.307. Under that law, only clear and objective standards, conditions, and procedures may be applied to regulate housing. We request that the Planning Commission either remove these or address them in an objective way:

- Residential Building Materials. As drafted, this gives sole discretion to Planning Official to determine what building materials and appearances should be mandated. That is not a clear an objective standard.
- Separate General Play Area. As drafted, this requires a re-evaluation for each new tenant of each dwelling. This is not clear and objective nor is it achievable, because it requires a review for each particular instance for each new tenant. That would be impossible for a park operator to comply with and would lead to discrimination of persons who have children so that a land use approval would not be violated. We would suggest the amendment be modified to require new parks to always provide an objective amount of play area at all times and all circumstances.

The City's land use counsel, Garrett Chrostek, has pointed out that ORS 446.095 contains this criteria and so it is consistent with state law. We disagree. ORS 446.095 was last updated in 1995, whereas Oregon's Needed Housing statutes were adopted and last updated in 2019. Given the conflict in statute and the clear statutory mandate at ORS 197.307(4), which prohibits both the adoption or application of only clear and objective standards, conditions, and procedures, we believe that any provision that is arguably not clear and objective may not be applied – even if erroneously adopted by the City. The City will bear the burden in later explaining how its regulations can be applied in a clear and objective manner. *See Buffalo-Bend Associates, LLC v. Clackamas County*, LUBA Nos. 2019-090/091 (Jan. 31, 2020).

City of John Day
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Even if the City adopts these amendments as drafted, they may not be imposed.

We ask that the Planning Commission thoughtfully review these comments and recommend modifications for consistency with these comments and state law.

Yours very truly,

/s/ Kenneth Katzaroff

Kenneth Katzaroff

JKKA

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