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Re Land Use Code Update

**OFFICE OF CITY MANAGER  
ELLENSBURG, WA**

Dear City Council and Staff,

I am writing to put in the record testimony on the content of the Land Use Code Update. I am troubled by aspects of many sections in the draft. I will try to explain each in detail, but it is certainly easier to do in study session than in a council hearing. I suggest you create such a study session.

By way of background the City of Ellensburg 2006 Comprehensive Plan Update, Chapter 7, Housing does a great job of describing the situation in Ellensburg for both for sale housing and rental housing. Page 161 states "median income households cannot afford the median priced home in Ellensburg." As of the 2006 date of the Comprehensive Plan Update the median price home was \$150,000. As of March 2013 the median price had climbed to \$181,000 and the average price was \$202,000. This average price is climbing toward \$250,000 because of increased costs of fees and commodities. The 2006 Comprehensive Plan also states "there is a significant 'housing gap', where median income households are priced well out of the home ownership market. It also appears there is an inadequate supply for rental units affordable to people of median income or less" (page161).

The majority of housing is constructed by the private sector and goal H-2 C/1 suggests the City will work with the private sector to create workable strategies. I suggest that input from the building community has been largely ignored. The private sector will only produce what it believes it can sell and the public will buy. Ignoring input from the private sector will insure that the supply problem will become much worse. There is a shortage of inventory in part because costs exceed the potential sales prices people in the community can afford. This update should look at any aspect that will increase costs.

The Land Use Code Update has many very good elements that permit dense development. However, internally there are many code sections that will defeat implementation of a strategy or prohibit its use by the private sector. Let me give two historic examples of the code/goal conflicts that have existed over the past 15 years and exist today.

Example 1. RS zoning permits 6 DU/Acre, but another portion of the code requires a minimum lot frontage on a public road. The latter lot frontage has forever limited the maximum density in the RS zone to 4 DU/acre.

Example 2. Since 1995 a comprehensive plan policy was and is, "strengthen the PUD process." This is a great policy goal since most forms of higher density must be achieved through the PUD ordinance. A little history, the PUD ordinance was originally written by the planning commission and adopted by the City council. None of these nice people sought input from the building community. To date the PUD ordinance has been used only once. I used the ordinance to build Timothy Park on Alder Street. The ordinance was poorly drafted and it took three years working with the staff to process our application from first submission to building permit. City staff knowing that this was an unacceptable situation solicited Carol Morris, attorney on loan from the Association of Washington Cities to redraft this ordinance. Again this was ordinance was adopted by City Council without input from the building

community. The ordinance has never been used. It has a fatal defect in that it requires all circulation within a PUD to be on public roads meeting development standards for these public roads. By definition almost all roads in a PUD's need to be private. So for nearly two decades the City has deprived the building community of the primary tool for creating dense housing for sale or rent in the City of Ellensburg. None of the strategies for density and affordable housing in the Land Use Code Update are possible without a concurrent amendment of the one singular section of the existing PUD ordinance changing the section from public roads to private roads. If modified all private roads would still have to be compliant with the International Fire Code and meet utility and right of way requirements of the public works development standards.

Now I will continue with comments. These comments are of two general types. One category are code sections that will defeat other plan policies or code sections and the other category are simply comments on what the building community can or cannot sell. If a builder cannot sell or does not believe he is willing to risk building according to a micromanagement of his product then you will not have the diversity and inventory of new housing that the City needs to meet any of its housing, affordable housing, or population goals in your comprehensive plan, nor will the City's Comprehensive Plan or development regulations be compliant with Growth Management.

The following are sections that either need to be changed or eliminated:

#### 3-23 Density Minimums

This is a real problem in every zone. Zoning should be permissible not mandating. In the RS zone we cannot sell 6 DU/acre. Sanders Mill is 4 DU/acre. Greenfield Park is 6.7 DU/acre in the RL zone. You cannot get the yard (front, side, or rear) in the RS zone at 6 DU/acre. RS and RL zones are different markets entirely. Mandating minimums for required densities will not work. This absolutely needs to be deleted in all zones.

#### 3-24 FAR

This is another limitation in achieving zone density.

#### 3-24 Maximum Impervious service.

This is a limitation on achieving zone density or any density. In RL the code table states 45% maximum coverage Greenfield Park at 6.7 DU/acre is 70% impervious. Greenfield Park would not have been built under this code. No builder will use a green roof or grasscrete surface. This is not Arizona. We do not need aquifer recharge and we are already detaining storm water. This code will render all zones unbuildable even RS (driveway and walk, but no patio?). This will dictate mass and form to cover small portions of ground. This pushes everything vertical in all two story houses, three stories and four stories! Young and old in this community want single story. This section must be eliminated.

### 3-24 Garage set back

Making the garage set back 25 feet squeezes useable rear yard open space and encourages two small cars to be parked one behind the other. Twenty two feet is what we use in Sanders Mill. Three more feet not only adds impervious surface but adds cost.

### 3-24 Minimum Side Yard

Except in the RS zone, minimum side yards should be allowed at 5 feet and 5 feet or as dictated by the International Fire Code.

### 3-28 15.32.070 Impervious Surface Standards

Delete this section. It impairs every single residential zone in achieving any density.

### 3-32 15.32.140 Fences A4

Change the second sentence to read. "Fences 2 feet or greater from the alley may be 72 inches high." Two feet is plenty for grass shrubs and trees (see Wheaton Court Alley of Alder.) We cannot sell alley loaded housing without a normal 72 inch high rear yard privacy fence. By creating larger margins from the alley squeezes the rear yard which is already small. Alleys are expensive as they are essentially another street. It is requirements like this that will make builders never use alley loaded housing.

### 3-40 FAR Bonus Density

If FAR is used in a manner to limit density in any of the listed zones below achieving the density stated in the zone in order to achieve participation in the programs provided for bonus, builders will not build in this community. They do not like coercion and social engineering.

In fact, if zone densities cannot be achieved out right without incentives or bonus programs due reducing code sections like impervious surface, FAR, off street parking, setbacks, or other design or cost related impositions, builders simply will not build and this Land Use Code Update will be the primary reason housing and/or affordable housing growth strategies will not be met.

### 3-59 A 2, 3, 4

Really. These 3 paragraphs are not necessary. I am on the Airport Advisory Board and helped write the Airport Overlay Zone. This just is not required, except in the airport industrial in the county. I am working with Kelly Carlson, airport manager, on drafting development regulations for the airport industrial zone where this might be a factor but it is just not required outside this zone.

#### 4-4 Street Scape Design

First off there are no dimensions on the street sections for any of the rights of way. These must be attached to comment. Please create and disseminate so these sections can be evaluated.

I was pleased to serve on the Non-Motorized Committee although none of my policy recommendations appear in this draft. It is absolutely necessary to allow contiguous curb and sidewalk. Builders rely on rolled curb and adjacent sidewalk for many reasons. First, it consumes less right of way. Second, it allows flexibility for siting a house with garage without having to cut a vertical curb for a driveway. Third, utilities must be installed behind the sidewalk either in the right of way or an easement on private property. How would you like a 15 foot front yard with a ten foot easement for power, cable, gas pedestals and vaults? Lastly, tree roots will heave the separated sidewalk. No one has planted as many trees anywhere as Sanders Mill. Thousands. For maintenance of the trees, irrigation, and lawns, we cannot build any of the street sections shown in this chapter. There absolutely has to be a permissible alternative for contiguous curb and sidewalk for each of the proposed street sections.

What is interesting to me is that I made these same points when I served on the Non-Motorized Committee. It is very important for policy makers to give weight to the people who actually build housing, borrow money and have to sell the product to the public. If they are ignored these codes will sit and \_\_\_\_\_ for the building community, we will not build if we can't sell it.

#### 4-9 15.42.020 A1 Connectivity to abutting lands.

"Street stubs shall be provided to allow access to future abutting subdivisions and to logically extend the street system into surround area."

Well ok, but only for those streets shown in the Comprehensive Plan currently established in policy at a ½ mile interval. City Council may choose to amend the Comprehensive Plan to make this interval ¼ mile. In any event, without these streets being shown on a map in the comprehensive plan adopted with public notice to affected property owner's, application of the sentence cited above would be arbitrary and capricious in a hearing and would certainly be challenged in court.

The City needs to be careful not to make development more costly. One thing to consider in all your development standards for road improvement standards, "is there nexus?" What is nexus? Well it is certainly appropriate for water, sewer, storm, road and other utility improvements to be constructed for a subdivision. For water and sewer mains, if they are oversized the developer is reimbursed for such oversizing by the City. The reasoning is that the oversizing beyond the needs of the development is for the community at large. So nexus is addressing the legitimate requirement and

impact of a development. Beyond that there is not nexus. Who should pay for oversizing of road improvements?

In road standards, most developments only need to be improved to the standard of a local access street (see page 4-6). What happens if you have property on the ½ mile grid in the Comprehensive Plan for a collector, minor or major arterial? What if the City attempts enforce a policy on just any stub or street with no adopted Comprehensive Plan map and notice to property owners? I would say that the City and the property owner will have a problem. Neither the City nor the property owner will have the money to construct the upgraded street section over and above the local access street and certainly will not agree to just any stub. There is no nexus of the impact of the development. The City can't afford to pay for the overage. So the City denies the plat. The property owner sues. Let's say the property owner losses. So no subdivision. No housing. This is why street sections and arterial maps are part of an adopted Comprehensive Plan process with maps matter. Notice to property owners in this process will be critical or be subject to later challenge. Streets are expensive regardless of who pays for them. Ultimately the homeowner pays. What happens if the City of Ellensburg comprehensive plan and development regulations double down on top of impact fees, plan review fees, storm water and energy code updates, etc.? Nowhere has there been consideration of the effect of this update on cost. Cost needs to be a primary consideration.

#### 4.9/10 15.42.020 Block Design & Connectivity Standards.

A. All zones. 3 Pedestrian Access Ways.

"Access ways shall conform"

C. Safety..."shall avoid tunnel affect"

What was amazing about this in discussion in the non-motorized committee was no weight given to private property rights and effects of these access ways have on adjacent property, clear aside from cost. So who wants to live next to one of these? None of our customers. Tunnel effect deals with public interest. "Height of Fence". Well we need privacy fences at 72 inches. How about privacy of the homeowner, freedom from people roaming about their home? This access way subtracts from the value of any lot abutting an access way. This access way cannot be lighted for the same reasons parks and John Wayne trail cannot be lighted. These access ways should not be required if they are access ways to nowhere.

4-12 Figure 15.42.020 B2

The John Wayne Trail has limited access, as I have testified many are limited access. None of the access way connections would be allowed by the state or under the John Wayne Trail Plan and Design as shown in the above referenced figure.

4-14 Edges and Fences 2B

“Subdivision design that includes lots that backup to a collector or local access streets is prohibited.”

What does this mean? Consider Alder Street in Sanders Mill. Sanders Mill has both rear yards and front yards facing the arterial. Both are necessary. The fences and trees in our constructed street section are compatible with the standards in this update. This sentence is even inconsistent with other sections of this update.

4-22 EA “Each lot in a residential subdivision shall have direct access to a public right of way”

This needs to explicitly state that this standard can be met by a private driveway or in the case of an amended PUD ordinance, a private road.

5-47 D Building Articulation Multifamily

Departures: needs to be expanded. One of the most success projects in the Seattle Metro area on Mercer Island is Shorewood Built in the early sixties. It is eight unit building, four up and four down. The buildings are used brick down, lap siding second stories. They are a clean box with simple gable roofs. They are quintessential Colonial Architecture, east to build, easy to maintain, timeless architecture, and the most affordable scheme possible. This section categorically prohibits one of the best affordable and classic styles.

This is another example in this update of micromanagement gone terribly awry.

5-61 15.54.020 Single Family Design

Entries and façade

“3. At least 15 percent of a façade (all vertical surfaces facing the street) shall include transparent windows or doors.”

No house in Sanders Mill meets this standard. This should be deleted. It conflicts even with the state energy code that tends to limit windows. Further, people do not want transparent front doors. If you have a garage, living room with window and front door vestibule, the living room window cannot meet this standard. Again this is micromanagement gone terribly wrong.

## 5-62 Garage Placement and Design

"3. Garages shall be setback at least 25 feet from the front property line."

All Sanders Mill garages are 22 from the back of sidewalk. The reference should be back of sidewalk not property line. Depending on where the right of way edge is this standard may push the house far greater than 25 feet from back of sidewalk. Two small cars can park in 25 feet one behind the other. Amend this to 22 feet from back of sidewalk.

## 5-76 15.55.030 Computation of Required off street parking Figure 15.55.030 (A)

Apartment-2 bedroom or large 1.0 space per bedroom.

You should probably get input on this from an apartment builder on this. Maintenance of this requirement will insure little affordable rental property will be built. In larger projects in particular not everyone is in residence at the same time. The larger the project the less not more parking is required. Some adjustment downward for projects over a certain size 100 units, 200 units, 300 units, 400 units may be wise. I would consult with people that build this size project.

## Page 5-112 15.58 Outdoor Lighting

Residential building permits should be exempt from this section or it should only be guidance not mandatory. Why? Well in your development standards you currently have illumination standards. This ordinance exempts City street lights. The illumination standards for street lights require general illumination so that there is no darkness. In order for street lighting to achieve dark sky three times the street lights would be required. So the City did what is thought was correct and exempted City streets. That was the correct thing to do since dark sky was not affordable. Once street lights in residential zones are exempted however, all residential areas are completely and fully illuminated at night. Inside the ambient street light illumination, residential lighting is absorbed in the brightness of the street lights. Applying this ordinance inside residential areas just does not make sense. Change this to make it a recommendation not a mandate in residential zones. In residential zones there is no dark sky by definition according to the City Development Standard for street lights.

I actually have more to say on the Land Use Code Update but would prefer to save it for a study session. In general, I would say that this amount of design on every aspect of construction may be "off putting" to many of the very people you want to create retail, industrial, commercial, and residential development. You are telling people very precisely what product they must create in the City of Ellensburg. Much of the recommendations may not work. People who make investment backed decisions must have enough flexibility to do what they believe works (within limits of course). It may be impossible for a developer or builder to weigh through all this

and make a judgment that he knows what his project will look like or what subjectively will get approved. Whether engineer or architect, it is not clear what policy makers will do to their design in the review or hearing process. In application or hearing will every project, plat, and building permit have to go through design review? There is nothing explicit enough to guide a hearing examiner (if you were to have this change) is this update. They need black and white, not gray. Rather than racing to conclusion, I think with the exception of amending the PUD ordinance to permit private roads, you should take a big pause and get more input to this update. In conclusion much of this update is very good! You want it to be used and guide growth, not bring all growth to a halt or create contentious public hearings or nightmares for staff

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Steve Willard