

Bellevue, WA
May 11, 2008

Honorable Mark McClain, Chairman
Honorable Alan Crankovich
Kittitas County
Board of Commissioners
205 W 5th AVE Suite 108
Ellensburg WA 98926

Delivered Via Email for the public record

RE: **Additional Comments on the Rural Towns recommendation and Interim Land Use and Zoning Designation Policy** relating to the Snoqualmie Pass Area and compliance issues on the Eastern Washington Growth Management Hearings Board for (EWGMHB) decision Case 07-1-0004c.

Dear Chairman McClain and Commissioner Crankovich:

I learned the Hearing comment period was extended providing an opportunity for additional comments. To reiterate, I am very much in favor of the Rural Towns recommendation, as I believe it provides the Commission with a vehicle to appropriately govern Snoqualmie Pass based on its intrinsic nature.

This document elaborate on the following issues:

- **Pay-up or be foreclosed** - all property owners in the SPUD were assessed on the basis of three (3) dwelling units per acre.
- **SPUD Can't Function Without Operating Revenues** – 14 of the 15 planned SPUD customers will disappear in each required 5-acre tract.
- **Make Everything a Non-conforming Land Use** - the unnecessary change in land use, while restudying the area turns planning and permitting on its head.
- **Setting The Legal Trap** – Learn the hard way about “immediate” studies
- **How May I Best Represent All Of The Public** - Do not loose the high ground to lawyers waiting in the wings.
- **Springing The Legal Trap** – Why all the lawyers, I thought this issue was about land use planning?
- **Obviously You Are Joking Are You Not?** – Speaks for itself!

This outlines briefly the situation and sets forth, further below, probative damage and the dangers inherent in completely downgrading land use, as a point of departure in the SPRT as recommended to you.

Pay-up Or Be Foreclosed

Almost forty (40) years of planning and decision-making by Snoqualmie Pass Public Utility District (SPUD) elected officials resulted in millions of dollars being assessed the private sector and expended to address public health safety and welfare issues associated with water supply and wastewater. SPUD planned, formed, assessed and constructed a pass-wide water and sewer system, building a public infrastructure, to make existing and future growth, necessary to satisfy transient recreational population demands on land use carrying capacity healthy, safe and sound.

Landowners in the SPUD district were assessed at the rate of three (3) dwelling unit water hookups per acre total acres owned. Millions of dollars in assessments were paid by landowners in the SPUD district and collected by the Kittitas County Treasurer, starting in 1987. The assessments were remitted to SPUD who in turn invested those dollars into pipes pumps and treatment systems for the entire district. The contract between SPUD and SPRT landowners could not have been communicated more clearly—you shall receive water hookups to use on your land and you shall pay SPUD at the rate of three dwelling unit hookups per acre to install it and to operate the system for you. That was the contract—that was the bargain.

Those who did not pay or who could not pay their assessment were subjected to foreclosure. Their land was taken from them and was sold to pay the assessments for the pass wide system, which today serves those lands assessed at three dwelling units per acre.

The water and sewer plan was undertaken and implemented over thirty (30) years ago. The plan was not a vague promise on a multi-colored set of plans; it was made and the hand of local government enforced payment to accomplish it. This was an irreversible taking and expenditure of tax payer assessed dollars to assure and insure public health safety and welfare in current and planned development through a public water and sanitary sewage system on those lands assessed. This was and is the contract. These plans were reviewed and adopted by Kittitas County before the assessments were made.

SPUD Can't Function Without Operating Revenues

A more serious issue exists for the future of the SPUD system as a result of downgrading land use categories to which no one in favor of this approach has analyzed, dimensioned, documented and accepted financial responsibility. SPUD, in 1987 assessed, designed and built a water and sanitary sewer system for approximately 2,220 Equivalent Residential Units (ERU's). At present, less than one third of those hookups are connected and delivering planned operating

revenue to SPUD. The operating revenue necessary to maintain and replace the SPUD water and sanitary sewer system, in the long run, is dependant on planned operating revenues. Otherwise, existing users could be caused to pay 200 percent more than planned not adjusted for inflation. The proposed land use decision will reduce the planned operating revenue stream on a 15 to 1 basis for a typical 5-acre minimum proposed lot size. Knowingly undertaking planning for the financial destruction of the SPUD pass-wide water and sanitary sewer system raises a number of serious issues, not the least of which immediately rise to issues of the public health safety and welfare, the fundamental underpinning on which zoning and land use powers rest.

There are serious taking issues associated with this approach within any part of the SPUD service boundary. These issues go to the taking associated with current land use and zoning that currently enables land downers use of the fruits of the water and sewer assessments. It also goes to the future imputed costs to all of those who currently rely on the SPUD as it was planned and designed to operate within the costs of operation and maintenance spread over 2,220 hookup user base more than three times that which will result if downgrading to Rural Residential of existing land use takes place.

Make Everything a Non-conforming Land Use

The SPRT land use proposal before the Commission for adoption, as developed by LUAC, proposes a dramatic reversal of existing “*as-built reality and public infrastructure*” and a “return” to open space land use intensity, predating over 40 years of development under by government and private sector economic investment, governmental and private sector planning and financing of infrastructure to accommodate transient population recreational demand on Snoqualmie Pass. Multi million dollar ski and winter recreational have been made by governmental and private sector investments. Three Interstate 90 interchanges were developed, providing more planned land use access on Snoqualmie Pass than is provided by the Interstate system for almost all other small cities and towns in the State of Washington.

It is not clear me or to anyone with whom I have spoken, that there is a legal requirement forcing the rush and strong pressure to cause the Commission to reduce and downgrade adopted land use intensity to one (1) dwelling unit per five (5) acres in the SPRT for an “*interim*” period. Especially on those landowners who were assessed for three (3) dwelling units per acre and who had as their only option to non-payment of the assessments **foreclosure and loss of their property!** I know that if members of the LUAC were polled or deposed, it will be immediately found that the committee members were not made aware of these

fact along with many others including the existing adopted land use plans in the SPRT.

The dramatic land use down grade, supported broadly by Futurewise, et al, which Mrs. Jill Arango recommends to Director Piercy and the Commission proposes a Rural Residential land use overlay for all land use on Snoqualmie Pass. She essentially recommends the Commissioners make all existing “as developed” land and all pending land use actions “non-conforming” land uses. But we are told, “not to worry.” Studies (unbudgeted, unfunded and most likely not programmed?) will “immediately” be undertaken to determine THE land use and zoning that should “*actually*” be in the SPRT.

Who in the State of Washington, not to mention Kittitas County, cannot see what has and is occurring in the SPRT? The answer is—EVERYONE who is paying attention. The clock has been not running backwards nor is the recreational pressure by the transient population seeking recreation in the SPRT diminishing; rather, it is on the increase. This reality guided and informed the planning and infrastructure development of elected officials of the SPUD and Kittitas County during the last thirty 30 years. But—therein lies the crux of this matter.

Downgrading of land is about a clear divide in desired futures in SPURT. There are those, most of who live in other counties, who want to stop all development on the Pass, ignoring everything else with that single objective in mind. They believe if they cannot purchase it, they will downzone it. This, in part, is why Kittitas County is embroiled in this GMA matter and in this Hearing. There is nothing wrong with these differences of opinion regarding future land uses, nothing, that is, if those who want their opinion land use to prevail are also those who own the land.

The proposal before the Commission absolutely removes all commercial land use from SPRT. The proposed land use provides for one dwelling unit per five acres anywhere in SPRT. Why the rush? What happened to the millions of dollars assessed all landowners in the SPUD and the investment to provide for a minimum of approximately 2, 219 dwelling unit equivalent hookups?

Setting The Legal Trap

What is it that underpins the logic, which proposes to undo 30 to 40 years of existing land use reality and public infrastructure investment for an “interim” period? Will better urban and economic planning result if we “temporarily” officially change the land use maps to such an extent that if one attempted to use them for orienteering; an athlete would think he or she were lost when visually comparing what is actually built on the ground and what is illustrated on the proposed land use map?

Who actually benefits from this planning approach, which starts out not with “what is”, but starts from a hypothetical perspective of pristine rural open spaces and “pretends” that what exists actually never was?

Certainly not those who travel there to recreate, certainly not those who live and work there, certainly not those who are being herded into existing centers and who need and want not only land areas to recreate but various types of food and shelter and other services at their recreation destination. A planner is not needed nor is a study to determine that Rural Resident land use, permitting only one (1) dwelling unit per five (5) acres makes no sense at present or in a future reality of the **growth** SPRT is destined to and was planned to have.

The Rural Residential land use being proposed for your adoption, ignores everything that is currently built **on the ground** for all residential and commercial purposes, which serves a portion of the existing transitory population’s recreational needs and what is actually built **under the ground** and everything that was planned, designed paid for and implemented to serve not only today’s needs but the needs of tomorrow.

To my knowledge this planning idea and approach did not originate within the LUAC nor am I aware of any policy direction from the Commission to undertake planning for the future in this unusual manner. Could this planning approach have originated with Mrs. Arango, the Chairperson of the LUAC, who, while not an urban or economic planner, is a self-styled open space advocate and the Director of the Cascade Land Conservancy in Kittitas County who describes herself on the Internet as being involved in “...*proactively conserving open space*.” I respectfully suggest that the Commission explore the origin of this urban planning methodology. I for one, as a trained post-graduate Urban Planning Professional, have never seen this approach to undertake and formulate a forward looking land use and economic plan. Ever!

The only professional and personal experience I have with this unusual approach to land use planning is in precisely those circumstances whereby parties bring actions under the GMA to stop and/or reduce development and permanently convert it to very low density rural acreage or convert it into public open space.

How May I Best Represent All Of The Public

In some cases and situations this conversion may be very appropriate. But it is not where it is necessary to “pretend” existing legal land use activities do not exist. However, in all of these cases, public policy makers are encouraged or cajoled into entering into a “*two step land use polka*” by:

1. Taking the first step to reduce all land use to the density of rural open space; and
2. Taking the second step by agreeing to undertake an “immediate” study to determine what the land use “*should be*;“

In short order Elected officials quickly find out just who their dance partners really are! Staffing plans of organizations that brought the land use actions quickly begin to make sense. They have more lawyers; experienced public activists and community organizers on staff than they do urban planners because going forward; planning will be undertaken in the courts—legal and of public opinion—rather than in the planning department.

As local governments begin to search for ways to fund these “immediate” unplanned and unbudgeted land use and economic studies that were promised, they also begin to understand the need to fund numerous “unplanned” and unbudgeted legal battles with each and every attempt to “up-date” what were to be a “temporary” changes in legally adopted and difficult to challenge land use and zoning plans which were once in existence.

I’m sure Mr. Piercy has briefed the Commission on the financial and legal perils and costs of this approach. And that he has recounted the experiences of other similar local governments that have been down the path being recommended to you. But it is worth mentioning for the record.

A decision maker in this position has to ask ones self:

“Why, if land use for a given area, be it SPRT, or any other of the recommended Rural Towns, can be professional determined within an “immediate” study time frame as recommended by Mr. Piercy, what is the rush to make “short term” changes to long standing land uses? Why not leave long standing land uses and zoning in place as they are bolstered legally by the weight of long term public policy, precedent, and findings of fact while the promised studies “immediate” studies are being conducted? What public damage is being incurred?

Who has the high ground in each of these alternative approaches, during and after the conduct of these “immediate” studies and in the implementation of their findings?

1. Leave existing land uses and zoning in place and add or delete based on professional finding from the study results; or

2. Take land use to “bare ground” and attempt to reinstitute and justify each reintroduction of land use intensity that known litigious parties do not want now nor do they want to have reinstated in the future, irrespective of the “immediate” studies.

These are first order questions and, as mentioned above, I am sure that Mr. Piercy has briefed you on the staffing, budget and time lines and likely outcomes regarding these two alternative paths you may choose to take.

Obviously You Are Joking Are You Not?

I know, that Futurewise appreciates the recommendations made by Mrs. Arango and Mr. Piercy. Futurewise, et al is in favor of the approach to downgrade land use of commercially zoned lands and land with existing water and sewer service to support a minimum of three dwelling units per acre to the status of rural lands.

Their written testimony prior to the first hearing on this matter states the following:

“We appreciate the rural comprehensive plan designation and zoning for the Gold Creek part of the Snoqualmie Pass Sub-Area Comprehensive Plan. This will protect the quality of life for Kittitas County residents and property owners and, by protecting important wildlife habitats, enhance the county's tourism industry. Please see page 5 of this letter.”

Obviously as one of the “*private property owners*” with water and sewer hookups having a current value in excess of \$1,500,000 in that precise area, I must be getting a value that I am not capable of appreciating. Futurewise appreciates that I, instead being able to use the 230 water and sewer hookups assessed by the SPUD in 1987 on my Commercial – Lodging land use, will enjoy being downgraded to Rural Residential land use which will allow me to use only 15 of those 230 water and sewer hookups on my land. I’m not sure what Futurewise thinks about the other 215 hookups worth approximately \$1,400,000 that were assessed the property but will no longer be legal to use on my property. Futurewise made no mention of this financial impact to this property owner. Also, I am still trying to understand how Futurewise believes that my quality of life, as a property owner, is being protected by this decision.

As a destination lodge owner and one who has been involved in the outdoor tourist business, for 16 years, I fail to understand how raw land with wildlife and no supporting services will “...*enhance the tourism industry.*” as opposed to what is planned. At some point one realizes, as is evinced by their pronouncements, that to label the name “Futurewise” an oxymoron would be an understatement.

It is ironic that those who support the action, which will potentially degrade and/or destroy SPUD, do so under the umbrella of the GMA. The GMA was intended, among other things, to encourage planning, financing and development of sanitary services to cope with and support orderly growth. The SPRT has been, is and shall be impacted by transitory population growth which is inextricably tied to the availability of SPUD services. Who among those advocating actions that clearly put the viability of SPUD on the line has ever mentioned anything regarding their concern for those who own the land, who are served by SPUD and all of the human animals, who live on and who episodically inhabit the pass? I have not found one assembly of words in any of their comments that have that as their intent.

Sincerely,
Michael L. Darland