City of Kenmore

City of Kenmore - 18120 68th Avenue NE - P.O. Box 82607 - Kenmore, WA 98028
Phone: 425-398-8900 - Fax: 425-481-3236 - E-mail: cityhall@kenmorewa.gov

City of Kenmore
Planning Commission Meeting Agenda

Tuesday, April 17, 2018 @ 7:00 p.m.
Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call Bridgit Baker at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Planning Commission agendas are also available on our website at www.kenmorewa.gov.

1. **CALL TO ORDER**
   For this meeting only, there will not be an opportunity for verbal citizen comments. Written comments are welcome and should be mailed to the Planning Commission at City Hall (address above) or emailed to landerson@kenmorewa.gov.

2. **APPROVAL OF MINUTES**

   April 3, 2018 Planning Commission Meeting Minutes

3. **AGENDA ITEMS**

   Housing Strategy Plan: Preserving Existing Affordable Housing Memo
   Attachment 1 - Criteria
   Attachment 2 - Options for consideration
   Attachment 3 - Worksheet
   Attachment 4 - Correspondence

4. **ADJOURNMENT**

5. **UPCOMING MEETINGS:**
   May 1, 2018, 7:00 p.m. – Meeting Cancelled
   May 15 and 16, 2018, 6:00 p.m. – Public Hearing

City of Kenmore
Planning Commission Meeting
April 3, 2018 @ 7:00 p.m.

Planning Commission Members – In Attendance

Douglas Nugent, Chair
Mark Ohrenschall, Vice Chair
Carol Baker
Mike Mulcare
Dennis Olson
Scott McDonald

Consultants & Staff

Debbie Bent, Community Development Director
Lauri Anderson, Senior Planner
Bridgit Baker, Admin Assistant
Mike Stanger, ARCH

1. CALL TO ORDER

The meeting was called to order by Chair Nugent at 7:00 p.m.

2. CITIZEN COMMENTS

Robert Spurlock, 7021 NE 181st St, Kenmore, WA 98028. He has been a resident of the mobile home park for over 30 years. He would like to have the moratorium extended to give everyone affected time to for their input.

Russ Millard, Senior Property Manager for Inglewood East Mobile Home Park. They are in favor of a positive approach to creating sustainable affordable housing. He felt the work done over the last few months was positive until the last meeting. He thinks the Planning Commission should stick to incentives based actions and not punitive ones. Their park has no plans for redevelopment.

Carole Myers, 7031 NE 175th St Unit 27, Kenmore, WA 98028. She is a resident at the Lakewood Villa Mobile Home Park. She would like to know more about the plans on affordable housing for the elderly and disabled, as well as the support like fire, EMT and police. She supports growth and diversity, but all aspects of it needs to be considered.

Janiece Hoggat, 7301 NE 175th St Unit 136, Kenmore, WA 98028. She has been a resident of Inglewood Shores Mobile Home Park about 3 years and purchased her home to retire in. She hopes that the future affordable housing put in place will help those in the retirement years because the monthly costs are exceeding their income at the rate rents are increasing.

Deborah Bartos, 7031 NE 175th St, Kenmore, WA 98028. She is a resident at Lakewood Villa. She feels that Kenmore has a moral obligation to do the right thing. She recommends that the Planning Commission sees how they live and not judge from the outside. She feels everyone has a right to be a part of the community since they pay their rent. They are not asking for handouts.

Stacey Valenzuela, Lakewood Villa Mobile Home Park resident. She appreciates the City of Kenmore involving the residents in their discussion. She requests that City of Kenmore preserves the mobile home parks long term. She also hopes some contingencies for land owners be implemented to maintain the infrastructures, keep rents, sewer and water charges affordable. Lastly, she asks that if the owners were to receive payments that they structure payments to coincide with compliance of infrastructure and possibly some set aside for temporary loan assistance for homeowners that want to do home upgrades (ie. asbestos removal). She also addressed the value and equity of their homes that are being sold for $20,000-$80,000.

Joanna Crocker, 7301 NE 175th St Unit 324, Kenmore, WA 98028. She is a resident of Inglewood East Mobile Home Park. She wanted to address the misinformation that their homes do not appreciate, since they do. She also wanted to address the power of community. Aging in place and when seniors can stay in a place they want to the costs decrease. If, and when the Millards do decide to sell, they would be interested in purchasing their park.

Bob Humble, 7031 NE 175th St Unit 6, Kenmore, WA 98028. He is a resident of Lakewood Villa. He thanked the Planning Commission for hearing him. He stated that it is increasingly difficult and dangerous to leave the Mobile Home Park driveway due to the cars and trucks barreling down the street. If the City of Kenmore increases density, they may need a stop light there.

Daniel Stoner, 6905 NE 182nd St, Kenmore, WA 98028. He is the owner of the park next to City Hall. They do have plans in the 5-10+ years to redevelop the park. He has tried to work collaboratively with City Hall, however, at the last meeting he felt it went from using a carrot to using a stick. The concepts of forced density and home cost reimbursement are unfair. He feels that as a property owner, why do they have to bear the burden of providing affordable housing for the entire City of Kenmore. As a developer, he feels that some of the plans are unworkable. The market should determine what the density is and not a regulation. He wants to encourage the Planning Commission to work with the property owners to create legislation that can accommodate the existing residents, but doesn't prevent future development.

Janet Birch, a Bothell resident. She wanted to speak on behalf of her ex-sister-in-law, Cynthia Little who is a resident of Lakewood Villa. She feels that the developers are not thinking of the residents that live in the parks. The residents of the parks already have homes, where will they go if they can't resell their home or move into an apartment? These communities are not like apartments. She feels that it is important for everyone to come together.

Beau Harer, representative of the management company for Lakewood Villa as of March 1, 2018. He wanted to reiterate that neither Lakewood Villa or Inglewood East have any intentions on selling or redevelopment plans. They would like to make it easier to revamp those communities. He would like the Council to consider lifting restrictions to bringing in new homes into the communities.

3. APPROVAL OF MINUTES

Commissioner McDonald motioned to approve the March 15, 2018 minutes which was seconded by Commissioner Baker. The motion passed 6-0 with no abstentions. Commissioner McDonald motioned to approve the March 20, 2018 minutes which was seconded by Commissioner Ohrenschall. The motion passed 6-0 with no abstentions.

4. AGENDA ITEMS:

Laurie Anderson clarified that under the current rules there are no protections for the residents of the mobile home parks. Redevelopment could occur at any time and the City is not involved. However, the City is trying to be proactive and sees the need for affordable housing. The City Council has tasked the Planning Commission to look at strategies for preservation of existing affordable housing to address affordable housing needs. The goals are to look at all options and balance the needs for everyone.

The Planning Commission finished the assessment of the options started at the prior meeting. The first option was to preserve senior Mobile Home Communities for the long-term through protective overlays. Commissioner McDonald moved to decline this option which was seconded by Commissioner Ohrenschall. The motion passed 4-2 with no abstentions.

The second option focused on not preserving the existing Mobile Home Communities, but building a new mobile home park for the residents. The majority of the Commission declined this option.

The third option to not preserve the Mobile Home Communities, but require the property owner to purchase other existing affordable housing in Kenmore was also not supported by the majority of the Commission.

The fourth option to not preserve the Mobile Home Communities, but offer every new protected affordable unit in the City to the Mobile Home Community residents, eventually freeing up the Mobile Home Communities for redevelopment was supported by the majority of the Commission. Lauri Anderson recommended that the question of legality should be set aside for the City attorney to weigh in on.

The second task of the meeting was to review potential criteria for evaluation that should be amended. Commissioner Olson recommended having a viability of options criteria which the Commission agreed on.

Lauri Anderson briefly reviewed the prior meetings and explained the structure and agenda of the April 17, 2018 meeting. The upcoming meeting will be a work session to address all 6 parks with no verbal citizen comments. However, citizens can submit written comments. The public hearing will be held over two days on May 15th and May 16th starting at 6:00 pm. Lauri Anderson recommended that the May 1st meeting be cancelled. Commissioner Baker motioned to adopt the staff recommendation to cancel the May 1st meeting which was seconded by Commissioner Mulcare. The motion passed 6-0 with no abstentions.

5. ADJOURNMENT

Chair Nugent adjourned the meeting at 9:15 p.m.

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Planning Commission

Approved by Planning Commission on: ________________________

18120 68TH AVENUE NE PO BOX 82607
KENMORE, WASHINGTON 98028

MEMO

TO: Planning Commission

FROM: Debbie Bent, Community Development Director
Lauri Anderson, Senior Planner
Arthur Sullivan, ARCH Program Manager
Mike Stanger, ARCH Planner

DATE: April 10, 2018

SUBJECT: Manufactured Housing Community Discussion, continued

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The agenda for your April 17 meeting is to use the criteria approved at your last meeting (see Attachment 1) to determine the recommended options for each of the six manufactured housing communities (MHC) in the City. The list of options you have developed is included as Attachment 2.

Preliminary recommendations should be made for all of the parks on the 17th to keep the project on track for the May 15 and 16 public hearing. Staff recommends that, in the interest of completing these recommendations on the 17th, you use the attached worksheet (see Attachment 3) to draft your thoughts and comments prior to the meeting.

As we've previously discussed, all of the options are more protective of current residents than is the status quo which does not address MHC closure by the property-owner. Too, all options--except MHC purchase--preserve planned residential densities.

Attachment 4 contains correspondence received since your last packet was distributed.

Attachments
Attachment 1: Criteria
Attachment 2: Options
Attachment 3: Worksheet
Attachment 4: Correspondence

ATTACHMENT 1

Criteria for Evaluation

(4/17/18)

Address of Park	7031 NE 175th St. Lakewood Villa	7301 NE 175th St. Inglewood East	7000 NE 181st St. Lake Terrace (north side)	7021 NE 181st St. unnamed (south side)	7614 NE Bothell Wy. Kenmore Village	6837 NE 182nd St. Lakewood
Size (# units)	Large (57)	Large (78)	Small (11)	Small (20)	Medium (27)	Large (63)
Percent of allowable density	88%	84%	22%	30%	38% (existing zoning, not TOD)	40%
Vision consistency	Consistent	Consistent	Inconsistent	Inconsistent	Moderately consistent with underlying zoning.* Inconsistent with TOD overlay.	Moderately consistent**
Age restrictions	Yes	Yes	No	No	No	No
Property sale or redevelopment timeline (current owner)	10-15 years	Not anticipated	< 5 years	< 5 years	< 5 years	5-10 years
Age of structures (% post-1976)	45%	19%	27%	76%	48%	65%
Environmental issues with redevelopment	Yes: wetlands, river, floodplain, seismic hazard	Yes: wetlands, river, floodplain, seismic hazard	No	No	Yes: wetlands, floodplain, seismic hazard	No
Feasibility of selected option						

* 9 du/acre (existing density) is a multifamily density. The purpose of the R zones is to implement Comprehensive Plan policies for housing quality, diversity, and affordability, and to efficiently use land, public services, and energy.

**19 du/acre (existing density) is a multifamily density. The purpose of the DR zone is to provide higher density residential development in support of the downtown commercial zone. From the Comprehensive Plan: “The district represents an opportunity to provide a range of housing types in the community with attention to appearance and scale.”

MANUFACTURED HOUSING COMMUNITY (MHC) OPTIONS

(4/17/2018)

LONG TERM MHC PRESERVATION

Option 1: Preserve the MHC for the long-term through land value exchanges

- Allow park owners to either (a) transfer (sell) their development rights (TDR) from the MHC to another designated area and property where increased density is suitable or (b) receive affordable housing fee-in-lieu payments as compensation.
- In exchange, the park owner and/or its buyer would covenant to preserve the MHC for the long-term, with corollary maintenance requirements.
- The TDR and/or affordable housing fee-in-lieu payments programs would be limited to the City of Kenmore initially, but if unsuccessful, a regional approach could be considered.

  Issues:

  Will there be enough new development in Kenmore to make this approach feasible?

  How would the TDR or fee-in-lieu transfer occur? Would the transfer be between individual parties with the City as broker, or would the City or another agency serve as the "bank?"

  How would the timing be regulated? For example, would the MHC property owner receive payments over time as new development purchased TDR units or made fee-in-lieu payments, or would the City or another agency front the payment to the property owner?

  Who would determine the values of the transfer units or fee-in-lieu?

  How would the values of the units or amount of the fees be indexed over time?

Option 2: Preserve the MHC for the long-term through purchase from the property owner at fair market value

- Provide direct assistance to purchase the MHC, blending any or all financial resources: from residents, private nonprofits, public agencies, etc.
- Place a long-term covenant over the property to preserve the park and/or rezone the park to provide protection.

Issues:

Implications for residents/nonprofits/agencies paying fair market value for properties currently planned for higher densities or commercial uses.

Would the property owners wait for the longer time period typically needed to put together financing by groups trying to preserve existing parks?

Would the rezoning approach allow for future redevelopment?

EXTENDED MHC PRESERVATION

Option 3: Preserve the MHC for several years through a variety of incentives given to the property owner

- Provide direct assistance (infrastructure upgrade loans, reduced taxes or fees) in exchange for some period of preservation, with corollary maintenance responsibilities; and/or
- Provide increased density or decreased affordable housing requirements through phased zoning that preserves the MHC for some period of time, with corollary maintenance responsibilities.
- Taking first right of refusal to buy the park and removing nonconforming status could be part of this approach.

Issues:

Would the property owner continue to maintain the property as the preservation sunset date approached?

Would residents move in/out of the park as the preservation sunset date approached?

PRESERVATION OF AFFORDABILITY WITH ASSISTANCE

Option 4: Do not take City action to preserve the MHC, but preserve affordability and provide assistance

- Rezone the MHC property for greater density but require new development to include an equivalent number of units as are in the MHC as “affordable” at a level of income roughly equivalent to the housing costs that mobile home park residents currently are paying.
- Provide the current MHP residents with a "right of first opportunity" to rent the newly built affordable units
- For residents who want to move into the new units, provide temporary relocation assistance and/or other monetary compensation for the loss of their MH unit.
- For residents who do not want to move into the new units, require a relocation plan, a longer notice or park closure, and/or provide a certain amount of relocation assistance.

Issues:

How would residents handle the transition between the closure of the park and the construction of the new units?

Would potential future projects be big enough and at high enough densities to accommodate all of the required units?

Would existing MHC unit sizes (primarily 2 bedroom) be achievable?

Could projects achieve the income levels needed by the current residents?

Should the income limits be adjusted over time once the MHC residents are no longer living in the development?

Option 5: Do not take City action to preserve the MHC, but offer every new protected affordable unit in the City to the MHC residents, eventually freeing up the MHC for redevelopment

- Give qualified MHC residents the first opportunity to rent all new protected affordable units in the City.
- Restrict redevelopment until the park is vacant.

Issues with this approach:

How would the timing for this option work? A limited number of protected affordable units are being created. How could the new projects accommodate all of the residents of a park?

If the MHC was losing tenants over time, would maintenance continue?

This approach reduces the stock of affordable housing in the City overall, unless affordable housing requirements are put on the redevelopment project.

Is this approach legally defensible given recent court decisions?

ATTACHMENT 3

WORKSHEET FOR MANUFACTURED HOUSING COMMUNITIES (MHC) RECOMMENDATIONS

Address/Name of MHC	Option 1 Long-term preservation: buying development rights	Option 2 Long-term preservation: purchase by preservationist	Option 3a Extended preservation through incentives	Option 3b Extended preservation through phased zoning	Option 4 On-site replacement units with assistance	Option 5 Off-site replacement units before redevelopment	Comments
City Code / Regulatory Actions	• Overlay zoning or covenant. • Create fee-in-lieu option (citywide) and/or • Create TDR program..	• Create fee-in-lieu option (citywide).	• Require relocation plan. • Remove nonconforming status.	• Time-limited overlay-zone, followed by up-zone. Upzone may have less affordability requirements than Option 4. • Require relocation plan. • Remove nonconforming status.	• Up-zone with affordability equivalent to manufactured homes. • Require relocation plan. • Provide "right of first opportunity" to rent.	• Restrict redevelopment until park is vacant. • Give MH owners preference in new restricted affordable units in Kenmore. • Require relocation plan	
Direct City Assistance	• Up-front finance fee-in-lieu payment to property owner. • Financial assistance for home rehabilitation	• Financial assistance (grant or loan) for property purchase/ upgrade • Financial assistance for home rehabilitation	• Reduce property owner operating costs (e.g. utility, property tax) • Loans for property upgrades • Financial assistance for home rehabilitation • Relocation assistance	• Financial assistance for home rehabilitation • Relocation assistance	• Relocation assistance	• Relocation assistance	
7031 NE 175th St. Lakewood Villa							
7301 NE 175th St. Inglewood East							
7000 NE 181st St. Lake Terrace (north side)							
7021 NE 181st St. unnamed (south side)							
7614 NE Bothell Wy. Kenmore Village							
6837 NE 182nd St. Lakewood							

ATTACHMENT 4 (a)

Bridgit Baker

Subject: Lakewood Villa

-----Original Message-----
From: Kristen Little [mailto:kristenannlittle@yahoo.com]
Sent: Thursday, March 29, 2018 3:15 PM
To: Lauri Anderson <landerson@kenmorewa.gov>
Subject: Lakewood Villa

Hello,

My name is Kristen Little. I am the daughter of Cynthia Little who lives in the Lakewood Villa mobile home park at address 7031 NE 175 St. #22, Kenmore WA 98028.

I am writing to beg that you please not sell this mobile home park.... my mom is on state disability, she has mental health issues, and this home is all she can (barely) afford..... She will be on the streets if her home is taken away from her.

I beg you not to sell her home.

Best regards,
Kristen Little

ATTACHMENT 4 (b)

Planning Commissioners
City of Kenmore
18120 68th Ave. NE
Kenmore WA 98028

April 9, 2018

Dear Chair Nugent and Members of the City of Kenmore's Planning Commission,

I am responding to the email sent to you by Mr. Beau Harer, on March 21, 2018.

I would like to provide another view of the situation, that perhaps will assist you as you consider the complexities of preserving an array of affordable housing options for the citizens of Kenmore.

Mr. Harer makes some bold assumptions about what the presumed end use would be of manufactured housing communities built in the 1960s. He implies that they were simply a temporary solution and that they would be replaced when no longer practicable. I assume, since they are still in existence, that the community owners continue to consider them a practical business operation. Indeed, given the income generated by the operation of manufactured housing communities, it must be obvious that they are practical, at least from the community owners' perspective, otherwise, they would be long gone. As for the home owners, they too find manufactured home living to be practical, if somewhat precarious. The home owners have pride of ownership – the fulfillment of the American dream – and the ability to upgrade their homes as finances and new styles dictate.

Mr. Harer goes on to state that community owners receive no public benefit from operating these profitable businesses. However, he neglects to mention that many communities, some of his own included, receive favorable loans from Freddie Mac and Fannie Mae – federal tax dollars that come without strings attached, in terms of consumer protections for the vulnerable households who live in these communities (indeed it ought to be noted, that while the federal government is willing to loan money at favorable rates to community owners, no such loan products exist to help home owners purchase their homes, largely because of the insecurity of tenure that comes with living in a manufactured housing community).

While there are no local ordinances requiring manufactured housing community owners to maintain and upgrade their infrastructure (a slumlord ordinance similar to that regulating apartment owners would go a long way to ensuring safe, habitable living conditions), home owners do continue to invest in and upgrade their homes on a regular basis. Although there comes a time when even the home owners wonder if it worth the time, money, and effort involved, since they have no guarantee that the community will even be open in 12 months' time (state law requires a community owner to provide a 12 month notice of closure. HB 1514 (Rep. Robinson) would have required 3 years' notice but the community owners opposed that idea vigorously).

A requirement that community owners upkeep and upgrade their communities as needed, could be met with an opportunity for financially eligible home owners to access weatherization money to repair leaking roofs and other structural defects. There are ways to ensure the long term viability of manufactured housing communities and thus comply with all elements of the Growth Management Plan: preservation of existing neighborhoods, and a variety of housing options for all economic segments of society, to name but a few.

It is also worth noting that there are energy-efficient, low carbon footprint manufactured homes on the market. These homes cost about 35% - 47% of a similarly sized site built home. Kenmore could be a leading light in the preservation of manufactured housing communities with innovative programs to support the replacement of aging homes with these new models.

As you consider the options under review, please note that the Ninth Circuit Court of Appeals, ruled that adoption of a local zoning ordinance is not a takings under either the State or Federal Constitution (see Laurel Park Community LLC, et al v. City of Tumwater, October 29, 2012)(Attached).

In addition, a local zoning ordinance does not restrict the community owners' ability to raise rents, change rules, or otherwise operate their business. They are also able to sell the community whenever they choose. This has been done in Tumwater, without any adverse impact to either the community owners or the home owners.

Furthermore, as Mr. Harer points out, HB 1884 (Rep. Ryu) was a bill that both community owners and home owners supported. However, this bill required nothing of the community owners. It simply allowed the state's relocation assistance funds (money paid into the fund only by home owners when they buy a home in a community) to be used to help someone who has lost their largest asset, their home, to find alternative housing. So if the home owner is lucky maybe there would be enough left (after paying for the removal and disposal of their home) for one month's rent on an apartment, since there will only be a paltry sum, if anything remaining out of their state relocation assistance allowance.

I applaud you for having such a robust public process. There is still some way to go, but the process has been fair and open. There are many experts in the room and available to staff, and the home owners' stories are worth hearing again and again. They own their homes, have invested in them and in the wider community, and desire nothing more than a fair return on their investments.

I would be more than happy to make myself available should any of you have questions or concerns.

Sincerely,

Ishbel Dickens

Ishbel Dickens, J.D.

(former Executive Director of the National Manufactured Home Owners Association).

CC: Debbie Bent and Lauri Anderson, Kenmore City Staff
Association of Manufactured Home Owners (AMHO)

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LAUREL PARK COMMUNITY, LLC, a Washington limited liability company; TUMWATER ESTATES INVESTORS, a California limited partnership; VELKOMMEN MOBILE PARK, LLC, a Washington limited liability company; and MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON, a Washington nonprofit corporation,
Plaintiffs-Appellants,

v.

CITY OF TUMWATER, a municipal corporation,
Defendant-Appellee.

No. 11-35466

D.C. No. 3:09-cv-05312-BHS

OPINION

Appeal from the United States District Court for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted
August 8, 2012—Seattle, Washington

Filed October 29, 2012

Before: John T. Noonan, Susan P. Graber, and Johnnie B. Rawlinson, Circuit Judges.

Opinion by Judge Graber

3.

COUNSEL

Philip A. Talmadge, Talmadge/Fitzpatrick PLLC, Tukwila, Washington, for the plaintiffs-appellants.

Jeffrey S. Myers, Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., Olympia, Washington, for the defendant-appellee.

Daniel A. Himebaugh, Pacific Legal Foundation, Bellevue, Washington, for the amicus curiae.

OPINION

GRABER, Circuit Judge:

Defendant City of Tumwater enacted two ordinances that seek to preserve the existing stock of manufactured home parks within the municipality by limiting the uses of certain properties. Plaintiffs are three of the affected property owners —Laurel Park Community, LLC; Tumwater Estates Investors; and Velkommen Mobile Park, LLC—and a nonprofit entity, Manufactured Housing Communities of Washington. Plaintiffs allege that the ordinances, on their face, violate various constitutional provisions. The district court held that the facial constitutional challenges fail and granted summary judgment to Defendant. On de novo review, *Strategic Diversity, Inc. v. Alchemix Corp.*, 666 F.3d 1197, 1205 (9th Cir. 2012), we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Manufactured Homes*

The term "manufactured homes" describes a type of housing that typically is not constructed at the installation site. *See generally* Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol*, 35 U.C.L.A. L. Rev. 399 (1988). Originally called "mobile homes," early versions were no more than travel trailers hitched to the back of a car. Mobile homes can be moved from one site to another, allowing the owner to change locations without changing housing.

Over time, however, the predominant use of this type of housing began to shift toward a more fixed use. Occupants installed a "mobile" home in a fixed location and lived in it year-round. In 1974, recognizing that these homes were more akin to permanent dwellings than to travel trailers, Congress enacted the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. No. 93-383, 1974 S. 3066, §§ 601-628 (now codified at 42 U.S.C. §§ 5401-5426). That statute authorized the Department of Housing and Urban Development to regulate the construction and safety of mobile homes. In 1980, Congress replaced nearly all references to "mobile home" with "manufactured home." Pub. L. No. 96-399, § 308(c).

As the Supreme Court has noted, "[t]he term 'mobile home' is somewhat misleading." *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992).

> Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved.

Id.; *see also Manufactured Hous. Cmtys. of Wash. v. State*, 13 P.3d 183, 206 (Wash. 2000) (Talmadge, J., dissenting) ("Mobile homes are not mobile. The term is a vestige of earlier times when mobile homes were more like today's recreational vehicles. Today mobile homes are designed to be placed permanently on a pad and maintained there for life." (internal quotation marks omitted)).

The Supreme Court has described the typical arrangement between a mobile home's owner and a mobile home park's owner:

> A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping.

Yee, 503 U.S. at 523; *see also Manufactured Hous.*, 13 P.3d at 206 (Talmadge, J., dissenting) ("In most instances a mobile home owner in a park is required to remove the wheels and anchor the home to the ground in order to facilitate connections with electricity, water and sewerage." (internal quotation marks omitted)).

Given the "site-specific improvements," *Yee*, 503 U.S. at 523, and the fact that "mobile homes are designed to be placed permanently on a pad and maintained there for life," *Manufactured Hous.*, 13 P.3d at 206 (Talmadge, J., dissenting), it is not surprising that the costs of relocating a mobile home are very high. "Once 'planted' and 'plugged in,' [mobile homes] are not easily relocated." *Id.* (internal quotation marks omitted). For example, "[p]hysically moving a double- or triple-wide mobile home involves unsealing; unroofing the roofed-over seams; mechanically separating the sections; disconnecting plumbing and other utilities; removing carports, porches, and similar fixtures; and lifting the home off its foundation or supports." *Id.* (internal quotation marks omitted).

Because they cost less than traditional homes (less even than rental housing in some circumstances), manufactured homes are an attractive option for lower-income and poorer residents. "Mobile home residents are typically poorer than the average rental household, with incomes lower by one-third." *Id.* at 207 (internal quotation marks omitted).

The combination of those factors—the "immobility of mobile homes," *id.* at 206, the resulting high costs of relocation, the fact that mobile home owners typically do not own their pads, and the limited financial resources of many owners of mobile homes—has led to a well-documented problem when the owner of a mobile home park wants to convert the property to a different use:

> The effects on mobile home owners . . . faced with moving because mobile home park owners . . . want to convert a mobile home park to another use can be devastating. A home owner owns the mobile home,

> but only rents the land on which it sits. Closure and conversion of a mobile home park force the owner either to move, or to abandon what may be his most valuable equity investment, a mobile home, to the developer's bulldozer. Displacement from a mobile home park can mean economic ruin for a mobile home owner.
>
> . . . .
>
> . . . [Moreover,] there is a major shortage of space for mobile homes. Thus the owner who needs to rent a lot for his mobile home has no choice but to enter the "park owner's market" in which the demand for space far exceeds the supply of available lots.

Id. at 206-07 (citations and internal quotation marks omitted).

As a result, many states and municipalities have enacted laws aimed at protecting owners of manufactured homes. Those actions, though, often impinge on the property rights of the owners of mobile home parks, sometimes to such a degree that the legislation amounts to a constitutional violation.

In the state of Washington, an average of 5.8 mobile home parks closed every year between 1989 and 2002. That average rose to 14 park closures per year between 2003 and 2008. The number of closures is not surprising, given the high level of residential development during those years. As some of the Plaintiffs here candidly admit, one investment strategy for mobile home parks is to purchase land located in the path of development. The rental income from the mobile home pads provides steady income and, if the land's value rises as development surrounds the park, the park's owner can sell the land or convert it to other, more profitable uses, such as multifamily housing.

The Washington legislature responded to the large number of park closures by enacting, first, the Mobile Home Relocation Assistance Act, Wash. Rev. Code § 59.21, 1989 Wash. Sess. Laws, ch. 201. "When a mobile home park is closed, this law requires the park owner to contribute money toward the tenants' relocation costs." *Guimont v. Clarke*, 854 P.2d 1, 3 (Wash. 1993). The Washington Supreme Court held that "the Act is unduly oppressive and violates substantive due process." *Id.* at 16. The court invalidated the law in its entirety. *Id.* at 16-17.

Next, the Washington legislature enacted a law that "gives mobile home park tenants a right of first refusal when the park owner decides to sell a mobile home park." *Manufactured Hous.*, 13 P.3d at 185 (citing Wash. Rev. Code § 59.23.025 (2000)). The Washington Supreme Court invalidated that law, too, this time holding that "the statutory grant of a right of first refusal to tenants of mobile home parks[ ] amounts to a taking and transfer of private property." *Id.* at 196. Although some protections for owners of mobile homes remain on the books in Washington, they are mostly procedural, such as the requirement that, before closure of a mobile home park, the park's owner must give at least 12 months' notice to all residents of the park. Wash. Rev. Code § 59.21.030.

B. *Tumwater's Ordinances*

Tumwater contains ten manufactured home parks. The parks are located throughout Tumwater, and none appears to border any other park. Three of the parks are very small and do not have a name apart from their respective addresses. The remaining seven are named Laurel Park, Tumwater Mobile Estates, Velkommen, Eagles Landing, Western Plaza, Thunderbird Villa, and Allimor Carriage Estates.

Against the backdrop of increasing closures of manufactured home parks in Washington and the limited constitutionally valid statutory protections, the Tumwater City Council began hearing concerns from residents that some of the owners of Tumwater manufactured home parks had plans to close. Tumwater residents expressed their views at several public meetings. Mobile home owners tended to seek protection from park closures, while park owners tended to emphasize respect for private property and the legal limits on property restrictions.

The City Council ultimately enacted two ordinances. Ordinance No. O2008-027 amended the Tumwater Comprehensive Plan and the Tumwater Zoning Map. Ordinance No. O2008-009 amended the Tumwater City Code. The ordinances create a new Manufactured Home Park land use designation ("MHP") and a new Manufactured Home Park zone district.

The ordinances designate six of the ten existing Manufactured Home Parks—Laurel Park, Tumwater Mobile Estates, Velkommen, Eagles Landing, Western Plaza, and Thunderbird Villa—under the new land use designation and include those properties, and only those properties, as the new Manufactured Home Park zone district. Before the enactment of the ordinances, the zoning code permitted a wide range of uses on the properties, including multi-family residences and other dense types of development. The ordinances restrict those uses in the following relevant ways.

First, the ordinances specify certain "permitted uses," which are allowed as of right: manufactured home parks, one single-family dwelling per lot, parks, trails, open spaces, other recreational uses, family child care homes, and child mini-day care centers. Second, the ordinances specify 11 "conditional uses," which are allowed via a discretionary conditional use permit: churches, wireless communication facilities, cemeteries, child day care centers, schools, neighborhood community centers, neighborhood-oriented commercial centers, emergency communications towers, group foster homes, agriculture, and bed and breakfast establishments. Third, the ordinances permit still other uses if specified criteria are met:

"The City Council may approve the property owner's request for a use exception if the property owner demonstrates a. they do not have reasonable use of their property under the MHP zoning; or b. the uses authorized by the MHP zoning are not economically viable at the property's location."

The stated "intent" of the ordinances is: "The Manufactured Home Park (MHP) zone district is established to promote residential development that is high density, single family in character and developed to offer a choice in land tenancy. The MHP zone is intended to provide sufficient land for manufactured homes in manufactured home parks."

The ordinances include many explanations for the creation of the new land use designation and zone district and the inclusion of existing manufactured home parks in the district. Most relevant here, the ordinances state that applying the new designation and zone district to existing manufactured home parks is consistent with a wide range of goals and policies included in various documents, such as the Tumwater Comprehensive Plan. They also state that:

- "applying the Manufactured Home Park land use designation and zone district to existing manufactured/mobile home parks will help to ensure a sufficient supply of land for these types of uses in the future"

- "manufactured home parks are a source of affordable single family and senior housing in Tumwater," and "protecting manufactured home parks from the pressures of development will help to maintain the existing stock of manufactured housing provided by these 'parks.' "

- "the manufactured/mobile home parks known as Eagles Landing, Laural [sic] Park, Tumwater Mobile Estates, Thunderbird Villa, Velkommen, and Western Plaza are located within residential neighborhoods and currently have residential zoning and are easily recognized as traditional manufactured housing communities."

- "applying the Manufactured Home Park zone to the six traditional mobile/manufactured home parks . . . is consistent with [a stated policy] to support healthy residential neighborhoods which continue to reflect a high degree of pride in ownership or residency" and "is consistent with [a stated policy] to support the stability of established residential neighborhoods"

The ordinances exclude the three small, unnamed parks, in part because "the small size of these three 'parks' does not foster a sense of community or neighborhood, and the owners of these three small 'parks' appear to own all of the dwellings located on the properties which contrasts sharply with the rest of the more traditional mobile/manufactured home parks in Tumwater where the majority of dwellings are not owned by the land owner." The ordinances excluded the seventh named park—Allimor Carriage Estates ("Allimor")—because it "is currently the only mobile/manufactured home park within Tumwater that is zoned General Commercial, the only 'park' that is almost completely surrounded by General Commercial zoning, and the only 'park' that abuts intensive commercial development in the form of commercial strip development and intensive large scale commercial retail including Albertsons, Costco, and Fred Meyer."

C. *Procedural History*

The owners of three of the six newly designated Manufactured Home Parks—Laurel Park, Tumwater Estates, and Velkommen—along with the nonprofit Manufactured Housing Communities of Washington, filed this action in federal district court.[1] Plaintiffs allege that the enactment of the ordinances violated their constitutional rights under several theories. The district court granted summary judgment to Defendant on all claims and entered final judgment. Plaintiffs timely appeal.

DISCUSSION

Although Plaintiffs raised a number of theories before the district court, they have limited their appeal to three claims: (1) a federal takings claim, (2) a state takings claim, and (3) a state substantive due process claim.[2]

A. *Federal Takings Claim*

The Fifth Amendment provides, "nor shall private property be taken for public use, without just compensation." There are two types of "per se" takings: (1) permanent physical invasion of the property, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); and (2) a deprivation of all economically beneficial use of the property, *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015-16 (1992). Plaintiffs do not contend that the ordinances constitute a "per se" taking. They argue, instead, that the ordinances constitute a regulatory taking because the ordinances go "too far." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

[1]Plaintiffs also filed a petition for review with the state administrative agency, alleging certain state-law violations. The agency found that Defendant had violated certain state-law provisions but declined to reach, for lack of jurisdiction, the constitutional issues. Those administrative proceedings are not part of this appeal.

[2]Plaintiffs also argue that the district court abused its discretion by granting a motion to quash certain notices of deposition filed by Plaintiffs. *See Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813 (9th Cir. 2003) (holding that we review for abuse of discretion a district court's decision on a motion to quash). We hold that the district court did not abuse its discretion. The evidence sought is either known to Plaintiffs or is irrelevant to the facial challenges.

[1] As a general rule, zoning laws do not constitute a taking, even though they affect real property interests: "[T]his Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests. Zoning laws are, of course, the classic example, which have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 125 (1978) (citations omitted); *see Pa. Coal*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *see also Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (holding that, in considering a regulatory taking case, "we must remain cognizant that 'government regulation—by definition—involves the adjustment of rights for the public good' " (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)).

[2] Nevertheless, as noted, regulations that go "too far" constitute a taking. Determining whether a regulation goes too far requires a court to engage in "essentially ad hoc, factual inquiries." *Penn Cent.*, 438 U.S. at 124. "[R]egulatory takings challenges are governed by the standards set forth in [*Penn Central*]." *Lingle*, 544 U.S. at 538. "Primary among [the relevant] factors are [1] the economic impact of the regulation on the claimant and, particularly, [2] the extent to which the regulation has interfered with distinct investment-backed expectations. In addition, [3] the character of the governmental action . . . may be relevant in discerning whether a taking has occurred." *Id.* at 538-39 (citation, internal quotation marks, and brackets omitted). "[T]hese three inquiries . . . share a common touchstone. Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Id.* at 539.

At the outset, we note that Plaintiffs bring a *facial* challenge. It is not clear that a facial challenge can be made under

Penn Central. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118 & n.32 (9th Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 2455 (2011). As we did in *Guggenheim*, we will "assume, without deciding, that a facial challenge can be made under *Penn Central*." *Id.* at 1118. We turn, then, to the three *Penn Central* factors.

1. *"Economic Impact of the Regulation on the Claimant"*

[3] Plaintiffs offer very little evidence of economic effect resulting from enactment of the ordinances. At best, Plaintiffs have presented information that reflects an economic loss of less than 15% with respect to one of the three Plaintiff properties and *no effect* on the other two Plaintiff properties or the properties of the remaining affected MHP parks.[3] Although there is no precise minimum threshold, Plaintiffs' evidence is of very little persuasive value in the context of a federal takings challenge. *See, e.g.*, *Cienega Gardens v. United States*, 331 F.3d 1319, 1343 (Fed. Cir. 2003) (holding that a taking occurred when a regulation effected a 96% loss of return on equity). A small decrease in value, for only one affected property, falls comfortably within the range of permissible land-use regulations that fall far short of a constitutional taking. *See Penn Cent.*, 438 U.S. at 125 ("[T]his Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests."). The Supreme Court cases "uniformly reject the proposition that diminution in property value, standing alone, can establish a 'taking,' see *Euclid v.*

[3]The one Plaintiff property that showed a decrease in value was Velkommen. Various reports and assessments—operating under different background assumptions—valued the park: One report assigned a pre-ordinance value of $2.7M and a post-ordinance value of $2.4M (11.1% decrease); one assessment assigned a pre-ordinance value of $1.8M and a post-ordinance value of $1.6M (11.1% decrease); and a final report assigned a pre-ordinance value of $1.675M and a post-ordinance value of $1.45M (13.4% decrease). The other two Plaintiff properties showed no change pre-ordinance and post-ordinance (with appraised values of $6.3M and $4.37M, respectively).

Ambler Realty Co., 272 U.S. 365 (1926) (75% diminution in value caused by zoning law); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (87 1/2% diminution in value)." *Penn Central*, 438 U.S. at 131.

[4] In sum, the minimal economic effect of the ordinances does not support a takings claim.

2. *"Distinct Investment-backed Expectations"*

[5] When Plaintiffs bought the properties, they had the expectation that, when they desired or when market conditions made it attractive, they could convert to a more profitable use, such as multi-family housing or housing developments. The zoning laws previously allowed such development, and the ordinances now foreclose that option (at least until Plaintiffs show that there are no economically viable options available under the other uses expressly permitted by the ordinances). But those facts are no different than the assertions that could be made by property owners adversely affected by any zoning law. As the Supreme Court wrote in *Penn Central*, "the submission that [the plaintiffs] may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable. Were this the rule, this Court would have erred [in many of its previous takings cases]." *Id.* at 130. Of most importance, Plaintiffs retain the ability to continue operating the properties as manufactured home parks. "So the law does not interfere with what must be regarded as [Plaintiffs'] primary expectation concerning the use of the parcel." *Id.* at 136. In other words, although the ordinances affected one of Plaintiffs' expectations—that at some indefinite time in the future they could convert their properties to some other specific uses —the ordinances did not affect Plaintiffs' "primary expectation."

In *Guggenheim*, we held that " '[d]istinct investment-backed expectations' implies reasonable probability, like expecting rent to be paid, not starry eyed hope of winning the jackpot if the law changes." 638 F.3d at 1120. In our view, the ordinances at issue here fall between the two poles used in that example. Plaintiffs' expectation of converting their properties is speculative to a degree, because it depends on future events (chief among them, market forces making conversion economically attractive). But it is not as speculative as "winning the jackpot if the law changes," because it depends only on unknown future economic trends, not an outright change in law. Our clarification later in the same paragraph provides a means of assessing Plaintiffs' expectations here: "Speculative possibilities of windfalls do not amount to 'distinct investment-backed expectations,' unless they are shown to be probable enough materially to affect the price." *Id.* at 1120-21. As discussed above, the speculative possibility of converting the properties to another use had *little to no effect* on price.

[6] This factor, too, fails to support a takings claim.

3. *"The Character of the Governmental Action"*

"[T]he character of the governmental action—for instance whether it amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good—may be relevant in discerning whether a taking has occurred." *Lingle*, 544 U.S. at 539 (internal quotation marks omitted). The government generally cannot " 'forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' " *Id.* at 537 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

[7] Although it is a close call, we agree with Plaintiffs that the character of the governmental action here slightly favors their takings claim. The intent and effect of the ordinances are to require only Plaintiffs and the other affected owners of

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manufactured home parks to continue to provide the public benefit (manufactured home parks), when the benefit could be distributed more widely (for example, by providing relocation assistance to owners of manufactured homes or a larger MHP zone district). The ordinances do allow many other uses but, at least at the moment, those other uses do not appear to provide truly economically attractive alternatives to the existing manufactured home parks. As a practical matter, Plaintiffs must continue to use their properties as manufactured home parks. Indeed, that was the intended effect of the ordinances.

[8] That analysis goes only so far, however. Unlike in other cases where the challenged law *required* continued operation of an existing use, *e.g.*, *Cienega Gardens*, 331 F.3d at 1338-39, the ordinances here do not *force* Plaintiffs to continue operating their properties as manufactured home parks. *See Lingle*, 544 U.S. at 537 (holding that the government cannot "forc[e] some people alone to bear public burdens"). As just a few examples, Plaintiffs could decide to close their parks, to convert their properties to other allowed uses, or to sell the properties, and the ordinances have no effect on those possibilities.

4. *Conclusion*

[9] Because the first two factors weigh strongly against a takings claim and the third factor weighs only slightly in favor of a takings claim, we conclude that, on their face, the ordinances do not constitute a taking under the Fifth and Fourteenth Amendments. *See also Guggenheim*, 638 F.3d at 1120 (holding that the first two factors are the "primary" factors to consider; the character of the governmental action is not on equal footing).

B. *State Takings Claim*

Plaintiffs next argue that, even if the ordinances do not constitute a taking under the Federal Constitution, the ordinances

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nevertheless effect a taking under the state constitution.[4] Article I, section 16 of the Washington Constitution provides, in relevant part: "No private property shall be taken or damaged for public or private use without just compensation having been first made . . . ."

Commentators have asserted that the Washington Supreme Court cases that interpret that provision are confusing and that discerning the applicable analytical framework is difficult. Roger D. Wynne, *The Path Out of Washington's Takings Quagmire: The Case for Adopting the Federal Takings Analysis*, 86 Wash. L. Rev. 125 (2011); Jill M. Teutsch, Comment, *Taking Issue with Takings: Has the Washington State Supreme Court Gone Too Far?*, 66 Wash. L. Rev. 545 (1991); Richard L. Settle, *Regulatory Taking Doctrine in Washington: Now You See It, Now You Don't*, 12 U. Puget Sound L. Rev. 339 (1989); *see also Guimont v. City of Seattle*, 896 P.2d 70, 75-76 (Wash. Ct. App. 1995) (describing the doctrine as "the complex, confusing and often-ethereal realm of theoretical law that has developed in Washington under the taking clause"). Quagmire or not, we need not wade far into this area of Washington law, because Plaintiffs advance only two specific arguments—both leaning heavily on the Washington Supreme Court's decision in *Manufactured Housing*—concerning state takings law. We turn to that case.

[10] In *Manufactured Housing*, 13 P.3d at 185, the Washington Supreme Court considered the constitutionality of a state law that "g[ave] qualified tenants a right of first refusal to purchase a mobile home park."[5] The court held that "a right

[4]The district court did not analyze this issue. Because this is a pure issue of law that the parties have briefed fully, we decide it on the merits. *Bibeau v. Pac. Nw. Research Found. Inc.*, 188 F.3d 1105, 1111 n.5 (9th Cir. 1999).

[5]The court described the act as follows:

> To exercise a right of first refusal, the tenants must organize into a "qualified tenant organization" and give the park owner

of first refusal, even one created by statute, can create an interest in property." *Id.* at 192. The court reasoned that "[a] right of first refusal to purchase is a valuable prerogative, limiting the owner's right to freely dispose of his property by compelling him to offer it first to the party who has the first right to buy." *Id.* (internal quotation marks omitted). Citing a treatise, the court concluded that "the right to grant first refusal is a part of 'the bundle of sticks' which the *owner* enjoys as a vested incident of ownership." *Id.* at 193 (footnote omitted). "Property is not one single right, but is composed of several distinct rights, which each may be subject to regulation. The right of property includes four particulars: (1) right of occupation; (2) right of excluding others; (3) right of disposition, or the right of transfer in the integral right to other persons; (4) right of transmission." *Id.* (internal quotation marks and brackets omitted). Accordingly, "the statute deprives park owners of a fundamental attribute of ownership." *Id.* at 194; *see also id.* ("The instant case falls within the rule that would generally find a taking where a regulation deprives the owner of a fundamental attribute of property ownership.").

> written notice of "a present and continuing desire to purchase the mobile home park." Once the park owner has received such notice, the park owner must notify the tenants of any agreement to sell the park to a third party, as well as disclose the agreement's terms. If the park owner fails to properly notify the qualified tenant organization, a pending third party sale is voidable.
>
> Upon receiving proper notice, the tenants have 30 days in which to pay the park owner two percent of the third party's agreed purchase price and to tender a purchase and sale agreement as financially favorable as the agreement between the owner and the third party. If the tenants meet these requirements within the 30-day period, the park owner must sell them the park. If, however, the tenants fail to meet these requirements or if, in the case of seller financing, the owner determines selling the park to the tenants would create a greater financial risk than selling to the third party, the owner may proceed with the sale to the third party.

Manufactured Hous., 13 P.3d at 185 (citations and footnotes omitted).

[11] The court held, additionally, that "we are persuaded that a taking has occurred in this case not only because an owner is deprived of a fundamental attribute of ownership, but also because this property right is statutorily *transferred*" to the park residents, who can exercise the right of first refusal. *Id.* "[T]he actual effect of [the statute] is more closely akin to the exercise of eminent domain . . . because the property right is not only taken, but it is statutorily transferred to a private party for an alleged public use." *Id.*

[12] Plaintiffs first argue that the ordinances have destroyed one of the sticks in the bundle representing a fundamental property right, by depriving the parks' owners of the right to dispose of their property as they choose and effectively conferring control of that right on the tenants. We disagree. As an initial matter, the ordinances here do not at all limit the owners' ability freely to *dispose* of the property. Indeed, one owner appears to have sold his property.

[13] The ordinances restrict to some extent the owners' ability to *use* their properties, because they can no longer build multi-family housing, for example. But imposing *use* restrictions on property—as distinct from restrictions on alienation—is the essence of zoning. The Washington Supreme Court consistently has defined the fundamental attributes of property rights by reference to rights that do *not* include the free use of the property. *See id.* at 193 (identifying the fundamental rights of occupation, excluding others, disposition, and transmission); *see also Guimont*, 854 P.2d at 10 ("[T]he court must first ask whether the regulation destroys or derogates any fundamental attribute of property ownership: including the right to possess; to exclude others; or to dispose of property."); *Presbytery of Seattle v. King County*, 787 P.2d 907, 912 (Wash. 1990) ("[T]he court should ask whether the regulation destroys one or more of the fundamental attributes of ownership—the right to possess, to exclude others and to dispose of property."). Indeed, concerning *use*, the court has defined a fundamental attribute of property only with respect to being able to make *some economically viable use* of the property. *See, e.g.*, *Guimont*, 854 P.2d at 10 ("[A]nother 'fundamental attribute of property' appears to be the right to make *some* economically viable use of the property."). Plaintiffs do not argue, of course, that the ordinances deprive them of all economically viable uses; they are instead being encouraged to continue the economically viable use that they freely chose. In sum, the ordinances do not destroy or limit any fundamental property right as defined by the Washington Supreme Court.

Plaintiffs' other argument is that a taking has occurred because some property right has been transferred to the parks' residents. As an initial matter, it is unclear whether this alternative argument is viable. The court's discussion of the statutory transfer issue in *Manufactured Housing* appears to be premised on its finding of a fundamental property right: "[W]e are persuaded that a taking has occurred in this case not only because an owner is deprived of a *fundamental* attribute of ownership, but also because *this* property right is statutorily *transferred*." 13 P.3d at 194 (first emphasis added). In any event, Plaintiffs' argument fails on its own terms.

In *Manufactured Housing*, the statute granted the right of first refusal *to the parks' residents*. Accordingly, the residents —and only the residents—could exercise that valuable property right. Here, the residents have no ability—now or in the future—to require the parks' owners to perform any act. Nothing prohibits the owners from converting their properties to one of the many permitted uses under the ordinances (such as a cemetery, bed and breakfast, day care center, recreational facility, or single-family dwelling) or from selling to a third party. If a park owner so chose, the residents would be powerless to affect that decision.

[14] We therefore hold that the ordinances do not constitute a taking under the Washington Constitution.

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C. *State Substantive Due Process Claim*

[15] Finally, Plaintiffs argue that the ordinances violate their state substantive due process rights. Article I, section 3 of the Washington Constitution states: "No person shall be deprived of life, liberty, or property, without due process of law."

> To determine whether the regulation violates due process, the court should engage in the classic 3-prong due process test and ask: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the land owner. In other words, 1) there must be a public problem or "evil," 2) the regulation must tend to solve this problem, and 3) the regulation must not be unduly oppressive upon the person regulated. The third inquiry will usually be the difficult and determinative one.

Presbytery, 787 P.2d at 913 (footnotes and some internal quotation marks omitted).

The first prong is "whether the regulation is aimed at achieving a legitimate public purpose." *Id.* The stated "intent" of the ordinances is: "The Manufactured Home Park zone district is established to promote residential development that is high density, single family in character and developed to offer a choice in land tenancy. The MHP zone is intended to provide sufficient land for manufactured homes in manufactured home parks." That stated purpose is quintessentially legitimate: the organization of land uses to promote the public goals of "high density, single family" development and a "choice in land tenancy." This prong is easily met. *See, e.g.*, *Guimont*, 854 P.2d at 14 (concluding, with little discussion, that "aid[ing] mobile home owners with relocation expenses when a mobile home park is closed" is a legitimate public purpose).

The second prong is "whether [the law] uses means that are reasonably necessary to achieve that purpose." *Presbytery*, 787 P.2d at 913. In *Guimont*, the Washington Supreme Court held:

> Certainly, providing mobile home owners with relocation assistance would be a reasonably necessary step in achieving the Act's purpose. The more difficult issue here is whether it is reasonably necessary to require the assistance to be paid by the closing park owner. To assist in determining whether these means used by the Act are reasonably necessary in all regards, we must turn to the third due process question, that of undue oppression.

854 P.2d at 14.

[16] A similar analysis applies here. The zoning changes encourage the continued provision of manufactured home parks, which is "[c]ertainly" a reasonably necessary step in achieving the ordinances' purpose. "The more difficult issue here is whether it is reasonably necessary to require" that development to be provided only by some of the present-day park owners. *Id.* Plaintiffs have a point that the provision of certain types of housing may be considered a burden that should be borne more generally by the public. As in *Guimont*, the answer to the reasonableness of the law depends on "the third due process question, that of undue oppression." *Id.*; *see also Presbytery*, 787 P.2d at 913 ("The third inquiry will usually be the difficult and determinative one.").

> We determine if a statute is unduly oppressive by examining a number of nonexclusive factors to weigh the fairness of the burden being placed on the property owner:

> On the public's side, the seriousness of the public problem, the extent to which the owner's land contributes to it, the degree to which the proposed regulation solves it and the feasibility of less oppressive solutions would all be relevant. On the owner's side, the amount and percentage of value loss, the extent of remaining uses, past, present and future uses, temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation and how feasible it is for the owner to alter present or currently planned uses.

Guimont, 854 P.2d at 14-15 (internal quotation marks omitted).

[17] Here, we conclude that the two most important factors are the fact that the present-day effect on Plaintiffs' property values is little to none and the fact that Plaintiffs may continue to use their properties as they have been used for decades. It is true that Tumwater's solution is not necessarily the most efficient and that it concentrates the economic burden on a relatively small number of property owners. It is also true that the regulation is permanent (at least until future speculative amendments). But, when all is said and done, the amount of harm is very small or nonexistent. In each case described by Plaintiffs in which the Washington Supreme Court has found a due process violation, the amount of measurable harm has been great. *See Guimont*, 854 P.2d at 15-16 (concluding that the relocation-assistance statute violated substantive due process because it imposed a fee of $7,500 per pad on a park owner who wished to close, which would amount to $750,000 for a park with 100 pads); *Sintra, Inc. v. City of Seattle*, 829 P.2d 765, 776-77 (Wash. 1992) (holding that imposition of a $218,000 fee to develop a $670,000 property was unduly oppressive).

[18] In this regard, we consider it important that Plaintiffs have chosen to raise a *facial* challenge. If a particular Plaintiff could show a significant diminution in value of a particular parcel of property, then the weighing of the factors might be different. As it stands, however, the fact that Plaintiffs have presented no evidence of diminution of value, apart from one park that suffered a loss in value of less than 15%, severely undermines their claim that, *on their face*, the ordinances are unduly oppressive. It would be odd to conclude that an ordinance that had no economic effect on most properties was oppressive at all, let alone unduly oppressive. For those reasons, we hold that the ordinances do not violate Washington principles of substantive due process.

Under the heading of substantive due process, Plaintiffs also argue that the ordinance is illegal "spot zoning": "that an individual piece of property was singled out for zoning incompatible with neighboring property." *Buckles v. King County*, 191 F.3d 1127, 1137 (9th Cir. 1999).[6] As an initial matter, it is unclear whether a party can raise a "spot zoning" challenge in the context of a facial challenge to ordinances; we have found no Washington cases that involve a *facial* "spot zoning" challenge. We assume, without deciding, that a facial "spot zoning" challenge is viable.

[19] "Spot zoning has been consistently defined to be zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan." *Save Our Rural Env't v. Snohomish County*, 662 P.2d 816, 819 (Wash. 1983). There is no "hard and fast rule that all spot zoning is illegal." *Id.* "[T]he main inquiry of the court is whether the zoning action bears a substantial rela-

[6]"Spot zoning" "is variously characterized as a substantive due process violation, a taking, or even an equal protection violation; spot zoning does not neatly fit into one category." *Buckles*, 191 F.3d at 1137. In the absence of any objection, we accept, for purposes of analysis, Plaintiffs' characterization of their spot zoning claim.

tionship to the general welfare of the affected community." *Id.* For all the reasons discussed above, there is little doubt that the ordinances bear a substantial relationship to the general welfare of the community. Other than the original Washington "spot zoning" decision in 1969, *Smith v. Skagit County*, 453 P.2d 832 (Wash. 1969), in which the court held that placing an aluminum processing plant on an island constituted illegal spot zoning, Plaintiffs cite no case in which the Washington courts have found illegal spot zoning. *See Save Our Rural Env't*, 662 P.2d at 819 (holding that no illegal spot zoning occurred where a new "business park zoning classification provides a flexible means to broaden the industrial base of the region and to produce energy and travel time savings for employees"); *Bassani v. Bd. of Cnty. Comm'rs*, 853 P.2d 945, 951 (Wash. Ct. App. 1993) (holding that there was no illegal spot zoning where the zoning was "generally consistent" with the relevant plans and was "good for the county, and good for one of the county's major employers"). We thus reject Plaintiffs' spot zoning challenge.

CONCLUSION

Plaintiffs cannot establish that the Tumwater ordinances, on their face, effect a taking or constitute undue oppression. The most fundamental reason why that is so is that the enactment of the ordinances had nearly no effect on the value of their properties. They can continue to use the properties just as they have chosen to do for years; the new zoning ordinances allow many alternative uses; and the new zoning ordinances contain a "safety valve" pursuant to which Plaintiffs may pursue other uses if the presently authorized uses are not economically viable.

AFFIRMED.

ATTACHMENT 4 (c)

April 10, 2018

To: Laurie Anderson, City of Kenmore City Planner

From: Christine Suzuki

RE: Manufactured Homes in Kenmore

Hi Laurie,

Please forward the following comments/suggestions to the planning committee for their review:

*Kenmore should be a place for ALL people, including middle class, upper class, low income, fixed income, seniors, families and young workers.

*People live in different types of housing depending on their stage in life.

*Young people usually live in apartments or condos which are inherently high density

*As people advance in their careers, they get married, have families and then they move out of the city to the suburbs into single family residential housing which is the lowest density

*At a certain point, the children grow up and move out and the parents look at downsizing. They usually want to move into a space that has at least 3 bedrooms and if possible all one level. They start thinking about the next 15 years and want to purchase something that they can live in throughout retirement. They usually either opt for a townhouse (housing that is attached to another house sharing the land), a large condo, or a manufactured home either in a park or on a small piece of land. Both the town house and the manufactured home options would be considered mid density, less dense than apartments by definitely more dense than single family homes.

*At retirement, people have stopped working, they are on fixed incomes. If they have not already done so, retirees are looking for housing that they can afford and still be able to buy food, housing that is all one level, housing that still allows for their independence, housing that they want to live in for the rest of their lives. The choices they make are the same as above, mid density.

*Age people age, they may need help walking, cooking, etc. Many people move into Adult Family Homes, which are privately owned homes in residential neighborhoods. Each adult family home can accommodate up to 8 clients. Housing eight households on one piece of residential property is similar in density to manufactured home parks, mid density.

*Sometimes health issues require full time assisted living facilities with on staff nurses & doctors. Facilities such as Foss in Greenwood area of Seattle are large facilities and are often located in residential neighborhoods. This is high density living in low density neighborhoods = mid density?

*Of the above household stages four of the six are MID DENSITY yet the city of Kenmore is comprised almost exclusively of low density residential or high density apartment housing, excluding a good portion of the residents that are older than 50 or on fixed incomes who need or want to live in mid density housing.

*At this point in time, Kenmore should have 3 plans, plan a for the immediate protection of mid density housing. Plan b for the long term creation and preservation of mid density housing and Plan c for the transition from the plan a to plan b.

*Zoning is one way to accomplish change. 1) Restructure all residential zoning to allow duplexes, town homes, adult family homes, mother in law apartments and back yard cottages. Encourage creation/development of this type of housing through tax incentives. 2) Create a permanent zoning overlay over existing mfh parks protecting the parks from development. 3) Create single small plots that for manufactured homes (see below)

*City planning determines roads and the utilities that go into the roads, through the roads, the city determines areas (downtown core, industrial, residential neighborhoods, business centers.) The city provides water sewer and electrical to businesses and home owners. The city should create small residential plots of land that are serviced with electricity, water and sewer from the street and sell the land for specifically manufactured home placement. The city would bill the homeowners for utilities same as they bill all other residents/businesses. This would create a permanent long term solution for residents who need mid density housing.

Thanks for listening to my comments.

Christine Suzuki

Christine Suzuki – christine@christinesuzuki.com