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VIA HAND DELIVERY

Spokane County Planning Commission
c/o Scott Chesney
Director of Planning
Spokane County
1116 West Broadway Avenue
Spokane, WA 99260

Re: Comments Regarding the Development of Regulations Under ZTA-01-23

Dear Scott:

I am writing regarding the draft provisions currently under consideration by the Spokane County Planning Commission related to the above-referenced planning file number, and specifically the one-mile buffers proposed for urban growth areas, churches, cemeteries and schools, which are ostensibly used as a noise abatement mechanism related to the use of shotguns. There are two problems with this approaching noise abatement through the use of uniform buffers. First, the one-mile distance is an arbitrary solution that is not based upon actual identified impacts, and therefore unlawful under Washington law. And second, Spokane County's code already contains an exemption from noise abatement for "sounds created by the discharge of firearms on authorized shooting ranges." SCC 6.12.020(b)(2). This code is consistent with the noise standards developed by the Washington State Department of Ecology at WAC 173-60-050.

1. Adopting A One-Mile Buffer Is Arbitrary And Not Allowed Under Washington Law.

From a regulatory perspective, noise is very difficult to measure and a one-size-fits-all mechanism does not produce equitable solutions. The transmission of noise is affected by many conditions, including: topography, prevailing weather patterns, temperature and humidity,

presence of trees and other vegetation, and barometric pressure. Each site is unique, and, as such, the impacts should be assessed on a site specific review at time of permit application, where the staff and/or the hearing examiner can require a noise study under the substantive authority of the State Environmental Policy Act (Chapter 43.21C RCW).

In order to truly understand the impacts directly attributable to the development of a gun club, site specific analysis must be performed. RCW 82.02.020 is a statutory prohibition on municipalities from imposing direct or indirect taxes, fees, or charges on development, and is intended to stop the imposition of general social costs on developers, while at the same time allowing the continued imposition of costs that are directly attributable to the development. *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wash.App. 937 (2010). RCW 82.02.020 and the Washington case law interpreting it generally prohibit the imposition of a regulation or condition on development that is not reasonably necessary as a direct result of the development. And any condition imposed must be "roughly proportionate" to the impact of the development. *Isla Verde Int'l Holdings v. City of Camas*, 146 Wn.2d 740 (2002); *Citizens' alliance for Property Rights v. Sims*, 145 Wn.App. 649 (2008) (while local governments have authority to adopt regulations and withhold plat approval if conditions for development have not been satisfied, such conditions are allowed only where the purpose is to mitigate problems caused by particular development); *United Development Corp. v. City of Mill Creek*, 106 Wn.App. 681 (2001) (City could not require developer, whose development would have no effect upon drainage at the adjacent boulevard, to make frontage improvements for drainage); *Detray v. City of Lacey*, 132 Wn.App. 1008 (2006) (City made no effort to show whether alleged increase in pedestrian and bike traffic from development would be nominal or significant, or that traffic from development would somehow increase need for widening of already deficient road); *Larry Cobb, et al. v. Snohomish County*, 64 Wn.App. 451 (1991) (court ruled the county could not require traffic impact mitigation because the development contributed traffic only to the portion of the intersection that operated at LOS C and their development code did not require impacts to LOS C intersections to be mitigated); *Lance Burton v. Clark County*, 91 Wn.App. 505 (1998) (court disallowed condition requiring developer to build a road that would eventually connect to another road, asserting it did not solve the identified public problem because the record did not furnish a basis for inferring whether the connection would occur in the foreseeable future).

Moreover, development regulations and exactions must bear a nexus between the identified problem and a legitimate government interest, and be roughly proportionate to the identified problem. For example, in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the United States Supreme Court reviewed a regulation under which the California Coastal Commission (the "CCC") required that an offer to dedicate a lateral public easement along the Nollans' beachfront lot be recorded on the chain of title to the property as a condition of approval of a permit to demolish an existing bungalow and replace it with a three-bedroom house. The Coastal Commission had asserted that the public-easement condition was imposed to promote the legitimate state interest of diminishing the "blockage of the view of the ocean" caused by construction of the larger house. The Court held that in evaluating such claims, it must be determined whether an "essential nexus" exists between a legitimate state interest and the

permit condition. The Supreme Court ruled that a requirement by the CCC was a taking in violation of the Takings Clause of the Fifth Amendment, as incorporated against the states by the Fourteenth Amendment.

In addition, *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the owner and operator of a plumbing and electrical supply in the city of Tigard, Oregon, applied for a permit to expand the store and pave the parking lot of her store. The city planning commission granted conditional approval, dependent on Dolan dedicating land to a public greenway along an adjacent creek, and developing a pedestrian and bicycle pathway in order to relieve traffic congestion. The case was appealed all the way to the Supreme Court of the United States. The Supreme Court overturned the state Land Use Board of Appeals and the Oregon appellate courts, holding that a government agency may not require a person to surrender constitutional rights in exchange for discretionary benefits, where the property sought has little or no relationship to the benefit conferred. A two-prong test was applied: Whether there is an "essential nexus" between the permit conditions and legitimate state interest, and whether the degree of the exactions required by the permit condition bears the required relationship to the projected impact of the proposed development. The Court held that the first condition had been satisfied, but that the City failed to make an individualized determination that the required dedications are related, in both nature and extent, to the proposed impact. Further, the Court held that the requirement for a *public greenway* (as opposed to a private one, to which Dolan would retain other rights of property owners, such as the right of exclusive access), was excessive, and that the City failed to meet its burden of establishing that the proposed pathway was necessary to offset the increased traffic which would be caused by the proposed expansion.

The proposal to use a standardized one-mile buffer to mitigate noise does not attempt to understand the actual impacts directly attributable to the siting of a gun club at a particular location, nor did any of the proponents of such a measure include any specific justification or analysis to justify its arbitrary application. As such, it is unlawful under RCW 82.02.020. Furthermore, there is no obvious "nexus" between the noise of shotguns and the proposed one-mile buffer solution, and there is no evidence in the record that such a solution is "roughly proportionate" to the impact being mitigated. Instead, a site-specific analysis of the true impacts from a putative project on a specific site should be analyzed in the context of a conditional use permit by the planning staff and the hearing examiner, where either could require a noise study to accurately understand how to equitably mitigate any impacts.

2. Adopting One Mile Buffer Would Be Inconsistent With Existing County Code.

Spokane County cannot adopt noise mitigation related to gun clubs because its existing noise ordinance specifically exempts "authorized shooting ranges" from regulation. Washington law (WAC 173-60-050) and Spokane County's code (SCC 6.12.020(b)(2)) specifically exempts "sounds created by the discharge of firearms on authorized shooting ranges" from regulation. In 1990, Spokane County adopted the standards of WAC 173-60-050 via Resolution 90-0667 and Resolution 90-0638. Thus, adopting a standard requiring an "authorized shooting range" to be

located one mile from urban growth areas, churches, cemeteries and schools promotes a noise abatement mechanism that directly contradicts, and creates an internal conflict with, the County's current code.

Please include these comments in the Planning Commission file for the above-referenced matter, and thank you for the opportunity to provide comment.

Very Truly,

A handwritten signature in black ink, appearing to read "T. Hume". The signature is fluid and cursive, with a long horizontal stroke at the end.

TAUDD A. HUME
WITHERSPOON BRAJCICH MCPHEE, PLLC