11/5/19 cc'd = Council Orjiako Wiser Cook

November 5, 2019 FOR THE PUBLIC RECORD

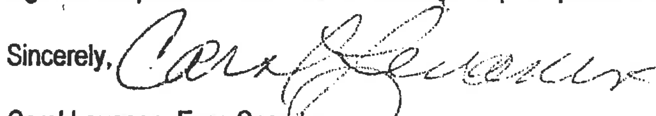
Dear Councilors,

June 21, 2019 Knick v Township of Scott, Pennsylvania, Supreme Court of the United States **case # 17-647, Justice Roberts** writes concerning property rights. Rose Mary Knicks was challenging an ordinance that allowed the public on her property. He discussed **United States v Clarke,** Inverse Condemnation as a "cause of action against a governmental defendant to recover the value of property which had been taken in fact by the governmental defendant.. "Inverse condemnation stated in contrast to direct condemnation, in which the government initiates proceeding to acquire title... every other State besides Ohio, provides a state inverse condemnation action. In the Williamson County case a property developer brought a takings claim under &1983 against a zoning board that had rejected the developer's proposal for a new subdivision. The decision states, "a property owner has claim for a violation of the Takings Clause as soon as a government takes his property for pubic use without paying for it...... The Clause provides: Nor shall private property be taken for public use, without just compensation" It does not say: Nor shall private property be taken for public use, without an available procedure that will result in compensation." If a local government takes private property without paying for it, that government has violated the Fifth Amendment." The property owner many sue the government at that time in federal court for the deprivation of a right secured by the Constitution. The availability of any particular compensation remedy, such as an inverse condemnation claim under state law cannot infringe or restrict the property owner's federal constitutional claim.." In San Diego Gas & Elec. Co. v San Diego, Justice Brennan explained that "once there is a taking, compensation must be awarded because as soon as private property had been taken, whether through formal condemnation proceedings, occupancy, physical invasion or **regulation,** the landowner has already suffered a constitutional violation".

The Transcript of Proceedings before the Honorable Edwin Poyfair, **on February 21, 1997 case 96-2-00080-2,** describe the result of the extreme downzoning by the 1994 Clark County Comprehensive Plan and his purpose for his ruling. He states, "The Court, in reviewing the Growth management Act, specifically RCW 36.70A notes that this Court pursuant to 36.70A.300 has jurisdiction based on the petitions that have been filed. Certainly the Growth Management Hearing Board is not above the law. They must follow that which is statutory, in fact, the GMA is the genesis for their existence. As I look, after reviewing, it appears that the Western Growth Management Hearings Board proceeded with an end in sight and not with the idea of developing the factors that would accomplish that end. My impression and my opinion and my decision is that the Hearing Board did not follow the mandate that the statute set forth. Specifically, there are determinations of definitions regarding agricultural land and forest land. There are further explanations as to what must be included in each one of those classification. When I see the statute that indicates forest land means land primarily devoted to growing trees for long term commercial timber products, when it goes on to say what factors shall be considered, the proximity of the land to urban, suburban and rural settlements, surrounding parcel size and compatibility of land uses, long term economic conditions that affect the ability to manage for timber products and the availability of public facilities and then couple that with what long term commercial significance means, as so defied in RCW 36.70A.030, **I find that the mark has been missed and missed substantially**.....and I'm speaking again as relates to the concerned citizens' case specifically the Achen matter. I believe that it is appropriate for them to revisit the EIS... **But I think, based on what I'm seeing now, that it was tantamount, to and could be classified as a taking. I think this is a real concern and that's something that I do not wish to see and that's the reason, that is again part of the reason for the** remand.

Clark County did it wrong in 1994 by not following the law. The county must make corrections to the Plan or suffer the legal consequences. Staff cannot continue to push policies through that are not in the best interest of the citizens.

Sincerely,



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