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May 4, 2021

VIA E-MAIL
(Sen.KayseJama@oregonlegislature.gov)

Senator Kayse Jama, Chairman

VIA E-MAIL
(sen.DennisLinthicum@oregonlegislature.gov)

Senator Dennis Linthicum, Vice Chairman

VIA E-MAIL
(Sen.DickAnderson@oregonlegislature.gov)

Senator Dick Anderson, Member

VIA E-MAIL
(Sen.JeffGolden@oregonlegislature.gov)

Senator Jeff Golden, Member

VIA E-MAIL
(Sen.DebPatterson@oregonlegislature.gov)

Senator Deb Patterson, Member

Re: Opposition to HB 2364

Dear Senator Jama and Honorable Committee Members:

This firm represents Commonwealth Real Estate Services, Inc. (known as "Commonwealth"). Commonwealth manages 90 manufactured home communities and over 7,000sites throughout the State of Oregon. In addition, Commonwealth has a park brokerage business and has been involved in hundreds of transactions involving the purchase and sale of manufactured dwelling parks in Oregon.

HB 2364 would significantly modify ORS 90.842, et seq., better known as the "opportunity to purchase" law. This law allows park residents an equal and fair opportunity to compete to purchase parks. Nothing in the law has been problematic for park residents in any respect. There is no evidence that park owners are skirting their obligations, or failing to comply with ORS 90.842, et seq.. In fact, many communities have been sold to tenant associations since it's passage. Oregon park owner groups such as OPOA and MHCO have educated and guided park owners as to their compliance obligations, though there will always be the rare "one off"

situation which is hardly a basis for the volume and scope of changes proposed in HB 2364. Existing law allows the residents an adequate remedy; injunctive relief and actual damages or twice the rent, whichever is greater.No evidence has been submitted that these remedies are insufficient. **As such, HB 2364 is a solution in search of a problem.**

Since the mid-1980s, a group of park owners and residents (often including manufactured home lenders and county tax collectors) has met every two years. They were known as the "park legislative coalition;" their purpose was to discuss – and if possible agree upon – consensus legislation for matters affecting manufactured dwelling parks. For decades this has included any changes to ORS Chapter 90. After five meetings during 2020, the proponents of HB 2364 unilaterally disbanded the Coalition; they then refused to review, discuss or consider any input from park owners in the preparation of this bill.

ORS 90.842, et seq. was originally negotiated within the Park coalition group prior to the 2013 legislative session. The park owners and tenants worked for months to reach a deal as to the substance of this law; the balance struck was delicate, but agreeable to both sides. Each gave up something it wanted in order to reach agreement. However, the proponents of HB 2364 now seek to unravel that deal -- by changing the law to give them the very benefits they gave up during negotiations in 2013. Not only is this patently unfair to park owners, but it sets a dangerous precedent that agreements reached in the coalition in years past can now be summarily undone, to the advantage of only one party.

HB 2364 imposes a penalty against a technically non-compliant park owner for 10% of the sale price. Depending on their location and quality, communities typically sell for over $100,000 per home site. As the price for a manufactured home community ranges from one million dollars at the low end to tens of million dollars for larger, higher end parks, this penalty would on average be in the hundreds of thousands of dollars, and could easily exceed one (1) million dollars. Moreover, the standard for triggering the penalty is inherently ambiguous: an owner's failure to comply must have prevented the tenants from competing to purchase "in a substantial way." What is "substantial" is in the eye of the beholder. Though existing law uses the same phrase, never before has it been used as the basis for such a massive penalty against the seller.

When HB 2364 was in the House Committee on Housing, Representative Fahey wrote a letter (as part of the Dash 5 Amendments) to reflect her intent relating to the good faith language in the bill. She indicated that the intent of the bill was not "to give tenants any special advantage over another third party purchaser in negotiation;…[but] to strengthen the requirement that facility owners give a fair chance to their tenants to compete to purchase a facility." However, HB 2364 does exactly that: the spectre of a massive 10% penalty for hundreds of thousands of dollars, coupled with the prospect of an award of attorney fees under ORS 90.255 to a prevailing resident, presents a significant "hammer" over park owners which third party prospects do not have. A claim for the penalty allows the residents to use it over the seller: if the seller refuses to sell the community to the residents for their lower price, and on their terms, they will pursue litigation to recover the penalty plus legal fees. **HB 2364 thus eliminates the possibility of a "level playing field" as between residents and third party purchasers.**

HB 2364 is legally untenable for several reasons, the most prominent of which is that the park owner and seller would be automatically liable for a massive civil penalty without the tenants having to show that they suffered any actual loss or damage. Although the first phrase of subsection (6) refers to the penalty as "damages," it is not: it is a preset sum which has nothing to do with the plaintiff's actual loss or condition. The New Hampshire law upon which this bill is modeled requires a showing of willfulness on the part of the seller; here there is no such requirement. There is also no requirement that the residents make any showing that they were ever ready, willing or able to close, and as the statute of limitations on a penalty claim is one year, a seller would not know if he or she will be sued until long after the deal has closed. Like their counterparts, residents should have to prove actual damages to have a claim. In short, this bill is one-sided in favor of residents: Section (8) allows for the park owner to recover actual damages from the tenant only if the owner can sustain his or her burden of proof as to loss, though the residents' remedy against the landlord requires no such proof, only that there was a technical defect by the park and that it affected the residents' ability to compete in a way which they view as "substantial".

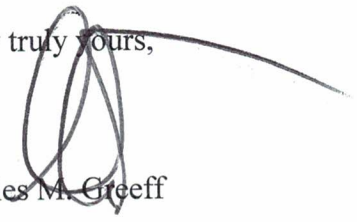
Parks in Oregon have suffered significantly over the last two years. The COVID-19 pandemic has had disastrous effects upon their revenue. Most parks have residents who are at least one year behind in rent. On average, communities with 40 to 60 spaces face a rent arrearage in excess of $40,000.00. For the communities managed by Commonwealth, over $700,000 in unpaid rents owed. In light of SB 282, which appears to be moving toward passage, and given problems with the landlord compensation fund, park owners may never recover unpaid rents from April 1, 2020 to June 30, 2020. An additional penalty of 10% of the sale price – which could amount to hundreds of thousands of dollars - would be disastrous. These providers of affordable housing are desperately seeking to recover from the effects of the pandemic. **HB 2364 would prevent this recovery and would undoubtedly result in increased park closures for redevelopment.**

For those owners who remain in the industry, the penalty threatened by HB 2364 would only increase their cost of doing business. Those costs are passed along to the residents. The great majority of Oregon parks increase their rents annually well below the maximum of 7% plus CPI. However, HB 2364 would push them to maximize rent increases year after year to build up a cushion to pay for the possibility of the 10% penalty. HB 2364 would thus result in rents being higher than they would otherwise need to be.

For these reasons we would ask that you vote "do not pass" as to HB 2364.

Thank you for your consideration.

Very truly yours,



Charles M. Greeff

CMG:vn
Commonwealth/Letter Re HB 2364 Opposition
cc: Clients (via e-mail)