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VIA E-MAIL

Stephen Erno
Town of Wickenburg
155 N. Tegner St., Ste. A
Wickenburg, AZ 85390
serno@wickenburgaz.gov

Re: Wickenburg – Reversion of Zoning to Prior Classification
Our Client: Arizona Municipal Risk Retention Pool
Insured: Town of Wickenburg

Dear Mr. Erno:

This firm represents Arizona Municipal Risk Retention Pool ("AMRRP") on various coverage matters. AMRRP asked us to evaluate potential coverage issues that may arise if the Town of Wickenburg ("Town") votes after a public hearing on August 5, 2024, or some later date, to revert the zoning of property subject to Ordinance No. 785 from RM-1-PAD Multiple Family Residential, Planned Area Development back to R1-35 Single Family Residential and C-3 Major Street Commercial. It is our understanding that the Town could face significant financial exposure if the Town Council took action to revert the zoning. In response, a Council member asked for information regarding the Town's land use liability coverage under the AMRRP policy. This letter is not intended to address all potential coverage implications involved with a reversion action, but to provide a brief summary as to why there likely would not be any coverage for such an action.

It is our understanding that the zoning reversion currently under consideration relates to an affordable housing project planned within an area governed by Ordinance No. 785. Based on public demands, the Town Council is considering reverting the zoning for the land where the project is to be constructed without the consent of property owner, the Wellick Foundation, and developer, Gorman. Such reversion would impact the owner's and developer's ability to move forward with the project. We have also been informed that counsel for the Wellick Foundation and Gorman have indicated that they will pursue legal claims against the Town if steps are taken to revert the Project's classification.

On behalf of AMRRP, we have evaluated whether there is potential coverage under the Municipal Management Practices Liability policy ("Policy") issued by AMRRP if the Town were sued for reverting the zoning classification. Based on the information provided, it is our opinion that any such potential claims would not meet the Coverage Agreement requirements, exposing the Town to financial exposure not covered by the Policy. First, the Policy only covers "damages" for which a member is liable for a "wrongful act." "Wrongful act" does not include any act that is wanton or reckless or which constitutes malfeasance, willful neglect of duty, bad faith, or willful violation of an ordinance. Here, if the Town elects to revert the zoning for the property in question against the advice of counsel, such an act may be considered wanton, reckless, malfeasance, a willful neglect of duty, bad faith, a willful violation of an ordinance, or a combination of these and would not be covered by the Policy's Coverage Agreement.

Second, there are several exclusions within the Policy that may apply to preclude AMRRP from covering such an act by the Town, including: Contractual Liability exclusion, Fiduciary Liability exclusion, Land Use exclusion, Other Than Money Damages exclusion, and Expected Or Intended Damages exclusion.

As set forth in greater detail in our previous letter, AMRRP has significant concerns that the actions the Town is contemplating by reverting the zoning status in connection with Ordinance No. 785, and any subsequent claim or lawsuit resulting therefrom, are not covered by the Policy. Please note that this letter does not replace our prior letter, but is provided to briefly summarize AMRRP's current position.

If you have any questions, please feel free to contact me at the phone number or email address provided above.

Very truly yours,

Amanda J. Taylor

Amanda Taylor

AJT/rt

cc: Tarah Mayerhofer, tmayerhofer@wickenburgaz.gov
Trish Stuhan, trish@piercecoleman.com