

On Mon, Dec 23, 2019 at 8:17 AM Barry Berezowsky <bberezowsky@sequimwa.gov> wrote:

Good Morning Mr. Bilow,

I'm glad I could be of assistance with your appeal question. The charts and language in the code makes the process seem more complicated than it actually is.

On a different note, I'm intrigued by your suggestion that the issue of sovereign immunity requires the City Council to be the review authority on this application. While I have a basic understanding of the concept of sovereign immunity, I've never had to deal with it in my planning career. Given my admitted lack of knowledge about sovereign immunity in general and how it impacts the land use application process in particular, I ask for any help you may be able to provide me so that this issue can be fully considered.

I thank you in advance for any information you may be able to provide.

Regards,

Barry Berezowsky

Robert Bilow <millrow26@gmail.com>

Mon, Dec 23, 2019 at 1:04 PM

To: Barry Berezowsky <bberezowsky@sequimwa.gov>

Cc: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>, Charlie Bush <cbush@sequimwa.gov>, DG_All_CityCouncil <CityCouncil@sequimwa.gov>

Hello Director:

Responding to your morning email, the concept of "sovereign immunity" is an aspect of the common law maxim "The King Can Do No Wrong".

in our nation, the United States cannot be sued unless Congress has consented to such litigation. Congress did so in the Federal Tort Claims Act of 1946. Accordingly, a potential litigant must now file a claim under the provisions of that Act prior to filing any action against the United States.

As explained in a current google article: "Indian Tribes, like the individual States, have immunity from suit pursuant to the federal law of each Tribe's sovereign status. While this immunity may be waived by a Tribe or Congress may abrogate it through clear and unequivocal legislative action, generally an American Indian Tribe may not be haled into court."

The Jamestown S'Klallam Tribe has repeatedly and assiduously asserted its sovereign immunity, and properly so. I have attached pertinent provisions of the Jamestown Tribal Code reflecting the Tribe's emphasis of sovereign immunity.

I notice that you copied the City Attorney on your email, and she should be your primary resource on this topic; I'm certain Kristina Nelson-Gross insisted that the Sequim/Jamestown wastewater agreement signed last December included a specific limited waiver of sovereign immunity by the Tribe. And I would expect that she has previously advised the Planning Commission that absent a waiver of Tribal sovereign Immunity, any application submitted by the Tribe and approved by the City could **NOT** be enforced in Court by the City of Sequim.

Best regards,

Bob Bilow

JAMESTOWN S'KLALLAM TRIBAL CODE

Section 1.02.04 No Implied Waiver of Immunity; No Grant of Jurisdiction

Nothing in this Code shall be construed or implied to be a waiver of the sovereign immunity of the Tribe, nor any affiliated entity of the Tribe, nor shall anything herein be construed as a grant of jurisdiction to the United States of America, the State of Washington, or any political or governmental subdivision thereof, nor of any other state or any other federally recognized Indian tribe.

Section 22.01.01 Purpose

The Tribe, as an aspect of its sovereignty, is entitled to immunity from suit in all tribal, state and federal courts absent the clear, express and unequivocal consent of the Tribe or the clear, express and unequivocal consent of the United States Congress. The Tribe desires to make clear to all persons having or doing business or otherwise dealing with the Tribe, its subordinate economic and governmental units, its Tribal officials, employees and authorized agents, that the Tribe does not, under any circumstances, intend to voluntarily waive its entitlement to immunity from suit in tribal, state and federal courts under the doctrine of Tribal sovereign immunity absent strict and complete compliance with the procedures set forth in Section 22.01.02 of this Chapter which shall be the exclusive method for effecting a voluntary Tribal waiver of sovereign immunity.

Section 22.01.02 Waiver of Sovereign Immunity

Consent of the Tribe to waive its immunity from suit in any tribal, state or federal court may only be accomplished through the clear, express and unequivocal consent of the Tribe pursuant to a resolution duly enacted by the Tribal Council. Any such resolution purporting to waive sovereign immunity as to the Tribe, or any of its subordinate economic or governmental units or any of its Tribal officials, employees or authorized agents, shall specifically acknowledge that the Tribe is waiving its sovereign immunity on a limited basis and describe the purpose and extent to which such waiver applies. The failure of the Tribal Council resolution to contain such language shall render it ineffective to constitute a waiver of Tribal sovereign immunity. A Tribal Council resolution shall not waive sovereign immunity to allow a court or decision-making body (including an arbitration panel) other than the Jamestown Tribal Court to hear a dispute unless the resolution expressly and unequivocally allows such other body to hear a dispute and specifically names such decision-making body. There shall not be a waiver so as to allow monetary relief unless the resolution expressly and unequivocally so provides. A Tribal official, employee or contractor shall lack all authority, whether actual or apparent, to waive sovereign immunity beyond the express terms in a Tribal Council resolution. Any contract or agreement purporting to grant a limited waiver of sovereign immunity, which is not supported by a Tribal Council Resolution meeting the requirements of this Title, shall be null and void.