

DIRECTOR, DEPARTMENT OF COMMUNITY DEVELOPMENT  
IN AND FOR THE CITY OF SEQUIM

In re:

NOTICE OF DETERMINATION AS  
PROCEDURE **TYPE A-2** FOR FILE NO.  
CDR20-001

JAMESTOWN S'KLALLAM TRIBE MAT  
CLINIC BUILDING PERMIT, SEPA &  
DESIGN REVIEW

File No.: CDR 20-001

NOTICE OF APPEAL

This matter is an appeal of the Director's Notice of Procedure **Type A-2** Determination regarding File No. CDR20-001, which is a proposed quasi-medical facility on real property apparently owned by the Jamestown S'Klallam Tribe in the River Road Economic Opportunity Area, Sequim, Wa. This appeal is being filed pursuant to Sequim Municipal Code (SMC) Section 20.01.240(A), which provides in part that, "Administrative Type A-1 decisions may be appealed, by applicants or parties of record, to the hearing examiner", and as a consequence of the Director's "act of classifying this Application" which is deemed a Type A-1 decision per SMC 20.01.040(A) which also notes "classification of an application shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question."

**1. The Decision Being Appealed:**

The Director's Determination that Procedure Type A-2 be used for File No. CDR20-001, regarding the proposed Jamestown S'Klallam Tribe MAT Clinic Building Permit, SEPA and Design Review dated January 24, 2020. (the "Notice of Determination").

**2. Name and Mailing Address of Appellant and his/her interest(s) in the matter:**

Robert L Bilow

195 Sunset Pl.

Sequim, WA 98382

Appellant lives slightly outside the City Limits of Sequim, but certainly within the area of impact of any decisions, construction, or business operations which might result from Application CDR20-001. Appellant has testified on several occasions before the Sequim City Council regarding the broad public interest demonstrated by this Application.

**3. The Specific Reasons Why the Appellant Believes the Decision to be Wrong:**

The Director has reached his “decision” erroneously by proceeding through an analysis based upon **Title 18** of the Sequim Municipal Code, rather than via the proper Title 20 of that Code. Indeed, under a proper application of the Sequim Municipal Code, this Decision made by the Director is entirely **PREMATURE**.

The fact that this “Process” should follow the procedures detailed in SMC **Title 20 and not Title 18** is abundantly clear from the Statutory Purpose identified in SMC 20.01.010 “Statutory Authorization and Purpose:

In enacting this **TITLE (20.01.010 et seq)**, the city council intends to establish an **integrated permit review process**, including environmental review, that implements the provisions of Chapter **36.70B** RCW (the Regulatory Reform Act ESHB 1724) while ensuring compliance, conformity, and consistency of proposed projects with the city’s adopted comprehensive plan and development regulations. (Ord. 2000-006 § 3) (emphasis added)

The very first step in this “integrated review process” consists of the director “classifying” the “project permit application”, which is defined in SMC 20.01.020(Q) as: “Project permit” or “project permit application” means any land use or environmental permit or license required from the city for a project action...”

SMC 20.01.020 next proceeds to define **four** categories of “process”, and the Director shall assign the “project permit application” to one of those categories. SMC 20.01.020 defines those categories as follows:

T. “Type A-1 process” means a process which involves an application that is subject to clear, objective and nondiscretionary standards that require the exercise of

professional judgment about technical issues **and therefore does not require public participation.**

U. “Type **A-2** process” means a process which involves an application that is subject to objective and subjective standards that **require the exercise of limited discretion about non-technical issues and about which there may be a limited public interest.**

V. “Type B process” means a process which involves an application that is subject to standards that require the exercise of **certain discretion and about which there may be a considerable public interest.**

W. “Type C-1, **C-2**, C-3 processes” means processes which involve applications that **require the exercise of substantial discretion and about which there is a broad public interest.** (emphasis added in each)

Yet the Director has incredibly issued his determination that the project application in question should be assigned a “Type **A-2**” status, meaning that **the project requires limited discretion and involves limited public interest.**

The Director should have instead assigned this application a “Type **C-2**” status since **the project requires substantial discretion and involves broad public interest.**

Considerations of the zoning provisions contained in SMC title 18 should **then** be considered by the Director **as the application proceeds through the C-2 process.**

The Director is clearly “processing” this Application erroneously under SMC Title 18, since he appears to have concluded that the permit qualifies as some type of a “medical clinic” under SMC 18.08.020, as noted in footnote 5 on page one of his “Determination”. I do not believe that SMC Title 18 even mentions the alternative “process categories” of Type A-1, Type A-2, Type B, Type C-1, Type C-2, or Type C-3 (except once in referring to a conditional use).

Only **AFTER** classifying this application under SMC Title 20 as a Type C-2 process should the Director **then** proceed to examine whether the described use is a permitted, conditional, or other use described in SMC zoning Title 18. The Director’s action is premature, as is his legal analysis of various interpretations of zoning laws.

By definition, this application must be classified as C-2. There truly is no manner by which one can argue that this application has LIMITED PUBLIC INTEREST as opposed to BROAD PUBLIC INTEREST.

#### **4. The Desired Outcome or Changes to the Decision:**

The Director has utilized ONLY SMC Title 18 in making his determination, rather than the correct approach utilizing both Titles. The Director should have used Tables 1 and 2 of SMC 20.01.030 entitled “**Procedures for processing development project permits**” rather than zoning Tables 1 and 2 of SMC 18.33.031 defining “**Uses**”. And even though this Application might not fit precisely into any of the SMC 20.01.030 Table 2 “application types”, except perhaps as a “special use permit”, I submit that the Table 2 list of C-2 application types is **not** exhaustive and should not be applied so as to prevent the proper C-2 designation in this instance. See also SMC 20.01.030(B).

Inasmuch as SMC Title 20 was adopted by the City of Sequim many years before zoning Title 18, the latter must be interpreted consistent with the earlier “Process” Title 20. In other words, a use might be termed as “permitted” under SMC Title 18, but may fail SMC Title 20 analysis for a variety of reasons. For example, an “outpatient facility” appears permitted under Title 18; nevertheless, if during the Title 20 Process the City should find that the facility will be exclusively used for **Coronavirus research**, the facility would certainly be disallowed in the final analysis.

Director Berezowsky delved into many unrelated branches of inquiry while justifying his immediate A-2 classification, including a narrow analysis of the Americans With Disabilities Act (ADA). But he was premature in proceeding at this time with such considerations. After proceeding with proper hearings and testimony, factors such as the ADA might impact the ultimate issue of whether this Application should be approved, conditionally approved, or denied.

At this time, despite the hyperbole utilized in the Director’s determination, the only certainty is that this Application fits the Type C-2 process which requires **substantial discretion and about which there is a broad public interest**.

**The Director’s classification of this Application should be changed from A-2 to C-2 and the Application processed as specified in the Sequim Municipal Code.**

#### **5. The \$600 Appeal Fee is attached.**

Respectfully Submitted,

Robert L Bilow