

HELSELL
FETTERMAN

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Sequim City Council
152 W. City Cedar St.
Sequim, WA 98382

VIA REGULAR AND ELECTRONIC MAIL

Re: Proposed Jamestown S'Klallam Drug Treatment/Detoxification Center

Dear Councilmembers:

Thank you for listening to our concerns at your January 13 meeting regarding the proposed Jamestown - S'Klallam drug rehabilitation center. To restate our position in writing for the record, we are concerned that the Applicant and your Planning Director either misunderstand or are consciously ignoring express language in the Sequim Municipal Code requiring City Council review of this project in favor of administrative review under the A-2 process.

As we pointed out in our October 10, 2019 correspondence to you, this project falls foursquare within the Growth Management Act's definition of "essential public facility", which appears in RCW 36.70A.200(1). That definition is as follows:

"Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020."

As we also pointed out, the City of Sequim has a separate permitting process for Essential Public Facilities. That process is codified in SMC 18.56, which has been a part of the Code since 1997. Section 18.56.040 clearly and unequivocally states that these facilities can only be approved by you, the City Council:

18.56.040 Permit required.

Essential public facilities and special property uses shall be allowed within certain use zones after obtaining an essential public facilities and special property use permit granted by the city council. (Ord. 97-019 § 4, Exh. B)

In claiming that this project qualifies for Sequim's A-2 permitting process, the Applicant and your Planning Director are asking you to completely ignore this undisputable and unequivocal language.

They are also asking you to ignore SMC Section 20.01.040(B), which requires the Planning Director to use the "higher procedure type letter" in the event of any question:

20.01.040 Determination of proper type of procedure.

B. Determination of Director. The director shall determine the proper procedure for all development applications. If there is a question as to the appropriate type of procedure, the director shall resolve it in favor of the higher procedure type letter as defined in SMC 20.01.030. (Ord. 2000-006 § 3)

This will be the first Assignment of Error in our litigation, and we are extremely confident that a LUPA court will agree with our assessment of this situation, and will at a minimum remand the application back to you for review under the C-2 process. As I mentioned on the 13th, it's hard to imagine a court allowing the public process to be suppressed in this manner, especially given the Growth Management Act's mandate for "early and continuous public participation". For these reasons, the threats of litigation from the Tribe ring very hollow to us.

As I imagine you know, there are allegations of complicity between your Planning Director and the Tribe. At this point, they're anecdotal and unverified, however it is unusual that the Director and/or the City Manager would; 1) state publicly that the project meets the definition of 'outpatient clinic' months before the application was even filed; 2) state publicly before it is filed that the project can be processed under the A-1 permitting process, only recently stating that A-2 will be used instead; 3) completely fail to respond publicly or directly to our October 10, 2019 correspondence pointing out that City Council involvement is mandatory under SMC 18.56.040 (cited above); and 4) tell the Applicant that their application is complete the same day it was filed, and that it will be processed as an A-2 project, as Mr. Simcosky stated to his supporters in an email sent on Friday, January 10, 2020.

Because of this, we filed a public records request seeking all communications between Mr. Berezowski and the Tribe and are awaiting receipt of the second installment of the City's response. If we find evidence of complicity, we will share it with you immediately, but whether or not complicity exists, the fact remains that the Applicant and your Planning Director are steering you into litigation in which your legal position will be that it is appropriate to suppress public participation in the permitting process for a highly controversial drug rehabilitation facility, ignoring clear and unequivocal code mandates in the process. As elected officials, I cannot imagine that you would enjoy being placed in this position by parties who are not themselves directly accountable to the public.

Legally, there is no reason why you cannot instruct Mr. Berezowski to process this application through the C-2 permitting process and to require that the Applicant obtain an Essential Public Facilities Permit, as mandated by SMC 18.56.040. If you do that, you will avoid our above-referenced litigation and will be on the side of more, rather than less, public participation on a very controversial project.

Thank you for the opportunity to comment on this critically important issue. I may be reached at mspence@helsell.com or at (206) 689-2167 with any questions or comments.

Very truly yours,



Michael A. Spence

MAS: ahc

Cc: SOS

Barry Berezowski, Planning Director
Kristina Nelson-Gross, City Attorney