

March 18, 2020

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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:

As you may remember, this firm represents Save Our Sequim, a large group of Sequim area residents opposed to the above-referenced drug detoxification center. Your response to a recent public records request filed by us and attorney Robert Bilow revealed internal and external communications between and among your senior staff members and representatives of the applicant that are troubling to us and others. Copies of the actual emails are attached to this letter, however a chronology of them is set forth below for your convenience:

On **March 27, 2019**, 40 days before the proposed project was even announced and 306 days before the application was filed, the Applicant's representative Brent Simcosky sent Planning Director Barry Berezowsky a copy of the Applicant's budget request to the State Legislature and referenced a 3:30 p.m. meeting the following day. Mr. Simcosky's email specifically states:

"Hi Barry,

As promised, here is a copy of the capital budget request report we prepared for Representative Steve Tharinger. We will see you at your office tomorrow at 3:30 p.m."

Less than an hour later, Mr. Berezowsky sent an email to City Manager Charlie Bush informing him that the Tribe purchased the subject property and notifying him of the upcoming meeting. Mr. Berezowsky's email stated specifically as follows:

[Name]
[date]
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"Hi Charlie,

Not sure if you knew this received (sic) some funding in the state's budget and the tribe has purchased land behind Costco in the River Road EOA. As you can see I'm meeting with Eric and Brent tomorrow to discuss the project. According to Brent it's now public so I thought I better give you a head's up in case you hear from some Council members or"

The land purchase was not mentioned in Mr. Simcosky's earlier email. Curiously, the land purchase in question did not close until May 10, 2019.

The meeting happened the next day, **March 28, 2019**.

The following day, **March 29, 2019**, Mr. Berezowsky sent Mr. Bush an email stating that:

"I met with Eric and Brent yesterday and I don't see any major issues with the property or zoning. Although this is a super project that will bring a great deal of benefit to the community I suspect some neighbors might have some concerns which means how the project is rolled out to the public is important. Both Eric and Brent agreed and are working on a PR campaign"

According to both Eric and Brent they expect at least half of the funding to be included in the upcoming budget which will allow them to build the out patient facility with the inpatient hospital to come as a second phase (although plans could change). If this in fact happens they are expecting a public announcement as early as next week." (emphasis added)

On **March 30, 2019**, Mr. Bush sent Mr. Berezowsky an email stating;

"Awesome on both counts, thanks!"

These communications are troubling on several levels:

1. Inpatient Facility: Mr. Berezowsky demonstrably knew that the project contained a second phase, which included an inpatient facility, which is not a permitted use in the RREOA District under SMC 18.33.031, yet he did not "see any major issues with the property or zoning", ten months before the application was filed. This indicates either

that he; 1) does not know the details of the zoning code he administers; or 2) willingly chose to ignore this important detail of the project.

2. Prejudgment and Personal Bias: Mr. Berezowsky's personal opinion 10 months before the application was even filed that this was a "super project" that will "bring a great deal of benefit to the community" is clear and convincing evidence of his prejudgment and personal bias towards this project. These statements constitute a violation of the following ethics policies contained in the City of Sequim's employment manual:

EMPLOYEE ETHICS

The City's primary function is to serve the citizens of Sequim. A central tenet of achieving that goal relies on treating the public as its most valuable customer. Consistent with our core values, the City expects that all employees will serve our citizens in a professional manner that is professional, fair, courteous, effective, efficient, and helpful. The City trusts and expects that its employees' decisions and actions will be guided by sensible judgment, personal responsibility, and the following ethical principles:

- *Tact and courtesy in all interactions, including members of the public, City officials, and fellow employees;*
- *Uphold the City's policies in a clear and consistent manner at all times;*
- *Make unbiased decisions and use authority fairly and responsibly;*
- *Avoid decisions or actions that might result in or give the impression of providing preferential treatment or privileged information to any person;*
- *Conduct City business in an impartial manner, disclosing all potential conflicts of interest;*
- *Advocate for an environment of public trust by upholding our core values;*
- *Be good stewards of the City's resources, grounds, facilities and equipment;*
- *Use position or City resources only for legitimate City business and not for personal gain; and*
- *Be mindful of how actions may be perceived by others.*

Employees must also comply with all applicable requirements of RCW 42.20 (Misconduct of Public Officers) and 42.23 (Code of Ethics for Municipal Officers). No City employee may engage in any act which is in conflict with, or creates an appearance of conflict with, the performance of official duties (emphasis added)

3. Coordinating with Applicant. Mr. Berezowsky clearly knew that the project would meet strong community opposition, yet 40 days before the project was publicly announced and 10 months before the application was filed, he “agreed” with the Applicant that “how the project is rolled out to the public is important”. In other words, Mr. Berezowsky was coordinating with the Applicant on a public relations strategy, despite knowing that it would meet significant community opposition and despite the fact that Phase II of the project is inconsistent with the zoning in the RREOA District.

SOS submits that these statements by Mr. Berezowsky and Mr. Bush easily rise to the level of a conflict of interest, which justifies his recusal from this project under the following process set forth in the Employment Manual:

Conflicts of Interest

Employees who become aware of an actual or apparent conflict of interest regarding any matter in which they have decision-making authority must disclose the conflict to their immediate supervisor. If their supervisor agrees a conflict exists after consultation with the City Attorney or the Human Resources Department, employees must excuse themselves from decision making on the matter. The disclosure and steps taken to avoid the conflict will be documented in writing, dated and signed by the employee and supervisor.

If Mr. Berezowsky or Mr. Bush were elected officials, their actions would clearly constitute a violation of Washington’s Appearance of Fairness Doctrine, which is codified in RCW 42.36 et. seq. The fact that they aren’t, however, does not excuse you as elected officials from alleged violations of RCW 42.36.110. That statute provides as follows:

RCW 42.36.110

Right to fair hearing not impaired.

Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.

These emails and subsequent events lead clearly to the conclusion that Mr. Berezowsky and Mr. Bush; 1) were ‘in on’ the project 40 days (and possibly more) before the public knew about it and a full 10 months before the application was filed; 2) either misunderstood or intentionally ignored sections of the zoning code that did not support

[Name]
[date]
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the application; 3) coordinated with the applicant on a public relations strategy in advance of the project roll out; 4) stated publicly (and incorrectly) that the project was consistent with the applicable zoning; and 5) incorrectly and illegally classified the project as eligible for the A-2 permitting process, despite clear code language requiring them to “resolve” any question about process in favor of the “higher procedure type letter”, in an attempt to make an “end run” around your potential opposition to this project. Individually and collectively, these actions and inactions impair the public’s right to a fair hearing on this project, in violation of RCW 42.36.110, Washington’s Appearance of Fairness Doctrine.

For these and more reasons, Save Our Sequim demands that you immediately suspend the application and conduct an investigation into the conduct of Mr. Berezowsky and Mr. Bush as detailed herein and take the actions contemplated in your Employment Manual, including the recusal of both from this proposed project. This situation, combined with the widespread shutdowns caused by the COVID-19 pandemic more than adequately justifies suspension of the 120-day rule under RCW 36.70B.080(1).

Thank you for reviewing this letter. I may be reached at mspence@helsell.com or at (206) 689-2167 with any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Spence". The signature is stylized and cursive.

Michael A. Spence

MAS: lrb
attachments
cc: SOS

From: Barry Berezowsky
Sent: Tuesday, August 6, 2019 3:44 PM
To: Karen K. Kuznek-Reese
Subject: FW: BH Campus
Attachments: Capital Grant - Final.pdf

From: Barry Berezowsky
Sent: Wednesday, March 27, 2019 2:42 PM
To: Charlie Bush <cbush@sequimwa.gov>
Subject: FW: BH Campus

Hi Charlie,

Not sure if you knew this received some funding in the State's budget and the tribe has purchased land behind Costco in the River Road EOA. As you can see I'm meeting with Eric and Brent tomorrow to discuss the project. According to Brent it's now public so I thought I better give you a head's up in case you hear from some Council members or

I'll keep you apprised while you are away.

BB

From: Brent D. Simcosky <bsimcosky@jamestowntribe.org>
Sent: Wednesday, March 27, 2019 1:51 PM
To: Barry Berezowsky <bberezowsky@sequimwa.gov>
Cc: Eric Lewis <elewis@olympen.com>; Kyle E. Johnson <kjohnson@jamestowntribe.org>; michael@teammcaleer.com
Subject: BH Campus

Hi Barry,

As promised, here is a copy of the capital budget request report we prepared for Representative Steve Tharinger. We will see you at your office tomorrow at 3:30 PM.

Thanks!!!

D. Brent Simcosky
Director of Health Services

Jamestown S'Klallam Tribe

808 North 5th Ave
Sequim, WA 98382

360-582-4870 (work)
907-617-2564 (cell)

Email: bsimcosky@jamestowntribe.org

From: Barry Berezowsky
Sent: Tuesday, August 6, 2019 3:47 PM
To: Karen K. Kuznek-Reese
Subject: FW: Jamestown/OMC

From: Charlie Bush <cbush@sequimwa.gov>
Sent: Monday, April 1, 2019 10:51 AM
To: Barry Berezowsky <bberezowsky@sequimwa.gov>
Subject: Re: Jamestown/OMC

Awesome on both counts, thanks!

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From: Barry Berezowsky
Sent: Friday, March 29, 2019 10:48:08 AM
To: Charlie Bush
Subject: Jamestown/OMC

Hi Charlie,

Hope you are having a great time learning lots at conference.

I met with Eric and Brent yesterday and I don't see any major issues with the property or zoning. Although this is a super project that will bring a great deal of benefit to the community I suspect some neighbors might have some concerns which means how the project is rolled out to the public is important. Both Eric and Brent agreed and are working on a PR campaign.

According to both Eric and Brent they expect at least half of the funding to be included in the upcoming budget which will allow them to build the out patient facility with the inpatient hospital to come as a second phase (although plans could change). If this in fact happens they are expecting a public announcement as early as next week.

That's it for now,

BB

P.S. the SBA event is going great.