The Honorable Brent Basden
Noted for August 21, 2020 at 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

SAVE OUR SEQUIM, a Washington 501(c)(4) corporation; and PARKWOOD MANUFACTURED HOUSING COMMUNITY, LLC, a Washington Limited Liability Company, Plaintiffs, vs. CITY OF SEQUIM, a Washington Municipal Corporation; and JAMESTOWN S'KLALLAM TRIBE, Defendant.	NO. 20-2-00304-05 PLAINTIFFS' RESPONSE TO THE CITY OF SEQUIM AND JAMESTOWN S'KLALLAM TRIBE'S MOTIONS FOR SANCTIONS

RESPONSE

Defendants City of Sequim ("the City") and Jamestown S'Klallam Tribe ("the Tribe") filed their respective Motions for Fees and CR 11 Sanctions on August 13, 2020, twenty-seven days after this Court dismissed Plaintiff's *Complaint* in this action. For the

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reasons set forth herein. Defendants' motions should be denied in their entirety without award of costs, fees, or sanctions.

I. CR 11 Sanctions are not appropriate in this case and Defendant's request for sanctions should be denied.

Defendants' legal theory for requesting sanctions and asserting that Plaintiffs' lawsuit was frivolous results almost entirely from Defendants' continued and deliberate attempt to mislead this Court that Plaintiffs prematurely filed a lawsuit under the Land Use Petition Act ("LUPA"). The very first sentence of the Tribe's Motion repeats this fallacy. In reality, on May 5, 2020, Plaintiffs filed a Complaint challenging the constitutionality of several ordinances within the Sequim Municipal Code ("SMC"), under the theory that the code was either constitutionally vague or an unlawful delegation of administrative authority, resulting in subjective interpretation and application of the conflicting provisions to existing or past land use applications before the City of Sequim. The pleadings filed by Plaintiffs in this case in support of that constitutional challenge satisfy the requirements of CR 11 and sanctions are therefore inappropriate.

"CR 11 addresses two types of problems relating to pleadings, motions and legal memoranda: filings which are not "well grounded in fact and . . . warranted by . . . law" and filings interposed for "any improper purpose"." *Bryant v. Joseph Tree, Inc.*, 119 Wn. 2d 210, 217 (Wash. 1992). Indeed, CR 11 requires that every pleading, motion, or legal memoranda signed or prepared by an attorney be 1) well-grounded in fact; 2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the

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establishment of new law; 3) not be interposed for any improper purpose, such as to harass, cause unnecessary delay or increase the costs of litigation. *See Generally* CR 11.

Washington caselaw sets a high bar for parties requesting sanctions under CR 11. The fact that a complaint does not prevail on its merits is by no means dispositive of the question of CR 11 sanctions. *John Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 111, 780 P.2d 853 (1989). CR 11 establishes a high threshold for the court: To avoid being swayed by the benefit of hindsight, the trial court should impose sanctions only when it is " 'patently clear that a claim has absolutely no chance of success.' " *Oliveri v. Thompson*, 803 F.2d 1265, 1275 (2d Cir.1986) (quoting *Eastway Constr. Corp. v. City of New York*, 762 F.2d 243, 254 (2d Cir.1985)), cert. denied, 480 U.S. 918, 107 S.Ct. 1373, 94 L.Ed.2d 689 (1987); *Bryant*, 119 Wn.2d [210] at 220, 829 P.2d 1099 [1992]. *MacDonald v. Korum Ford*, 80 Wn.App. at 884, 912 P.2d 1052 (1996). (emphasis added). The policy behind the high barrier a party must overcome is best summarized by the 9th Circuit in the following passage, which is directly applicable to this situation:

> "Were vigorous advocacy to be chilled by the excessive use of sanctions, wrongs would go uncompensated. Attorneys, because of fear of sanctions, might turn down cases on behalf of individuals seeking to have the courts recognize new rights. They might also refuse to represent persons whose rights have been violated but whose claims are not likely to produce large damage awards. This is because attorneys would have to figure into their costs of doing business the risk of unjustified awards of sanctions." *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1363-64 (9th Cir. 1990).

CR 11 is not meant to act as a "fee shifting mechanism," or to "chill an attorney's enthusiasm or creativity in pursuing factual or legal theories," but to curb abuses of the judicial system and to deter baseless filings. *Biggs v. Vail*, 124 Wn.2d at 197, 876 P.2d 448

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(1994); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d at 219, 829 P.2d 1099; *Ames v. Pierce County*, 194 Wn. App. 93, 120, 374 P.3d 228 (2016). Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of prefiling investigation is to be tested by "inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted." *Biggs*, at 197, (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d at 220, 829 P.2d 1099).

The Defendants cannot possibly meet this threshold. In the case at bar, this Court ruled only that the Plaintiffs' claims were 'premature' and clarified that they can be raised in a LUPA court once LUPA jurisdiction is conferred. This being the case, the Defendants cannot meet the "high threshold" of proving that it is "patently clear that a claim has absolutely no chance of success", under the above-referenced case law. For this reason alone, the Defendants' motions should be denied.

A. The Plaintiff's lawsuit is well grounded in fact.

Plaintiffs provided an adequate legal basis for challenging the City's municipal code ordinances based on the contradictory and confusing language contained within the code. Plaintiffs' Complaint cited ordinances within SMC Title 20 that are confusing and appear contradictory on their face with regard to project classification and which entity at the City was responsible for hearing any appeals filed on a land use application. See *Complaint* pp. 3-4. Plaintiffs' Emergency Motion also identified confusion in the language concerning how parties of record are defined within the code, and appear to exclude persons who had not submitted comments at an open public hearing under an administrative process (A-1) that is ministerial and provides for no public hearing. *See Emergency Motion* pp. 3-4. The

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City also admitted that it must "look at its old code" in light of ADA litigation and how the City has permitted other structures. *Id.* at 6.

Based upon the SMC's confusing language, the City's purported legal analysis used to justify the project's classification, statements from City officials that the code was outdated and not applied according to its express language, and the fact that the City had issued moratoriums on other confusing or outdated areas of its code, it was reasonable to believe that provisions of the SMC were either unconstitutionally vague or delegated administrative authority unlawfully. In essence, Plaintiffs reasonably believed that the reason for the inconsistent treatment of these applications before the City arose from the confusing language in the code, forcing the City to process applications inconsistently.

Plaintiff's lawsuit was well grounded in fact based upon the existing language of the code and the City's actions in the matter in which Plaintiffs are involved. At the time the lawsuit was filed, and at the time the Emergency Motion was heard, the City still had not completed its response to Plaintiff SOS's public records requests. In fact, the final installment, which was only received on August 13, is heavily redacted and contains a privilege log that does not comply with RCW 42.56, the Washington Public Records Act. [See Spence Dec. at p. 3 and Ex. F]. Further, because this lawsuit was dismissed less than three months after it was filed, Plaintiffs had no opportunity to conduct additional discovery that may have uncovered additional facts in support of, or against, Plaintiffs' arguments. For example, records that have not yet been properly disclosed may provide evidence as to whether Plaintiffs should be challenging the Director's decisions interpreting the ordinances

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and applying them, or whether they are inconsistently applied because they are inherently confusing and contradictory.

The reasonableness of an attorney's inquiry is evaluated under an objective standard of "reasonableness under the circumstances." *Bryant*, at 220. "The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted." *Id.* Plaintiffs' and their counsel made reasonable inquiry into the facts that were available to them during the pendency of this action. For that reason, Plaintiffs' lawsuit satisfied the criteria for being well grounded in fact under the "reasonableness" test.

B. The Plaintiff's lawsuit was warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

Plaintiffs lawsuit is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. The purpose of Plaintiff's lawsuit was to challenge the constitutionality of several ordinances within the SMC. The Uniform Declaratory Judgments Act ("UDJA") provides this Court with the authority to declare rights, status and other further relief as warranted and equitable where a declaratory judgment or decree is prayed for. RCW 7.24.010 and .080. A person whose rights are affected by a municipal ordinance may obtain a declaration of rights, status or other legal relations under the UDJA. RCW 7.24.020. Plaintiffs' *Complaint* cites jurisdiction pursuant to "RCW 7.24 et seq.," the UDJA. It intentionally does not mention RCW 36.70C (LUPA), because Plaintiffs were not arguing a LUPA action.

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Plaintiffs cited legal authority in their Motion for TRO arguing to the Court that the language of the SMC ordinances was unconstitutional for vagueness and/or an unlawful delegation of administrative authority. *See Plaintiffs' Motion* pp. 3-7. References to the Tribe's application before the City, including all factual references in Plaintiffs' Complaint and thereafter, were anecdotal in nature to demonstrate to the Court the actual harm suffered by Plaintiffs. According to the applicable case law and the UDJA, the proper procedure for lodging a facial constitutional challenge to the City's municipal code was followed. Plaintiffs readily admitted that the administrative process for the Tribe's application was still ongoing, but Plaintiffs never intended to challenge the land use decisions made in that application in this present action. Rather, Plaintiffs case here argued that the language of the applicable ordinances impacted every land use application processed by the City, including the Tribe's.

Defendants, despite their best efforts, concede that they are aware of Plaintiffs' actual intentions in filing this action. Why would the Tribe prepare responsive argument on the "vagueness" of the city code or address the "improper delegation of administrative authority" in their Response to Plaintiffs' TRO Motion unless they read and understood the legal bases by which that motion was brought? *See Jamestown S'Klallam Tribe's Opposition to Emergency Motion* pp. 14-16. Similarly, the City in its Response references Plaintiff's allegations that the SMC ordinances are unconstitutional. *See* Def. City's Resp., at p. 3. Despite referencing the constitutional arguments made by Plaintiffs in the City's briefing, its present Motion disingenuously states "Plaintiffs' counsel asserted for the first time in their Reply that they were making a facial challenge to the City's ordinances at

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issue." *City's Mot. for Award of Sanctions etc.*, at p. 9. Both the City and Tribe have exhibited significant effort to ignore the Plaintiffs' arguments expressed in their pleadings and argument, wrongfully asserting that Plaintiffs have argued a LUPA petition before this Court. Nearly every one of the "quotations" allegedly overheard by the City Attorney substantiate that Plaintiffs' arguments have centered around the constitutionality of the relevant SMC ordinances for the entirety of this action.

The Court should further find that Plaintiffs' lawsuit has sufficient legal merit undeserving of CR 11 sanctions because it did not rule on the substantive issues presented by Plaintiffs during the pendency of this case. This court did not reject those claims directly, it stated that these causes of action were "premature" (*Memorandum Opinion*, at page 3) and clarified that these issues can be raised in a later Land Use Petition, should that action prove necessary. The Court also held that:

> "Mandamus would likely be appropriate in some circumstances. For example, if the City refused to accept a land use permit, or once received, refused to act upon that permit, an order directing action could be sought." (*Id.* at 6)

Accordingly, the case was dismissed without prejudice. The Court did not sign the City's proposed Order calling for an award of attorney's fees and costs, and the Tribe did not even ask for fees or costs in the Order it drafted and proposed. The Court modified and executed the Tribe's proposed Order when it dismissed this case, ordering only:

> 1. The Motion is GRANTED. The Plaintiffs' Complaint for Declaratory, Injunctive, and Mandamus Relief is DISMISSED without prejudice under CR 12(b)(6) for failure to state a claim upon which relief can be granted.

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Plaintiffs understood and respected the decisions of this Court and, assured they would have the opportunity to try these claims in a LUPA action, moved on to an appeal before the City's Hearing Examiner.

While Plaintiffs' preferred to exercise their rights to challenge the constitutionality of the ordinances in this forum, they respected the decision of this Court and filed no further motions in this case. Plaintiffs' basis for asking the Court to reconsider the harm component of this action only came after the Tribe's attorney filed a letter informing the Court that it had misrepresented the Tribe's rights at a prior hearing. As that information was divulged after the period for reconsideration had lapsed. Plaintiffs were left with no recourse besides asking the Court to consider whether or not that information impacted the Court's earlier decision.

In addition, the Defendants cannot prove that this lawsuit represented an 'abuse of the judicial system' or a 'baseless filing'. This case represented a constitutional challenge to a regulatory scheme that forces an aggrieved party to wait until the substantive permit approval is granted before challenging the classification of the project as eligible for administrative approval, which artificially doubles the burden of proof an aggrieved party must meet. That issue has not been litigated or even discussed in any of the case law cited by either of the Defendants. In fact, none of the case law cited by either of the Defendants even involves LUPA. This being the case, the Plaintiffs were making "a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law." CR 11(a)(2).

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C. The Plaintiff's lawsuit was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The City appears to be hanging its hat on this element, going to extreme lengths to portray this lawsuit as harassment, claiming it is an "all-out assault on the City Council certain City staff and even the City's contracted hearing examiner without sufficient legal or factual support" (*City's Motion*, P. 11 lines 22 – 24), and that the Plaintiffs "sought to inflame the public", and "used their social media platform to allow members to routinely call for firing certain City Staff, voting certain elected officials in and certain elected officials out and promoting racist and intolerant attitudes." (*Id.* at p. 13 – lines 10 – 13). The City also accuses SOS member Jodi Wilke of having political motives, citing articles in the Peninsula Daily News in support of this accusation. The City further questions the timing of this lawsuit, claiming that "They waited to file their complaint until five days before candidate filing week opened and their Motion seven days after filing week ended" (*Id.*, at p. 14, lines 3 – 5) This fact had nothing to do with the timing of the filing whatsoever. (Declaration of Michael Spence at 3) As a 501(c)(4) entity, SOS is prohibited from engaging in political activity, so in essence, the City is accusing SOS of criminal conduct.

The City's Motion also makes unsubstantiated, unsupported and unexplained accusations that the Plaintiffs "failed to meet their pre-filing and post filing certification obligations". Substantively, the City's motion string-cites virtually every reported CR11 case, none of which apply to LUPA or the present situation.

Plaintiffs also believe that the City may be mischaracterizing hearing testimony, relying on "statements made at those hearings that were heard by me, were recorded by the

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court, and are true and correct transcriptions to the best of my knowledge and belief." (*Third Declaration of Kristina Nelson-Gross* at 2).

For example, the City claims that unidentified counsel stated that the hearing that "We don't believe there is LUPA jurisdiction" (*Id.*, at p. 8 lines 9 – 10). Although it is unclear from this Declaration whether the City actually ordered and reviewed a transcript, to the extent this statement refers to SOS attorney Michael Spence, upon information and belief the actual statement was that "we are not in LUPA jurisdiction yet", which was SOS's rationale for filing this lawsuit and Motion for an Emergency Injunction. (Declaration of Michael Spence at 3). If the City failed to order, review, and provide a certified transcript to reproduce any statements verbatim from the hearings in this action, any such statements should be stricken and the Court should disregard them for the purposes of Defendants' present Motions.

The Plaintiffs also submit that the City's Motion represents the pot calling the kettle black, and that the City is engaging in as much, if not more, harassment and intimidation than alleged against SOS and its representatives. In addition to the personal attacks referenced above, the City has accused SOS of making "false, unprofessional and irresponsible" statements regarding the substance of SOS's concerns, in response to a substantive comment letter on the project submitted by SOS.

The City has also attempted to suppress SOS's first amendment rights to free speech and to petition their elected officials, in a March 23, 2020, letter to SOS counsel stating that, "… it is completely inappropriate for you and your client – **who is an appellant on this matter** – to continue to communicate with my clients on this issue" (emphasis in original).

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(Supplemental Declaration of Michael Spence, at 2 and Exhibit D). The "client" the City is referring to is SOS and its many members who are residents of Sequim, and the City's 'clients' referenced are members of the Sequim City Council.

In addition, the City has been slow-walking their responses to SOS's public records requests, and the most recent response, received only on August 13, is almost completely redacted, with a privilege log that contains no 'identifying information', as required by RCW 42.56.310(3), as interpreted by *Rental Housing Association v. City of Des Moines*, 165 Wn.2d 525, 199 P. 3rd 393 (2009), with highlighted language *from Progressive Animal Welfare Society v. University of Washington*, 125 Wn 2d, 243, 884 P. 2d. 592 (1994). That caselaw describes identifying information as follows:

> "The identifying information need not be elaborate, but should include the type of record, its date and number of pages, and unless otherwise protected, the author and recipient, or if protected, other means of sufficiently identifying particular records without disclosing protected content. Where use of any identifying feature whatever would reveal protected content, the agency may designate the records by a numbered sequence"

A lawsuit challenging the constitutionality of a city ordinance is not harassment simply because the City must respond to that challenge. Further, the purpose of bringing this constitutional challenge, as stated repeatedly by Plaintiffs in their briefing and argument, was to prevent judicial waste by complying with a statutory scheme that forces the parties to start over from scratch after permit approval where the underlying classification for the project was wrong from the onset. While the Court here elected to deny Plaintiffs' requested relief, it cannot reasonably entertain that the purpose of this lawsuit was to prolong litigation. The remaining conspiracy theories and negative

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comments about Ms. Wilke and other concerned citizens expressing themselves on social media has no bearing on the timing or presentation of this lawsuit and is wholly immaterial. It is nothing but conjecture on the part of the City in support of its unreasonable request to punish Plaintiffs for challenging its ordinances on constitutional grounds.

II. Even if the Court issued sanctions, the circumstances of this case do not remotely warrant the demands made in Defendants' Motions.

Should the Court regrettably grant Defendants' Motion(s), it should only do so after careful consideration of all the parties' actions, the complexities of this case, and the extent to which any sanctions would prove useful after this action's prior dismissal. The court should examine the mitigation efforts by the party requesting sanctions. *Biggs*, at 201 (Citing Bryant v. Joseph Tree, Inc., 119 Wn. 2d 210 (Wash. 1992)). Courts must limit fees to the amounts reasonably expended responding to the sanctionable filings." *Id.* It should not be used as a "fee-shifting mechanism." *Id.*

Here, the Tribe seeks sanctions in the amount of all fees and costs it incurred in this action. *See Tribe's Motion*, at p. 8. The City's motion asks for sanctions "to be determined from a cost bill." *See City's Motion*, at pp. 19-20. Plaintiffs believe that a cost bill will be insufficient to inform the Court what, if any, of the time or costs were expended addressing Plaintiffs' alleged sanctionable filings. The City and Tribe are asking this Court to award sanctions akin to the fee-shifting mechanism cited above, which is not the purpose of CR 11.

It is undisputable that the Tribe and City have both expended resources far beyond what was reasonably necessary to litigate this case. Together, the Defendants flooded this action with over 500+ pages of documentation in response to Plaintiffs' 9-page Motion for

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TRO. The Court previously acknowledged Defendants' excessive filings, writing: "It is unfortunate that such a large volume of material has been provided on extraneous issues." Footnote 2 of Memorandum Opinion, *dated* June 24, 2020, at p. 2. One of many such examples was the letter attached to the Community Development Director's Declaration from the North Peninsula Building Association expressing their displeasure with Plaintiff's lawsuit and otherwise serving no relevant purpose. It is inappropriate to expense Plaintiffs for Defendants' legal fees and costs that were unnecessarily and wastefully inflated.

Also worthy of consideration is the fact that the Tribe affirmatively requested that it be permitted to join this lawsuit by way of Intervention – which was granted by Plaintiffs upon Stipulation. Plaintiffs' requested relief in this action would have temporarily halted the City from taking action until it remedied the ambiguous ordinances in question. Because the Tribe's application was the matter in which Plaintiffs were engaged and provided the context for Plaintiffs'' alleged harm, Plaintiffs stipulated to their intervention in good faith, mitigating costs for the Tribe that it would expend had it litigated for intervention. In contrast to the large quantity of immaterial documentation submitted by Defendants, Plaintiffs' provided concise briefing.

In a lawsuit that lasted under three months, Plaintiffs filed their *Complaint*, a Motion brief, and a Reply brief, and a single Response brief before Defendants filed these Motions. The parties conducted no discovery. The City prepared and filed a motion for summary judgment that wasn't even heard after it elected to join in the Tribe's motion to dismiss. As co-defendants, much of the work was duplicative and the Tribe's rights were arguably fully protected by the City defending the action on its own.

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Save our Sequim is not a large, for-profit organization with unlimited resources like the City of Sequim or the Jamestown S'Klallam Tribe. Save our Sequim is made up of a large number of small donors who are concerned about the impacts of this project on the City of Sequim.

Parkwood is an affordable housing retirement community for 55+ senior residents. It has a lawful duty to protect the health, safety, and welfare of its residents and takes great pride in its relation to the community in Sequim. The community ownership cares very deeply for its people and wants nothing more than to fulfill its lawful responsibilities to its residents. Parkwood's support for this action stems from a strong desire to seek honesty and transparency from Sequim's officials, and to make sure that the City follows the law for the safety of the Parkwood community. Without unambiguous language in the applicable ordinances guiding the City's officials on processing land use decisions, Parkwood is concerned that the City is left without the appropriate recourse to properly evaluate the environmental impacts that any land use project will have on public services including law enforcement, the fire department, and other health or traffic facilities or resources. Sanctioning Plaintiffs for challenging the constitutionality of an ordinance, when considering the Defendants' elective and excessive participation in this action, is unwarranted.

III. The lawsuit was not "frivolous" and Defendants are therefore not entitled to an award of fees and costs under RCW 4.84.185.

The same analysis provided above concerning the criteria CR 11 sanctions applies to the Defendants' request for sanctions under RCW 4.84.185. RCW 4.84.185 authorizes the

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trial court to award the prevailing party reasonable expenses, including attorney fees, incurred in opposing a frivolous action. *Bldg. Indus. Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 745, 218 P.3d 196 (2009). Sanctions are against the party, not that party's attorney, under RCW 4.84.185. Such an award is available only when the action as a whole can be deemed frivolous. *McCarthy*, 152 Wn. App. at 746, *Goad v. Hambridge*, 85 Wn. App. 98, 105, 931 P.2d 200 (1997), stating: An appeal is frivolous only if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists. A party has a right to appeal, and an appeal is not frivolous simply because the party's arguments are rejected. The entire record should be considered, and all doubts should be resolved in favor of the appellant. (Internal quotation marks and citations omitted.) A lawsuit is frivolous if, when considering the action in its entirety, it cannot be supported by any rational argument based in fact or law. *Curhan v. Chelan County*, 156 Wn. App. 30, 37, 230 P.3d 1083 (2010); see also *Loc Thien Truong v. Allstate Prop. and Cas. Ins. Co.*, 151 Wn. App. 195, 207-08, 211 P.3d 430 (2009) (award of fees under RCW 4.84.185 may be made against a party when the action, viewed in its entirety, cannot be supported by any rational argument on the law or facts); *Goldmark v. McKenna*, 172 Wn.2d 568, 582, 259 P.3d 1095 (2011)

Plaintiffs incorporate the entirety of their response addressing CR 11 sanctions above as if it were fully expressed herein. The Tribe's Motion justifies its request for fees under RCW 4.84.185 upon its incorrect claim that Plaintiffs "challenged a premature land use decision without exhausting administrative remedies and without identifying any authority that justified violating LUPA." *Tribe's Motion*, at p. 7. As Plaintiffs have laid out in detail

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above, there is no basis for considering Plaintiffs' action to be subject to LUPA jurisdiction. Plaintiffs brought a constitutional challenge against the confusing and conflicting language in the SMC, in part based upon the City's representations that the code is not strictly followed and after it issued moratoriums on applications concerning other areas of the code that it was revising due to confusion concerns similar to those expressed by Plaintiffs. This Court did not rule on the substantive issues in its *Memorandum Opinion*. Instead, it dismissed Plaintiffs' case without prejudice and afforded Plaintiffs the opportunity to reargue these challenges should that prove necessary in a later action. Had Plaintiffs' pleadings been without any reasonable factual or legal basis, dismissal with prejudice would have been appropriate. Instead, the Tribe's proposed Order, and whose motion the City joined, acknowledged that dismissal without prejudice was appropriate.

This conduct leads to the possibility that the City is attempting to distract SOS and put them "to great expense, harassment, and interruption of their productive activities" (RCW 4.24.525 Findings—Purpose—2010 c 118:), a possible violation of Washington's anti-SLAPP statute, codified in RCW 4.24.525, which reads in part as follows:

> **RCW 4.24.525**
> **Public participation lawsuits—Special motion to strike claim—Damages, costs, attorneys' fees, other relief—Definitions.**
>
> (iii) As used in this section:
>
> (iii) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;
>
> (4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

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(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(iii) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

The Plaintiffs therefore suggest that if the Court is inclined to award sanctions, they should do so against the City for this conduct.

CONCLUSION

There is significant and undisputable evidence that the lawsuit was grounded in fact. Ten months before the application was even filed, the administrator in charge of the process emailed the applicant stating that the project was "super" and a "benefit" to the community. That same person then declared unilaterally that the project was a "medical clinic" rather than an "essential public facility", despite significant evidence to the contrary and indicating possible confusion over interpreting confusing or conflicting ordinances. That same person then unilaterally chose the administrative approval process rather than the code-mandated quasi-judicial process. However, the code section at issue in this litigation requires an aggrieved party to wait until the approval of the substantive permitting decision before challenging the classification. These facts are not in dispute.

The lawsuit was also warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. The regulatory scheme at issue in this litigation requires an aggrieved party to overcome two

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presumptions of deference in one appeal process. Plaintiffs can bring a constitutional challenge under the UDJA to challenge the language of a municipal ordinance. The regulatory scheme issue has not been before the courts in a LUPA context, and overarching this fact is the notion that citizens of Sequim are entitled to the right to timely and freely petition their elected officials under the first amendments to the United States and Washington constitutions, and to meaningful procedural due process.

The lawsuit was further not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. As set forth above, the Plaintiffs legitimately believe that the challenged regulatory scheme deprives them of their procedural due process rights to timely challenge the classification decision and that the applicable ordinances conflict or potentially could deprive Plaintiffs from being considered a party of record. Plaintiffs' accept the City's assurances that they are in fact parties of record, as repeated during this action, but had no way of knowing that when this lawsuit was filed based upon the actual language contained in the ordinance. This court did not reject these claims, rather it stated that deciding upon them now was "premature" and clarified that these issues could be raised in a LUPA challenge. Plaintiffs respected the Court's decision and have complied with that decision. Regarding claims of harassment, the City can only point to Sequim citizens exercising their first amendment rights of freedom of speech outside of the context of this lawsuit, while at the same time attempting to suppress those rights in a letter to SOS counsel. Regarding delay, there is no evidence that this lawsuit slowed down the City's appeals process. And regarding increasing costs, this Court should note that the City submitted close to 500 pages of materials in its pleadings in this matter, much of which was extraneous by the Court's own conclusion.

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For these and other reasons, the Defendants' motions should be denied and this court should consider an award of sanctions against the City for possible violations of Washington's anti-SLAPP legislation

DATED this 19th day of August 2020.

H n LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 19, 2020, the foregoing document was sent for delivery on the following party(ies) in the manner indicated:

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DATED this 19 day of August, 2020

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