

THE HEARING EXAMINER OF THE CITY OF SEQUIM

RE: CDR20-001

Consolidated Administrative Appeals of  
January 24, 2020 Notice of Determination of  
Procedure Type: May 15, 2020 Director's  
Report and Staff Decision; and May 11,  
2020 MDNS for Jamestown S'Klallam Tribe  
Outpatient Clinic

RESPONSE TO JAMESTOWN  
S'KLALLAM TRIBE'S MOTION FOR  
SUMMARY JUDGMENT

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I, Appellant Robert L. Bilow, certify and submit this brief in response to the Motion for Summary Judgment filed by the Jamestown S'Klallam Tribe (Tribe).

In its Motion, the Tribe misstates and mischaracterizes the basis for my Appeal. Additionally, rather than stating the "undisputed facts" which support its claim that there is "no genuine issue of any material fact" respecting Summary Judgment, the Tribe simply relies upon a string of self-serving facts.

The two supplemental cases cited by Tribe, *Washington State Dep't of Nat. Res. V. Kitsap Cty.* and *Spokane Rock Prods., Inc. v. Spokane Cty. Air Pollution Control Auth.*, both involve appeals from “lower agencies”. For example, the Washington State website notes: “The Pollution Control Hearings Board hears appeals from orders and decisions made by the Department of Ecology and other agencies as provided by law.” I comment on this only because perhaps the reason the Tribe did not include a Statement of Undisputed Facts was because this administrative appeal of Director Berezowsky’s “determination” is not truly similar to a full hearing in front of a lower administrative agency.

In any event, those cases do reiterate the standards beyond merely the absence of any “genuine issue of material fact”. The *Spokane Rock Products* citation includes: “A material fact in a summary judgment proceeding is one that will affect the outcome under the governing law”, *Eriks v. Denver*, 824 P.2d 1207 (1992) and “In a summary judgment, all facts and **reasonable inferences** must be construed in favor of the nonmoving party”, *Jones v. Allstate Ins. Co.*, 45 P.3d 1068 (2002). (emphasis added)

## **I. THE ABSOLUTELY CRITICAL ISSUE OF SOVEREIGN IMMUNITY IS NEVER MENTIONED IN TRIBE’S MOTION OR SUPPORTING EXHIBITS**

Reading the extensive materials submitted with this Motion for Summary Judgment, the Tribe’s counsel appears to be “whistling past the graveyard”, to use a very old idiom, since the overriding issue in this matter of Sovereign Immunity is **never** mentioned.

However, the Tribe’s counsel clearly recognized the importance of the sovereign immunity issue since the June 1, 2020 letter from Miller Nash to Berezowsky objecting to his 5/11/2020 MDNS contains this statement, which is **Exhibit O** to this Tribe Motion:

**“F. Conditions targeting the Tribe's political status are improper.** Several of the conditions relate to processes that are uniquely available to federally recognized Indian tribes, like the Tribe, including sovereign immunity and the ability to put land into trust. But the Tribe is entitled to have its permits processed in the same manner as any other applicant. We are aware of no basis that allows a city to require a tribe to forfeit its sovereign immunity, even in a limited capacity, or reimburse a city for “lost tax revenue” in order to receive a permit, especially when the permit is for a project that is permitted outright and causes no probable adverse environmental impacts.” (emphasis added)

Earlier portions of the Miller Nash letter also indicate the Tribe’s objection to any city supervision of its proposed MAT clinic, even though sovereign immunity is not explicitly stated; rather it is easily inferred:

**“E. The City's land use authority does not extend to clinic operations.** Many of the conditions impermissibly regulate clinic operations. Again, clinic operations have no impact on public services, so imposing these mitigating conditions is outside the City's authority under SEPA. While the City's staff is experienced in administering land use code, they are not clinical experts, and it is improper for them to use land use code to regulate medical services.”

“Further, the MDNS does not account for the other laws that regulate clinic operations, and “whether local, state, or federal requirements and enforcement would mitigate an identified significant impact.... The conditions regulating clinic operations are unworkable, unwise, and should be stricken.” (emphasis added)

## II. IN THE ABSENCE OF “SOVEREIGN IMMUNITY” ALL REFERENCES IN TRIBE’S MOTION ARE SIMPLY MEANINGLESS

The balance of Tribe’s brief consists of vacant statements apparently designed to obfuscate or distract from the sovereign immunity issues at the core of this Hearing Examiner proceeding. For example, considerable language is wasted discussing the fact that a building permit was actually issued during the pendency of this Appellate process. Beginning on page two of the Motion, counsel states:

**“Further, the Project Opponents’ appeals are moot. No party appealed the building permit for the Project, and that land use decision has become final. Even if the Project Opponents’ prevailed (sic) on their challenges to the Determination and Design Review Approval, the Tribe could still act on its unchallenged building permit.”** (emphasis added)

The apparent arrogance of Tribe’s counsel is surprising to this Appellant, who has had a very high regard for the Miller Nash firm for over 50 years.

On the same page two, counsel claims that **the Type C-2 process itself cannot require “substantial discretion”** since (in counsel’s opinion) “Under Washington law, issuing a building permit is a ministerial act that requires *no* discretion at all.” That circular logic is unsupported indeed. Counsel then summarily concludes:

“Accordingly, because the permits on appeal do not require the exercise of substantial discretion, a C-2 process is not warranted.”

The remainder of the Tribe’s brief relating to this Appellant lack any legal merit or are simply conclusory, such as the following instances:

On page 15, counsel reiterates the “aggrieved party” claim from SMC 20.01.090E, which I have already demonstrated is inapposite in my response to the City’s Motion to Dismiss (to which I direct counsel.) On page 18, counsel repeats the City’s claim that SMC Title 18 should somehow supersede Title 20, and I again refer counsel to my response to the City earlier today. On page 20, counsel makes the unsupported claim:

“The Director is legally prohibited from exercising discretion when reviewing a building permit application.”

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**The Tribe has failed to establish any basis for summary judgment, and its Motion must be denied.**

Respectfully submitted,

I certify that I have served all parties by email on September 14, 2020, and that all foregoing statements are true.



Robert L. Bilow

Idaho State Bar # 1294

Senior status, inactive

**From:** [Tellina Sandaine](#)  
**To:** [Erika Hamerquist](#)  
**Subject:** FW: Response to S/J  
**Date:** Tuesday, September 15, 2020 7:58:03 AM  
**Attachments:** [MAT HEx Response to Tribe SJ 2.pdf](#)

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**From:** Robert Bilow <millrow26@gmail.com>  
**Sent:** Monday, September 14, 2020 9:01 PM  
**To:** Phil Olbrechts <olbrechtslaw@gmail.com>  
**Cc:** Andy Murphy <andy.murphy@millernash.com>; Kristina Nelson-Gross <knelson-gross@sequimwa.gov>; LeAnne Bremer <leanne.bremer@millernash.com>; Michael McLaughlin <michael@mdmwlaw.com>; Michael Spence <mspence@helsell.com>; Tellina Sandaine <tsandaine@sequimwa.gov>  
**Subject:** Response to S/J

Mr. Hearing Examiners and counsel:

Guess I'm not so good at clerical stuff. Left off part of one sentence at the top of p.4, so am send a replacement Response to all.

Bob Bilow

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"The Director is legally prohibited from exercising discretion when reviewing a building permit application."

An elementary reading of SMC Titles 18 and 20 shows this to be false. Next, the closest the Tribe's brief comes to mentioning sovereign immunity is on page 30, stating "The City's land

use authority does not allow it to regulate clinical services.” While this might be true in the abstract, the **OPPOSITE** is true if the Tribe’s use permit is issued without even a limited waiver of sovereign immunity. Without such a waiver, as stated in my response to City’s Motion and as I’m certain is well known to Tribe’s counsel, the doctrine of sovereign immunity would prevent the City of Sequim or any other County, State, or Federal agency from being allowed to bring the Tribe into the judicial system within the State of Washington to enforce any facet of the activity in the proposed MAT clinic. *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018).

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Outpatient Clinic

RESPONSE TO CITY MOTION  
TO DISMISS

I, Appellant Robert L. Bilow, certify and submit this brief in response to the Motion to Dismiss filed by the City of Sequim.

In its Motion, the City has repeatedly misstated and mischaracterized the basis for my Appeal. Accordingly, I will first identify the more obvious misstatements made by the City, then identify the errors made by Director Berezowsky in his January 24, 2020 "Notice of Determination of Procedure Type", next specify the proper "Typing Procedure" required under the Sequim Municipal Code, and finally address the "standing" errors in the City Motion.

## BEGINNING OBSERVATION

For some inexplicable reason, by virtue of this Motion to Dismiss ALL PENDING APPEALS before the Hearing Examiner, the Sequim City Attorney is attempting to allow the Jamestown S’Klallam Tribe to build and operate a Medication Assisted Treatment clinic which will be subject to absolutely NO judicial oversight due to the Tribe’s SOVEREIGN IMMUNITY. If the City should prevail, no person, entity, City, County, State or Federal Agency can force the Tribe into Court for any transgression committed directly or indirectly with respect to the Tribe’s operation of the MAT clinic.

### I. CITY MISSTATES THE FOUNDATION OF MY APPEAL

City begins its argument by erroneously grouping me with the other two Appellants, Parkwood Manufactured Housing Community (Parkwood) and SAVE OUR SEQUIM (SOS), in stating:

“despite Appellants’ strained and superficial interpretation of the law, the City cannot require the Tribe to go through the Essential Public Facilities C-2 process.”

The topic of Essential Public Facilities has never been the basis of my Appeal in this matter, as will become obvious a few pages later in this brief.

Next, City again groups all Appellants in mistakenly asserting:

“Appellants’ arguments hinge solely on the *type of patients treated and medication provided* at the facility, which under clearly established anti-discrimination laws cannot be a basis for issuing land use decisions under the ADA/RA.”

Again, the basis of my appeal has nothing to do with the *type of patients treated and medication provided* at the facility. And with respect to the Americans With Disabilities Act (ADA), I agree that the ADA prevents governmental entities from discriminating against individuals through use of the zoning process, as stated in the cases cited later in the City’s Motion,

*Pacific Shores Properties, LLC v. City of Newport*, 730 F.3d 1142 (2013), *New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3d Cir. 2007), and *Comprehensive Addiction Treatment Services, Inc. v. City and County of Denver*, 795 P.2d 271 (1989).

Why the City believes that my Appeal is to the contrary is a mystery to me.

And next, on pages 8, 12, and footnote 17 on page 24, the City claims that my Appeal suggests a Type C-2 process is required due to some “community interest” or “broad community interest”. Once again, the City has missed the mark, since that is not at all my position. Perhaps the City’s confusion is best demonstrated in its footnote 2 on page 8, which states:

“The City does not fully understand this argument and what follows is our best attempt to unpackage and respond to this vague and confusing argument.”

While that language could be construed to be a bit insulting, I suggest that it instead demonstrates the City’s dearth of legal talent capable of understanding and applying the Sequim Municipal Code, particularly Land Use Title 20.

## **II. THE CLEAR FOUNDATION OF MY APPEAL IS THE SOVEREIGN IMMUNITY ACCORDED THE JAMESTOWN S’KLALLAM TRIBE**

In this action, the determinative issue is the **SOVEREIGN IMMUNITY** possessed by the Jamestown S’Klallam Tribe. Native American Indian Tribes have sovereign immunity, a status which protects any such Tribe from suits within **ANY** Court of Law in the Unites States. State and federal courts have repeatedly emphasized that only the United States Congress has the power to limit Indian sovereign immunity, the most recent significant case being the United States Supreme Court decision in *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649 (2018). As a result, tribal sovereign immunity has become a seemingly boundless means of avoiding

lawsuits and liability. Other than Congress, this immunity is absent only in instances where a Tribe itself has waived that sovereign immunity.

Accordingly, unless the Jamestown S’Klallam Tribe **waives** its sovereign immunity with respect to its operation of the MAT clinic, the City of Sequim has **NO ABILITY** to force compliance with City, County, or State Health Codes. Indeed, the City has **NO** ability to file **ANY** legal action in State or Federal Courts relating to operation of the MAT clinic.

The Jamestown S’Klallam Tribe clearly knows how to execute a limited waiver of sovereign immunity, even though the City Attorney seemed surprised when I raised this issue at the October 14, 2019 City Council meeting shortly after I became aware of the proposed MAT clinic. (Exhibit RLB-8) This should not have been a surprise to her---I have attached (Exhibit RLB-1) the limited waiver which she, as City Attorney, presumably recommended and the Tribe signed in December of 2018 in order to obtain wastewater services from the City of Sequim under an Interlocal Agreement. Please note also that the limited waiver for the Interlocal Agreement explicitly extends **ONLY** to City of Sequim and **NOT** to any other party!

Nonetheless, the Tribe recently posted a collection of “Frequently Asked Questions” on its website, one of which states unequivocally:

“The Tribe must follow all Sequim City codes and building regulations. Furthermore, we must follow all Washington state and federal regulations regarding the operation of a medication-assisted treatment clinic.” (Exhibit RLB-2)

These statements have no legal effect absent a proper limited waiver of sovereign immunity, since the promises **cannot be enforced** by the City of Sequim, or any County, State, or Federal agency. Note that the term **“Sovereign Immunity”** does **NOT** appear anywhere in the City’s Motion to Dismiss, or in the Tribe’s Motion for Summary Judgment also filed against my Appeal. The City and Tribe have a clear joint desire to mislead the Hearing Examiner in the pending Appeals.

### III. A PLAIN READING OF SEQUIM MUNICIPAL CODE, TITLE 20, SHOWS THAT DIRECTOR BEREZOWSKY ERRED IN TYPING THE TRIBE'S APPLICATION AS AN A-2 PROCESS

All my SMC analysis included in this document is based upon the "plain meaning" of the Code sections referenced, which is recognized universally as the proper method of such analysis. *Seattle Housing Authority v. City of Seattle*, 3 Wn.App.2d 532 (2018), *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 43 P.3d 4 (2002)

Upon receipt of a Permit Application, the Director of the Department of Community Development, Barry Berezowsky, was obliged to "process" that Application pursuant to Title 20 of the SMC, as stated in the first section of that Title, 20.01.010 Statutory Authorization and Purpose:

"In enacting this title, 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."  
(emphasis added) (Exhibit RLB-7)

To clarify the alternative "Process Types" available under Title 20, the SMC included specific definitions of the "A", "B", and "C" Types of process:

SMC 20.01.020:

"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.

"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.

“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.

“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)

The A-2 process is essentially “automatic” or “ministerial”, whereas the C-2 process involves a considerable degree of human intelligence.

The “Typing Process” as defined required that the Director utilize the following schedule in Title 20, §20.01.030 for his “Typing Decision”:

A. Project Permit Application Framework.

Table 1

Procedural Steps	Application Process					
	Type “A” Actions Administrative		Type “B” Actions Hearing Examiner	Type “C” Actions Planning Commission and City Council		
	Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Recommendations by:	N/A	N/A	Staff	Staff	Planning Commission	Staff
Notice of Application	No	Yes	Yes	Yes	Yes	No
Public Meeting/ Workshop	—	—	—	—	Planning Commission	—
Open Record Public Hearing	<u>See Note<sup>a</sup></u>	<u>See Note<sup>a</sup></u>	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision-making Body	Staff <sup>b</sup>	Staff <sup>b</sup>	Hearing Examiner <sup>b</sup>	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner <sup>c</sup> City Council	City Council <sup>d</sup>	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

<sup>a</sup>Public hearing only if administrative decision is appealed, open record hearing before hearing examiner.

<sup>b</sup>Denials of permits, boundary line adjustments and variances must be reviewed by the city attorney for legality before becoming final.

°Appeal authority for building and other construction permits; sign permits and boundary line adjustments. Subsequent appeals on these permits to Clallam County Superior Court.

°Subsequent appeals on city council decisions to Clallam County Superior Court.

Table 2

Application Type						
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3	
Building and other construction permit	SEPA determination	Variances	Major use permit	Comprehensive plan amendment	Final subdivision map	
Sign permit	Minor subdivision		Shoreline permit	Special use permit	Dedication of public easements and rights-of-way	
Boundary line adjustment	Minor conditional use permit					SMC land use related text amendment
Minor amendments to PRDs	ESA and wetland permits				Site-specific rezone	
Home occupation					Planned residential developments	
Street use					Major amendments	
					Annexation	
ESA, shoreline and wetland exemptions	Street vacation					
	Preliminary major subdivisions					
			Preliminary binding site plan			

**B. Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications are subject to a Type A-1 and Type A-2 process (administrative), Type B process (hearing examiner), or Type C-1, Type C-2 and Type C-3 process (planning commission/city council) as defined in SMC 20.01.020.** As defined in subsection A of this section, a Type A-1 is an administrative process which does not require public notice; a Type A-2 process is an administrative process which requires public notice; a Type B is a quasi-judicial process which requires a public hearing (the decision-making body for a Type B process is the hearing examiner); Type C-1 processes are quasi-judicial and require public hearings (the decision-making body for Type C-1 processes is the planning commission). **Type C-2 are quasi-judicial or legislative and require public hearings (the decision-making body is the city council).** **Type C-3 are largely ministerial** and do not require a public hearing (the decision-making body for Type C-3 is the city council). (emphasis added)

In view of the overriding and monumental issue of SOVEREIGN IMMUNITY, the Tribe’s Application clearly fits within the “Type C-2 process” and only in that process due to the **SUBSTANTIAL DISCRETION** which clearly will be essential following that selection.

This fact is obvious when one considers the alternative: As established by the United States Supreme Court in the *Upper Skagit Indian Tribe* decision noted above and all legal precedent thereafter, **no person or entity can sue the Tribe in any State or Federal Court without first obtaining the consent of the Tribe or of the United States Congress. If the City were able to approve this Application without conditions, the City would forfeit any ability to enforce any rules or guidelines regarding the MAT facility in the future!** This is akin to creating a “super-power” within the City of Sequim to operate the MAT clinic without recourse.

The mere concept of this happening is frightening and ludicrous. Yet this is what the City and Tribe propose and support at this time!

Before demonstrating how Director Berezowsky has pushed for this absurd result in his “Typing Determination”, consider the following steps, which define the “proper” process required under SMC Title 20, the “**integrated permit review process**” (Exhibit RLB-7):

First, the Director is to make a “Typing Determination” under SMC 20.01.040B:

“The director shall determine the proper procedure for all development applications.”

Thus, the Director is to make a selection among the Type “A”, “B”, and “C” procedures. The only reasonable choices initially are the A-2, and C-2 Types---the A-2 Type because Table 2 mentions a SEPA process, and the C-2 Type because Table 2 mentions “Special use permit” and C-2 involves the application of “substantial discretion”. In the final analysis, the A-2 process is eliminated (1) because A-2 is only a “ministerial” action involving “limited discretion” while C-2 involves “substantial discretion”, and (2) SMC 20.01.040B states:

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.**”

Type C-2 is clearly the “higher procedure type letter in SMC 20.01.030”. Furthermore, the Table 2 classification of “special use permit” is appropriate due to the Tribe’s sovereign immunity and all judicial consequences which flow from that status. As noted above, any other designation results in the creation of an entity operating the MAT clinic without any possibility of judicial supervision or restraint by the City of Sequim or any other governmental entity. Why the City is supporting this result is incredulous to this Appellant.

After making this C-2 determination, the Director then should have looked to SMC Title 18 to determine whether the “use identified” was appropriate under the Zoning provisions. According to the SMC 18.33.031 “table of uses” an “outpatient facility” is a permitted use and an “inpatient facility (hospital) is a conditional use within the River Road economic opportunity area (RREOA). (Exhibit RLB-4)

While the MAT clinic Application claims to be for an outpatient facility, that position remains somewhat in question since at a Special Meeting of the Sequim City Council held July 29, 2019 City Manager Charlie Bush described a recent meeting he had with Brent Simcosky, Director of Health Services for the Tribe. Manager Bush stated:

“The Tribe has stated that the phase 2 project is an inpatient behavioral health facility...With this new information about possible additional development, their application may result in a process that involves a conditional use or special use permit.” (Exhibit RLB-5)

Indeed, the possibility of a Type C-1 process was discussed even earlier, at the July 8, 2019 City Council meeting during which City Attorney Kristina Nelson-Gross actually deferred to Director Berezowsky for expertise regarding development provisions in the SMC. (Exhibit RLB-9)

Continuing with the “proper procedure” being discussed, the Director would next have faced the true issue in this proceeding: While phase 2 of the MAT clinic might currently be claimed to be “speculative”, what action should the Director take considering the Tribe’s “statement of intent” and the issue of “sovereign immunity”? Perhaps a waiver of sovereign immunity by the Tribe should have been demanded, as was the case in the Interlocal (wastewater) Agreement in December of 2018. (Exhibit RLB-1) In

any event, Director Berezowsky simply failed to even reach this question in his "Typing Determination", as described in the next section.

#### IV. BEREZOWSKY ERRORS IN TYPING DETERMINATION

Many errors are evident in Director Berezowsky's Typing Determination. First of all, he failed to decide among the A-1, A-2, B, and C-2 types as required by SMC 20.01.040B. Instead, on the very first page of his decision, Berezowsky merely presumptively stated that there was "no question" as to the appropriate type of procedure because the permitted uses for zoning purposes in SMC 18.33.031 included outpatient care services. He did not follow the process mandated by SMC 20.01.040B and 20.01.030 at all. His only "comparison of types" was to note that since the Tribe had submitted both a building permit (A-1) and a SEPA form (A-2), then the "higher procedure type" was A-2; this was a massive error to basically decide that the "use table" in Title 18 should be determinative in resolving an issue arising under Title 20.

Berezowsky next discusses essential public facilities, which issue is not pertinent to my Appeal, then proceeds into a discussion of the Americans With Disabilities Act (ADA). The ADA prohibits discrimination whereby zoning codes are used to prohibit certain medical clinics, which is not at issue before this Hearing Examiner.

Finally, Berezowsky mentions the C-2 Type process and its elements of "substantial discretion" and "broad public interest". He disposes of the "broad public interest" element by making some unintelligible reference to comprehensive plan amendments and/or zoning amendments which go before the City Council yet do not generate public interest. If his analysis is meant to suggest that a community's common interest cannot be a basis for rejecting an otherwise acceptable building application, then I certainly agree with him. **But he dismisses the "substantial discretion" issue summarily and without discussion. His error consists of failing entirely to mention and consider the issue presented by the Tribe's sovereign immunity.**

It is obvious that Berezowsky deliberately ignored the issue of sovereign immunity in his Decision, which is manifest error due to the significance of this issue and the fact that he asked me for an explanation of sovereign immunity **less than one month before issuing his Decision**. I explained the concept of sovereign immunity to Director Berezowsky and also reminded him of the many references in the Jamestown S'Klallam Tribal Code to sovereign immunity. (Exhibit RLB-3)

SMC 20.01.040 states that the Director's act of classifying the Tribe's application is an A-1 action, and is subject to appeal at the same time and in the same way as the merits of the application. For the reasons stated above, the City's Motion to Dismiss my Appeal **should be rejected**.

**V. THE CITY'S ATTEMPT TO QUESTION MY ABILITY TO BRING THIS APPEAL IS CONTRARY TO THE SEQUIM MUNICIPAL CODE AND CONTRADICTS THE CITY'S OWN STATEMENTS**

As a quite minor diversion, the City begins its attempt to question my Appeal (Exhibit RLB-15) by claiming I am not an "aggrieved party". That term is mentioned in SMC 20.01.090E, which section applies **only** to appeals of Type A-2 decisions. (Exhibit RLB-11) My appeal is directed at the Director's Typing Determination, which is an A-1 action described in SMC 20.01.040 and appealable under that same section. (Exhibit RLB-7) The term "aggrieved party" does not appear in that SMC section.

More importantly, at my request the City "cleared" my ability to appeal the Typing Determination, in December of 2019. At that time, I noticed the unusual description of a "party of record" in SMC 20.01.020. It appeared that the "party of record" status was limited to individuals who had testified at an open record hearing on the application; and, since no open record hearing would be held before Director Berezowsky was to make either his A-1 (Typing) or A-2 decisions, it appeared that no person or entity could qualify as a "party of record" with the ability to

appeal. Accordingly, after Director Berezowsky stated to me by email that I would have an opportunity to appeal through SMC 20.01.240, I delivered a letter to him on December 20, 2019 asking for confirmation. (Exhibit RLB-12)

Later on the same day, Berezowsky confirmed by email (Exhibit RLB-13) that I would become a party of record with ability to appeal by submitting comments during the forthcoming SEPA process. I sent a “confirming email” to Director Berezowsky the same day (top of Exhibit RLB-13) with copy to the City Attorney. Since **NO** public hearing was possible before the Director’s A-1 Decision, the SMC “party of record” process made absolutely no sense without this clarification. I completed this “loop” by sending in my SEPA comments on April 8, 2020. (Exhibit RLB-14)

This resolution was acceptable since the alternative was outrageous: If no public hearing were held before the Director’s A-1 or A-2 Decisions, then there could be **NO appeal whatsoever!** And, considering the critical importance of sovereign immunity, the Director would seemingly have the unilateral power to approve projects which would have no appellate oversight whatsoever!

The City’s Motion to Dismiss must be rejected on all points.

Respectfully submitted,

I certify that I have served all parties by email September 14, 2020, and that all foregoing statements are true.



Robert L. Bilow

Idaho State Bar # 1294

Senior status, inactive



## JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

### RESOLUTION #49-18

WHEREAS, the Jamestown S'Klallam Indian Tribe (herein after referred to as "the Tribe") was Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council ("Council") is the governing body of the Tribe, in accordance with its Constitution adopted on November 19, 1983, pursuant to the provisions of Part 81 of Title 25 of the Code of Federal Regulations, as such Constitution is amended from time-to-time; and

WHEREAS, the Council and City of Sequim ("City") entered into a Joint Memorandum of Agreement, dated February 26, 2015, stating their mutual interest in having the City provide, at its regional wastewater treatment facility, wastewater treatment services, in whole or in part, to the Tribe; and

WHEREAS, the parties agreed to work together to pursue a mutually satisfactory arrangement for such wastewater treatment; and

WHEREAS, the Tribe and City staff have worked over the past two years to develop an Interlocal Agreement ("ILA") which sets forth such a plan to provide long-term wastewater services to Tribal trust and reservation lands; and

WHEREAS, the City has requested, and the Tribe has agreed, as a condition for entering into the ILA, to grant a limited waiver of sovereign immunity, pursuant to the provisions of Title 22 of the Tribal Code;

NOW, THEREFORE, the Tribe expressly waives its right to sovereign immunity and its right to assert a sovereign immunity defense in Washington State courts for the limited purpose of: 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of the ILA, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of the ILA, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of its insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative proceedings before proceeding with any dispute resolution or legal remedies described in the ILA; and

BE IT RESOLVED FURTHER, Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party to the ILA deems it necessary to institute legal action or proceedings to enforce any right or obligation under the ILA. The Parties further agree that any such action or

proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of the ILA, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of the ILA; and

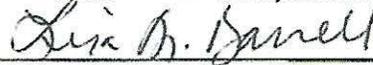
FINALLY, BE IT RESOLVED, the Council approves the ILA with the City for disposal of wastewater from all Tribal trust and reservation lands held now and in the future and directs the CEO of the Tribe, or his designee, to execute the ILA, substantially as set forth in Exhibit A to this resolution, on behalf of the Tribe.



W. Ron Allen, Chairman

**Certification**

I, Lisa M. Barrell, Secretary of the Jamestown S'Klallam Tribal Council of the Jamestown S'Klallam Tribe, do hereby certify that the resolution was adopted at a regularly scheduled meeting of the Jamestown S'Klallam Tribal Council at the Tribal Office in Blyn, Washington on November 28, 2018, with a quorum approving the resolution by a vote of 3 FOR and 0 AGAINST with 0 ABSTAINING.



Lisa M. Barrell, Tribal Council Secretary



**The Jamestown S'Klallam  
Healing Clinic**

<https://jamestownhealingcampus.org>

HEALING CLINIC DESIGN (/#DESIGN)

LOCATION (/#LOCATION)

HEALING CLINIC PARTNERS (/#PARTNERS)

FAQS ([HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/FAQS/](https://jamestownhealingcampus.org/faqs/))

**Ex RLB-2**

COMMUNITY RESPONSE PLAN  
([HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/WP-CONTENT/UPLOADS/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-27-4842-8261-9569.PDF](https://jamestownhealingcampus.org/wp-content/uploads/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-27-4842-8261-9569.PDF))

# Frequently Asked Questions

## 1. What is medication-assisted treatment (MAT)?

MAT has been essential in not just saving lives, but in helping people manage the debilitating nature of addiction. This offers the best opportunity for sustained recovery, with a success rate of more than 75 percent.

MAT uses one of three medications, which reduces cravings, treats withdrawal, blocks effects of other opioids, and prevents overdoses.

Because of the damage that opioids cause in the brain and body, there is very little success in trying to eliminate an addiction without MAT. According to the U.S. Department of Health & Human Services:

*A common misconception associated with MAT is that it substitutes one drug for another. Instead, these medications relieve the withdrawal symptoms and psychological cravings that cause chemical imbalances in the body. ...[R]esearch has shown that when provided at the proper dose, medications used in MAT have no adverse effects on a person's intelligence, mental capability, physical functioning, or employability ([source \(https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat\)](https://www.samhsa.gov/medication-assisted-treatment/treatment#medications-used-in-mat)).*

## 2. Aren't these services

No. Some Clallam County residents are traveling to other MAT clinics in Aberdeen, Everett, and Tacoma, but would rather receive care closer to home. Other patients in our area get medication-assisted treatment through their primary care providers, and that

already

available?



The Jamestown S'Klallam  
Healing Clinic  
(<https://jamestownhealingcampus.org>)

has helped meet part of our community's need. However, just like  
HEALING CLINIC DESIGN (#DESIGN) LOCATION (#LOCATION)  
diabetes or any other illness, different patients need different levels  
of treatment. HEALING CLINIC PARTNERS (#PARTNERS)  
Some people need to have their medication  
administered daily and they need other services to support their  
recovery. That is the work of the Healing Campus, and no one else is  
doing it. COMMUNITY RESPONSE PLAN  
FAC (HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/FAC)  
HTTPS://JAMESTOWNHEALINGCAMPUS.ORG/WP-  
CONTENT/UPLOADS/2020/01/COMMUNITY-RESPONSE-PLAN-JAN-  
27-4842-8261-9569.PDF)

### 3. Who are the patients?

The average opioid use disorder patient is a white male between 25 and 55 years old. We expect our first group of patients will be self-referred, meaning they are already receiving treatment and would like to do so closer to home. The majority often have jobs and families they care for. Even after the two-year ramp-up period, we expect very few patients to have housing issues.

### 4. Why is this needed?

Our counties were especially affected by the national opioid crisis, with death and overdose rates far greater than other counties. Between 2012 and 2016, Clallam County had the second highest drug overdose death rate in the state, and overdoses were the leading cause of accidental deaths. While many patients are being successfully treated in primary care, we know that many others need more intense medical supervision to get well.

### 5. Does the Jamestown Tribe have to follow city, state, and federal regulations?

The Tribe must follow all Sequim City codes and building regulations. Furthermore, we must follow all Washington state and federal regulations regarding the operation of a medication-assisted treatment clinic. The MAT Clinic must also be inspected and certified by the Drug Enforcement Administration (DEA) prior to opening.

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

Ex RLB-3

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

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.

development facilities, assembly, warehousing, distribution, professional services, corporate headquarters, medical facilities and complementary educational and recreational uses among others. Limited retail, business and support services that generally serve the needs of the districts' tenants and patrons as well as limited multifamily mixed residential/commercial uses are also allowed. All three districts are intended to expand and diversify the city's economic base and increase the number and range of living-wage jobs. (Ord. 2019-002 § 1 (Exh. A))

### 18.33.020 Purposes.

A. The Bell Creek economic opportunity area (BCEOA) district provides for business and professional offices, corporate headquarters, research and development facilities, light industry/manufacturing and complementary retail, commercial, educational, recreational and limited multifamily residential uses. The district is not intended to support the general commercial needs of the community.

B. The River Road economic opportunity area (RREOA) district is intended to enhance the city's economic base by providing for an integrated grouping of businesses and buildings of a larger size and scale than the BCEOA and HTLI districts may support. The RREOA district supports a variety of uses, such as light manufacturing, professional office buildings, retail, commercial, multifamily residential and warehousing and distribution.

C. The high tech light industrial (HTLI) district provides appropriate locations for combining light, clean industries, including industrial service, manufacturing, fabrication, assembly and production; business and technology research and development; and warehousing, distribution and storage activities. Uses are typically not reliant on unprocessed natural resources. Professional offices and sale of goods produced on site are subordinate to permitted activities. (Ord. 2019-002 § 1 (Exh. A))

### 18.33.030 Uses.

A. Types of Uses. For the purposes of this chapter, there are three kinds of uses:

1. A permitted (P) use is one that is permitted outright, subject to all the applicable provisions of this title and relevant portions of the Sequim Municipal Code.

2. A conditional use (C) is a Type C-2 discretionary use reviewed through the process set forth in SMC 20.01.100 governing conditional uses.

3. A prohibited use (X) is one that is not permitted in the zoning district under any circumstances.

B. Recognizing that there may be certain uses not mentioned specifically in Table 18.33.031 because of changing businesses, technology advances, or other reasons, the DCD director is authorized to make similar use determinations, as set forth in SMC 18.20.015.

The following Table 18.33.031 is a list of uses for the three zoning districts:

**Table 18.33.031 – Business and Employment District Uses**

USE	BCEOA	RREOA	HTLI
Office and Professional Services			
All forms of corporate, professional, public, brokerage, administrative, financial, building trade, and research offices	P	P	X
Corporate headquarters and regional offices	P	P	X
Office-oriented service providers, such as communications services, photocopying, courier and messenger services, graphic design, printing, promotional products, and the like	P	P	X
Office equipment sales and services	P	P	X
Technology service and support, copy and connectivity centers, telework centers	P	P	X
Business/Technology Research and Development			
Biotechnology/medical laboratories	C	C	C
Computer technology	P	P	P
Electronic components and board systems engineering and development	P	P	P
Research and research industry-oriented service providers	P	P	P
Software engineering	P	P	P
Commercial Services and Retail			
Commercial convenience, personal services, and restaurant establishments (In existing and/or new structures 5,000 square feet or larger, commercial convenience, personal service uses, and restaurant eating/drinking establishments are allowed but are to be subordinate to the building's primary uses. All commercial uses located in the structure are limited to 25% of the building's gross square footage. No drive-through facilities are allowed.)	P	P	X
Commercial retail in conjunction with a primary use (Retail sales of products assembled, manufactured, etc., in the BCEOA, RREOA, HTLI zoning districts are allowed but are to be subordinate to the building's primary use. Retail sales use is limited to 25% of the building's gross square footage.)	P	P	P

USE	BCEOA	RREOA	HTLI
Wireless communication facilities	P	P	P
Co-location of wireless facilities on existing facility or structure	P	P	P
Other			
Ambulatory and outpatient care services (physicians, outpatient clinics, dentists)	P	P	X
Child care centers	C (as a secondary use)	C	C (as a secondary use)
College, universities, technical, trade and other specialty schools	C	C	C
Grade schools (K – 12)	C	C	X
Hospital	C	C	X
Museums, historic and cultural exhibits	P	P	X
Privately owned amusement, sports or recreation establishments (retail sales limited to 25% of use's total square footage)	P	P	X
Churches, new freestanding/monument structures and existing building(s) 5,000 square feet or larger	C	C	X
Churches, under 5,000 square feet and within an existing building(s)	C	C	C
Sports arena or stadium	C	C	X
Veterinary clinics and hospitals (not including kennels)	P	P	X

(Ord. 2019-002 § 1 (Exh. A))

### 18.33.040 Development standards.

For development standards, see Table 18.33.042 below.

**Table 18.33.042 – Business and Employment Districts Development Standards**

Standard	Bell Creek EOA	River Road EOA	HTLI
Minimum/maximum lot area	None	None	None

MANAGER  
BUSH

^

## Comments for July 29 City Council Meeting

Based upon conversations with the Jamestown S'Klallam Tribe, we have been expecting an application for phase 1, the Medically Assisted Treatment Center, at some point in the future.

In a meeting that I had last Thursday with Chairman Ron Allen to discuss John Wayne Marina, he mentioned that the Tribe was acquiring an option on land to the west of the land they already purchased. He stated the purpose was to provide street access to River Road. He also mentioned that housing could be included in their development plans. I followed up today with Brent Simcosky, Director of Health Services for the Tribe. Mr. Simcosky stated that the Tribe does not have plans to construct housing in that location and that Chairman Allen was speaking to the need for affordable housing generally in the community. He did confirm that the Tribe is working to secure an option on additional land next to the potential phase 1 and phase 2 projects for possible access to River Road. The Tribe has stated that the phase 2 project is an inpatient behavioral health facility.

In the spirit transparency, given that we are all here on this topic tonight, I thought it important to share this information with you. I encourage you to ask the Tribe questions at their meeting on August 8<sup>th</sup>, should you have them, about any further plans they may have at this site besides phases 1 and 2. City staff will be asking the same of the Tribe through the permitting process.

It is unusual for us to be discussing a process a project may follow prior to an application or even a pre-application meeting. We are all speculating at this point until something arrives in writing from an applicant. We had been expecting an application to follow an A1 or A2 process, based upon what the Tribe had previously told us about their project. With this new information about possible additional development, their application may result in a process that involves a conditional use or special use permit. We mentioned this possibility at the July 8<sup>th</sup> meeting. As we do in our normal development processes, we will have to wait until we have an application in writing to determine its exact path.

We want to hear from you tonight and will be answering your questions in writing regarding the permitting process and posting those answers on our website. We will also be submitting questions about the project to the Tribe. Thank you for being here tonight.

20.01.170 Application review – Scope of review.

20.01.180 Application review – Integrated SEPA review.

Ex RLB-7

20.01.190 Notice of public hearing.

20.01.191 Notice of public meetings.

20.01.200 Procedures for public hearings.

20.01.201 Procedures for public meetings.

20.01.210 Reconsideration.

20.01.220 Remand.

20.01.230 Final decision.

20.01.240 Appeals.

20.01.010 Statutory authorization and purpose.

In enacting this title, 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)

20.01.020 Definitions.

The following definitions shall apply throughout this title:

A. "Adjacent landowners" means the owners of real property, as shown by the records of the county assessor, located within 300 feet of any portion of the boundary of the proposed subdivision.

B. "Aggrieved party" is a party of record who can demonstrate the following:

1. The land use decision will prejudice the person;
2. The asserted interests are among those the city is required by city code to consider in making a land use decision; and
3. A decision on appeal in favor of the person would substantially eliminate or redress the prejudice alleged to be caused by the land use decision.

- C. "Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a city decision.
- D. "Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for land use permits.
- E. "Hearing examiner" means a position appointed and created pursuant to Chapter 2.10 SMC to hear and decide appeals of orders, decisions or determinations made by the staff and to authorize upon appeal in specific cases such variances from the provision of the zoning ordinance or other land use regulatory ordinances as the city may adopt.
- F. "City" means the city of Sequim, Washington.
- G. "City council" means the city of Sequim city council.
- H. "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.
- I. Days. All days shall be calendar days.
- J. "Department" means the department of community development.
- K. "Director" shall mean the director of the department of community development or his/her designee.
- L. Effective Date of Decisions. All preliminary and final decisions shall be effective on the date stated in SMC 20.02.010.
- M. Effective Date of Notices. All notices provided to applicants and any members of the public shall be effective on the date deposited in the mail and when first published or posted on properties.
- N. "Ministerial" means an action that allows for little description and requires adherence to previous decisions or adopted rules and regulations.
- O. "Open record hearing" means a hearing, conducted by a single hearing body or officer, that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record hearing has been held on the project permit.

P. "Parties of record" means the land use permit applicant, persons who have testified at an open record hearing, and any persons who have submitted written comments concerning the application that form part of the public record that is considered at the open record hearing (excluding persons who only signed petitions or mechanically produced form letters).

Q. "Project permit" or "project permit application" means any land use or environmental permit or license required from the city for a project action, including but not limited to subdivisions, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by Chapter 18.80 SMC, Critical and Environmentally Sensitive Areas Protection, as amended, site-specific rezones authorized by the Sequim comprehensive plan or a formally adopted subarea plan, but excluding the adoption or amendment of the Sequim comprehensive plan, a subarea plan, or development regulations except as otherwise specifically included in this subsection.

R. "Public workshop" or "public meeting" means an informal meeting or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to a decision. A public workshop may include, but is not limited to, a design review, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public workshop may be recorded and a report or recommendation may be included in the local government's project permit application file.

S. "Sequim Municipal Code" means Sequim Municipal Code as amended.

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. (Ord. 2019-004 (Exh. B); Ord. 2012-001 § 3 (Exh. B); Ord. 2011-017 §§ 1, 2; Ord. 2002-014; Ord. 2000-006 § 3)

**20.01.030 Procedures for processing development project permits.**

## A. Project Permit Application Framework.

SMC 20.01.030

Table 1

Procedural Steps	Application Process					
	Type "A" Actions Administrative		Type "B" Actions Hearing Examiner	Type "C" Actions Planning Commission and City Council		
	Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Recommendations by:	N/A	N/A	Staff	Staff	Planning Commission	Staff
Notice of Application	No	Yes	Yes	Yes	Yes	No
Public Meeting/ Workshop	—	—	—	—	Planning Commission	—
Open Record Public Hearing	See Note <sup>a</sup>	See Note <sup>a</sup>	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision- making Body	Staff <sup>b</sup>	Staff <sup>b</sup>	Hearing Examiner <sup>b</sup>	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner <sup>c</sup> City Council	City Council <sup>d</sup>	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

<sup>a</sup>Public hearing only if administrative decision is appealed, open record hearing before hearing examiner.

<sup>b</sup>Denials of permits, boundary line adjustments and variances must be reviewed by the city attorney for legality before becoming final.

<sup>c</sup>Appeal authority for building and other construction permits; sign permits and boundary line adjustments. Subsequent appeals on these permits to Clallam County Superior Court.

<sup>d</sup>Subsequent appeals on city council decisions to Clallam County Superior Court.

Table 2

Application Type					
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3

Application Type					
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Building and other construction permit	SEPA determination	Variances	Major use permit	Comprehensive plan amendment	Final subdivision map
Sign permit	Minor subdivision		Shoreline permit	Special use permit	Dedication of public easements and rights-of-way
Boundary line adjustment	Minor conditional use permit		SMC land use related text amendment	Acceptance of public improvement	
Minor amendments to PRDs	ESA and wetland permits		Site-specific rezone		
Home occupation			Planned residential developments Major amendments		
Street use			Annexation		
ESA, shoreline and wetland exemptions			Street vacation		
			Preliminary major subdivisions		
		Preliminary binding site plan			

B. Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications are subject to a Type A-1 and Type A-2 process (administrative), Type B process (hearing examiner), or Type C-1, Type C-2 and Type C-3 process (planning commission/city council) as defined in SMC 20.01.020. As defined in subsection A of this section, a Type A-1 is an administrative process which does not require public notice; a Type A-2 process is an administrative process which requires public notice; a Type B is a quasi-judicial process which requires a public hearing (the decision-making body for a Type B process is the hearing examiner); Type C-1 processes are quasi-judicial and require public hearings (the decision-making body for Type C-1 processes is the planning commission). Type C-2 are quasi-judicial or legislative and require

public hearings (the decision-making body is the city council). Type C-3 are largely ministerial and do not require a public hearing (the decision-making body for Type C-3 is the city council).

C. Exemptions from the requirements of project permit application processing as defined in this chapter are contained in SMC 20.01.070.

D. Burden of Proof. During "project permit" or "project permit application" (as defined in SMC 20.01.020(Q)) processes as described in this title, the burden of proof is on the proponent or permit applicant. The proponent or applicant must provide convincing evidence to the decision makers that the application conforms to applicable law, including, but not limited to, the Growth Management Act, SEPA, the Sequim Municipal Code, all developmental regulations, and the city's comprehensive plan. The proponent must also present convincing evidence that any significant adverse environmental impacts have been adequately mitigated. (Ord. 2019-004 (Exh. B); Ord. 2019-006 § 1 (Exh. C); Ord. 2010-006 § 1; Ord. 2005-022 § 10; Ord. 2004-015 § 11; Ord. 2002-014; Ord. 2000-006 § 3)

#### **20.01.040 Determination of proper type of procedure.**

A. Type of Application. The act of classifying an application shall be a Type A-1 action. 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.

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)

#### **20.01.050 Projects requiring two or more permit applications.**

A. Optional Consolidation. A project that involves two or more permit applications may be subject to a consolidated project permit review process as established in this chapter. The applicant may determine whether the applications shall be processed collectively or individually. If the applications are processed under the individual procedure option, the highest type procedure must be processed prior to the subsequent lower procedure.

B. Consolidated Permit Processing. When the project is reviewed under the consolidated procedure option, the highest procedure required for any part of the project application must be applied. All project permits being reviewed through the consolidated permit review process shall be included in the following:

1. Determination of completeness;
2. Notice of application;

Σx RLB-8

**CITY OF SEQUIM  
CITY COUNCIL MINUTES  
SEQUIM CIVIC CENTER  
152 WEST CEDAR STREET  
SEQUIM, WA  
CORRECTED OCTOBER 14, 2019**

1. League of Women Voters Water Study Group

Ann Soule, Public Works Resource Manager, and Carol Hull with the League of Women Voters (LWV) presented concerning the educational outreach for the LWV and the story of water.

The kickoff of the series starts October 23rd. The Story of Water coincides with Imagine a day without water.

2. South Sequim Complete Streets Charrette & Next Steps (by Framework)

Jeff Arango with Frameworks presented the information from the South Sequim Connector Design Charrette.

Ted Miller mentioned that the through route is another perspective to consider in addition to the neighbors' input.

Arango stated that the options that are being created do not lead to a trade-off. They can satisfy the residents and the goals in that area.

Miller stated that he isn't a fan of traffic calming for a street like this. Arango mentioned soft traffic calming which relates to the designs presented this evening. Soft traffic calming is like sidewalks buffered by street trees and bike lanes, etc.

Bob Lake asked about how many people affected by the connector were in attendance. Arango mentioned about 40 - 60 the first night and that they took the site tour the next day which included about 15 and about 20 at the Administration Building.

Arango stated that people were concerned with walking and lighting and less about their property at this time. He said that once you start talking about specifics, personal property concerns come up.

Jennifer States said this is an opportunity for people to come together and talk about a shared vision.

Lake said that traffic can be sent through other traffic routes.

Brandon Janisse asked if Framework engaged the Shaw family. Arango said yes.

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

Present: Dennis Smith, William Armacost, Ted Miller, Bob Lake, Jennifer States, Candace Pratt, Brandon Janisse  
Absent: None      Excused: None

## **CHANGES TO THE AGENDA**

Janisse requested to pull Item 10 from the Consent Agenda. Miller agreed with that request.

Smith moved the Student Liaison report to occur after Item 4.

**MOTION** to approve Changes to the agenda. by Brandon Janisse; seconded by Ted Miller. **Carried Unanimously.**

## **CEREMONIAL**

### **3. Introduction of School Superintendent Dr. Rob Clark**

Dr. Rob Clark was welcomed by Mayor Dennis Smith. Dr. Clark came in to thank the City for the welcome and the partnerships created and the consistent support of Sequim School District programs.

### **4. Bob Lake Yellow Belt Award**

Jason Loihle, Management Analyst, presented Lake with a Lean Six Sigma Yellow Belt Award.

### **Student Liaison Report**

Eva Lofstrom gave the Student Liaison report. She mentioned that they just had Homecoming and some freshman students are currently visiting Japan. The student choir is participating at All-State. The STEM program started a robot program to introduce younger kids to the program.

**PUBLIC COMMENTS Please limit comments to 3 minutes. Please see "Public Comments" rules attached.**

Joan Cotta, 1301 S. 3rd, Unit 9D, her comments are on the MAT Survey. She is concerned with the security of that survey. She took a Polco Survey twice and it didn't kick her out. She has concerns with the older generation and their ability to take the survey. She is also concerned with the ability to drive results and sway the results. She doesn't think it is an adequate tool.

Marc Sullivan, 822 Clark Road, is here to talk about the MAT Clinic. He said that Brent Symcosky said that the Jamestown Tribe has offered a MAT treatment at the clinic for more than two years now. He asked the Police Department about how many calls they received from Jamestown because of the MAT treatment. He said hardly anyone even noticed because nothing happened. He commented on the Essential Public Facility process. He said to obey the rule of the law.

Bob Bilow, 195 Sunset Place, is a retired lawyer and class of 1961 of Sequim. He wants to know if the Tribe would waive the sovereign immunity. He said you can't take the Tribe into Superior Court. He said that the wastewater treatment plant had that immunity. He asked that the Tribe do that with this property as well. He said this isn't automatic because the Council must have a way of an outlaw organization from coming in. He wants to make sure there are rules and that the tribe waives their immunity.

Rebecca Horst, 330 West Maple St., class of 1993 in Sequim and the 1993 Irrigation Festival and she is a Pioneer and a grange member. She was in the foster system and her father is a Navy Seal, frogman and he didn't get a diploma. They grew up in poverty. She said that she stayed late at the last meeting and that the City Council said that they discussed the survey and that the Council said that maybe the Jamestown would consider a different location. She told the Council that they are being harassed by this group and you are reinforcing the negative behavior. Last weekend they completed a peace march.

Elizabeth Shilling, 822 Clark Road, has lived in Sequim for about five years now and she also lived in Sequim in the early 1980s. She said it has changed a lot since her first time living here. She mentioned the water video and the charrette. She said that planning is so important here. She said people are struggling because with emotion and fear. She said we should go with facts and she also said that she isn't against the MAT clinic. She mentioned heavy rail in Seattle in the late 1960s or early 1970s. The citizens voted it down. They ended up putting it in for more money.

Rose Marschall, 162 South Barr Road, and asks the Council to err on the side of caution. She would like Council to pass a city ordinance to deny camping or sleeping on public land. She said that other cities have passed civil ordinances saying that you can't camp here. She referred to Burien, Federal Way and Tacoma. She would like Council to pass that.

#### **PUBLIC HEARINGS (Quasi-Judicial or Legislative)**

**CONSENT AGENDA was amended to exclude item 10.**

5. City Council Meeting Minutes September 23, 2019
6. Correction to July 8, 2019 City Council Minutes
7. Claim Voucher Recap in the Amount of \$492,132.86
8. Appointment of Wren Fierro-Burdick to the Parks, Arbor & Recreation Board

**CITY OF SEQUIM  
CITY COUNCIL MEETING MINUTES  
SEQUIM CIVIC CENTER  
152 WEST CEDAR STREET  
SEQUIM WA  
July 8, 2019**

**WORK SESSION**

**1. Team Decision Making**

Charlie Bush discussed his studies at Harvard, stating that: Some decisions are hard to make, and many are made in groups; better decisions are made when groups utilize diversity; group members have different backgrounds and perspectives; groupthink occurs when people want their views to conform with those around them; causes of groupthink include failure to encourage dissent and share information, polarization, and making decisions too early.

**City Manager Report**

Bush stated that the Carrie Blake Park docent program was flagged by WCIA during a recent audit and the program has been placed on hold.

Regarding Council's preliminary broadband assessment goal, the City is coordinating regionally on an opportunity where NODC would administrate a grant; the total need is about \$26,000; contributions could be split on a per-capita basis, with Sequim contributing \$5,000; the County will provide \$10,000; staff will bring an interlocal agreement forward to Council; and, any agreement must be presented to CERB before any grants can be authorized. Miller stated that more competition is needed, and Bush stated that PUD has fiber with nine providers offering services on it. Lake asked if the library may be a stakeholder, and Bush agreed.

**INFORMATION**

**Committee, Board and Liaison Summary Reports**

Lake stated that he attended a Peninsula Emergency Preparedness meeting where he learned of a volunteer that responds to emergencies in a private organization, and that he discussed the mesh network which would be used to connect in the event of an emergency.

States stated that she attended the NODC meeting June 27<sup>th</sup> where a memorandum was signed between the Federal SBA, NODC, and USDA for joint promotion to leverage support for small businesses, and that USDA is offering joint sessions for rural Washington small business development.

Pratt stated that she attended the 1<sup>st</sup> Friday Art Walk. Art Commission member Susan Mollin organized the speakers, and Christopher Enges spoke about videography work done utilizing drones.

Armacost stated that he also attended the 1<sup>st</sup> Friday event. The theme was purple, there was a

diverse range of artists, people in the Council Chambers were working hands-on, and the event was well attended.

### **Student Liaison Report**

Hannah Hampton stated that she is excited to work with the Council.

### **Presiding Officer Report**

Smith reported on Coffee with the Mayor in June: Attorney Nelson-Gross, Chief Crain, and Operations Manager Ty Brown were there. About sixteen members of the public attended. Nelson-Gross provided information on quasi-judicial procedures, Brown spoke about last winter's snow events, and Crain answered questions about the condition of the lot at the corner of 3<sup>rd</sup> Avenue and Washington Street.

## **REGULAR MEETING**

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

Present: Armacost, Janisse, Lake, Miller, Pratt, Smith, States.

### **CHANGES TO THE AGENDA**

The City Manager Report and the Committee, Board and Liaison Summary Reports were addressed during the Work Session.

### **CEREMONIAL**

None

### **PUBLIC COMMENTS**

Bush asked the audience how many had come to speak about a potential Jamestown S'Klallam Tribe facility (Medically Assisted Treatment), and most raised their hands. Bush stated that the decision-making body for such a project could be the Planning Commission; however, the City has not received an application.

Berezowsky stated that he has met with a representative of the Tribe and OMC. About three weeks ago City, Fire Department, and Tribal staff met and discussed feasibility aspects of a potential project behind Costco. It is typical to have informal meetings. Sometimes an application is later received, other times not. 14-17 beds might be proposed for the 1<sup>st</sup> phase, but the project is not fully funded. If the City were to receive such an application, a notice would be published in the newspaper, on the City website, mailed to nearby property owners, and a sign posted on the property providing information about a public comment period and a public hearing. If such a project were to move forward it would be funded in part by the State. If the City were to receive an application for such a project, a design review would be done to determine if the proposal met City requirements under a "C-1" process. The

Planning Commission would be the decision-making body.

A person asked if zoning could be changed to prevent such a project, and Nelson-Gross stated that the City has an obligation under the law to allow for siting of those types of facilities. Zoning is designed to agree with the Comprehensive Plan, for which there was ample opportunity to provide input. There is a process for zoning change requests under Sequim Municipal Code (SMC) 18.88.

A person asked about a newspaper article that was published, and Bush stated that he spoke with a reporter. The State legislature allocated some funding, and an article was written.

A person stated that homeless people are bused to Sequim from Seattle, and Bush stated that the City has not been able to confirm that rumor.

A person stated that land behind Costco was purchased by the Tribe, and Bush stated that people purchase property; however, the City has not received an application.

Lake stated that it is good for people to express their opinions, and that the Planning Commission would hear those comments.

Berezowsky explained the Growth Management Act, stating that laws govern what the Planning Commission and City Council can do, and SMC Chapter 18 lays out the process for Comprehensive Plan and zoning changes.

A person stated that she would like to hear from the people in the audience.

Nelson-Gross asked Berezowsky if there is any scenario where the City Council could be the decision-maker for such a project, because if so, that would be a quasi-judicial process. Berezowsky stated that if a project required a Special Use permit the Council would be hearing it, and if a project was heard by the Planning Commission then the Council would be the appeal authority.

A person read aloud from a newspaper article some of the criteria used to evaluate certain development applications.

A person asked about the nature of Berezowsky's meeting with OMC and the Tribe, and Berezowsky stated they had questions regarding the feasibility of a potential project.

Janisse asked if a moratorium was appropriate, and Nelson-Gross stated that she cannot give an answer to the question at this point.

Lake asked the audience if all were against the potential project and based on responses it appeared that most were.

Bush stated that there is a possibility this could become a quasi-judicial matter before Council in the future, therefore staff recommends discontinuing the conversation at this time.

A person stated that she wanted to hear the opinions of Council members, and Nelson-Gross stated that it is not advised because Council could be hearing this matter in the future.

A person asked if those who had signed in to make public comments could speak, and Nelson-Gross stated that a public notice would be issued announcing an appropriate time to make public comments, that the Council can close public comment if it is not part of a public hearing, and that there is no public hearing on tonight's agenda for this topic. She asked members of the group not to have outbursts and to be respectful.

Bush stated that the City would issue a press release notifying the public of a time and place for a meeting to be held to discuss this topic in a more appropriate venue. The audience collectively asked "when", and Bush stated that it would be in the month of July.

Smith stated that opinions have been heard tonight and through numerous phone calls and emails, but he would not make a decision based on hearing from just one side, and that we should move forward with tonight's agenda.

A person stated that she is an RN and has done work related to methadone clinics, that she saw an outpatient treatment program that was successful, that drug use is a problem in Clallam County, and that we've got to figure out a way to treat people so they don't rob, get overdosed, and fill up emergency rooms.

Smith called for a 5-minute recess, stating that the agenda would move on when the meeting resumed.

## **PUBLIC HEARINGS**

**(Legislative)**

### **2. Mid-Year 2019 Proposed Budget Amendments and Ordinance No. 2019-008 Authorizing Unforeseen Expenditures for 2019**

Hagener presented, stating that the proposal includes a request for two FTEs, an update of the salary and wage schedule, equipment purchases that came in 2018 but were actually paid in 2019, and costs related to last winter's "snowmageddon".

Σx RLB-10



152 W. Cedar Street. Sequim, WA 98382  
PH (360) 683-4908 FAX (360) 681-0552

**NOTICE OF DETERMINATION OF PROCEDURE TYPE FOR  
FILE NO. CDR20-001  
JAMESTOWN S'KLALLAM TRIBE MAT CLINIC BUILDING PERMIT, SEPA  
& DESIGN REVIEW**

**DATE: 1/24/2020**

**Introduction:** According to the Sequim Municipal Code (SMC)20.01.040(B) "[t]he 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."

The act of classifying an application is a Type A-1<sup>1</sup> action and such permit classification "... shall be subject to reconsideration and appeal at the same time and in the same way as the merits of the application in question." (SMC 20.01.040(A))

**Decision:** After reviewing the Medical Assisted Treatment (MAT) clinic application and supporting materials submitted by the Jamestown S'Klallam Tribe, I find that there is no question as to the appropriate type of procedure the application will be subjected to, and therefore I find the permit, as submitted, falls under the City's A-2<sup>2</sup> permit process. The Jamestown S'Klallam Tribe is proposing to build a medical clinic in the River Road economic Opportunity Area (RREOA)<sup>3</sup> According to Table 18.33.031 Business and Employment District Uses "[a]mbulatory and outpatient care services (physicians, outpatient clinics, dentists" are uses that are permitted outright<sup>4</sup>. Therefore, the Tribes proposed Medically Assisted Treatment (MAT) clinic is a permitted use because it meets the definition of a medical clinic in the City's zoning code<sup>5</sup>. My decision is based on a review of the City's code, state and federal law and past practices.

<sup>1</sup> A Type A-1 process is an administrative process that does not require public notice (SMC 20.01.030(B)).

<sup>2</sup> A Type A-2 process is an administrative process which requires public notice (SMC 20.01.030(B))

<sup>3</sup> The City's Economic Opportunity Areas were designated in 2015, well before the passage of President Trump's Tax and Jobs Act that created the process by which each State Governor could designate Economic Opportunity Zones. The RREOA provides no financial or tax incentive or benefit to developers or investors in the zoning district.

<sup>4</sup> A permitted (P) use is one that is permitted outright, subject to all the applicable provisions of this title and relevant portions of the Sequim Municipal Code

<sup>5</sup> "Clinic" means a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities (SMC 18.08.020).

**Discussion:** The Tribe’s MAT clinic application consists of a building permit, design review and State Environmental Policy Act (SEPA). A building permit is a Type 1<sup>6</sup> application, SEPA review is considered a Type 2<sup>7</sup> application, therefore, the Type 2 process is used for the subject application.<sup>8</sup> The C-1, C-2 or C-3 permit types in Table 2 below do not contain a process within which the Tribes MAT clinic fits, unless one considers the application to be a “special use”.<sup>9</sup> As discussed below, the subject application is not a special use or Essential Public Facility (EPF) because, first, the facility is not an “in-patient substance abuse facility”<sup>10</sup>, second, it is not “difficult to site”, and third, the courts have a long history of requiring local government to treat drug treatment clinics and offices as they treat other medical clinics and offices.

**Table 2**

Application Type					
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Building and other construction permit	SEPA determination	Variances	Major use permit	Comprehensive plan amendment	Final subdivision map
Sign permit	Minor subdivision		Shoreline permit	Special use permit	
Boundary line adjustment	Minor conditional use permit			5/10C land use related text amendment	Acceptance of public improvement
Minor amendments to PRDs	ESA and wetland permits			Site-specific rezone	
Home occupation				Planned residential developments Major amendments	
Street use				Annexation	
ESA, shoreline and wetland exemptions		Street vacation	Preliminary major subdivisions	Preliminary binding site plan	

Arguments have been made that the Tribe’s proposed MAT clinic is an essential public facility and, therefore, should be processed according to the City’s C-2 permitting process. The theory is that the City’s code lists “alcoholism or drug treatment centers” as uses “[t]he council may permit ... in districts from which they are now prohibited by this title”.<sup>11</sup> Because the SMC does not include a definition of “drug treatment centers” one needs to look to the applicable sections of the Revised Code of

<sup>6</sup> SMC 20.010.020T. “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

<sup>7</sup> SMC 20.010.020U. “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.

<sup>8</sup> Design review is not a permit, but instead a process to provide guidance and standards for the site and structural development of commercial, industrial, mixed-use and multifamily projects ...” SMC 18.24.010

<sup>9</sup> Special uses are treated similarly to essential public facilities in SMC 18.56

<sup>10</sup> WAC 365-196-550viii lists “in-patient facilities, including substance abuse facilities as EPFs.

<sup>11</sup> SMC 18.56.030

Washington (RCW) and the Washington Administrative Code (WAC) for an understanding of what the legislation contemplated this type of essential public facility to be.

According to WAC 365-196-550(a) “[t]he term “essential public facilities” (EPF) refers to public facilities that are typically difficult to site.” WAC 365-196-550 lists the types of facilities that are considered essential public facilities in the state. The use most like the SMC referenced “drug treatment centers” is “[i]n-patient facilities, including substance abuse facilities;...”<sup>12</sup> (emphasis added). According to the submitted application the proposed MAT clinic will not provide in-patient services, but instead will provide outpatient treatment typical of other types of medical clinics and/or offices. The fact that the MAT clinic will treat recovering opioid addicts is irrelevant to whether the facility is an EPF under state or local law.

Furthermore, RCW 36.70.200(1) defines EPFs as “those facilities that are difficult to site,…” and it is difficult to conclude the siting a 16,700 square foot medical clinic is “difficult”. The City has approved a number of medical clinics over the past 30 years with no difficulty and, except for the outcry by some members of the public, there is no evidence that this drug treatment clinic is more difficult to site than any of the medical clinics previously approved by the City<sup>13</sup> or any other office or commercial building of a similar size, such as Rite Aid (17,272 sq. ft.) or Walgreens (14,470 sq. ft) or the much larger Jamestown Family Clinic<sup>14</sup> (~35,000 sq. ft.).

Finally, even if one could conclude that the proposed MAT clinic was actually an essential public facility subject to the City’s conditional use process, at best the City could only condition the approval of the project because state law prohibits local government from precluding the siting of essential public facilities<sup>15</sup> and/or imposing unreasonable conditions that make the project impracticable.<sup>16</sup>

Analysis of the city’s and state’s essential public facilities language leads me to conclude that the proposed 16,700 square foot MAT clinic does not meet the definition of an EPF and is, instead, only distinguished from any other clinic or office providing medical services by way of the nature of the patient’s medical condition and medical therapy.

To further illustrate, SMC 18.56.030(J), upon which some opponents rely states as follows, emphasis added:

The council may permit the following uses in districts *from which they are now prohibited* by this title:

J. Group homes, *alcoholism or drug treatment centers*, detoxification centers, work release facilities for convicts or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more residents.

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<sup>12</sup> WAC 365-196-550(viii)

<sup>13</sup> File Reference number DRB16-001 (Design Review Application) & SEPA 16-006 (SEPA Checklist), Sequim Retina Properties, June 3, 2016; Notice of Environment Review, SEPA File# 09/001, Mitigated Determination of Non-Significance, Jamestown S’Klallam Tribe, 02/10/09; SEPA Checklist, Olympic Memorial Hospital, Sequim Outpatient Clinic, 1988.

<sup>14</sup> Interestingly, the Tribe has advised that this clinic has been using medically assisted treatment at this facility for at least the past 18 months and merely seeks to consolidate services.

<sup>15</sup> RCW 36.70A.200(5)

<sup>16</sup> Cascade Bicycle, 07-3-0010c, FDO at 17.

Notably absent from the opponents' analysis is the simple fact that the City, despite the language in its code, is prevented from enforcing such prohibitions because case law has made clear that jurisdictions cannot discriminate against medical facilities by virtue of what type of medication is prescribed.

For example, arguing that clinic's drug treatment services are distinguishable from diabetes or cancer clinics is a position contrary to well settled case law. As a result of multiple decisions over the past twenty-years, such as the Third Circuits decision in *New Directions*, municipalities are prohibited to treat drug treatment facility's (i.e. methadone clinics) any differently than "ordinary" medical clinics for zoning purposes.<sup>17</sup>

Other cases supporting equal treatment of medical clinics regardless of the actual "treatment" method being provided at the clinic demonstrates this fact.

*An addiction treatment center, which was licensed for detoxification, withdrawal, or maintenance of addicts, was permitted "office" under the zoning ordinance like other medical offices, in which dispensation of drugs was viewed as part of services provided, and the center could not be denied use permit on theory that its "primary purpose" was dispensation of methadone. Comprehensive Addiction Treatment Services, Inc. v. City and County of Denver, 795 P.2d 271 (Colo. Ct. App. 1989).*

*A methadone clinic is a valid use under the authorization for offices for professional persons. Since the methadone clinic has doctors, nurses, and other licensed professionals who assist in physical and mental treatment of the persons in the program, it constitutes a professional office. While excluded as a clinic due to the insufficient number of doctors, it is a permitted use without necessity of any special-use permit. A resolution by the council stating their interpretation of the zoning restriction is not binding by the court as an attempt to regulate judicial decisions. Village of Maywood v. Health, Inc., 104 Ill. App. 3d 948, 60 Ill. Dec. 713, 433 N.E.2d 951 (1st Dist. 1982).*

*A methadone maintenance treatment center for heroin addicts in a business district is proper as within the classification of professional offices. Where the treatment center operates only during restricted hours and for nonresident patients, it does not fall outside the classification by being a hospital and constitutes reasonable use within the personal services provisions. A resolution by the council against any treatment center is not effective. L & L Clinics, Inc. v. Town of Irvington, 189 N.J. Super. 332, 460 A.2d 152 (App. Div. 1983)<sup>18</sup>.*

Additionally, in Georgia, a court held that the Americans with Disabilities Act (ADA) prohibits local governments from administering licensing and zoning permit procedures in a manner that subjects persons with disabilities to discrimination based on their disability.<sup>19</sup>

In Maryland, Baltimore County's special methadone policy that required methadone programs to undergo a public hearing rather than locate as of right as a medical office was found to have a disproportional

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<sup>17</sup> *New Directions Treatment Services v. City of Reading*, 490 F.3d. 293 (3<sup>rd</sup> Cir. 2007); *Bay Area Addiction Research and Treatment v. City of Antioch*, 179 F.3d 725 (9<sup>th</sup> Cir. 1999); *Comprehensive Addiction Treatment Services, Inc. v. City and County of Denver*, 795 P.2d 271 (Colo. Ct. App. 1989); *Village of Maywood v. Health, Inc.*, 104 Ill. App. 3d 948, 60 Ill. Dec. 713, 433 N.E.2d 951 (1<sup>st</sup> Dist. 1982)

<sup>18</sup> WESTLAW, Ordinance Law Annotations, Narcotics: Illegal Substances, September 2018 Update

<sup>19</sup> *Pack v. Clayton County, Georgia*, 1993 WL 837007 (N.D. Ga. 1993)

burden on a protected class of individuals because no other medical facility was required to undergo such a process.<sup>20</sup>

In *THW Group LLC v. Zoning Board of Adjustment*, 86 A 3d. 330 (Pa. Commw. Ct. 2014) following the Third Circuit's holding in *New Directions*, the court acknowledged that, although the courts might sympathize with the concerns of the surrounding community, municipalities are not free to apply different zoning standards to methadone clinics than to other ordinary medical clinics.

Given the clear direction of the courts across the United States, local government cannot treat drug treatment clinics any differently than they treat other medical offices or clinics. When a government has rules or processes that treat drug treatment clinics and offices differently than other clinics, the courts are likely to find such rules and procedures to be facially discriminatory because they have no rational basis and are, therefore, *per se* violations of the ADA and, perhaps, Section 504 of the Rehabilitation Act of 1973. Additionally, because of current federal court decisions prohibiting local governments from treating drug treatment clinic differently than other medical clinics, it stands that, if the proposed MAT clinic is an EPF, then all medical clinics in the City are also EPFs. This, of course, would be an absurd interpretation of Washington State's EPF statute.

In addition to case law, the City of Sequim has historically reviewed medical clinics and offices under the A-2 administrative review process<sup>21</sup>. For the City to now divert from its historic permitting process to intentionally treat the proposed MAT clinic differently than other medical clinics could be viewed as intentional discrimination.

In *Innovation Health Systems v. City of White Plains*, in which an out-patient alcohol and drug treatment program claimed the city had engaged in intentional discrimination by denying it a building permit to locate in a business zone, the Second Circuit relied on evidence that the city had departed from both substantive and procedural norms in denying the building permit and affirmed the lower court's issuance of an injunction, concluding that Innovative Health Systems would prevail on the merits. This case cautions jurisdictions to not make land use decisions that are not based on the jurisdiction's zoning code. The City of White Plains denial of Innovative Health Systems' building permit was found by the Second Circuit to be based on "...little evidence in the record to support the decision on any ground other than the need to alleviate the intense political pressure from the surrounding community brought on by the proponent of the drug-and alcohol- addicted neighbors."<sup>22</sup> Similarly, a 1998 Washington State Supreme Court decision, *Mission Springs v. City of Spokane*, relying upon a Ninth Circuit court decision, held that denying any permit for which the applicant has met the relevant criteria places a jurisdiction and its individual councilors/commissioners at risk of liability for procedural and substantive equal protection violations.

Finally, it has been suggested that one sentence in SMC 20.01.020 should be the determining factor elevating the subject application from the A-2 process to the C-2 process. This position is based on an incorrect analysis and understanding of the land use process in general and the City's land use regulations in particular. The language cited from the definition section of SMC 20.01.030W states:

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<sup>20</sup> Smith-Berch, Inc. 68 F. Supp.2d at 621

<sup>21</sup> File Reference number DRB16-001 (Design Review Application) & SEPA 16-006 (SEPA Checklist), Sequim Retina Properties, June 3, 2016; Notice of Environment Review, SEPA File# 09/001, Mitigated Determination of Non-Significance, Jamestown S'Klallam Tribe, 02/10/09; SEPA Checklist, Olympic Memorial Hospital, Sequim Outpatient Clinic, 1988.

<sup>22</sup> *Innovative Health Systems v. City of White Plains*, 931 F. Supp. 222 at 49 (S.D.N.Y. 1996)

“[t]ype 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<sup>23</sup>(emphasis added). While there is no question that the subject project has generated “public interest”, the subject application also provides little opportunity to exercise “substantial discretion” due to the fact that the application consists of a building permit which is ministerial, design review which is not listed in the table of application types, but nevertheless required, and SEPA which has its own procedural and substantive limitations and does not offer “substantial discretion. Therefore, how would this definition be applied? It appears some only want the “broad public interest” words to be considered while ignoring the “substantial discretion” language. Frankly, the theory that the degree of “public interest” should be used to determine what type of process a permit should be subjected to falls apart when examined closer. For example, there have been plenty of amendments to the comprehensive plan and/or zoning ordinance that generated little public interest, but still went before the City Council for a decision. Because these amendments did not generate public interest should they have been decided by some other decision-making body such as a hearings examiner or staff? The answer should be, of course not, but this example illustrates the fallacy of such an idea.

It is difficult to imagine the City being able render a decision that wasn't arbitrary and capricious if definitions are used to establish procedural or regulatory guidance and/or policy. How would definitions be calibrated to be consistent, predictable and fairly applied over time? One can only imagine the chaos that would occur when an application, that is being processed, suddenly faces a local groundswell against it. This type of chaos is not supported by Washington State land use law which “requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW36.70B.020(4),...”<sup>24</sup> to ensure local permitting procedures implement goal 7 of the Growth Management Act.<sup>25</sup> State law requires local governments to create land use permitting processes that achieve consistency and order in procedural requirements, something that is not possible if we relied on definitions instead of predetermined standards and procedures to guide our decision-making process as required by law.<sup>26</sup>

Although definitions are helpful to understand the meaning and intent of certain terms, definitions are not intended to serve in place of a jurisdiction's clear procedural policy. The City's procedural policy directing the “typing” of permit applications is found in SMC 20.01.040 and Table 2, SMC 20.01.030 and is consistent with WAC 365-196-845 by categorizing permits as: (i) Permits that do not require environmental review or public notice, and may be administratively approved; (ii) Permits that require environmental review, but do not require a public hearing; and (iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal. The permit “typing” process outlined in WAC 365-196-845 recognizes jurisdictions administer many different types of permits and these permits can generally be categorized into groups based on process. Each process is assumed to attract a certain level of public interest, although that is just an assumption and not a rule. The permit “typing” process required by the above referenced WAC does not suggest definitions should be used in the permit typing process.

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<sup>23</sup> SMC 20.01.030W

<sup>24</sup> WAC 365-196-845(1)

<sup>25</sup> RCW 36.70A.020(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability

<sup>26</sup> WAC 365-196-845 Local project review and development agreements sets forth the permit process requirements and contains no mention of using a jurisdiction's definitions in the permitting process.

Finally, isolating a portion of one definition from the statute and using it to base a procedural decision on is contrary to the canons of statutory interpretation which requires the reader to give meaning to every word and to consider all parts of the statute together.

**Conclusion:** Based on the above discussion, I find the Jamestown S’Klallam Tribe’s MAT clinic application will follow the A-2 processing path per SMC 20.01.090, design review pursuant to SMC 18.24.033 and SEPA. This process is consistent with the City’s past processing practices for other medical clinics and offices and compliant with the ADA and federal case law.

A decision on an A-2 permit application is made by the Director after the application has been reviewed by the City Engineer, Public Works Director, Police Chief and Fire District 3 for consistency with SMC 18.24.

**Appeals:** Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing examiner per SMC 20.01.240(A). Appeals must be accompanied by the required appeal fee in the amount of \$600.00 (SMC 3.68)

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 (SM 20.01.040).

01/24/20  
Date

  
\_\_\_\_\_  
Barry Berezowsky, Community Development Director

**20.01.090 Administrative approvals subject to notice (Type A-2) – Process overview.**

A. Administrative Decision. The director shall approve, approve with conditions, or deny (with or without prejudice) all Type A-2 permit applications, subject to the determination of completeness, the notice of application, the notice of decision and appeal requirements of this section.

B. Notice of Application. Within 14 working days after the date an application subject to a Type A-2 process was accepted as complete, the review authority shall issue a public notice of the pending review consistent with the requirements of SMC 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by enduring posting of the property, mailing and by publication in the city's official newspaper as provided in SMC 20.01.130.

C. Additional Posting. The review authority may also require notices to be posted in conspicuous places visible on the site or in the vicinity of a proposed action at least 10 working days before the close of the comment period.

D. Staff Report. The director shall issue written findings and conclusions supporting Type A-2 decisions.

E. Appeal Procedures. An applicant or other party of record who may be aggrieved by the administrative decision may appeal the decision to the hearing examiner; provided, that a written appeal is filed in conformance with SMC 20.01.240.

F. Public Hearing on Appeal. If a Type A-2 decision is appealed, an open record public hearing will be held before the hearing examiner consistent with the requirements of SMC 20.01.200. (Ord. 2019-004 (Exh. B); Ord. 2000-006 § 3)

Ex RLB-12

Robert L Bilow  
195 Sunset Pl.  
Sequim, WA 98382  
(360) 808-3098  
email: [millrow26@gmail.com](mailto:millrow26@gmail.com)

December 20, 2019

Director  
Sequim Planning Commission  
152 W Cedar St  
Sequim, WA 98382

Dear Mr. Berezowsky:

In your 12/18/19 email to me you stated "If you choose to appeal a decision by the City, the appeal procedures are in SMC 20.01.240." Your statement appears to indicate that I will indeed have an opportunity to appeal any decision you might render classifying the regional MAT clinic proposal as being subject to a Type A-2 process rather than C-2. Is my reading correct?

In any event, the appellate procedure you suggested of SMC 20.01.240 has me truly confused and I request direction, for the following reasons:

- a. If you (Director) classify the application, when received, as Type A-2, then SMC 20.01.090 (E) provides that your decision may be appealed by either "the applicant or other party of record";
- b. SMC 20.01.020 defines "parties of record" as either (1) the applicant or (2) any person who has testified or submitted written comments at an open record hearing;
- c. SMC 20.01.190 (A) states that no public notice is required for Types A-1 and A-2 actions "because no public hearing is held". I thus conclude that an "open record hearing" is different from a "public hearing";
- d. SMC 20.01.020 defines "open record hearing" as "a hearing, conducted by a single hearing body or officer, that creates the record through testimony and submission of evidence and information";
- e. In searching the SMC for an applicable "open record hearing", I found only that SMC 20.01.140 (B)(9) refers to a "hearing, if

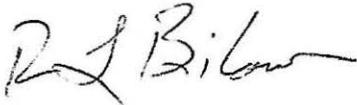
applicable” and SMC 20.01.150 (E) states “If a predecision hearing is required, the notice of application shall be issued at least 30 days prior to the hearing”.

Accordingly, I have found no reference in the SMC for an “open record hearing” being required for the Type A-2 process, and without an “open public hearing” being available, it would appear that I have no ability to be a “party of record” in order to qualify to be able to appeal per SMC 20.01.090. I’m certain I have missed some appropriate SMC provision and will appreciate if you will please identify it for me.

Finally, I note that if I am able to appeal any decision as a “party of record”, under SMC 20.01.090 (E) that appeal will be made to a “hearing officer” apparently appointed per SMC 2.10. Is my understanding accurate?

I will look forward to your clarifications.

Very truly yours,



Robert L. Bilow

cc: Sequim City Council

**EX RLB-13**

Robert Bilow &lt;millrow26@gmail.com&gt;

**Re: Type 2 Appeal Process**

1 message

Robert Bilow &lt;millrow26@gmail.com&gt;

Fri, Dec 20, 2019 at 5:07 PM

To: Barry Berezowsky &lt;bberezowsky@sequimwa.gov&gt;

Cc: Kristina Nelson-Gross &lt;knelson-gross@sequimwa.gov&gt;, Charlie Bush &lt;cbush@sequimwa.gov&gt;, DG\_All\_CityCouncil &lt;CityCouncil@sequimwa.gov&gt;

Good (late) afternoon Director:

Having just responded to your email received at 1:26 pm today, I appreciate having now received your 3:09 pm email which totally answers my appellate concerns/questions expressed in the letter I delivered to your office at approximately 1:30 pm today.

Since the step-by-step review process appeared so complex, as described in my letter, I'm pleased you confirmed that the SEPA process inclusion and its public comment period will result in "party of record" status for appellate purposes. Although that conclusion is not apparent from the rigid SMC provisions, I found it inconceivable that an administrative process within the Planning Commission could conclude with interested parties being denied any ability to appeal from an administrative decision.

The appellate issue having been answered, I am yet not even remotely persuaded that the review should be anything other than a C-2 matter. Despite the explanatory charts within the SMC, the crucial issue of sovereign immunity alone calls for a decision on this anticipated application to be made **only** by the City Council of Sequim.

Regards,

Bob Bilow

On Fri, Dec 20, 2019 at 3:09 PM Barry Berezowsky &lt;bberezowsky@sequimwa.gov&gt; wrote:

Good afternoon Mr. Bilow,

In regards to your letter dated December 20, 2019 in which you pose a number of questions concerning the City's appeal process for a Type A-2 process I offer the following comments and trust my brief response is a sufficient response to your questions.

SMC 20.01.090 contains the provisions for the Type A-2 permit process and includes a requirement for the review authority to issue a public notice consistent with SMC 20.01.140. The public notice will include notice of a pending SEPA threshold determination and the duration of the public comment period. Public comments submitted during the public comment period will be considered by the review authority prior to making a decision. By submitting public comment you would become a party of record and have a right to appeal the review authority's decision. Upon issuing a decision the review authority will send a notice of decision to the applicant and party's of record. The notice of decision will include disclosure of the appeal period.

According to SMC 20.01.090(F) if the review authority's decision is appealed the appeal would be made to the Hearing Examiner who would hold an open record hearing. The difference between an open record hearing and a closed record hearing is that new information and evidence may be submitted at an open record hearing whereas the record cannot be supplemented in a closed record hearing. Table I below provides a visual of the process.

I trust my response has been helpful.

Best,

Barry Berezowsky

**Table 1**

Procedural Steps	Application Process					
	Type "A" Actions <i>Administrative</i>		Type "B" Actions <i>Hearing Examiner</i>	Type "C" Actions <i>Planning Commission and City Council</i>		
	Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Recommendations by:	N/A	N/A	Staff	Staff	Planning Commission	Staff
Notice of Application	No	Yes	Yes	Yes	Yes	No
Public Meeting/ Workshop	—	—	—	—	Planning Commission	—
Open Record Public Hearing	See Note <sup>a</sup>	See Note <sup>a</sup>	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision-making Body	Staff <sup>b</sup>	Staff <sup>b</sup>	Hearing Examiner <sup>b</sup>	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner <sup>c</sup> City Council	City Council <sup>d</sup>	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

<sup>a</sup>Public hearing only if administrative decision is appealed, open record hearing before hearing examiner.

**EX RLB-14**

Robert Bilow &lt;millrow26@gmail.com&gt;

**MDNS Comments April 8, 2020**

1 message

Robert Bilow &lt;millrow26@gmail.com&gt;

Wed, Apr 8, 2020 at 1:41 PM

To: Barry Berezowsky &lt;bberezowsky@sequimwa.gov&gt;, Tim Woolett &lt;twoolett@sequimwa.gov&gt;

TO:

Barry Berezowsky  
Tim Woolett

As Barry Berezowsky is the Responsible Official under the MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS) issued March 23, 2020 regarding File No. CDR 20-001, I make the following comments and objections to that MDSN:

1. The MDSN is signed without supporting authority by Tim Woolett on behalf of the SEPA Responsible Official, Barry Berezowsky. The MDSN is incomplete without documentation showing that Responsible Officer Berezowsky has legally delegated his responsibility for this MDSN to Tim Woolett, and that those responsibilities are in fact legally delegable.
2. The deadline of April 8, 2020 for "comments" regarding this MDSN should have been extended for an additional period of time pursuant to RCW 36.70B.080 due to the current COVID-19 crisis in the State of Washington and the City of Sequim. I join others whom I understand have requested an extension of the comment period deadline per RCW 36.70B.080.
3. The development described in file No. CDR 20-001 is only the first phase of a multi-phase project. The entire phased project should have been reviewed prior to issuance of this MDSN rather than only "Phase #1".

Respectfully submitted,

Robert L. Bilow  
195 Sunset Pl.  
Sequim, WA 98382  
millrow26@gmail.com

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