

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

COMBINED REPLY TO CITY AND
TRIBE'S RESPONSE TO BILOW
MOTION FOR SUBPOENAS

I, Appellant Robert L. Bilow, certify and submit this brief in response to the City of Sequim and Tribe's collective Responses to my Motion for Subpoenas (for judicial economy).

In its Motion, the City of Sequim makes a statement on page 8 I cannot understand, when it states:

"...subpoena requests under these circumstances are virtually unheard of because the land use decision has already been made."

This is an appeal of THAT land use decision (Typing).

The City next totally misses the current issue by stating:

“Moreover, the Typing Decision - which is the subject of Appellant Bilow’s appeal – on this matter has already been made, and to allow further testimony on the issue of sovereign immunity is patently unreasonable.”

The City misses the mark. The issue is whether under the Sequim Municipal Code (SMC) a decision on the Application in question involved “substantial discretion” and “broad public interest”, thereby being a “Type C-2” matter. All witnesses will testify to the “broad public interest” element; indeed, the parties would likely stipulate to that. So, the question becomes whether this “Typing” decision involves “substantial discretion”.

“Sovereign immunity” means essentially that the Jamestown S’Klallam Tribe **cannot** be hailed into any State or Federal Court. *Upper Skagit Indian Tribe v. Lundgren*, 1385 S.Ct. 1649 (2018). The Tribe has confirmed in its September 14 filing on this Motion that it will NOT waive sovereign immunity for the MAT project:

“There is no need to call witnesses to determine whether the Tribe will waive its sovereign immunity. It will not.” (emphasis added)

Until that statement was made, I felt that perhaps some accommodation might be reached for a conditional use of some type. Under normal circumstances, if prohibited acts were occurring on premises such as the MAT clinic, the City would issue a “cease and desist order”. And if the order were not honored, the City would go into State Court to enforce it! But sovereign immunity prevents the City from going into any court for enforcement whatsoever.

We are left with the issue: Does the inability of the City to “take the Tribe to court” for any transgression which might occur at the MAT clinic rise to the level of being a matter of “substantial discretion” for SMC “Typing” decisions? The Director’s Determination required “substantial discretion” due to sovereign immunity, thereby making it a “Type C-2” matter.

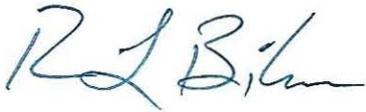
Even though the doctrine of sovereign immunity shields the Tribe from any court, it does not protect Chairman W. Ron Allen from testifying under subpoena like any other citizen who has relevant information. I appreciate the offer of testimony from Brent Simcosky, but Mr. Allen should also be obliged to testify.

The City objects to a subpoena of Kristina Nelson-Gross based on her status as a lawyer. That is not my intention. No inquiry will involve “advice” she has previously given any City employee. “Advice, and only “advice”, is protected by privilege. I wish only to inquire as to circumstances surrounding the Typing Determination made by Director Berezowsky. That is also the reason I ask to compel the testimony of Director Berezowsky and City Manager Bush.

I submit that all of the witnesses I have listed can provide relevant testimony regarding the central issues of “sovereign immunity” and “substantial discretion.”

Respectfully submitted,

I certify that I have served all parties by email on September 16, 2020, and that all foregoing statements are true.

A handwritten signature in blue ink, appearing to read "R. L. Bilow". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert L. Bilow

Idaho State Bar # 1294

Senior status, inactive