

Jennifer Kester

From: Earl Gipson [REDACTED]
Sent: Monday, July 6, 2020 3:09 AM
To: PC Public Comment
Cc: Carl Cole; Mary Mirante Bartolo; Mark Johnsen; Gwen Voelpel; Jennifer Kester; Dennis Hartwick
Subject: [EXT] - Comments for PC meeting 07/07/2020
Attachments: 1970_9257_Kester_Investigation Report.pdf

Dear Planning Commission,

I have just perused the PC packet for 07/07/2020 found at <https://www.seatacwa.gov/home/showdocument?id=28815>

First of all this is no longer "housingkeeping" and the document (Exhibit E's) should be called Staff Driven Changes and Amendments. Housingkeeping is dusting, cleaning, and rearranging furniture and not adding on a new deck (additional requirements).

Second the changes and additional requirements have no cost/benefit analysis (haven't seen one from a planner yet) and will only add to the cost of construction, housing, and improvements along with time required to build/construct anything. This will do nothing for affordable housing and in fact quite the opposite. I implore the Planning Commission to go through these changes paragraph by paragraph, line by line, and make your own schedule of approvals/recommendations (possibly in parts) and it not be dictated by the Planning Department.

For those who remember, we do not want a repeat of former Director Steve Butler and it appears we are headed that way, especially with Steve Pilcher and Joe Scorcio retired.

Furhter, after examining an investigation of our current Planning Manager (See PPR20-063). Pay particular attention to the document KesterInvestigationReport. I have included it in these comments.

Please see page 16 of this report. Ms. Kester did not involve/consult with the Commission Chair (and from what I gather continues not to) on the Commission agendas in violation of SMC 2.15.050 which reads

"The staff liaison shall produce, in cooperation with the Chair, an agenda for distribution to the Committee, Board, or Commission and the public. "

Note that it says "shall" and not "may." This investigation has many other holes in it and is biased in favor of the staff. I will go into further details at a later date/Commission Meeting and I prefer face to face. I have no issues with confrontation, debate, or whatever else nor do I need signs and protestors with me. :-)

This pandemic is causing problems/delays for all but we will get through it and I am far from done with Planning Department issues. Remember that song Smiling Faces Sometimes (by the Undisputed Truth-1971)?

Sincerely,

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Those Bcc'ed, I hope this is not "here we go again"

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January 30, 2020

City of SeaTac
Attention: Carl Cole, City Manager
4800 South 188th Street
SeaTac, Washington 98188-8605

RE: Complaint filed by Jag Basra and Tej Basra

Dear City Manager Cole:

INTRODUCTION:

I have been engaged by Clear Risk Solutions, to conduct an independent investigation of the complaint filed with the City of SeaTac by Jag Basra and Tej Basra. I was given unfettered access to all relevant City personnel to conduct interviews and I have been provided with what I believe to be all the relevant documents pertaining to the complaint. I have also accessed certain documents via the City's website. I have interviewed both Jag Basra and Tej Basra and reviewed documents provided by them during those interviews. The Basras' attorney Tom Hayton of the Seattle law firm Cutler Nylander & Hayton was present during the interviews of both Jag Basra and Tej Basra.

I will outline the details of the Basras' complaint more fully herein, but the substance of the complaint is that the Basras believe they have been treated unfairly by the City's Planning Manager, Jennifer Kester. Further, they believe that Ms. Kester has improperly interfered with the expansion of their parking business, Park N Jet, and their development of a parcel of property on North Military Road. My investigation revealed no such interference by Ms. Kester. Moreover, I found no evidence that Ms. Kester exhibited any ill will or discriminatory animus towards the Basras.

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BACKGROUND:

The first person to learn of the Basras' concerns was councilperson Joel Wachtel, who was contacted by Tej Basra by phone in late October or early November, 2019. Tej Basra requested a meeting with Councilperson Wachtel and he obliged. Councilperson Wachtel reports that he met with Jag and Tej Basra and that they expressed general concerns about Jennifer Kester "not acting in the City's best interest" and using her position as Planning Manager to impede the City's commercial growth and high-density residential development. At the conclusion of this meeting Councilperson Wachtel told the Basras that he needed them to put their complaint in writing so that he could take it to the City Manager.

Following his initial meeting with the Basras, Councilperson Wachtel called Mayor Erin Sitterley and briefed her on the verbal complaint. Councilperson Wachtel asked the Mayor if she would be willing to meet with the Basras and she agreed. In mid-November, Councilperson Wachtel and Mayor Sitterley met with the Basras and that is when the Basras first produced the undated written complaint. Councilperson Wachtel and Mayor Sitterley delivered the written complaint to the City Manager the same day they received it from the Basras. Neither the Basras, nor anyone else, had expressed concerns about Jennifer Kester's job performance as Planning Manager to the City Manager at any time prior. The City Manager promptly discussed the written complaint with City Attorney Mary Mirante Bartolo. The complaint was then forwarded to Clear Risk Solutions and I was engaged to conduct this independent investigation.

As part of this investigation I conducted in-person interviews of the following individuals in the following order: City Manager Carl Cole, Councilperson Joel Wachtel, Jag Basra, Tej Basra, Steve Pilcher, Jennifer Kester, Dennis Hartwick, Kate Kaehny, Mark Johnson and Mayor Erin Sitterley. I also interviewed SeaTac Police Officer Zach Brubaker by phone. Each individual I spoke to was forthright and fully answered all questions I posed to them. It was my perception that all witnesses cooperated fully and answered all my questions truthfully and to the best of their ability.

COMPLAINTS:

As indicated, the Basras first filed a written complaint in mid-November 2019. On the date of my in-person interviews with them, the Basras delivered to me two written complaints which are essentially the first written complaint divided into two separate areas of concern – those related to Jag Basra and those related to Tej Basra. Below I will set forth the verbatim language of those complaints. My findings for each area of concern will follow.

Jag Basra Complaint:

Map Amendment 3:

Complaint:

"When the planning commission was giving a formal recommendation on M3, M4, and M5 5/21/19 they stated they wanted to include M3 in the docket. Jennifer Kester lied to PED at the

5/23/2019 meeting and stated that the planning commission said not to move M3, M4 or M5 forward to the docket, and said that was what the staff recommendation was. She intentionally left out this slide in the public packet online that was up prior to the meeting. She wanted to ambush us and did not want me to have time for anyone to tell the truth, that the planning commission supported M3.

Due to Jennifer not being honest and transparent, the PED committee went ahead and gave a recommendation to remove M3, M4, and M5 from the final docket. The city council had to go back and add M3 to the final docket due to Jennifer's actions at their next meeting.

I want to highlight how her actions reached such a high level of wrong doing that the city council had to rescind actions the PED committee took as a result of misinformation from Jennifer.”

Finding:

I found no evidence indicating that Ms. Kester intentionally misled or lied to the PED in an effort to influence its decision on M3. Ms. Kester was very candid with me and readily acknowledged that the slide in question was not part of the public packet posted to the City's website prior to the PED meeting. As she explained to me, there was much discussion within the Planning Department how to deal with M3 between the Planning Commission meeting on 5/21/19 and the PED meeting on 5/23/19. Specifically, everyone in Planning who had any involvement with M3 was concerned because of the lack of specificity and direction that had been given to Planning by Council concerning M3. Since this was a Council initiated map amendment the process was being driven by Council, not the Basras.

Everyone I interviewed in Planning indicated that they were receiving mixed signals from Council about the specific goals of M3 and what density designation was ultimately being sought by Council. Therefore, between the Planning Commission Meeting and the PED meeting the Planning Department was having significant discussions about how to present their concerns to the PED and the slide was their way of raising their concerns about M3 with the PED. In addition, all of the members of the PED had been present at the Planning Commission Meeting and were well aware of the Commission's position on M3.

As the year drew on and time grew short to accomplish everything that needed to be done by year-end, it became apparent to Planning staff that M3 was a much larger and time-intensive project than everyone first believed. Succinctly stated, Planning staff did not believe that they would be able to accomplish everything that needed to be accomplished from a legal perspective (i.e. SEPA

review, traffic study, citizen input, etc...) for M3 by year end and the slide and related discussion were their way of informing PED of that fact.

Staff's recommendation to pull M3 from the final docket arose not from any ill motive, but instead a genuine concern that the legal prerequisites to move it forward could not be accomplished by year-end. There is no evidence that this was solely the work of Ms. Kester and there is no evidence either she or Planning staff intended to mislead the PED. Regardless, at the end of the day, Council held exclusive control over the fate of M3 since it was Council's proposal, not that of a private developer. There is no allegation, much less any evidence, that Ms. Kester had any authority or ability to determine whether or not M3 advanced to the final docket. Only Council held that power and ultimately Council decided it would not.

Park N Fly:

Complaint:

"On October 15, 2019, Tejvir, our civil engineer (Adam Paul), and myself had a meeting with Jennifer Kester regarding our desire to expand our parking business in SeaTac. Park N Jet 1, located at 18220 8th Ave S SeaTac, WA 98148.

At this meeting she brought up multiple roadblocks that our competitors never addressed when they developed their parking lots.

The first item being her demand that we consolidate all parcels with King County in the expansion area we were proposing. We did a previous expansion within the last 4 years and the city never required this before. We requested that she cite the code that stated this requirement. She said she would email it and never did.

We stated this was an illogical requirement and if it was in the code, why had it not been enforced at any other parking lot, she did not have a response for this and let us know said she would look into it and again we have not heard from her or received an email.

She also stated the city has an interior landscaping requirement for airport parking lots. We explained to her that we were only aware of one parking lot where this was enforced and we would like to know why it was not enforced, but was now being enforced on us. Additionally, we explained interior landscaping is a security threat and that we had already had multiple occurrences of theft and vandalism. There is not a single valet parking lot in a major airport market with interior landscaping

Jennifer explained this was the code and that we did not have many options

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Dennis Hartwick was also a part of this meeting and he then mentioned that we could potentially avoid this requirement as the code had language stating if it can be shown there is a safety/crime concern and the police agree, the requirement can be waived. Jennifer casually stated this had slipped her mind.

We had a meeting on 11/19/2019 with Zach Brubaker from the SeaTac Police department. He was not receptive at all to any of our commentary. We were trying to show him examples on a screen of how surveillance is disrupted by trees and he was not even willing to look at it.

He actually admitted he had a one hour meeting with Jennifer Kester in advance of our meeting and decided he would not be recommending a variance from the landscaping code due to security issues and even went on record saying the only reason he came to meet us was to tell us that and no input from us could change his mind.”

Finding:

As described with M3 above, there is no evidence that anyone in the Planning Department, including Ms. Kester, did anything improper or illegal as relates to the Basras’ efforts to expand their Park N Fly business.

By way of background, Dennis Hartwick was the staff contact and point person for the City on this project, not Jennifer Kester. Mr. Hartwick explained to me that the Planning Department was frustrated with the manner in which the Basras pursued this project from the beginning. First, according to Mr. Hartwick, the Basras and/or their consultants twice attempted to obtain a permit to move forward on this project without following the City’s procedure of first participating in a “Preliminary Application Meeting” as required by SeaTac Municipal Code Title 16. On their third attempt to obtain a permit without satisfying this prerequisite, Justin Rowland called Dennis Hartwick and told him that he needed him to explain the Preliminary Application process to the applicants because they were not listening to him. Mr. Hartwick explained the process to the Basras and in his words “they were not happy” and their consultant remarked “this is not the way it is done” or words to that effect.

Following the above described encounter, the Basras did eventually submit a Preliminary Application which Dennis Hartwick reviewed. Upon review, Mr. Hartwick concluded that the plans submitted did not comply with the City’s landscaping requirements for developments of this type. Based upon his prior knowledge of the Basras (it was his understanding they had previously entered into a “development agreement” with the City to avoid a landscaping obligation when they first developed Park N

Fly) he was concerned that they may not be receptive to his conclusion that the application did not meeting the City's landscaping requirements. Therefore, Mr. Hartwick explained the situation to his supervisor, Jennifer Kester, and she agreed with his assessment that landscaping was required per the SMC and that the plans, as submitted failed to comply with the SMC.

Eventually, in early October 2019, Jag Basra and his engineers Adam Paul and Kirk Lisitsyn, attended a Preliminary Application Meeting with Dennis Hartwick, Grace Amundsen Barnkow and Justin Rowland. Jennifer Kester had no involvement in the meeting. The purpose of the Preliminary Application Meeting is to go over permit applications, review them for completeness and answer any questions that may arise so that the permitting process runs smoothly. Mr. Hartwick specifically recalls that a number of issues were discussed as prerequisites for plan approval and issuance of permits, including landscaping, right of way and lot line adjustment and parking space size. Mr. Hartwick indicated that he was going to do some additional research and that he would circle back to discuss the project further. In general, Mr. Hartwick felt that the meeting went well and ended on a positive note.

Mr. Hartwick did in fact meet with Jag Basra and his engineer Adam Paul about a week later. In addition, Jennifer Kester and Tej Basra were also in attendance at this meeting. According to Mr. Hartwick, this meeting was confrontational from the beginning and the Basras both became upset and alleged that they were "always the target of the City" or sentiments to that effect. Both Mr. Hartwick and Ms. Kester told the Basras that they were bound by the provisions of the SMC. However, they did present options to the Basras such as attempting to negotiate another development agreement with the City, pursuing code amendment or alternative landscaping options. Mr. Hartwick does recall leafing through the SMC and mentioning to the Basras that they could pursue a CPTED (Crime Prevention Through Environmental Design) exemption for the landscaping requirement. The Basras were receptive to this idea and indicated that they had a good relationship with the police department and that they believed they could satisfy the CPTED requirements. The meeting concluded with the City offering to reach out to the City's CPTED Officer, Zach Brubaker, and the Basras agreeing to meet with Officer Brubaker to discuss the possibility of an exemption.

However, before the Planning Department could even coordinate with Officer Brubaker to discuss the possibility of obtaining CPTED exemption, the Basras submitted permit application and plans to the City which then triggered the Planning Department's

legal obligation to take action on the application. Unfortunately, the application as submitted did not adequately address the issues that had been raised at the Preliminary Application Meeting.

Approximately two (2) weeks after the Preliminary Application Meeting, Dennis Hartwick and Jennifer Kester were able to coordinate a meeting with Officer Brubaker who had just returned from a CPTED training. Officer Brubaker, Mr. Hartwick and Ms. Kester all describe the meeting as “short”. Dennis Hartwick explained to Officer Brubaker what the Basras were proposing and asked if it qualified for a CPTED exemption. Officer Brubaker unequivocally told them it did not. At no time did Ms. Kester, or Mr. Hartwick for that matter, pressure Officer Brubaker to deny the Basras a CPTED exemption. This conclusion was his and his alone. At the conclusion of the meeting, Mr. Hartwick and Ms. Kester asked Officer Brubaker if he would be willing to meet with the Basras at Park N Fly to discuss the CPTED issue with them and he readily agreed.

Thereafter, Officer Brubaker did meet with the Basras at Park N Fly and advised them the exemption from the SMC that they were requesting did not qualify for as CPTED. Officer Brubaker denies ever telling the Basras that he was simply there to “deliver a message”, that he had an “hour long” meeting with Ms. Kester” or that “no input from you (the Basras) would change my mind”. He also disputes the Basras’ allegation that he did not listen to their concerns or look at their security monitors.

Officer Brubaker emphatically denies that any “hour long meeting” between just him and Ms. Kester ever occurred. Moreover, no one with personal knowledge, i.e. Officer Brubaker, Dennis Hartwick and Jennifer Kester, corroborates the Basras’ allegation that Ms. Kester somehow compelled Officer Brubaker to deny them a CPTED exemption. Following his meeting with the Basras Officer Brubaker sent a letter to the Planning Department confirming his CPTED findings in writing, a copy of which is attached.

As to the Basras’ complaint that their business Park N Fly is being treated differently than other parking business in SeaTac, I found no evidence to corroborate this allegation. Specifically, in his complaint Jag Basra complains about the City’s requirement that it consolidate the all the legal parcels they intend to add to their parking business with the existing Park N Fly parcel. It should be noted that this requirement was raised by Dennis Hartwick, not Jennifer Kester. Moreover, Mr. Hartwick indicated that this had nothing to do with the identity of the developer seeking to expand

their business. Instead, as Mr. Hartwick explained, the requirement was imposed as a result of the SMC and King County Code. The SMC requires landscaping on the borders of parcels and leaving the parcels separate would essentially require landscaping within the parking lot consistent with the border landscaping required by the SMC. This would be incompatible with use as a parking lot. In addition, leaving the existing borders of the parcel intact would create potential issues with lot lines running through structures that might be constructed on the parking lot grounds in the future (i.e. buildings, garage structures, future development should the land use change in the future, etc...). Most importantly, Mr. Hartwick indicated to me that it was his understanding that consolidation was a requirement for recording with King County. I have not independently looked into this issue since it is irrelevant to the issue of whether or not Jennifer Kester exhibited any bias towards the Basras. Suffice to say that I found no evidence this requirement (consolidation of lots) was imposed for any improper purpose.

The primary source of the Basras' frustration appears to be their perception that other similar businesses have not been required to comply with the SMC and/or King County requirements now being imposed on them. I do not doubt that the Basras' frustration is genuine. However, I found no evidence to indicate that Jennifer Kester, or anyone else in the Planning Department, is intentionally singling them out for any improper purpose. Instead, I found all of the employees in the Planning Department, including Ms. Kester, to be focused on ensuring consistency of application of the SMC across the board. I heard from numerous people that there is a history of mistrust of the Planning Department based upon the conduct of employees who are no longer with the City. It is obvious that this mistrust still lingers. The Planning personnel that I interviewed were all very cognizant of this history and they are working hard to ensure that all applicants are treated the same regardless of how they or others have been treated in the past.

Planning personnel have looked into the Basras' allegation that they are being treated differently than other parking lot developers. While it does appear that there may have been some inconsistent application of code requirements in the past, the current Planning staff is working hard to ensure consistent application of code requirements to all applicants. In addition, like the Basras, some parking lot developers have negotiated development agreements to address concerns over landscaping requirements. Others developments may have pre-dated the City's incorporation. Still others do in fact have landscaping as required by the code. And,

admittedly, some may have slipped through the cracks or been allowed to avoid the landscaping requirements under previous Planning staff review. However, this Planning staff is committed to consistent application of the code to all applicants regardless of who they are and I found no evidence to indicate otherwise.

Complaint:

“It is very scary for me and my family that a person in a leadership position at city hall is abusing her role and power at variance levels and instances to damage my family. While I am a patient person, this is something I cannot ignore or stand for.”

Finding:

Although Jennifer Kester is not referenced by name, the portion of Jag Basra’s complaint quoted above is clearly directed at her. However, as more fully described above, I found no evidence whatsoever that Ms. Kester is in any way “abusing her role and power” with the City.

Tej Basra Complaint:

Complaint:

“Jennifer Kester has been sabotaging development in SeaTac since the day she got there. She has been on a mission to run city hall. This was also her prior track record at Gig Harbor.
https://www.kitsapsun.com/story/news/local/communities/gig-harbor/2018/02/20_gig-harbor-sets-moratorium-residential-development/355111002/”

Finding:

I found no evidence that Ms. Kester “has been sabotaging development in SeaTac” at any time. Instead, the people she works with in Planning indicated to me that her expertise in planning is actually a tremendous benefit to the City and has helped the department immensely. In addition, everyone with the City that I spoke with emphasized that the City is actually experiencing explosive growth and Ms. Kester is shepherding much of it.

Further, there is zero evidence that Ms. Kester is “on a mission to run city hall.” This statement was corroborated by no one.

Finally, the referenced article contains a one-sentence quote by Ms. Kester in response to a decision by the Gig Harbor City Council to enact a moratorium on development. There is no

indication in the article that Ms. Kester, who was the Gig Harbor Planning Director at the time, had any involvement in orchestrating the moratorium or that she was even in favor of it. It should be noted that the Gig Harbor City Council voted in favor of the moratorium 6-1.

When I asked Ms. Kester why she left Gig Harbor after sixteen (16) years of service she indicated to me that much of the reason had to do with the fact that a new Mayor and several new council members got elected on an “anti-growth” platform and that she was being asked to do things to move that platform forward. She felt that she was bound by the code and was uncomfortable being asked slow growth when she felt there was no legal basis to do so. As she put it, the “code is the code” and she was unwilling to ignore it to pursue that Council’s anti-growth agenda.

Complaint:

“When she joined she told me she did not want council members contributing at planning commission meetings. I told her I could not prohibit any public citizen from speaking during public comment. She then moved the chair Rick Forschler typically sat in which was closer to the commissioners' seats (in Riverton Room), also moved a table that was located next to where the commission sat so Rick Forshler could not sit there and it would make it more difficult for him to participate. Then told me we would switch to council chambers as it would be more difficult for council members to participate in planning commission meetings this way. These discussions took place in October and November of 2018.”

Finding:

Generally, the events that Mr. Basra describes occurred much like he describes them. However, the evidence establishes that Ms. Kester had a good-faith reason to have these discussions with Mr. Basra and to take the action she took.

Numerous witnesses that I interviewed, including everyone affiliated with Planning, expressed concern about how Planning Commission meetings were conducted prior to Ms. Kester’s arrival at the City. Specifically, numerous people described how SeaTac City Council members would attend meetings and talk over staff, ask questions of citizens, answer questions from citizens, etc... The meetings were described as being very informal and unstructured. Most concerning was the impression that many expressed that Council members were potentially sending the public the appearance that they held certain preordained opinions on land use matters that might come before Council as decision makers at a later time. Phrases I heard from numerous witnesses in

this regard included “appearance of fairness” and “conflict of interest”, both of which raise significant red flags in the land-use context. So concerning was this behavior by Council members that the City Attorney’s Office has been asked to provide legal guidance in an effort to curb it.

Ms. Kester explained to me that she was warned by her supervisor Steve Pilcher about Council member participation in Planning Commission meetings when she first started work with the City. She indicated that she was unfamiliar with this behavior as she had not encountered it in her previous role at Gig Harbor. However, when she attended her first Planning Commission meetings she did in fact witness the very behavior described above and it caused her much concern. To that end, following discussion with Mr. Pilcher, Ms. Kester took the steps described by Tej Basra in an effort to better manage the disruption of Planning Commission meetings. These steps were taken with the full knowledge and approval of Mr. Pilcher and they were not taken to harm the City, but instead to protect it from potential challenges to land-use decisions as a result of violations of the appearance of fairness doctrine or conflicts of interest. Ms. Kester also indicated that she had several discussions with Tej Basra about how to improve meetings and make them run more smoothly. Unfortunately, it appears that what Ms. Kester thought was constructive criticism was not received as such.

Complaint:

“My planning commission term was set to expire in March of 2019. Jennifer Kester asked me if I was interested in continuing on the commission. While I immediately stated I was interested in continuing. She asked if I was able to serve on the commission without a conflict of interest. I found this to unfounded and it made me feel uncomfortable that she was insinuating such. This meeting was on February 15, 2019.

After my term expired I reapplied and was interviewed by Jennifer Kester and Mayor Sitterley. When has a planning manager conducted planning commission interviews in the past? She tried to persuade me to not seek reappointment and now she was conducting my interview? This was in March of 2019

She then pushed Mayor Sitterley to not select me for another term on the Planning Commission. This is supposed to be a fair and unbiased process; this was the exact opposite of what the process is supposed to be.

Why was she asking me in the first place if I was planning on reapplying?

She did everything she could to make this an unfair process for me, after her efforts to dissuade me from applying in the first place.”

Finding:

As with his complaints about Ms. Kester’s comments and actions concerning Council participation in Planning Commission meetings, Mr. Basra’s description of Ms. Kester’s questions concerning his involvement on the Planning Commission is generally accurate. However, again, Ms. Kester’s motivation in asking what I perceive to be relevant and entirely normal questions was entirely appropriate.

Again, numerous witnesses that I spoke with, including everyone in any way affiliated with Planning, expressed concerns about Tej Basra’s service on the Planning Commission. However, not a single person, including the Basras themselves, was able to articulate an impermissible motive for these concerns. Much like the concerns related to Council participation in Planning Commission meetings, not just Jennifer Kester, but every City employee I spoke with was concerned about potential conflicts of interest and appearance of fairness questions related to a developer’s presence on the Planning Commission. The identity of that developer was simply irrelevant.

Moreover, numerous people also expressed concerns to me that Tej Basra “missed a lot of meetings”. The evidence on this issue is conflicting. Tej Basra is adamant that he only missed two (2) meetings and that in both instances he missed the meetings because he was travelling on business beneficial to the City. Mayor Sitterley investigated this matter and generally corroborated Mr. Basra’s recollection. On the other hand, Steve Pilcher and others in the Planning Department believed that Tej Basra had missed many more meetings. This belief was communicated to Ms. Kester when she started with the City because she was to be the staff liaison to the Planning Commission. The actual number of meetings Tej Basra missed is irrelevant to my investigation since it is undisputed that Ms. Kester’s had no malicious motive in inquiring about Mr. Basra’s ability to attend meetings – she was told he missed many meetings and she was simply trying to verify that he was able and willing to discharge his duties as a Planning Commissioner. The true number of meetings Mr. Basra missed and/or attended should be revealed by the Planning Commission minutes should the City feel the need to confirm that number.

Tej Basra also questions Jennifer Kester's involvement in his interview to sit on the Planning Commission. In her role as staff liaison to the Planning Commission, Mayor Sitterley invited Ms. Kester to sit in on Mr. Basra's interview. As the Mayor explained, she wanted someone with planning expertise to be involved in selecting Commissioners. Both the Mayor and Ms. Kester deny that Ms. Kester "conducted" the interview or that she improperly attempted to influence the Mayor's decision. In addition, according to Steve Pilcher, there was nothing out of the ordinary about Ms. Kester being a part of Mr. Basra's interview and he himself had sat in on Mayoral Planning Commissioner interviews when he previously held Ms. Kester's position.

Thus, the evidence indicates that Ms. Kester's discussions with Tej Basra were her good-faith efforts to determine whether or not Mr. Basra was willing and able to continue his duties on the Planning Commission. There is no evidence of any malicious motive in the questions she asked Mr. Basra or the statements she made to him. Instead, all the evidence indicates that Ms. Kester was taking reasonable steps to protect the City from potential legal challenges to future land-use decisions that would be made by the Planning Commission.

Complaint:

"When the planning commission was giving a formal recommendation on M3, M4, and M5 (on 5/21/2019) they stated they wanted to include M3 in the docket. Jennifer Kester lied to PED and stated that the planning commission said not to move M3, M4 or MS forward to the docket, and said that was what the staff recommendation was. She intentionally left out this slide in the public packet online that was up prior to the meeting. She wanted to ambush us and did not want my father to have time for anyone to tell the truth, that the planning commission supported M3.

Why did we stop recording planning commission meetings? This coincided with her hiring.

I expressed on multiple occasions that I believed meetings should have audio recording.

The planning commission minutes for the 5/21/2019 state that multiple commissioners supported M3 and even states "commissioners indicated a desire to examine this area in greater detail."

Why did Jennifer not convey this information to the PED committee on 5/23/2019, and instead misrepresented what the planning commission consensus was.

This resulted in the PED committee removing M3, M4, and M5 from the final docket. The city council then realized what Jennifer had done and added M3 back to the final docket at their next meeting."

Finding:

As more fully described above, the SeaTac City Council held ultimate control over the fate of M3, not Jennifer Kester or the Basras. Further, most of the confusion related to M3 was a result of the mixed signals that Council was sending to the Planning Department, not anything Jennifer Kester did or did not do. My interviews developed no evidence that Ms. Kester intentionally lied to PED in an effort to undermine M3 moving forward. Regardless, it is undisputed that the Planning Department recommended to Council that M3 not move forward and Council ultimately made that decision, which was entirely within its prerogative as the proponent of the map amendment.

Complaint:

“Once her attempt to remove M3 from the final docket was unsuccessful she then started to focus on her agenda that I had a conflict of interest as the chair to try and kill M3 from going through.

Throughout the Comp Plan process, she kept telling me I need to make sure I know what I am doing in regard to M3, conflict of interest. I told her multiple times that I had consulted the city attorney's office, and was doing exactly what Mark Johnson requested. He said I could still run the meetings, and I just needed to recuse myself from voting on M3. He gave example of council members owning property in areas of the city where they are involved in policy changes etc. This was a city initiated comp plan amendment, not one proposed by my father. She repeatedly made an effort to make conflict of interest an issue in relation to amendment M3.

At the October 1, 2019 planning commission meeting, Mark Johnson came up to me and said "remember we spoke about recusing yourself from the voting just be sure not to say anything about M3, I told him I had not said anything about M3. I said I am happy to respond to anyone saying I have said a word about M3, he said: "well it's only a couple of people complaining." He did not press it further and said I was doing a fine job. He then also said "someone" was complaining that council members are contributing too much at planning commission meetings. And I should try to limit council member comments, I asked him what he expected me to do, he then said I guess you can't do anything about that.. . I said correct. He then said I guess we don't need to make any announcement about you recusing yourself or about council member comments.

When M3 was up on the agenda, I said ok we will now move on to item M3 and there was an awkward silence. I then stared at Jennifer essentially conveying what are we waiting for, she then said "um do you have anything to say..." Mark Johnson then went up to her and explained there was nothing for me to say.... and then to save face Mark Johnson says "we are just doing what we have been doing, chair Basra is recusing himself from M3 discussion and voting." She made it a point to bring it up AGAIN.”

Finding:

Once again, the events as described by Mr. Basra do indeed appear to have happened generally as he describes them. Once again, however, the explanation for the comments made or actions undertaken have a non-sinister and obvious explanation. Here, the explanation is a simple miscommunication.

Assistant City Attorney Mark acknowledges having discussions with both Tej Basra and Jennifer Kester as described above. However, it appears that Mr. Johnson, Mr. Basra and Ms. Kester were not on the same page about what the outcome of those conversations would be. Specifically, Ms. Kester was not aware that Mr. Johnson had already spoken to Mr. Basra about the conflict of interest issue prior to the October 1, 2019 meeting, hence the awkward silence and her subsequent comments at that meeting. Further, according to Ms. Kester, it was her understanding that based upon the conversation between Mr. Johnson and Mr. Basra, Mr. Basra would provide some kind of “on-the-record” statement related to the conflict. When this did not occur, she was surprised and prompted Mr. Basra to make the statement she thought was forthcoming. Obviously, Mr. Basra took away something different from his discussion with Mr. Johnson.

It is important to again emphasize that Ms. Kester was one of many people affiliated with the City who were concerned about potential conflicts of interest that could arise as a result of Tej Basra’s Planning Commission role. There is no evidence that these concerns were motivated by anything other than a desire to ensure no conflict in fact existed and to protect the City from potential litigation.

Complaint:

“At many meetings, she stops my dad short during public comment and says he is out of time. At this meeting she let a neighborhood resident speak for 10 mins without stopping her. Speaking about how this was my family getting rich etc. Let her go on and on this neighbor was openly criticizing me so it was difficult for me to tell her to stop speaking or that he time was up. Jennifer had no issue telling my father to stop speaking, why was this not apples to apples for the people speaking out against the M3 proposal?”

Finding:

Ms. Kester does not specifically recall cutting off Jag Basra or not allowing him to speak at any public meeting or forum. She does

recall a public meeting where multiple residents raised concerns about the fact that Tej Basra was the Planning Commission chair and a project under its consideration would potentially benefit his father Jag Basra. Ms. Kester indicated to me that she was reluctant to intervene for the precise reason that shutting down resident comments about potential conflicts of interest would be viewed as the City taking the side of the developer. Again, there is no evidence that Ms. Kester's decision to exercise restraint was motivated by any kind of animus against the Basras.

Complaint:

"Jennifer Kester has not consulted me on weekly agendas for the planning commission which is supposed to be the correct procedure. The chair is supposed to sign off on the weekly agenda.

Finding:

Ms. Kester admits that she was not consulting with Tej Basra on weekly agendas for the Planning Commission. Steve Pilcher indicated that when he held Ms. Kester's position he also did not always consult with the Commission Chairperson on the agenda since Planning Commission meetings are staff driven. Likewise, Ms. Kester indicated that she also did not involve the Planning Commission chairperson in the preparation of the agenda during her tenure at Gig Harbor. I found no evidence of an improper motive or intent in failing to include Tej Basra in the preparation of the Planning Commission agenda. Instead, it appears to be merely a difference in management styles and preferences and something that can easily be changed.

Complaint:

"On October 15, 2019, my father, our civil engineer (Adam Paul), and myself had a meeting with Jennifer Kester regarding our desire to expand our parking business in SeaTac. Park N Jet 1, located at 18220 8th Ave S SeaTac, WA 98148.

At this meeting she brought up multiple roadblocks that our competitors never addressed when they developed their parking lots.

The first item being her demand that we consolidate all parcels with King County in the expansion area we were proposing. We did a previous expansion within the last 4 years and the city never required this before. We requested that she cite the code that stated this requirement. She said she would email it and never did.

We stated this was an illogical requirement and if it was in the code, why had it not been enforced at any other parking lot, she did not have a response for this and let us know said she

would look into it and again we have not heard from her or received an email.

She also stated the city has an interior landscaping requirement for airport parking lots. We explained to her that we were only aware of one parking lot where this was enforced and we would like to know why it was not enforced but was now being enforced on us. Additionally, we explained interior landscaping is a security threat and that we had already had multiple occurrences of theft and vandalism. There is not a single valet parking lot in a major airport market with interior landscaping

Jennifer explained this was the code and that we did not have many options

Dennis Hartwick was also a part of this meeting and he then mentioned that we could potentially avoid this requirement as the code had language stating if it can be shown there is a safety/crime concern and the police agree, the requirement can be waived. Jennifer casually stated this had slipped her mind.

We had a meeting on 11/19/2019 with Zach Brubaker from the SeaTac Police department. He was not receptive at all to any of our commentary. We were trying to show him examples on a screen of how surveillance is disrupted by trees and he was not even willing to look at it.

He actually admitted he had a one-hour meeting with Jennifer Kester in advance of our meeting and decided he would not be recommending a variance from the landscaping code due to security issues and even went on record saying the only reason he came to meet us was to tell us that and no input from us could change his mind.

He stated the City of Burien has a terrible zoning code and only cares about the financial success of businesses.

He had previously been very friendly and professional with me in my previous meetings and interactions with him. I was surprised that he was acting in such an unprofessional manner this time.”

Finding:

But for the additional comments attributed to Officer Zach Brubaker, the CPTED Officer for the City, Tej Basra’s complaint is essentially Jag Basra’s complaint restated. As indicated above, I found no evidence to corroborate the allegation that Jennifer Kester or anyone else affiliated with the City did anything improper or illegal as relates to the Basras’ efforts to expand their Park N Fly business.

As to the additional allegations related to Officer Brubaker, the allegations are uncorroborated by anyone aside from the Basras. As indicated above, Officer Brubaker, Dennis Hartwick and Jennifer Kester expressly dispute many of the accusations. Officer

Brubaker specifically denies making the comments attributed to him by Tej Basra. Even if I were to accept the Basras' allegations about what Officer Brubaker allegedly said when he met with them are true it does not change the ultimate fact that there is no evidence Jennifer Kester engaged in any improper or unprofessional behavior regarding the Basras' Park N Fly expansion.

Complaint:

“On November 12, 2019 I received an email from Jennifer Kester stating she wanted to cancel all planning commission meetings for the rest of the year because the other items on your work plan are not ready for planning commission introduction.”

Finding:

Jennifer Kester readily admits that she sent an email to Tej Basra indicating that she felt it was not necessary for the Planning Commission to meet in November or December of 2019. She indicated that this was in part due to the fact that she had been pulled into a couple of very large public works projects and other staff that worked with the Planning Commission were also busy on other year-end projects such as Comprehensive Plan Amendment. Ms. Kester indicates that Tej Basra did not respond to her email. Instead, it appears that the Basras filed their complaint regarding Jennifer Kester shortly after this email was sent.

In spite of Ms. Kester's email, it is my understanding Planning Commission meetings were scheduled to be conducted in November and December of 2019 with Steve Pilcher acting as staff liaison for the Planning Commission. I do not know if these meetings actually occurred or if anything substantive came of the meetings as my interviews occurred prior to those meetings.

I did not find any evidence that Ms. Kester's motive in sending the email wherein she proposed to cancel the meetings was in any way malicious. In her capacity as Planning Manager, Ms. Kester was attempting to maximize the use of her resources with year-end fast approaching. I cannot fault her for exploring the possibility of re-directing her resources from attending meetings to what she viewed as other equally or more important matters. Also, Tej Basra as Planning Commission Chair could have easily responded to Ms. Kester's email and told her that he did in fact want to hold the November and December meetings and Ms. Kester unequivocally stated she would have conducted the meetings. Regardless, the meetings did occur in the end.

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Complaint:

"I feel that we are behind our neighboring cities when it comes to planning for housing growth which at this point is a crisis in King County for which we are doing nothing.

Instead of making this a priority, planning staff has destroyed any proposals related to increasing housing supply in the city, such as M3.

The planning commission expressed our desire to discuss ADU's in SeaTac, this has not been brought forth by staff. I was expecting this to be at least discussed in a meeting before year end. We discussed frontage improvement standards for development of new construction at our last meeting, I was hoping for some follow up to that.

There is absolutely no sense of urgency from Jennifer Kester to address what I deem to be critical items for the city's future growth.

There has been great economic growth in SeaTac in this economic cycle, many commercial buildings and hotels have been built.

Why have we had almost no quality housing built?

I have repeatedly expressed during planning commission meetings that community business zoned land prices make it impossible to pencil for multifamily projects,

Community business is a majority of the land that is zoned for multifamily

City staff need to look at what corridors of the city can be upzoned for multifamily asap.

SeaTac is well positioned between the workforce centers: Bellevue and Seattle. But we are doing nothing to capture the demand.

The rapid bus lane on 405 will also make it way easier for people to commute to Bellevue for work. We need to prepare for this.

Jennifer Kester has shown utter disregard for fair process and any checks and balances that we are supposed to have here in the City of SeaTac.

She approached someone she expected to apply for a mayor appointed position and tried to persuade the candidate to not apply

When this was not successful she then interfered in the interview
And then tried to persuade the mayor to not appoint me

She then attempted to sabotage a development that I am involved in (Park N Jet)

And these are just the items I know about. I am sure a thorough investigation will open up a

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larger can of worms.

She has no regard for the rules and procedures we have in the city.

I want to know why she has conducted herself in this matter. **What was her motive?**

Is she racist?

She tried to dissuade a minority from seeking a position on the planning commission

Why did she discriminate against myself and my family?

Why did she sabotage a proposal (M3) that would have benefited my father?

She influenced a police officer to sabotage a development proposal by a company that I am an owner of. I want to know why she did this.

I have heard that there have been other complaints regarding Jennifer Kester which also gives me cause for concern.”

Finding:

The last portion of Tej Basra’s written complaint appears to be a stream of consciousness restatement of his prior allegations, along with a commentary on his development philosophy and frustrations that the City of SeaTac has not done more to foster growth.

As stated previously, his allegations directed towards Ms. Kester are not based in fact. Most importantly, his speculation that Ms. Kester might be a “racist” is without any factual basis whatsoever. I pointedly asked Mr. Basra what his basis was for making such an inflammatory allegation and he admitted there is none. In his mind, there can be no other explanation for the alleged improper treatment of him and his family. However, as I have repeatedly pointed out herein, I found no evidence of improper treatment of any kind and Mr. Basra’s accusation of racism is meritless.

CONCLUSION:

Jag Basra and Tej Basra’s complaint that Jennifer Kester has improperly interfered with the expansion of their parking business, Park N Jet, and their development of a parcel of property on North Military Road is baseless. There is no evidence of Ms. Kester exhibiting any ill will or discriminatory animus towards either of the Basras. Instead, all the evidence indicates that Ms. Kester is a conscientious and loyal City of SeaTac employee whose decisions are driven by the rule of law and the best interest of the City.

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It has been my pleasure conducting this investigation. Should you have any additional questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk A. Ehlis". The signature is fluid and cursive, with the first name "Kirk" being the most prominent.

Kirk A. Ehlis

Enclosure

CC: Mary Mirante Bartolo, SeaTac City Attorney
Mr. Phil Riche, Clear Risk Solutions



Park N Jet
18432 8th Ave S, SeaTac

Police Department
4800 South 188th Street
SeaTac, WA 98188-8605

City Hall: 206.973.4900
Fax: 206.973.4629
TDD: 206.973.4808

Acting Chief of Police
Jon Mattsen

This letter is in response to the plans for the Park N Jet expansion. I have reviewed the departure request in regards to SMC 15.445.250. As the CPTED certified crime prevention officer for the SeaTac police I disagree with the reasoning to exclude the landscaping. Interior landscaping such as this is considered a value not a hindrance. CPTED philosophy is that this type of landscaping should be picked based on species and maintenance. The "2 foot 6 foot" rule is key to CPTED and as long as ground vegetation doesn't exceed two feet in height and the branches on trees are cleared up to six feet from the ground. This rule creates landscaping that is both attractive and does not pose a risk of concealing criminal activities.

After going out to the property and hearing the concerns about hiding spots and motion sensor issues with the cameras I have not changed my opinion. I believe landscaping islands that break up large groups of cars provide more visibility. I understand and am sympathetic to their issue with the cameras but advised they pick landscaping specifically that has less leaves and less movement from wind.

If you have any questions or would like to discuss it further feel free to contact me. My phone number is 206-556-5024 and email is Zachary.brubaker@kingcounty.gov.

Mayor
Erin Sitterley

Deputy Mayor
Clyde Hill

Councilmembers
Rick Forschler
Joel Wachtel
Peter Kwon
Stanley Tombs
Pam Fernald

City Manager
Carl Cole

City Attorney
Mary Mirante Bartolo

City Clerk
Kristina Gregg

Thank you.

A handwritten signature in blue ink, appearing to read "Zach Brubaker".

Detective Zach Brubaker
SeaTac Police
4800 S 188 St
SeaTac, WA, 98188