

## CITY OF SNOQUALMIE, WASHINGTON

## In re Ethics Complaint against Peggy Shepard

## FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

## I. INTRODUCTION

On February 4, 2021, Snoqualmie Mayor Matt Larson submitted a complaint alleging that Councilmember Peggy Shepard had in multiple instances violated Snoqualmie Code of Ethics Chapter 2.80 of the Snoqualmie Municipal Code (“SMC”), the state Code of Ethics for Municipal Officers, RCW 42.23 and the Appearance of Fairness Doctrine, RCW 42.36.

The alleged violations included:

- Participating as a decisionmaker in quasi-judicial proceedings that require impartiality while privately advocating an outcome.
- Improperly disclosing privileged and confidential information and legal advice; and
- Making false statements or representations of public records or documents, or in willful disregard of their truth.

On May 14, 2021 Councilmember Shepard provided a written response to the Complaint. The response included exhibits, which along with the exhibits submitted with the complaint are included in the record. After reviewing and investigating the Complaint, on May 21, 2021, I concluded that the Complaint was legally sufficient and supported by probable cause with the exception of the allegation that Councilmember Shepard violated SMC 2.80.030(f)(3) by making false statements or representation of any public record or document in willful disregard of the truth

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION - 1

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1 and that allegation was dismissed. The remaining two allegations proceeded to hearing. On June  
2 22, 2021 the Ethics Hearing was held.

## 3 **II. THE RECORD**

### 4 **A. Pre-Hearing Submissions.**

5 In advance of the hearing both parties submitted briefing and documents for the record,  
6 including the following:

- 7 • Mayor Larson's Complaint dated February 4, 2021, and exhibits attached thereto.
- 8 • Councilmember Shepard's May 14, 2021 email response, exhibit, and links.
- 9 • Councilmember Shepard's Pre-Hearing Brief dated June 15, 2021 including Exhibits  
A-F; J-AG; AI-AL; and AN-AP.
- 10 • Mayor Larson's June 23, 2021 email and link to the October 22, 2018 council  
meeting.
- 11 • Mayor Larson's Response to Councilmember Shepard's Pre-hearing brief and  
exhibits.
- 12 • Mr. Sterbank's June 22, 2021 email and attachment of the Department of Ecology  
Comment letter; and
- 13 • Councilmember Shepard's June 22, 2021 Response to Document for Hearing.

### 14 **B. Post-Hearing Submissions.**

15 Following the hearing, the following submissions were received:

- 16 • Redacted versions of the October 10, 2019 email from Mr. Sterbank to  
Councilmembers, the July 19, 2019 email of Mr. Sterbank containing the July 17,  
2019 emails from Mr. Sterbank to Snoqualmie staff and the June 26, 2020  
confidential document resent by the City at the Hearing Examiner's request, and
- 17 • Councilmember Shepard's PowerPoint presentation and closing remarks and Exhibit  
AQ (Ecology's Role).

18 In summary, all the materials submitted have been included in the record.

## 19 **III. FINDINGS AND CONCLUSIONS**

### 20 **A. Claims that Councilmember Shepard violated SMC 2.80, RCW 42.23, and RCW 21 42.36 by participating as a decisionmaker in quasi-judicial proceedings that require impartiality while privately advocating an outcome.**

22 In his petition, Mayor Larson contends that Councilmember Shepard violated SMC 2.80,  
23 RCW 42.23 and RCW 42.36 by her conduct and/or participation in two quasi-judicial matters—  
24 (1) the Council's consideration and adoption of Resolution 1461 which adopted findings of fact,  
25 conclusions of law and conditions approving the Salish Lodge & Spa Expansion (hereinafter  
26

1 referred to as “the Salish Lodge expansion”); and (2) the Weyerhaeuser Mill Site application, a  
2 matter which currently is being reviewed by the City. Each of these matters will be addressed  
3 below.

4 **1. The Salish Lodge Expansion.**

5 Mayor Larson contends that Councilmember Shepard engaged in prohibited consideration  
6 of information outside of the record by making multiple contacts to staff at the King County GIS  
7 Department and the King County Boundary Review Board seeking and obtaining at least one  
8 document (a map). Exhibits submitted with the complaint include an email exchange between  
9 Councilmember Shepard and King County GIS staff on October 10, 2018, while the council had  
10 the Salish Lodge Expansion matter under consideration. Mayor Larson contends that  
11 Councilmember Shepard was obligated to disclose the contacts to King County GIS and provide  
12 any information she received for the record, that she and all other councilmembers were asked to  
13 disclose any ex parte communications prior to the Council’s consideration of the Salish matter on  
14 three separate Council meetings—October 22, 2018, October 24, 2018 and October 29, 2019—the  
15 last date being the date when Resolution 1461 was adopted—and that Councilmember Shepard  
16 made no disclosure of the contacts with County staff or any documents received.

17 Following the Resolution’s adoption, Mayor Larson contends that Councilmember  
18 Shepard made multiple contacts to the King County Boundary Review Board and the Office of  
19 Financial Management on both November 2, 2018 and November 11, 2018 again seeking  
20 documents to support a motion for reconsideration of the adoption of Resolution 1461. The  
21 complaint attached emails of Councilmember Shepard’s contacts with both agencies and an  
22 amended complaint from Janet Storr in a filed legal challenge of the Council’s action alleging that  
23 Councilmember Shepard was going to propose such a motion. The amended petition was attached  
24 as an exhibit to Mayor Larson’s complaint and it also was submitted as an Exhibit C to  
25 Councilmember Shepard’s pre-hearing brief. In Paragraph 8 of the Amended Petition, it is alleged  
26 that on November 8, 2018, Councilmember Shepard met with a group of concerned citizens to  
27 discuss options. In Paragraph 9 of the Amended Petition, it is alleged that the Petitioners attended

1 the November 13, 2018 Council meeting and presented a map from the county allegedly showing  
2 that the boundaries for the development were different from that described in the adopted  
3 resolution. It also alleges that Councilmember Shepard attempted to make a “motion to revisit the  
4 subject” but that she was not allowed to make the motion. The video from the Council meeting  
5 indicates that Councilmember Shepard began speaking about the Salish matter and was ruled out  
6 of order. Exhibit X to the Shepard submission.

7 For her part, Councilmember Shepard admits in her pre-hearing brief that she had a  
8 communication with the King County GIS Department during the time when Council had the  
9 Salish Expansion matter under consideration. She contends that the communications with the  
10 Boundary Review Board and OFM occurred after the Council adopted the Resolution on October  
11 29, 2018. In her June 22, 2021 submission, she admitted meeting with citizens on November 8,  
12 2018 but claimed there was false information in paragraphs 7-10 of the Amended Petition;  
13 however, she does not identify which statements were false. During the hearing, she denied that  
14 she was attempting to offer a motion for reconsideration on November 13, 2018. She admitted  
15 that she did not disclose her contacts with King County GIS or the other agencies when the City  
16 Attorney requested disclosure of any ex parte contacts with any proponents or opponents of the  
17 project. She explains her silence by claiming that the County was neither a proponent nor an  
18 opponent but instead was a “neutral agency.”

19 As will be described below, with respect to the Salish Expansion matter, it does not appear  
20 that Councilmember Shepard violated the State Ethics Act, RCW 42.23; however, the record  
21 supports conclusions that Councilmember Shepard violated the Appearance of Fairness Doctrine  
22 RCW 42.36 and SMC 2.80.030(A)(1).

23 **a. State Ethics Act RCW 42.23.**

24 In RCW 42.23.070, there is a list of prohibited conduct:

25 (1) No municipal officer may use his or her position to secure  
special privileges or exemptions for himself, herself, or others.

26 (2) No municipal officer may, directly or indirectly, give or  
receive or agree to receive any compensation, gift, reward, or  
gratuity from a source except the employing municipality, for a

1 matter connected with or related to the officer's services as such an  
2 officer unless otherwise provided for by law.

3 (3) No municipal officer may accept employment or engage  
4 in business or professional activity that the officer might reasonably  
expect would require or induce him or her by reason of his or her  
official position to disclose confidential information acquired by  
reason of his or her official position.

5 (4) No municipal officer may disclose confidential  
6 information gained by reason of the officer's position, nor may the  
officer otherwise use such information for his or her personal gain  
or benefit.

7 None of the contact alleged by Councilmember Shepard falls within these prohibitions.

8 **b. RCW 42.36, the Appearance of Fairness Doctrine.**

9 The appearance of fairness doctrine is a rule of law requiring government decision-makers  
10 to conduct non-court hearings and proceedings in a way that is fair and unbiased *in both*  
11 *appearance and in fact.* The doctrine was developed through case law focusing on protection of  
12 an applicant's due process rights and later was codified with respect to its application in land use  
13 matters. The doctrine requires adjudicatory or quasi-judicial decisions to be (1) procedurally fair;  
14 and (2) must appear to be conducted by impartial decision-makers. As is described in the MSRC's  
15 treatise on the Appearance of Fairness Doctrine, attached as Exhibit K to Councilmember  
16 Shepard's submission, the test for bias is as follows:

17 Has the decision been made solely based on matters in the  
18 record?

19 Would a fair-minded person, observing the proceedings, be  
able to conclude that everyone had been heard who should  
have been heard?

20 Did the decision makers give reasonable faith and credit to  
all matters presented, according to the weight and force they  
21 were reasonably entitled to receive?

22 As the test indicates, a basic principle of fair hearings is that the decisions are made entirely  
23 based on evidence presented at the proceedings.

24 No member of the decision-making body is permitted to engage in ex parte  
25 communications with proponents or opponents while the proceeding is pending. The statute  
26 allows a decisionmaker to cure a violation by disclosing on the record any communication and  
27 allowing the parties involved to rebut the content of the communication.

1        In instances where a decisionmaker believes additional information is needed, the statute  
2 permits the decisionmaker to request in a public hearing specific information from the parties  
3 relative to the decision if both the request and the results are part of the record. See RCW  
4 42.36.060(2).

5        Councilmember Shepard claims that her contact to the County was permissible because the  
6 county was neither a proponent nor an opponent of the project. While this may be true, it  
7 constitutes entirely too narrow a view of her obligations under the appearance of fairness act. The  
8 purpose of her inquiries was to seek information that she believed was relevant to the applications  
9 under consideration by the Council. Instead of relying on the information in the record brought to  
10 the Council she was actively seeking additional information outside the record. She did not attempt  
11 to utilize the mechanisms for disclosing the information she obtained and the conversations that  
12 she had. She could have requested the information from GIS during the proceedings so that all  
13 parties knew what and why she wanted the information. Although her conduct did not affect the  
14 result of the council action since she was the lone dissenter, her conduct was inconsistent with the  
15 act.

16        **c.        SMC 2.80.030(A)(1).** SMC 2.80.030(A)(1) provides:

17        A. Disqualification from Acting on City Business. No city  
18        officer or employee, while holding such office or employment,  
19        shall:

20        1. Engage in any transaction or activity, which is, or would  
21        to a reasonable person appear to be, in conflict with or incompatible  
22        with the proper discharge of official duties, or which impairs, or  
23        would to a reasonable person appear to impair, the officer's or  
24        employee's independence of judgment or action in the performance  
25        of official duties and fail to disqualify himself or herself from  
26        official action in those instances where the conflict occurs.

27        The term "city officer" includes any person holding a position by election. SMC  
28 2.80.020(C). Thus, under the Ethics Code, there is an objective, reasonable person standard  
29 applied to reviewing whether an officer's or employee's conduct is incompatible with the proper  
30 discharge of their duties or impairs their independence of judgment or action. Clearly,  
31 Councilmember Shepard's decision not to rely solely on the record and to engage in independent  
32

1 fact finding outside the record would to a reasonable person demonstrate conduct incompatible  
2 with her duties to be an impartial, quasi-judicial decisionmaker.

3 **2. The Mill Site.**

4 Councilmember Shepard has continued her independent fact-finding conduct in connection  
5 with the Mill Site matter. Mayor Larson's complaint alleges that Councilmember Shepard has had  
6 multiple communications with representatives of the Washington Department of Ecology ("DOE")  
7 regarding the Mill Site development proposal application by Snoqualmie Mill Ventures LLC. The  
8 Mill Site involves a proposal to redevelop a portion of property which once was part of the  
9 Weyerhaeuser Mill property. The contacts with DOE commenced in late 2018 and continued into  
10 2020 and are captured in part in the Exhibits attached to Mayor Larson's complaint.  
11 Councilmember Shepard inquired, among other things, whether the scope of the environmental  
12 review for the project had to include the entire former mill site rather than only the site of the  
13 proposed development (Shepard email dated December 26, 2018). Ecology directed her to the  
14 lead agency for the SEPA EIS which is the City. In April 2020, Councilmember Shepard then set  
15 up a meeting with DOE staff to discuss whether development could occur on part of the  
16 Weyerhaeuser mill site without the entire site being cleaned up.

17 In her pre-hearing brief, Councilmember Shepard admits that that her communications with  
18 DOE took place in 2018 and 2020. She claimed that the purpose of her communications was to  
19 correct DOE's public repository of documents about the Mill Site and that she provided the  
20 "updated information" to an interested member of the public. Councilmember Shepard claims that  
21 the communications with DOE did not violate the Appearance of Fairness Doctrine because they  
22 did not constitute ex parte communications with proponents or opponents because DOE is a  
23 "neutral party."

24 On July 9, 2020, DOE submitted a letter containing five pages of comments to the  
25 Environmental Analysis section of the Draft Environmental Impact Statement for the Mill Site  
26 project. The Environmental Health section of the comments specifically mention the site has not  
27 had a comprehensive remedial investigation according to the Model Toxics Control Act (MTCA)

1 regulations and identifies DOE databases pertinent to the facility. DOE's comments also disagree  
2 with certain statements in the DEIS regarding known or suspected contaminants, discusses DOE's  
3 opinion that additional stormwater control and monitoring will be necessary and expresses  
4 concerns about whether the City has sufficient capacity under current water rights to serve the new  
5 development.

6 In response to the submission of DOE's comments into the record, Councilmember  
7 Shepard provided an email from Thomas Buroker, Regional Director of Ecology's Northwest  
8 Region stating that Ecology is not an advocate or opponent of project proposals. He also states that  
9 DOE has authority delegated through federal and state law to implement and enforce various  
10 environmental rules. As the links attached to Mr. Buroker's email demonstrate, DOE has a major  
11 role in overseeing state and federal laws governing Washington's air, land, and water.

12 Finally, Councilmember Shepard contends that because there is no action on the Mill Site  
13 project currently before the Council, that her multiple contacts with DOE—including one contact  
14 that occurred after the date of the hearing—do not run afoul of the appearance of fairness statutes.  
15 Our courts have held that the prohibition on ex parte communications between a councilmember  
16 and an interested party only applies while a quasi-judicial proceeding is pending. See *West Main*  
17 *Associates v. City of Bellevue*, 49 Wn. App. 513, 529, 742 P.2d 1266 (1987). As of the date of the  
18 hearing, there was no appeal or application pending before the Council. While this would appear  
19 to prevent a conclusion that Councilmember Shepard has violated RCW 42.36, her conduct to date  
20 demonstrates poor judgment in once again inserting herself into investigation and advocacy rather  
21 than safeguarding her ability to act as a neutral and objective decisionmaker at the point in time  
22 when the project or any appeals are brought before the Council. Instead of working with the staff  
23 of the lead agency—the City—to address any questions she had about the scope of the  
24 environmental review, she instead went around the City staff and the applicant and had multiple  
25 communications with Ecology. Although Councilmember Shepard stated during the hearing and  
26 in her submission that “if there is any valid reason for me to recuse myself, then I will, “ it is  
27 difficult to imagine a scenario where she could be viewed as being objective given her numerous

1 communications with an entity that has a significant regulatory oversight role. It raises the  
2 question of whether she can uphold the standard articulated by the Washington Supreme Court  
3 “that whenever the law requires a hearing of any sort as a condition precedent to the power to  
4 proceed, it means a fair hearing, a hearing not only fair in substance but fair in appearance as well”.  
5 *Chrobuck v. Snohomish County*, 78 Wash.2d 858, 869 (1971), quoting *Smith v. Skagit County* 75,  
6 Wash.2d 715, 739, 453 P.2d 832, 846 (1969). Her conduct to date demonstrates that she has  
7 engaged in activity that would to a reasonable person appear to impair her independence of  
8 judgment and necessitates her disqualification from acting on any matters involving the Mill Site  
9 development proposal as required under SMC 2.80.030(A)(1).

10 **B. Allegations that Councilmember Shepard Improperly Disclosed Confidential  
Information and Legal Advice.**

11 Next, Mayor Larson’s complaint alleges two instances in which Councilmember Shepard  
12 disclosed privileged attorney-client communications in violation of the State Ethics Act, RCW  
13 42.23.070(4) and in violation of SMC 2.80.030(D).

14 **1. Disclosure of Attorney-Client Communications to the State Auditor’s Office.**

15 The first instance involved transmission of an internal City email thread responding to  
16 Councilmember Shepard’s questions about refund of deposits paid by developers. The internal  
17 thread included an email dated July 17, 2019 at 12:48 PM from City Attorney Bob Sterbank that  
18 was titled: “RE: MOUS refunds: attorney-client privileged and confidential.” All the recipients of  
19 the email were the mayor, councilmembers and select city staff. Mr. Sterbank also sent an email  
20 at 3:27 PM on July 17, 2019. It was addressed to the same internal recipients and carried the subject  
21 of: RE: MOUS refunds, the same subject line as the previous email. This email, however, did not  
22 have the “attorney-client privileged and confidential” language.

23 In her May 14, 2021 response to the complaint and in her June 15, 2021 pre-hearing brief,  
24 Councilmember Shepard admits that she forwarded the email string containing both emails from  
25 Mr. Sterbank to the State Auditor’s Office (“SAO”). Councilmember Shepard provided several  
26 reasons for doing so. First, she alleges that she did not believe the content of the email warranted  
27 an attorney-client designation. Second, she contends that she was entitled to transmit the

1 privileged documents because she was required to do so by law to report illegal activity to the  
2 SAO under RCW 43.09.185 because unlawful destruction of public records can be a crime.

3 Both of Councilmember Shepard's arguments are unpersuasive. First, RCW 42.23.070-  
4 (4) states:

5 (4) No municipal officer may disclose confidential information  
6 gained by reason of the officer's position, nor may the officer  
otherwise use such information for his or her personal gain or  
benefit.

7 While RCW 43.09.185 requires local governments to immediately report to the SAO  
8 known or suspected loss of public funds or other illegal activity, there is nothing in the statute that  
9 in doing so, permit an elected official to disclose attorney-client communication.

10 The attorney-client privilege belongs to all the City. The City Attorney represents all the  
11 city council, the mayor, and the staff. Disclosure of privileged information by one councilmember  
12 or staff person can result in the privilege being waived. It therefore is necessary that one  
13 councilmember does not have the unilateral right to determine whether the information contained  
14 in a communication from the city attorney is privileged. By her own admission, Councilmember  
15 Shepard violated RCW 42.23.070 when she unilaterally determined that the City Attorney's  
16 communications shouldn't be treated as privileged and forwarded them to the SAO.  
17 Councilmember Shepard contends the SAO had the right to review the materials and that the  
18 SAO's findings supported her view that the deposit refund needed to be handled differently.  
19 However, this "ends justify the means" argument is inappropriate.

20 In addition to violating RCW 42.23.070(4), the disclosure of privileged information also  
21 violates SMC 2.80.030(D), which provides:

22 "Disclosure of Confidential or Privileged Information. No city  
23 officer or employee, while holding such office or employment, or at  
any time after leaving office or employment, shall disclose or use  
any confidential or privileged information gained by reason of his  
or her official position for a purpose which is for other than a city  
purpose; provided, that nothing shall prohibit the disclosure or use  
of information which is a matter of public knowledge, or which is  
available to the public on request. "

1 Again, the analysis is similar. Councilmember Shepard had been provided attorney-client  
2 communications due to her position as a councilmember. She may have had legitimate concerns  
3 about how developer deposit refunds were being handled. She could have expressed her concerns  
4 to the SAO without forwarding the privileged communication. Alternatively, she could have had  
5 a discussion with the city attorney about whether the information he provided was confidential.  
6 But she did not have the right to disclose the communications from the City Attorney to anyone.  
7 Councilmember Shepard might contend that her disclosure to the SAO was for a “city purpose”;  
8 however, again, the city leadership as a whole should have the right to decide if, how and when to  
9 disclose such information in the course of a dialogue with the SAO. If each councilmember is free  
10 to unilaterally decide what is or is not privileged, then the privilege itself will be jeopardized.

11 **2. Disclosure of Attorney-Client Communication Regarding Electioneering.**

12 The second disclosure of attorney-client communications involved an email dated October  
13 11, 2019 that was sent to all councilmembers. In her response to the complaint, Councilmember  
14 Shepard recited the subject matter of the email, and that she had shared the email thread with her  
15 husband. Councilmember Shepard stated the reason she chose to share the email with her husband  
16 was because her underlying action – wearing a sweatshirt advocating certain candidates for the  
17 city council at a public meeting – was the subject of a complaint to the Washington Public  
18 Disclosure Commission and she claimed that any judgment against her would affect her husband  
19 as well. Disclosure of the attorney-client communication to Councilmember Shepard’s husband  
20 is not permitted under RCW 42.23.070(4) or SMC 2.80.030(D). He simply was not entitled to  
21 receive legal advice from the city attorney that was only intended for city councilmembers and  
22 staff.

23 **IV. RECOMMENDATIONS**

24 SMC 2.80.080 and 2.80.090 govern the scope of recommendations available to the Ethics  
25 Hearing Officer. SMC 2.80.080(C) states:

26 If the ethics hearing officer determines the mayor or a council member has violated  
27 a provision of the code of ethics, then he shall issue a “Letter of Censure”.

1 SMC 2.80.080(D) states:

2 If the ethics hearing officer determines any person has willfully and knowingly  
3 violated the provisions of this chapter, he may refer the matter to the prosecuting authority  
4 for action under SMC 2.80.090.

5 SMC 2.80.090(A) provides:

6 Any officer or employee who knowingly and willfully violates the provisions of  
7 this chapter shall be guilty of a misdemeanor.

8 SMC 2.80.090(B) provides in part:

9 If the ethics hearing officer recommends criminal prosecution of any elected  
10 officer, and prosecuting authority has not previously been appointed and confirmed, then  
11 the prosecuting authority shall be appointed by the King County prosecuting attorney.

12 Having found that Councilmember Shepard (1) violated SMC 2.80.030(A)(1) in  
13 conducting ex parte communications and in obtaining documents outside the record in connection  
14 with the Salish and the Mill Site matters; and (2) violated SMC 2.80.030(D) in disclosing attorney-  
15 client communications, I will now address my recommendations.

16 With respect to the violations of SMC 2.80.030(A)(1), the standard for determining that a  
17 violation occurred is whether it would appear to a reasonable person that the councilmember's  
18 activity impaired her independence of judgment or action in the performance of official duties and  
19 fails to disqualify herself from official action in those instances where the conflict occurs. The  
20 Code of Ethics does not define the phrase "knowingly and willfully." However, the words are  
21 defined in a criminal statute. A person knows or acts knowingly or with knowledge when: (i) he  
22 or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense;  
23 or (ii) he or she has information which would lead a reasonable person in the same situation to  
24 believe the facts exists which facts are described by a statute defining an offense. RCW  
25 9A.08.010(1)(B). A requirement that an offense be committed willfully is satisfied if a person acts  
26 knowingly with respect to the material elements of the offense, unless a purpose to impose further  
27 requirements plainly appears. RCW 9A.08.010(4). "Willfully" equates with "knowingly" and

1 “knowingly” is a less serious form of mental culpability than” intent.” *State v. Thomas*, 98  
2 Wash.App. 422, 425, 989 P.2d 612 (1999), review denied, 140 Wash.2d 1020, 5 P.3d 10 (2000);  
3 quoted in *City of Spokane v. White*, 102 Wash.App 955, 961, 10 P.3d 1095 (2000). Although  
4 “willful” may connote an absence of excuse or justification, it often connotes an act that is  
5 voluntary or knowing. *Id.*

6 Councilmember Shepard’s explanations that she thought the County staff in the instance  
7 of the Salish expansion and DOE in the instance of the Mill Site application were “neutral” and  
8 therefore available resources was an insufficient and unreasonable given the appearance of fairness  
9 statute’s focus on ensuring that communications and information regarding quasi-judicial matters  
10 are disclosed so that the applicant’s due process rights are protected. . While she can point to the  
11 specific question asked of Council by the City Attorney at the commencement of consideration of  
12 the Salish matter on three occasions—whether any member has had communications with a project  
13 proponent or opponent—as a limiting question, her silence in not disclosing her contacts with the  
14 county in the face of listening to her colleagues disclose communications that they received, along  
15 with her previous training on the appearance of fairness issues was inappropriate and clearly  
16 wrong. She, too, had a duty to speak up and disclose her communications.

17 Similarly, Councilmember Shepard’s outreach to DOE to express her concern about the  
18 scope of the environmental review for the Mill Site project and her failure to discuss those concerns  
19 with the City staff—the lead agency—as recommended to her by DOE-- would lead a reasonable  
20 person to conclude that she will be unable to objectively participate in any quasi-judicial  
21 proceeding related to the application. Again, her belief that DOE is neither a project proponent or  
22 opponent despite the agency’s voluminous comments and regulatory oversight responsibilities is  
23 unreasonable and clearly misses the point that under the reasonable person standard in SMC  
24 2.80.030(A)(1), it appears that she is acting as an advocate for a specific result rather than  
25 remaining objective and independent.

26 Councilmember Shepard’s conduct with respect to the two disclosures of attorney-client  
27 communication also present difficulties. Neither disclosure was inadvertent. With respect to the

1 release of the attorney-client communication in the email string sent to the SAO, she expressed a  
2 belief, albeit an erroneous one, that SAO would be entitled to review the communication as part  
3 of its audit function and that state law obligated her to make the disclosure. She could have raised  
4 any concerns with the SAO without including the attorney-client communication, but she chose  
5 not to do so. Her excuse, however, raised the question of whether the disclosure was for a “city  
6 purpose” or for a purpose “other than a city purpose”. SMC 2.80.030(D). As previously stated, it  
7 was not her right to decide whether to make the disclosure and whether such a disclosure advanced  
8 a city purpose. Her contention that she didn’t believe the contents were privileged exhibited  
9 extraordinarily poor judgment. While Mayor Larson’s submission did not identify any specific  
10 consequence or harm flowing from the release of the privileged communication, her actions were  
11 without a reasonable justification, inappropriate and not can be condoned.

12 Finally, Councilmember Shepard’s disclosure of the attorney-client communication dated  
13 October 11, 2019 to her husband did not advance any city purpose. She knew the communication  
14 was privileged and her excuse that her husband needed to know the information because any fine  
15 or penalty imposed would affect their marital community again demonstrates her continued poor  
16 judgment in failing to protect privileged information. No specific harm to the City was identified  
17 as flowing from the disclosure.

18 Councilmember Shepard’s conduct raises serious questions about her ability to be trusted  
19 with sensitive information regarding the City, and that the violations appear to meet the “willfully  
20 and knowingly” provisions in SMC 2.80.080(D). When that standard is met, the provision gives  
21 the Ethics Hearing Officer discretion in referring the matter to the prosecuting attorney for action  
22 under SMC 2.80.090 which includes misdemeanor prosecution. My recommendation is not to  
23 refer this matter to the prosecuting attorney for the following reasons:

24

- 25 • With respect to the Salish expansion matter, a considerable amount of time has passed  
since the matter was completed and no material adverse consequences to the City or  
the applicant were identified in the record.
- 26 • With respect to the release of the attorney-client communications to the SAO and to  
Councilmember Shepard’s husband, again the record lacks any information  
identifying any adverse consequences incurred by the City due to the disclosures.

27

1           • In both instances the lack of material harm to the City does not excuse the behavior  
2           and is not intended to impose an additional standard. Councilmember Shepard needs  
3           to understand that she does not get to unilaterally decide to violate the Ethics  
4           Ordinance if in her opinion, there only will be minimal harm to the City.  
5           • With respect to the Mill Site matter, the record does not indicate that the proceedings  
6           are currently before the Council for consideration; however, the record clearly  
7           demonstrates that Councilmember Shepard's conduct demonstrates that she will not  
8           be objective and that if she does not recuse herself from participation in the matter,  
9           the City Council should adopt a resolution excluding her from doing so.  
10           • Finally, the decision not to refer the matter to the prosecuting attorney is a close call.  
11           Councilmember Shepard's violations described herein demonstrate a consistent lack  
12           of transparency, arrogance, and bad judgment. If any further violations of the Ethics  
13           Code come to light or occur and meet the standard in SMC 2.80.080(D), there should  
14           be no hesitation in making a referral to the prosecuting attorney.

10           For the foregoing reasons, I have prepared a Letter of Censure addressing Councilmember  
11           Shepard's conduct, a copy of which is attached to this report.

12  
13           DATED July 19, 2021.

14           By



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16           Grant S. Degginger  
17           City of Snoqualmie Ethics Hearing Officer

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FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND RECOMMENDATION - 15

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## CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2021, I caused to be served a copy of the foregoing on the following person(s) via electronic mail and first-class mail:

Hon. Matthew R. Larson  
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[mayor@snoqualmiewa.gov](mailto:mayor@snoqualmiewa.gov)

Hon. Peggy Shepard  
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s/ Norma Tsuboi  
Norma Tsuboi, Legal Assistant