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| **From:** | Ron Whalen |
| **To:** | Corcoran, Elizabeth (SAO) |
| **Subject:** | Issues for inclusion to 2023 audit of San Juan County----4th installment draft |
| **Date:** | Friday, June 23, 2023 9:18:28 AM |
| **Attachments:** | Roll value history -Bormann.odt<br>Roll value history-Skoog.odt<br>8-6-19 email to County Prosecutor.odt<br>8-12-19 Prosecutors office.eml.msg<br>10-13-22 opinion of prosecuting atty.odt |

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External Email

This is the 4th installment of Issues for inclusion to 2023 audit of San Juan County. This installment concerns conflict of interest.

I'm not an attorney. My discernment of RCW's concerning conflict of interest is cursory. Reference to RCW's are my perspective of rules that I believe correspond to the following information.

*RCW **43.160.040***

*Conflicts of interest—Code of ethics.*

*In addition to other applicable provisions of law pertaining to conflicts of interest of public officials, no board member, appointive or otherwise, may participate in any decision on any board contract in which the board member has any interests, direct or indirect, with any firm, partnership, corporation, or association which would be the recipient of any aid under this chapter. In any instance where the participation occurs, the board shall void the transaction, and the involved member shall be subject to whatever further sanctions may be provided by law. The board shall*

*frame and adopt a code of ethics for its members, which shall be designed to protect the state and its citizens from any unethical conduct by the board.*

## Issues for inclusion to 2023 audit of San Juan County

### Conflict of interest A

Summary process for acquisition of property by the San Juan County Land Bank (LB);

A. LB staff identifies prospective acquisitions in compliance with an approved purchase plan.

B. There's incidental elements like appraisals and negotiations with property owners.

C. The prospective acquisition is presented to the County Council for a resolution of approval.

D. The 3 member county council votes on a resolution for acquisition which permits the

acquisition to proceed.

In April of 2018 the Director of the LB/Lincoln Bormann makes a presentation to San Juan county council as a LB staff recommendation for acquisition of property identified as the Lester property aka parcel # 350521001000 (*attachment 1*). Resolution is passed for the acquisition. Missing from the presentation is the fact the Lincoln Bormann/Director of the LB owns property approximately 800' from the proposed acquisition. Mr. Bormann's property is identified as parcel # 363232001000. Roll value history (*attachment 2*) illustrates between 2012 and 2018 the assessed value increases from $363,630 to $378,960 or 4.2% over 6 years. Average of .007/yr. In 2019 assessed value increases to $500,400 over the 2018 assessed value of $378,960. 32% increase in one year. The Lester property is purchased for $1,800,000 in 2018. It's 2017 assessed value is $187,560. The personal property of the director of the Land Bank jumps 32% ($121,440) one year after the Lester property acquisition. *Coincidence or Conflict of interest?*

### Conflict of interest B

On November 30, 2015 Land Bank (LB) chair of commission Jim Skoog is party to a LB presentation to San Juan County Council as a proposed LB acquisition known as Zylstra Lake.

This acquisition is noted in installment 2 as misrepresentation. Missing from Mr. Skoog's comments is the fact he owns property approximately120' from 60 acres of LB property that adjoins the 283 acre Zylstra Lake property he's proposing for acquisition (*attachment 3)*. Mr. Skoog's property is identified as parcel # 351714005000. Roll value history (*attachment* 4) illustrates between 2012 and 2015 Mr. Skoog's property assessed value depreciates from $325,550 to $300,230 (7.7%). Then in 2016, one year after the Zylstra Lake acquisition his assessed property value appreciates 12%. The Zylstra Lake acquisition costs $3,000,000. The property was appraised two years later in a grant application for $2,700,000. (*$300,000 less than the acquisition cost*).
*Coincidence or Conflict of interest?*

### Conflict of interest C

The San Juan County Council is composed of 3 residency districts. The 3 member council is

charged with resolution approvals which includes LB acquisitions. Past council member Rick Hughes served on the county council for an estimated 8 years and voted on LB acquisitions throughout his term as a council member. Rich Hughes owns personal property that adjoins 1,752 acres of LB property on Orcas island (*attachments 5* ). A review of record illustrates at no time did Mr. Hughes recuse his vote on LB acquisition proposals as a potential conflict of interest due to his personal property proximity to LB properties. I contend this fits squarely into the *Conflict of interest-Code of ethics* prescribed in RCW 43.160.040. *Coincidence or Conflict of interest?*

**Conflict of interest D**

The San Juan County Council is composed of 3 residency districts. The 3 member council is charged with resolution approvals which includes LB acquisitions. Past council member James Stephens served on the county council for a number of years and voted on LB acquisitions throughout his term as a council member. James Stephens owns personal property that is approximately 650' from LB property on Lopez island (*attachment 6*). A review of record illustrates at no time did Mr. Stephens recuse his vote on LB acquisition proposals as a potential conflict of interest due to his personal property proximity to LB properties. I contend this fits squarely into the *Conflict of interest-Code of ethics* prescribed in RCW 43.160.040. *Coincidence or Conflict of interest?*

**Conflict of interest E**

On 8-6-19 I submitted a request for interpretation of code to San Juan County prosecuting attorney (*attachment 7*). On 8-12-19 I received a reply (*attachment 8*). With the prosecuting attorneys explanation of protocol I saw no way forward to qualify questions of code compliance. 3 years later I met with acting council member Cindy Wolf and explained my attempts to submit a question to the prosecuting attorneys office for definition. As an elected official to the San Juan County Council she agreed to submit my questions to the prosecuting attorney. Council member Wolf emailed me October 13, 2022 noting "*Dep. P.A. Vira did some research. Shockingly, according to what she could find, getting an appraisal is best practice, but it is not required"(attachment 9).* I also was shocked and couldn't understand how a 5 word sentence of county code deemed as a duty could be construed as not required.

**County code 2.120.050 *Powers and Duties* Paragraph G "*To obtain real property appraisals*"**

Disappointed I pursued with some research and found some interesting information. It turns out the prosecuting attorney owns property adjoining San Juan County Land Bank property (*attachment 10*). The question put forth to the prosecuting attorney dealt with interpretation of county code which governs San Juan County Land Bank acquisitions. I then see a point of contention for bias and conflict of interest as outlined in the following excerpts from the American Bar Association-standards for prosecuting attorneys;

American Bar Association (ABA)

***CRIMINAL JUSTICE STANDARDS* for the *PROSECUTION FUNCTION***

**Standard 3-1.7 Conflicts of Interest**

a) The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts

(that may raise conflict issues. When a conflict requiring recusal exists and is non-waivable, or

informed consent has not been obtained, the

prosecutor should recuse from further participation in the matter. The office should not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

(f) The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

I pursued the normal channels of inquiry and protocol for interpretation of San Juan County code for 3 years only to learn the opinion offered by the prosecuting attorney is subject to a conflict of interest. I therefor request my original question be referred to the Washington Attorney Generals office.

***Relative to par. G of 2.120.050 of San Juan County code……"Is the requirement for appraisals discretionary"...?***

The San Juan County web site can be accessed with the following link sjclandbank.org

Under the headline ABOUT is another sub category FAQ with another sub category FREQUENTLY ASK QUESTIONS. One of those questions is;

*..What are the trade-offs and benefits of Land Bank ownership to the community*

Answered with;

Public land is a huge benefit for the county in that it:

1. Preserves the islands' rural and wild character and gives us places to go.

2. Plays a key role in keeping us competitive in the real estate market.

3. Helps maintain our property values.

4. Is an underlying driver of our visitor/service businesses.

5. Does not create a need for additional taxes as does development (EMS/hospital/schools, etc.)

*Helps maintain our property values* suddenly reads ironical when we consider just whose property values are maintained.

One incident of conflict of interest could be taken as coincidence. Two incidents would be suspect. Five incidents makes it clear. *Coincidence or Conflict of interest?*