

Edit Referral

H-21-348 Referral Information

Hotline ID: H-21-348

Date of Submission: 8/4/2021

Entity Type: Local

Entity Category Type: Park and Recreation District

Entity: Bainbridge Island Metropolitan Park and Recreation District

Sub Entity Name:

Category:

1-2 sentence description of concern: Citizen is concerned of misuse of public funds

Report Issued: No

Reporting Type: Hotline Letter

Report Number:

Investigation Contracted: No

Contract Number:

Contract Name:

Billing Time Code:

Costs:

Public Records Request: No

Flag For Annual Report: No

Substantiated: No

ARRA: No

Action: Referred to Audit Team - Consider Next Audit

Audit Team: Port Orchard

Audit Team Contact: strzalkaa@sao.wa.gov

cc:

Referral Date: 8/4/2021

Action Taken: No

Response Date:

Report Date:

Follow Up Date:

Date Closed: 1/17/2023

H-21-348 Contact Information

Hotline ID: H-21-348 **Date of Submission:** 8/4/2021

Submission Method: Letter **Date of Letter:** 7/26/2021

Submission Type: Citizen **Staff:** gillisj

Author(Last, First): Bricklin&Newman

Address: 1424 Fourth Ave, Suite 500

City: Seattle **State:** WA **Zip:** 98101

Home Phone:

Work Phone: 206-264-8600

Mobile Phone:

Email: telegin@bnd-law.com

Contact Work Phone

Preference: Email
Regular Mail

Waived Confidentiality: No

H-21-348 Referral Details

Hotline ID:

H-21-348

What state or local organization is involved?

Bainbridge Park and Rec.

Please identify the specific concerns you are hoping the audit will address.

Citizen is concerned of misuse of public funds (see attached for further detail)

Please provide a detailed description of the assertion or outstanding achievement, including who, when, where, what, how and how much.

How did this issue come to your attention?

**What employee(s), contractors, etc., were involved in the assertion or achievement?
Please include employee titles if possible.**

Please provide the names of any witnesses to the assertion or achievement, if possible.

Please provide any additional details or comments that would help us understand your assertion or achievement.

H-21-348

**Activity
Log**

Hotline ID: H-21-348

Entry Date ▼	Log Entry
01/17/2023	Referral updated by 'JEANA Gillis (gillisj)'.
01/17/2023	Discussed with AI and determined this is not within our authority and should be handled by the courts. Sent letter to the Citizen to explain our stance and attached to supporting documents. Ready to close. --whitebd
12/30/2021	Referral updated by 'JEANA Gillis (gillisj)'.
08/13/2021	Added second letter (dated 8/9/21, received 8/13/21). I also emailed Bryan Telegin to let him know we'd received the second letter and would add it to the hotline for consideration during our next audit. --strzalkaa
08/12/2021	Referral updated by 'AMY Strzalka (strzalkaa)'.
08/12/2021	Received a call from Bryan Telegin yesterday (8/11) inquiring whether we go the letter. I let him know our response was in the mail, and gave him a brief overview. Today, he emailed requesting an email copy of the letter since they currently don't have staff in the office I mailed it to. I emailed a copy and added his email info to the referral. --strzalkaa
08/11/2021	Performed initial citizen outreach via mail. Letter added to supporting documents. --strzalkaa
08/10/2021	Added AGO response to related documents. --strzalkaa
08/04/2021	Referral updated by 'JEANA Gillis (gillisj)'.
08/04/2021	Task assigned to 'strzalkaa@sao.wa.gov'. Team notification email sent to: strzalkaa@sao.wa.gov
08/04/2021	Referral updated by 'JEANA Gillis (gillisj)'. Action changed from (not set) to Referred to Audit Team - Consider Next Audit.



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-6200

August 10, 2021

David Bricklin
Bricklin & Newman LLP
1424 Fourth Ave., Suite 500
Seattle, WA 98101

Re: Potential litigation regarding “Compassion Seattle”

Dear Mr. Bricklin:

I write in response to your letter dated July 26, 2021. You request on behalf of your client, Save Sakai Community & Sports Center, that our office bring an action seeking to prevent the Bainbridge Park & Recreation District from spending public funds on the acquisition of the Bainbridge Athletic Club.

We consider litigation at the request of taxpayers in appropriate situations. Based upon review of your letter, we cannot conclude that the action you request would clearly serve the interests of the public in their capacity as taxpayers. We therefore decline to take the actions you request, but do so without expressing any view as to whether your claims may have potential merit.

To the extent your request is made as a prerequisite to asserting taxpayer standing, please understand that this letter expresses no view as to whether the requirements for taxpayer standing would be met.

I trust that this information will be helpful.

Sincerely,

s/Jeffrey T. Even
JEFFREY T. EVEN
Deputy Solicitor General

JTE:kdj

cc: Matt Kernutt, AAG



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

August 9, 2021

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bob Ferguson, Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

Pat McCarthy, Washington State Auditor
Insurance Building
Capitol Campus
302 Sid Snyder Ave. SW
Olympia, WA 98504-0021

rec'd
8/13/21
Kris Fuller

Re: Misuse of Public Funds by Bainbridge Park & Recreation District—Follow-up to Letter of July 26, 2021

Dear Attorney General Ferguson and Ms. McCarthy:

On July 26, 2021, we wrote to you on behalf of Save Sakai Community & Sports Center, a coalition of Bainbridge Island residents who are deeply concerned about a recent decision by the Bainbridge Park & Recreation District (“District”) to spend \$13.5 million on the purchase of a privately-owned recreation facility known as the Bainbridge Athletic Club. Our prior letter outlined several legal issues with the District’s purchase of this facility, including that its purchase of intangible business assets—*i.e.*, the name and good-will of the current business operator—exceeds the District’s statutory authority under Chapter 35.61 RCW. Under Chapter 35.61 RCW, the District has authority to purchase the real estate comprising the Bainbridge Athletic Club. It does not have authority to purchase intangible business assets.

The sale is progressing rapidly, with an anticipated closing date of August 31, 2021, and the District has yet to acknowledge the legal problems identified in our prior letter to you. The District has yet to provide a concrete business plan and revenue projection capable of paying the general obligation bonds needed for the sale. Nor has the District provided any detailed appraisals of the value of the business assets involved in the transaction.

Instead, the District recently announced that it will be changing the name of the athletic club from “Bainbridge Athletic Club to” to “Bainbridge Island Recreation Center.” It also appears that the

Bob Ferguson, Attorney General
Pat McCarthy, Washington State Auditor
Misuse of Public Funds by Bainbridge Park & Recreation District
August 9, 2021
Page 2

current owner will be canceling all memberships prior to the sale. Given these changes, it appears more and more that the District is receiving no consideration in exchange for roughly \$4 million to purchase the current owner's intangible business assets—namely, the current operator's name and good-will.

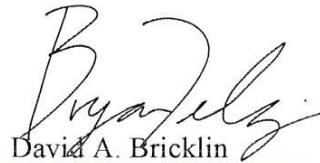
With the name changed and current memberships cancelled, these assets have zero value to the District. Thus, not only does the purchase of these assets exceed the District's statutory authority, these changes provide further support for our claim that the transaction constitutes an unlawful gift of public funds in violation of Article VIII, Section 7 of the Washington Constitution. Certainly, there is no value in spending \$4 million on a name that the District will not use, or on a membership list of cancelled memberships.

As discussed in our prior letter to you, it is within the Auditor's and Attorney General's authority to investigate these issues and, if you agree, to inform the District that the transaction violates Washington law. We ask that you please look into these issues at your earliest convenience and to inform the District of your opinion. The District is marching headlong into an illegal transaction involving millions of dollars in public funding. The course needs to be corrected and the public interest needs to be protected.

Thank you for your consideration of this matter. If you have any questions about this letter, please do not hesitate to contact us at (206) 264-8600. We look forward to hearing from you soon.

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in dark ink, appearing to read "David A. Bricklin". The signature is stylized with a large, looped "B" and "N" at the end.

David A. Bricklin

Bryan Telegin

Counsel for Save Sakai Community & Sports Center

cc: Client



BRICKLIN & NEWMAN LLP

lawyers working for the environment

Reply to: Seattle Office

July 26, 2021

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Bob Ferguson, Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

Pat McCarthy, Washington State Auditor
Insurance Building
Capitol Campus
302 Sid Snyder Ave. SW
Olympia, WA 98504-0021

Re: Misuse of Public Funds by Bainbridge Park & Recreation District

Dear Attorney General Ferguson and Ms. McCarthy:

We represent Save Sakai Community & Sports Center, a coalition of Bainbridge Island residents who are deeply concerned about a recent decision by the Bainbridge Park & Recreation District ("District") to spend \$13.5 million on the purchase of a privately-owned recreation facility known as the Bainbridge Athletic Club. Attached, please find a letter from our firm to the District concerning the proposed sale. As detailed in the attached letter, the sale exceeds the District's statutory authority under Chapter 35.61 RCW insofar as it obligates the District to spend nearly \$4 million on intangible business assets owned by the private entity that currently runs the Bainbridge Athletic Club. As well, the purchase of these intangible business assets—which are of little or no value to the District—represents an unconstitutional gift of public funds in violation of Article VIII, Section 7 of the Washington Constitution.

The attached letter also discusses the District's failure to provide meaningful notice and information to the public concerning the proposed sale. The sale was first announced at the Park District Commission's public meeting on June 17th, 2021. At the same meeting, with no opportunity for public review and informed public input, the Board of Commissioners authorized the signing of the purchase and sale agreement. Since then, the District has not been transparent about how the sale will be funded, the value of the properties and assets involved, or future financial projections. The lack of transparency is very concerning given that the District has most-recently said that the purchase will be funded with general obligation bonds that may ultimately

Bob Ferguson, Attorney General
Pat McCarthy, Washington State Auditor
Misuse of Public Funds by Bainbridge Park & Recreation District
July 26, 2021
Page 2

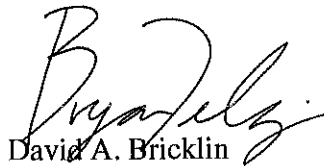
fall on the public to repay. Also of major concern, the sale may interfere with the District's plans to develop a sports facility on another local parcel known as the "Sakai property." Since 2017, the Bainbridge Island community has strongly supported development of the Sakai property with an indoor sports facility, and approved the public purchase of that property for recreational purposes in 2015. The District's current plan to purchase the Bainbridge Athletic Club will likely undermine this plan for the Sakai property.

On behalf of Save Sakai Community & Sports Center, we ask that your offices investigate the District's current plan to purchase the Bainbridge Athletic Club and to determine if the sale represents a misuse of public funds for the reasons described in the attached letter. If you concur with our evaluation, we ask that you require the District to abandon the sale. This request is consistent, *inter alia*, with the State Auditor's authority to "inspect the books of any person charged with the receipt, safekeeping, and disbursement of public moneys." RCW 43.09.050(2). This request is also consistent with the Attorney General's authority to investigate misuse of public funds, *see, e.g., Tabor v. Moore*, 81 Wn.2d 613, 617, 503 P.2d 736 (1972), and to "[e]nforce the proper application of funds appropriated for the public institutions of this state." RCW 43.10.030(8).

We thank you for your attention to this matter, and would appreciate your keeping us informed of the status of your inquiry as we are considering our own legal options for addressing the District's misuse of public funds. If you have any questions about this letter, please do not hesitate to contact us at the number above or at telegin@bnd-law.com and bricklin@bnd-law.com.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin

Bryan Telegin

Counsel for Save Sakai Community & Sports Center

cc: Client



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

July 23, 2021

VIA U.S. MAIL AND E-MAIL TO
terry@biparks.org, djanow@biparks.org
kdewitt@biparks.org, jtswolgaard@biparks.org
jkinney@biparks.org, asaphglosser@biparks.org

Bainbridge Island Metro Park & Recreation District
Attn: Terry Lande, Executive Director, and Board of Commissioners
7666 NE High School Road
Bainbridge Island, WA 98110

Re: Purchase of Bainbridge Athletic Club—*Void ab Initio* and Gift of Public Funds

Dear Mr. Lande and Members of the Board of Commissioners:

This letter concerns the Bainbridge Island Metro Park and Recreation District's ("District") recently-announced decision to purchase the Bainbridge Athletic Club ("BAC") for \$13.5 million. According to documentation on the District's website (<https://biparks.org/>), this purchase price includes \$8.75 million for the real estate and facilities comprising the BAC, to be purchased from the landowner BAC Court, LLC;¹ \$585,000 for personal property and inventory; and nearly \$4 million for the business currently operated at the BAC by Fourcourt, Inc. The purchase of the business includes Fourcourt's goodwill, domain name, membership list, and intellectual property.² This letter is submitted on behalf of Save Sakai Community & Sports Center, a group of Bainbridge Islanders seeking to assure the Sakai Community & Sports Center is developed as planned by the community and the District. The group opposes the proposed acquisition of the BAC which will divert critical human and financial resources necessary for the Sakai Center project. Information about Save Sakai may be found at its website, www.savesakai.com.

The District has not been transparent about this project. No notice of the District's interest in the BAC property was provided until June 17, 2021—the day the District signed the purchase and sale

¹ See Real Estate Purchase Agreement, page 1, ¶2 (June 17, 2021), available at https://biparks.org/wp-content/uploads/2021/07/Real_Estate_Purchase_and_Sale_Agreement.pdf

² See Asset Purchase Agreement, page 2, ¶2 (June 17, 2021), available at https://biparks.org/wp-content/uploads/2021/07/Asset_Purchase_Agreement.pdf

public—and sufficient time to do so—the public is not being well-served and the District is apt to make a decision it later regrets.

The District also should defer closing on the proposed BAC real estate and business purchases. Deferring closing would allow many necessary steps to be completed in a thoughtful way, including the following:

- Time for the District to release the information it has on the proposal.
- Time for the public to digest and comment on the information.
- Time for the District to convene an advisory committee and receive/consider the advice of that committee.
- Time for the District to create a well-thought out financing plan.
- Time for the District and the public to consider the impacts the BAC proposal will have on plans to develop the community center at Sakai.
- Adequate time for public review and input, the convening of and report from an advisory group, only after the public has had adequate access to the information.

The District also should reject the proposal to spend nearly \$4 million on purchasing the business, goodwill, and other intangible property of Fourcourt, Inc., because that part of the proposed transaction is beyond the District's statutory authority under Chapter 35.61 RCW. As you know, municipal corporations such as the District⁶ are "creatures of statute" and possess "only those powers conferred on them by the constitution, statutes, and their charters." *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 685–86, 743 P.2d 793 (1987) (citing 2 E. McQuillin, *Municipal Corporations* § 10.09). In construing a municipal corporations' powers, "[a]ny fair, reasonable doubt concerning the existence of a power is resolved by the courts against the corporation, and the power is denied." *State v. Superior Court of Washington In and For King County*, 93 Wn.2d 267, 269, 160 P. 755 (quoting Dillon on Municipal Corporations, § 89). Finally, if a municipal corporation acts in excess of its statutory authority, such action is deemed to be "ultra vires," meaning it is void from the start and is of no legal force or effect. "Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed." *South Tacoma Way, LLC v. State*, 169 Wn.2d 118, 123, 233 P.3d 871 (2010).

Applied here, the District's statutory grant of authority is defined at RCW 35.61.010, which authorizes "the management, control, improvement, maintenance, and *acquisition of parks, parkways, boulevards, and recreational facilities*" (emphasis added). This language empowers the

⁶ See RCW 35.61.040 (specifying that metropolitan parks districts formed under Chapter 35.61 RCW are municipal corporations).

Bainbridge Island Metro Park & Recreation District
Attn: Terry Lande, Executive Director, and Board of Commissioners
July 23, 2021
Page 5

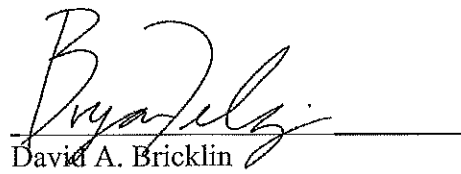
post hoc rationalization for the purchase price. The purchase of those assets is beyond the District's statutory authority. Finally, there is no reason why the District must purchase those assets to operate the BAC as a recreational facility—the District can certainly operate an athletic club without doing so in the same form and under the same name as the business entity that operates it now. In this regard, the purchase of intangible business assets is entirely superfluous and certainly does not justify spending nearly \$4 million over and above the value of the facility itself. In this transaction, only the private seller benefits. The public does not.

For the reasons above, the District should cancel its agreement to spend nearly \$4 million in public funds to purchase the business that currently operates the BAC. The District should not make any decision to purchase the real property and facilities comprising the BAC until it prepares a financing plan; provides full disclosure to the public; allows for ample public input; and receives the recommendations from a citizen advisory committee in accordance with District Policy 2320. All of this would serve the purpose of assuring that the proposal does not undermine timely development of the Sakai Community & Sports Center; that the District's plans are based on thoughtful consideration of all relevant information; and that the purchase is within the District's statutory powers and is not an unconstitutional gift of public funds for goodwill and other intangible assets that provide no value to the District.

This is simply too big of a decision to make on a hasty timeline without public involvement.

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in dark ink, appearing to read "David A. Bricklin", is written over a horizontal line.

David A. Bricklin

Bryan Telegin

Counsel for Save Sakai Community & Sports Center

cc: Client



**Office of the Washington State Auditor
Pat McCarthy**

Bricklin & Newman
1424 Fourth Ave, Suite 500
Seattle, WA 98101

Dear Bricklin & Newman:

Thank you for contacting the Office of the Washington State Auditor with your concerns regarding the Bainbridge Island Metropolitan Park and Recreation District.

You told us the District's purchase of the Bainbridge Athletic Club exceeds the District's statutory authority under Chapter 35.61 RCW insofar as it obligates the District to spend nearly \$4 million on intangible business assets owned by the private entity. Additionally, the purchase of these intangible business assets – which are of little or no value to the District – represents an unconstitutional gift of public funds in violation of Article VIII, Section 7 of the Washington Constitution.

We take our job of holding government accountable for the use of public resources seriously, and we have carefully considered the information you shared in your hotline submission. We have determined this issue is outside our audit authority as defined by RCW 43.09. This appears to be a legal matter that is best handled by the court system. You may wish to consider resolving your concerns in this way.

We are sorry we could not assist you with your concern.

Sincerely,

Brad White,
CPA, Program Manager

H-21-348

From: [White, Bradley \(SAO\)](#)
To: telegin@bnd-law.com
Subject: Hotline Referral to the Washington State Auditor's Office
Date: Tuesday, January 17, 2023 9:18:00 AM
Attachments: [image001.png](#)
[H-21-348 letter.docx](#)

Dear Bricklin & Newman,

Please see the attached letter as our response to your Hotline Referral.

Thank you,



Brad White, CPA
Team Spokane Audit Manager, County Program Manager
[Office of the Washington State Auditor](#)
(509) 919-0240 | www.sao.wa.gov
Keeping Washington rooted in #GoodGovernment since 1889:
sao.wa.gov/rooted



**Office of the Washington State Auditor
Pat McCarthy**

August 11, 2021

David A. Bricklin and Bryan Telegin
Bricklin & Newman LLP
1424 Fourth Ave., Suite 500
Seattle, WA 98101

Re: Citizen Hotline Referral H-21-348

Dear Mr. Bricklin and Mr. Telegin:

Thank you for contacting the State Auditor's Office Citizen Hotline with your concerns regarding the Bainbridge Island Metropolitan Park and Recreation District.

As a post-audit agency, we do not have the authority to intercede in matters that are in process. Our role is to examine past actions of the government, and evaluate whether the government complied with applicable laws, regulations and its own policies, and properly accounted for those actions. We will consider your concerns as part of our next audit of the District, planned for fall 2022.

Sincerely,

Amy Strzalka, CPA, Audit Manager