

HAD THE CITY RETAINED AN EXPERIENCED ENVIRONMENTAL ATTORNEY AT THE TIME THEY REALIZED THEY APPROVED THE TINAS COMA RESIDENTIAL DEVELOPMENT ON TOP OF A KNOWN HISTORIC ASBESTOS/TALC MINE, A HEART-TO-HEART DISCUSSION WOULD HAVE SURELY ENSUED. ASSUMING SUCH A MEETING TOOK PLACE, IT PROBABLY WOULD HAVE WENT SOMETHING LIKE THIS:

*Look, you folks are in a no-win situation here. You have contamination all over the place caused by a known carcinogen. You approved and allowed the release of tons of Naturally Occurring Asbestos and it polluted the area.*

You knew it was “*up there*” as far back as 1994. You had RCW and WAC codes that required you to do a thorough environmental investigation with regards to Natural Resource Lands, and your decision was to TRUST your City Planner Ms. Fleek, who according to her own testimony in a 2012 deposition, held at the City, stated, that she had no formal training in geology. Certainly, the City’s Planning Commission with all its vast training and experience in geology, knew what it was doing in 1997, when Ms. Fleek handed them phase 3 of 3, from the Burlington Hill Partnership, which from what I have gathered was an illegal “*Spot Zoning*” Annexation request, from her 1994 phase 1 of 3, Industrial Park partners. And just a further note, it is my understanding that Ms. Fleek knew as far back as 1994, that the Burlington Hill Partners were blasting tens of thousands of yards of mineral resource (rock) lands starting up the backside of the hill, all this without being in compliance with the statutes? Wow! I guess we can conclude when “*non-compliance with the law*” started with Ms. Fleek (*get your checkbook out folks!*). According to Ms. Fleek the Planning Commission was also involved, in the approval process with all three phases, she also stated that the Planning Commission was very competent, and vastly familiar with the geology of the Burlington Hill site, and why shouldn’t they be, one was an auto mechanic, another was a retired nurse, and then we had a drug store pharmacist, *give me a break!* This is exactly why smart cities have Hearing Examiners to prevent willful incompetent planners from ever approving residential housing developments on top of historical asbestos/talc quarries from ever coming to fruition. But miraculously Ms. Fleek had the ability to convince you people, that a 400 ft. high, 192 acre, “*old rock quarry,*” “*slap dab in the middle*” of farmlands, (as Ms. Fleek has state many times throughout her SEPA documents) with tens of millions of yards of mineral resource rock that required not digging, but required a lot of blasting as Ms. Fleek put it! and as Ms. Fleek stated in her environmental documents, along with her 1999 SEPA, (*mind you from a Federal Case stand point Ms. Fleek had distributed (mailed) false information throughout the state*) that Burlington Hill or “**THAT THIS PARCEL, (as she put it) IS NOT DESIGNATED AS A NATURAL RESOURCE LAND;**” are you kidding me! Please tell me how “*little ole*” Ms. Fleek, all by herself, was able to convince you people that a “*old rock quarry*” is “**R-A, Residential Agriculture Zoning,**” *give me a break!* I certainly would be very interested, in knowing the kind of corn, or lettuce you can grow on all that rock up there. Listen, you people had RCW and WAC codes that required you the City, to disclose Natural Resource Lands to anybody coming within 500 ft. of Burlington Hill, going back to 1991, are you people clueless or just insensitive? Ms. Fleek was your Planner since 1991, and now you’re telling me that she wasn’t aware of her RCW and WAC code duty to disclose, *give me a break!* She was totally aware! She was aware of every

case that was held in Skagit County by the Western Washington Growth Management Hearings Board which pertained to Natural Resource Lands in the 1990's, because they were all held here in Burlington, *give me a break!* And I am sure she had attended a few of those hearings! She knew of every countywide ordinance that was recorded and in force, (before Burlington Hill was ever a proposed concept) that related to Natural Resource Lands! And with all that said, Ms. Fleek's only excuse, or defense is that Skagit County drew a line on a map that defined the Natural Resource Lands and Industries, and the extent of Ms. Fleek's investigation, and ineffectual conclusion was that the Burlington Hill site, is not designated as Natural Resource Land," this is criminal! Ms. Fleek's stated that her ineffectual conclusion came from Skagit County, the same county that had been in non-compliance and sanction over this same subject repeatedly throughout the 1990's, Ms. Fleek's whole testimony is a "*bunch of malarkey,*" if a jury got a look at Ms. Fleek's deposition, and her 40 years of experience, and was able to determine that she was more than qualified to know what's going on, along with her lack of compassion, and empathy; all I can say is, you're lucky that this is not a criminal case, because they would lock her up, and throw away the key!

And now we are some 16 year later, you didn't tell your neighbors that the approval of your residential development would be sending carcinogens their way. And then, when you finally DID tell them, you said it was okay, as one of your retained attorneys Jill Smith conveyed in one of her many colorful declarations, that the EPA concluded a "*wrap up*" report that they can't help! No Ms. Smith, that's not what the EPA concluded, Federal Agent Andy Smith from the EPA stated that "Burlington Hill appears to be a site of NOA, and we have no statutory authority to clean up Naturally Occurring Asbestos, that has been disturbed through historical mining and more recently, residential development." And he went on to say that the EPA hosted a meeting with a collection of Federal, State, County, and local agencies on August 14, 2013. The purpose of the meeting was for the various parties to present their authorities as well as areas in which they lack authority to address NOA. The meeting also allowed EPA to inform the state of Washington that EPA was not going to take a removal action on the Burlington Hill site nor do any site characterization. Nevertheless, EPA has offered to coordinate further meetings and discussions between the agencies that would lead to a policy statement on how public health will be protected through a combination of regulation, permitting, and public outreach. And he stated that based on the information collected and observations made on the site visit, EPA has referred the site to the Washington State Department of Ecology so that they may consider if the site requires further Investigation or clean up, not "*wrap up*" Ms. Smith! The State may address this site or request Federal support as needed. So, you see folks, it isn't okay, nor is this case over. *Thank you very much Ms. Fleek!*

Now you have this case to defend. Your only reasonable defense is lack of damages: "*as far as you can tell nobody's sick.*" But many are scared they're GOING to be sick. That's speculation, isn't it? A trial judge won't throw it out as speculation. He will say it's a jury question. Well, let me tell you what a jury is going to do with THAT issue after they hear how you dealt with your unsuspecting neighbors. Let us not forget how Ms. Fleek responded at her deposition, folks, this is your City's primary witness, great huh! If the jury is given the opportunity to really break down Ms. Fleek' deposition, it will overwhelmingly unleash her lack of compassion, and empathy toward her fellow man. As Jill Smith graciously stated in a declaration, regarding Ms.

Fleek's deposition, that City's Planning Director with 40 years of experience was unprepared to answer questions concerning asbestos/talc that may be present within the rock formations of Burlington Hill, you're "*damn right*" she's unprepared to talk about it, she approved it! And as Ms. Smith tries to clarify to the jury, that Ms. Fleek understands the point of counsel's questions, now! And she's now ready to answer the questions straightforwardly, as she testifies at trial, are you people kidding, the juries already impeached your primary witness as a liar, criminal, and one who lacked compassion, and empathy, have you folks read Ms. Fleek's deposition? And Ms. Smith thinks that Ms. Fleek's prior testimony, which plaintiffs' counsel will undoubtedly seek to introduce at trial, will hopelessly confuse the jury and potentially prejudice the case against the City, *no Ms. Smith it will destroy the City!*

Don't forget Ms. Smith, you as one of the primary attorneys in this case, certainly didn't help, with your amazing testimonies in 2015, in which you incriminated the City, by stating that the City has documents in existence, and then confirming that there in archives of public records, and that these records discuss the historical presence of asbestos-related material on Burlington Hill, and that maybe a jury may find that the City is charged with "*record notice*" of those facts; or not," are you kidding me! Ms. Smith, your testimony is fatal for the City! You have single handily impeached Ms. Fleek's own testimony, by going against what Ms. Fleek said in one of her meaningless, lackadaisical excuse of answer declaration, where she stated that, "at the time that SEPA was performed on the Tinas Coma subdivision proposal in 1999, the internet was still relatively new, and searches and search results such as those describe simply were not feasible." And then you decide to put another "*nail in the casket,*" in the fall of 2015, (*3 years after you found out Ms. Smith*) and say that the City knew people were working up there, building homes in the asbestos laden zone. And that the City witnessed this activity, and took photos, and that "*they,*" (*apparently your referring to the home builders*) didn't take any precautions regarding asbestos. *No one wore a mask! No one was up there in a respirator!* Why should they be wearing a mask, or a respirator, "*my God,*" their just building homes for families, not mining for asbestos! What's the matter with you Ms. Smith, are you dense? And then you go onto say that this is going to be an issue in the case." "*Yeh,*" Ms. Smith this is going to be an issue in the case, and that issue is, why in the hell did you allowed this to continue? *Why didn't you stop this?* What were you thinking in counter suing the Plaintiffs and blaming them? We know who screwed-up, we know who approved the plat, and we know who untimely is responsible for exposing the families to this deadly carcinogen, it was your primary witness Ms. Fleek! *Give me a break!*

So, let's see if we can get this thing away from a jury and into the hands of some arbitrators. At least there you'd have a chance of getting through this without ruining your reputation in the community, and avoid a punitive or a compensatory verdict like the one your City attorney Scott Thomas had stated in one of his declarations, that this case has now been revised into an asbestos contamination lawsuit in which Plaintiffs' damage claims are expected to multiply exponentially and if 80 of the lots within the subdivision are occupied by homes with a view, the potential liability faced by defendants could, arguably, run to \$80,000,000, exclusive of attorney's fees (80 lots x \$1M/house) solely for property damages; liability for additional damages related to asbestos exposure would only multiply that amount. This is going to cost you, and forever embarrass your City...

Public policy can rightly be said to be found in the concept that the public interest gives rise to a special relationship. However, there may be no public policy to be served if the pollution occurs at a time and in a manner when no one knows, or ought to know, that the acts now complained of endanger the public.

The existence of facts necessary to make the determination of any such special relationship, as well as the factual background to determine whether public policy principles should be applied, are triable issues best left to the trier of fact.

Finally, I would just like to say, that Ms. Fleek's actions were ignominious. You can't tell me Ms. Fleek didn't know what she was doing, she knew exactly what she was doing. Ms. Fleek's cover-up was necessary if Burlington Hill was ever going to get approved. Ms. Fleek knew that if she had complied with the law in labeling Burlington Hill's historic rock quarry as a mineral resource land it would have potentially expose Burlington Hill's historic quarry mining operation, which would eventually had led to the asbestos/talc, and because of this fact, Ms. Fleek was not going to take any chances. Case in point, she had repeatedly stated in her 1997 Annexation, and 1999 SEPA documents, that Burlington Hill is not a natural resource land. Ms. Fleek's "*smoke and mirror,*" "*misdirection,*" tactics mislead the facts, which she knew by doing so would put her in compliance with the Natural Resource Land RCW and WAC code statutes, along with countywide, and your own City Ordinances regarding the mandated disclosures, (Ms. Fleek "*dodged a bullet,*") which would have been fatal for this developments approval.

Folks, this is not a criminal case, but from the standpoint of reasonable doubt, your primary witness Ms. Fleek has been, unresponsive, or lack thereof in her responses to questions during her deposition and vague in her declarations, with regards to her duty and responsibility in the approval of the Burlington Hill development, and her frequent responses were "*I don't know,*" "*Its public works duty,*" "*I can't remember*" and "*I FOLLOWED THE WAC CODES, I DID EVERYTHING RIGHT.*" Thus, a jury in a civil case would argue that Ms. Fleek's incredibility, draws an allowable inference based on the evidence that would be presented at a trial.

In a criminal case, *State v. Curtiss*, 250 P. 3d 496 - Wash: Court of Appeals, 2nd Div. 2011, *Curtiss* challenges the State's closing argument describing its burden:

*[R]easonable doubt is not magic. This is not an impossible standard. Imagine, if you will, a giant jigsaw puzzle of the Tacoma Dome. There will come a time when you're putting that puzzle together, and even with pieces missing, you'll be able to say, with some certainty, beyond a reasonable doubt what that puzzle is: The Tacoma Dome.*

So, folks, let see if a jury is going to see your case as criminal versus civil. I am going to give you a little insight to the required "*Standard of Proof*" in a criminal case versus a civil case. Crimes must generally be proved "*Beyond a Reasonable Doubt,*" whereas civil cases are proved by lower standards of proof such as the "*Preponderance of the Evidence,*" (which essentially means that it was more likely than not that something occurred in a certain way). The difference in standards exists because civil liability is considered less blameworthy and because the punishments are less severe. Although criminal and civil cases are treated very differently, one

thing for sure folks, many of the people from the Burlington Hill development, will more likely than naught, fail to recognize the conduct of Ms. Fleek's actions as having any difference between criminal and civil liability.

In civil cases folks, you only need a majority of the jurors to agree on a verdict not 12. Remember, the word "*verdict*" in Latin means "*to speak the truth.*"

I would just like to state for the record, that in decades of practicing law, I have never dealt with so much corruption like the one your City Planner Ms. Fleek had knowingly committed, of all the cities and counties, that I dealt with, (*and now you have all this latest evidence getting out to the public*) your Planner Fleek will forever be branded as person who lacked *gravitas*, compassion, and empathy, all this coming as a result of Ms. Fleek's actions; is what has put this City interests in jeopardy.

So, in closing, in my competent handling of this particular matter which included inquiry into, and the analysis of the factual and legal elements of this case against your City, when you allowed the approval of a residential development on a known asbestos/talc mine. It is also my duty as a lawyer to protect its client to the fullest extent, but in this particular case because of your primary witness Ms. Fleek's actions were so reprehensible, and is a person who lacks *gravitas*, compassion, and empathy, I believe a jury would impeach her by the end of her first day of a trial. Also, all your applicable evidence that your City may assume to have, lacks a substantive argument in this case. So with this "*enormous elephant in the room*" and in light of new evidence against your City, which will eventually generate media exposure that you will never recover from, it is my professional opinion, that you expeditiously settle this suit, and prepare for further ligation through a settlement, in the form of a home purchase buyout program, and that you immediately prepare a formal apology letter to your neighbors, for committing this deceitful act.

Very truly yours,

*"Heart-To-Heart"* Discussion