

06/21/2017

To: Whatcom County Council and Council Members for the Lummi and Nooksack Nations
Council Members from Bellingham, Ferndale, Lynden, Nooksack, Everson, Blaine, Sumas

From: Joy Gilfilen, President
Restorative Community Coalition

RE: Please pass a vote of No Confidence – Urgent Call to Action to Fix the Jail

Council members, our Whatcom County Charter calls for a balance of power between branches of government to be maintained¹. Today this balance has been distorted to allow the Executive Branch of Whatcom County Government unprecedented power. That is a problem only rectified if the local legislative, judicial and municipal branches of government do their part to hold this Executive Branch accountable to their oaths of office.

Please stand up for balanced government. Stand up to protect the taxpayer's rights. Stand up against the corporate abuse of power as it has been exerted by the Whatcom County Executive Branch: they continue to push for another sales tax even as they maintain "emergency conditions" inside the jail, harming friends, relatives, our neighbors.

Our Whatcom County Executive branch continues to:

- Avoid holding public hearings before lawmakers – so you are inadequately apprised of issues
- Avoid full disclosure of critical facts - so that lawmakers cannot make fully informed decisions
- Ignore the lack of a valid needs assessment – limiting your comprehension of the problem
- Refuse to present fiscal alternatives to building a new jail – which restricts your choices
- Operates in bad faith on contracts with the cities – like when the taxpayers said no to the jail tax in 2015, rather than listen and give a good faith attempt to solve the illegal and inhumane conditions in the jail (as due their contracts with the municipalities), they instead have been pushing to produce another convoluted, incomplete and unacceptable financial agreement. For the 2nd time they have created a similar manufactured fast track negotiating timeline to compel your compliance with their demands. *(In 2015 they used this same 'stakeholders' strategy to convince cities to agree to a presumptive business agreement while indirectly gaining your unwitting endorsement of the tax...which means you are "ganging up" on the taxpayers.)* This makes you an accomplice to passing a deceptive and expensive tax...that is literally building prison walls around us against our will.

This is not right. Please pass a "no confidence" vote against the Whatcom County Executive Branch for failing to adequately manage the current jail, and for failing to present an honest, fair and complete alternative plan to the Council, to the voters. Their plan to build a jail on LaBounty Road in Ferndale is out of order and violates the sacred trust of the citizens.

1. **It is fiscally deceptive.** There is no fiscal impact analysis for the taxpayers to analyze. The real cost of the jail is more likely to be \$250 Million not \$110 Million, according to Executive Louws in the stakeholders meeting.² The secondary impacts of operating expenses, transportation, road improvements, legislative and administrative costs have not been calculated. In a county with

200,000 men, women and children this is the height of fiscal irresponsibility. This is unsustainable on its face.

2. **There is no proven basis to justify “the plan”**³. There is No Needs Assessment and the Sheriff cannot even tell us who is in the jail as a charged felon, a convicted felon, or as pre-trial or convicted misdemeanants. This is evidence of basic jail mismanagement and fiduciary failure. At the minimum the Sheriff should know who is in his jail, for he states in a letter to Executive Louws⁴ that “(the Sheriff) is responsible for the operations of the jail.” The Sheriff also says, “The County Facilities Division is responsible for the maintenance and the assessment of the physical condition of the facility.” There have been no public hearings to challenge the mismanagement of the jail by the Sheriff and the Executive, nor to challenge the Prosecutor for not using prosecutorial discretion to reduce the overcrowding caused by non-violent offenders pursuant to WCC 1.28.100. Instead, the Executive branch has been using fear of “catastrophic failures” and allegations of “dangerous felons” to force the public to pass a tax. This is further proof of mismanagement and abuse of power by this branch. Who is ultimately in responsible charge of the inhumane and illegal conditions that continue to exist in our jail?

3. **Citizens’ concerns about fiscal impacts, and about moving the Sheriff’s office and the jail out of the County Seat were administratively dismissed (along with hundreds of other concerns) as being “outside the scope” of planning.**⁵ This was done in the Final Environmental Impact Statement by the jail planners working in tandem with the Executive branch. Repeated citizen requests for accountability and for an alternative to building a huge jail outside of downtown were systematically dismissed without evidence, without hearing, using circular reasoning, or completely without adequate study. As a result, the real (civic, economic, business and jurisdictional) impacts of moving the County Seat have not been measured. The familial, physical, economic and social impacts on inmates and their families have not been considered. No comprehensive analysis was done.

On page FS-2, they state “Under the No Action Alternative it is assumed that the current facilities (the main jail in downtown Bellingham and the work center in Bellingham) would continue to be used.” Then there is no additional backup research done in the FEIS to show how that could happen. On November 11, 2013 when presenting a fast track summary of the FEIS to the County Council, both Executive Louws and DLR Group tell the County Council that “No public Hearing is required” before you (the Council) are legally able to purchase the land in 10 days from the date they published the FEIS report to the web (Nov. 8, 2013). (Coincidentally that is the same 10 days they had an option to purchase the LaBounty property or it would expire). Inevitably, this put the Council under pressure and duress to buy the land in the remaining 7-day high pressure timeframe. With no public hearings needed, the land was purchased summarily at a value of about \$150,000 an acre – for 40 acres, rough half of which would need another \$10 Million in mitigation before the land could even be built on. This is abuse of power.

4. **Failed due process, failed contract management.**⁶ The public paid millions of dollars for studies, a promised Needs Assessment, and for the EIS, SDEIS and FEIS reports which were designed to provide two alternatives. Taxpayers did their job. Yet these reports are flawed. They did not

deliver to the public what was expected. Taxpayers repeatedly asked for accountability:

- Did not get a Needs Assessment to replace the flawed report that projected a 2400 bed jail.
- Asked that the downtown jail be fixed immediately to be humane and safe – it wasn't.
- In 2015 voters rejected the Jail Tax, saying no new jail – instead we are being pressured again.
- Asked for fiscal analysis and reports of options – there has been no response.
- Need recovery housing, mental/behavioral health solutions – very little action.
- Need inclusion/transparency in due process – instead voices have been deliberately excluded
- Need decency and fiduciary accountability to the inmates, family, and citizens – no response.

Instead we've got another convoluted agreement that is out of order, that is intended to convince all of us to pass another jail tax under pressure. We taxpayers now know that building a jail by going into unsustainable debt will not solve the underlying problems we have. Taxpayers demand more. We need honesty. We need transparency. We need facts. We need public hearings. We need solutions...not a bigger hole to fall into.

Maybe our representatives should stop negotiating with an Executive branch that is operating in bad faith. You are the lawmakers. You are the citizen's **only line of defense** to protect our constitutional rights and to hold our executive/financial branches accountable to their fiscal and fiduciary responsibilities.

Businesses work on facts. The democratic government should likewise work on facts. All of the cities and tribal nations have written contracts with Whatcom County, expecting their arrested citizens to be cared for in a safe and humane manner. When that County fails to live up to their responsibilities, then you are obligated to hold the County to those contracts and to local, state and federal laws. By doing nothing, you are defacto condoning the mismanagement of the jail and are party to the ongoing violation of civil rights that are happening inside the jail.

Right now, you are in a position to look at the long-term impact of the decisions you make today, and to think about what your legacy will be 30 years from now. Your choice is to lead with other Washington State Counties⁷ in criminal justice reform and fiscal responsibility, or to make a decision that puts Whatcom County further behind in criminal justice reform and deeper in debt than a county this size can support.

Here are things that can be done.

1. Make the Executive branch officials do the work we entrusted (and paid) them) to do. Top Priority: Fix the Jail! Get us out of crisis management.
2. Do a Needs Assessment and a fiscal analysis of options that provides adequate and rational data
3. Hold cross silo town halls and public hearings on the location, on the impact of technology on corrections options today, on different solutions to heal people from trauma, addiction and mental illness

4. Examine economic development alternatives that include recovery housing, business incubators, small town cooperatives that inspire free enterprise and renewable industry
5. Let the Incarceration and Prevention Task Force & the Vera Institute deliver their substantive findings and recommendations on how our members of the law and justice system can streamline the administration of our courts, police and law and justice systems. Help them help us all intercept and then stop inadvertent waste that creeps into all bureaucracies over time
6. Invite local non-profits and others to present proposals, projects and ideas about how to fix the deeper problems so we can reverse the trends of creating more laws and more concrete walls that lock people up instead of mentoring people to freedom

There are choices. There are options. We are a community, and our community needs leaders. Please join us in changing course.

¹ [Whatcom County Charter](#) adopted effective May 1, 1979

² Executive Jack Louws at Whatcom County Stakeholders Meeting

³ [Illusion of Inclusion](#) series of articles in Northwest Citizen by Juliette Daniels starting May 11, 2017

⁴ Letter from Sheriff Elfo to Executive Louws re: Jail by Sheriff Bill Elfo April 22, 2015

⁵ [Final Environmental Impact Statement](#) dated Nov. 8, 2013 – appendix G – over 100 pages.

⁶ Examine the EIS, SDEIS, FEIS, and the ongoing public records for written and oral public comments repeatedly given to the Whatcom County Council, to the Jail Task Force, to Jay Farbstein, to the [Incarceration Prevention and Reduction Task Force](#) from 2011 to 2017.

⁷ [“Evidence Based Jail Planning Processes”](#) series of four articles on NorthwestCitizen.com by Juliette Daniels – starting June 13, 2017
