

King County Office of Citizen Complaints - Ombudsman

400 Yesler Building
400 Yesler Way, Room 240
Seattle, WA 98104
206-296-3452 v/tty - 206-296-0948 fax

Complaint Form

The Office of Citizen Complaints - Ombudsman is not an office of first recourse. Therefore, we ask that you first try to resolve your complaint with the agency before filing a complaint with the Ombudsman. If you have been unsuccessful in resolving your concern with the agency, please fill out this complaint form and return it to our office by mail or fax.

Name: **Michael Costello**
Address: **XXXXXXXXXXXXXXXXXX**
City: **Redmond**
State: **WA**
Zip Code **98053**

Phone number(s): **XXXXXXXXXX**

1. King County **employee**, department, division, or service your complaint is about:

King County Department of Transportation

- **DOT Director Linda Dougherty**
- **DOT Supervisor Jennifer Lindwall**
- **DOT Manager Matthew Nolan**

2. File, permit, record, or other number, if applicable:

- **Redmond Ridge East Preliminary Plat Application**
- **Chen & Barahimi v. King County, Linda Dougherty, Jennifer Lindwall, Matthew Nolan**

3. County employees you have dealt with (name, position, agency):

**DOT Road Services Director Linda Dougherty
Lindwall & Nolan (by proxy)**

4. Witnesses/others involved (name, address, telephone number):

None

Summary of your complaint:

In 2004, King County, Linda Dougherty, Jennifer Lindwall, and Matthew Nolan were sued in King County Superior Court for alleged retaliation against several King County DOT whistleblowers. The whistleblowers, Ho-Chuan Chen and Hoisson Barahimi, alleged a myriad of improper and illegal acts committed by the DOT Concurrency Group to assist developers in general, and Quadrant Homes specifically, in Quadrant's preliminary plat application for Redmond Ridge East. Chen and Barahimi also alleged personal retaliation against themselves by Dougherty, Lindwall and Nolan because of their refusal to look the other way at the wrongdoing they had witnessed.

In June 2005, King County Hearing Examiner affirmed many of the Whistleblower charges in his recommendations to the King County Council to deny the Redmond Ridge East application, and in his recommendation for the Council to rescind the Transportation Concurrency Certificate improperly issued to Quadrant Homes in 2002.

On August 8, 2005, I wrote Linda Dougherty, Jennifer Lindwall and Matthew Nolan asking them to recuse themselves from all Redmond Ridge East matters, and to disengage from any decisions or actions related to that application that would have a direct financial and personal impact on their defendant status in the lawsuit that has now been moved to Federal Court. I felt it completely inappropriate for them to be directing legal responses and strategies while they were defendants in a complaint alleging personal wrongdoing. Here is that request:

From: mjcostello@att.net
Sent: Monday, August 08, 2005 9:07 AM
To: Dougherty, Linda; Lindwall, Jennifer; Mathew.Nolan@metrokc.gov
Cc: Lambert, Kathy; Maleng, Norm
Subject: Request for Recusal

August 8, 2005

Linda Dougherty - Director KCDOT Road Services Jennifer Lindwall - Manager KCDOT Mathew Nolan - Supervisor KCDOT

RE: Request for recusal from all Redmond Ridge East decisions and involvement

Dear Ms. Dougherty, Ms. Lindwall & Mr. Nolan,

As defendants in a lawsuit filed by DOT Whistleblowers last year, who have alleged retaliation by you in response to their allegations of wrongdoing by DOT under your leadership, it is entirely inappropriate for any of you to continue in the decision-making process on issues related to Redmond Ridge East, including decisions related to lawsuits and/or appeals your department has engaged in against the Hearing Examiner.

This letter is to formally request that each of you publicly recuse yourself from all decisions or matters related to Redmond Ridge East, and that any decisions that you have made since the litigation was filed against you, be reviewed for fairness, responsibility, and appropriateness on behalf of what should be a "neutral" Department of Transportation.

There can be no argument that each of you are now trapped in a serious personal conflict of interest, where findings of wrongdoing by the Hearing Examiner have supported the Whistleblowers allegations against DOT's actions in the Redmond Ridge East concurrency process. This decision has created a significant incentive for you to work to overturn that ruling and defend your personal interests and actions. Decisions, such as the hiring of a private pro-development law firm to sue the Hearing Examiner at additional taxpayer expense, supports my strong concern in your neutrality.

Please provide me a response, in writing or by email, of your decision on my request.

Thank you.

Michael Costello
XXXXXXXXXXXXXXXX
Redmond, WA

On August 25, 2005 I received the refusal letter from Dougherty, speaking for her and the others. Here is that email:

Dear Mr. Costello,

Thank you for your email of August 8, 2005 requesting that we recuse ourselves from all decisions or matters related to Redmond Ridge East. We have considered your request and the reasons you gave for making it. We are confident that we do not have any conflict of interest in connection with either our past decisions or decisions we may be called on to make in the future related to Redmond Ridge East. We therefore decline your request that we recuse ourselves.

Sincerely,
Linda Dougherty
Director, Road Services Division

Jennifer Lindwall
Manager, CIP and Planning Section

Matt Nolan,
Traffic Engineer/Manager
Traffic Engineering Section

As a result of this refusal to distance themselves from matters directly affecting them personally and financially, I sent the following response:

August 25, 2005

RE: Recusal request of matters related to Redmond Ridge East

Dear Ms. Dougherty, Ms. Lindwall & Mr. Nolan,

A claim that you don't have a clear and direct conflict of interest in matters related to Redmond Ridge East is utterly absurd! As defendants in a Federal lawsuit alleging retaliation and wrongdoing by you in the allegedly improper issuance of the Redmond Ridge East concurrency certificate in 2002, and the alleged retaliation against DOT employees who objected to the actions of your department and groups, you have a massive conflict of interest by staying involved in any decisions related to that development application, or any decisions related to whether your department should participate in litigation or appeals challenging the findings of King County Hearing Examiner Stafford Smith condemning the actions by your department. Mr. Smith's finding of repeated

"arbitrary and capricious" actions by your department in favor of Redmond Ridge East has already affirmed much of the allegations contained within the Federal lawsuit against you.

To state the obvious; the success or failure of your department in reversing the findings of Mr. Smith will have direct personal consequences to you and your defense in the aforementioned Federal lawsuit. Even your involvement in decisions to pursue such challenges, including DOT's lawsuit filed in superior court to overturn the examiner and DOT's appeal of the examiner's concurrency findings to the King County Council, can be easily be questioned as designed to benefit you personally and even financially, should the results of those challenges affect the costs you may incur in your defense and the success or failure of your defense of all the charges.

I most strongly request that you reconsider your refusal to recuse yourselves and request that you ask for an opinion from the King County Board of Ethics based on my request, and please include me in their reply.

Thank you.

Michael Costello
XXXXXXXXXXXXXX
Redmond, WA 98053

Subsequent to this exchange there has been no further response from Dougherty, Lindwall or Nolan. I took the next step to submit a PDA request to identify the costs being incurred by the taxpayers to defend Dougherty, Lindwall and Nolan in their retaliation suits, as well as defending their allegedly improper actions in the Redmond Ridge East matter. The response to that PDA request arrived yesterday.

To my personal shock and dismay, I am now aware of the fact that Dougherty, Lindwall, Nolan and/or others within King County, have currently authorized the expenditure of more than one million dollars to defend the actions of DOT, Dougherty, Lindwall and Nolan. DOT has hired not one, but two private law firms (Buck & Gordon LLP, Lane Powell Attorneys and Counselors) to defend their actions in both their official capacities and personal (the alleged retaliation).

The suggestion that they do not and have not had a serious direct conflict of interest in their continued involvement in Redmond Ridge East is absurd! The expenditure of more than a million dollars to defend their alleged wrongdoing is well beyond absurd. They not only should have recused themselves in response to my request, but they should have recognized the unethical decision to remain involved in Redmond Ridge East matters when the case was first brought against them in 2004.

5. In your view, what would be the best way to resolve your complaint?

With this email I am personally requesting such a review be conducted by the King County Board of Ethics in the appropriateness of the continued involvement of Ms. Dougherty, Ms. Lindwall, and Mr. Nolan in any matters or decisions related to Redmond Ridge East, which is the principal subject of the Federal lawsuit brought by the DOT whistleblowers. With the findings by the Hearing Examiner in June of repeated "arbitrary and capricious"

actions committed by DOT for this development under the leadership of Dougherty, Lindwall and Nolan, many of the charges in the Federal lawsuit have already been established as credible.

The defendants' clear conflict of interest not only demonstrates a perception of a direct conflict, but such a direct conflict exists and has since that suit was first filed. With the outcome of that suit directly tied to the finding of the hearing examiner and the actions taken by the defendants to overturn those findings, their involvement is unethical and clearly inappropriate. Their inability or unwillingness to step away only supports my concerns that their involvement is more than professional, but personal.

Now adding the fact that more than a million taxpayer dollars has been authorized to defend their alleged wrongdoing, their involvement in any decisions related to the litigation, funding of private counsel, or any issues related to Redmond Ridge East is outrageous and must stop and be reviewed for appropriateness and benefit to the taxpayers of King County without consideration to the private application filed by Quadrant Homes.

I affirm that the above statement and facts are true and correct to the best of my knowledge. ***I reserve the right to amend this complaint as new information becomes available.***

Signature

Michael Costello
XXXXXXXXXXXXXXXXXX
Redmond, WA 98053
XXXXXXXXXXXXXXXXXX

Date

Request for non-disclosure: I request that my name not be disclosed (Initial)

“I waive my right for non-disclosure”

pursuant to the provisions of RCW 42.17.31 O(e). If you initialed the request for non-disclosure we will not release your name in the event we receive a public disclosure request for your complaint.

Please mail your complaint to the Ombudsman Office at 400 Yesler Way, Rm. 240; Seattle, WA 98104. You may also fax your complaint to us at 206-296-0948. Please contact the Ombudsman Office at 206-296-3452 if you have any questions about how to fill out this form.