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Nicole Blackwood
(206) 474-6938

REBOUND

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April 15, 2021

Councilmember Susan Conniry
City of Ocean Shores
Ocean Shores Convention Center
120 W Chance A La Mer NW
Ocean Shores, WA 98569

Dear Councilmember Conniry:

Re: Response to Letter from Curt Zander Regarding REBOUND's Review
Ocean Shores Golf Course – Phase 1 Irrigation Project

Thank you for your email of April 8, 2020, forwarding Curt Zander's (owner of Turf Care and Ocean Shores Golf Course Inc.) April 5, 2020 email with its attached letter. Mr. Zander's letter represents his response to REBOUND's review of the City's compliance with public contracting requirements and procedures. The forwarded email appears to have been sent only to the Mayor and City Council. It was not sent to REBOUND, although our review is the subject of it and, since there is no cc list, I am unable to state with any certainty the names of any other recipients.

It is clear; however, from Mr. Zander's letter, that he believes our review to be about him, his lease, and his operation of his companies. He seems to have taken our review very personally. For the record, REBOUND's review is not, and never was about Curt Zander, his lease, or his companies. It is about the City of Ocean Shores and its compliance with the statutory requirements governing public contracting and, more specifically, public work.

I am concerned; however, because the forwarded email to which Mr. Zander's letter was attached, states that "a copy of this [his] letter will be going out to all of my members." This raises serious concerns as to who these members are. If Mr. Zander is referring to a private membership organization, this raises no issues; however, if the names and addresses of his "members" are derived from a list of people who play at the City owned golf course, then serious concerns are raised. While this information may be all, or in part, subject to public disclosure, it does not appear that any public disclosure requests were made to obtain it, or that any determination has been made regarding its status as a public record. Further, if these names and addresses are public records, there may be some restrictions on how they may be used.

Mr. Zander's letter states that he believes REBOUND's review, which he labels a "witch-hunt," was prompted by two Ocean Shores Councilmembers. To be clear, **it was not**. Mr. Zander closes his letter by noting that three Councilmembers are up for reelection this year. My research shows that, besides you, these are Eric Noble and Lisa Scott. I've never spoken to Lisa Scott, but Mr. Noble did contact me by telephone the day after he received the review. His concerns, however, were not about the compliance information contained in the review, or how the City might improve its practices, rather, they were about why our letter was addressed to the Auditor, what the Auditor could do, whether there would be litigation, what REBOUND's role was and, of course, the most pressing question, how, or by whom was this review initiated.

Since I have had no contact with Lisa Scott, and Councilmember Noble did not seem to be concerned with the compliance element of our review, a simple process of elimination leads to the conclusion that **you are the Councilmember upon whom Mr. Zander is focused.**

His intent in **mobilizing his “membership”** is absolutely clear from his rather sarcastic closing statement: **“I can hardly wait to see the results.”** Unless he is using a private membership list from a private organization, one might conclude that Mr. Zander intends to use his position as the lessee of the golf course, to gain access to the names and addresses of the people who play there. His intent would be, apparently, to influence the coming election as a retaliation against you for what REBOUND found in its review. This would be based on his erroneous assumption that you played a role in initiating it or assisting with it. **To be clear, you did not.**

If, in fact, Mr. Zander does use his position as a contractor/lessee to obtain and use the names and addresses of people who play at the golf course to influence the election, any such action or use of his position may result in an extreme conflict of interest for both Mr. Zander and the City. The Ocean Shores Golf Course does not belong to Mr. Zander and he does not have his own “members.” The Golf Course belongs to the City. Its members and the people who play there are not Mr. Zander’s members. While I am in no position to provide legal advice, I believe that the City should exercise great caution before allowing Mr. Zander, or anyone else with access to this type of information, to use it for his or her own political purposes or retaliatory efforts which, in this case, appear to be erroneously directed toward you.

For the record, I want to be clear, for you, for Mr. Zander and for any others copied on his letter or email. Until your recent email, which followed your receipt of REBOUND’s review, **you and I have never had any contact during our entire lives.** The review was sent to the Mayor and all Councilmembers at the same time, and I also received calls from other councilmembers after they received the review. To be clear, **you never contacted me prior to or during the review** and, to the best of my knowledge, you were likely not even aware of it until you received a copy, along with the Mayor and the other Councilmembers. I will swear an oath to that.

REBOUND is loath to become involved in the internal political affairs of public agencies but, in this case, corrections to Mr. Zander’s assumptions and allegations are warranted and especially appropriate since they were prompted by REBOUND’s review. Therefore:

The remainder of this letter is addressed to the Mayor and all City Councilmembers.

About REBOUND:

As noted in the introduction to our review, REBOUND is a private, non-profit organization established in 1988, whose mission is to promote voluntary compliance with state and federal prevailing wage laws. We review projects in WA, OR ID & MT. We are funded by the per-capita donations of the rank-and file membership of a consortium of building and construction trades unions; however, the primary beneficiaries of our efforts are non-union workers. We never charge for our services, and we do not accept requests to look into specific projects unless those requests come from one of our affiliated members. Over the years, we have collected millions of dollars in wages and benefits owed to workers on public works projects and, for the most part, those workers have no idea who we are, or how we came to review the projects upon which they are working.

About Miriam Moses:

As the former Industrial Statistician for the WA Department of Labor and Industries, I have been directly responsible for the administration of the Public Works Act, 39.12 RCW, as well drafting its related administrative code and related statutes. I have served on a wide variety of government committees, including the Capital Projects Review Board [CPARB] which drafted the Responsible Bidder legislation, as well as other committees dealing with issues ranging from misclassification of workers, developing and/or revising scope of work descriptions, prevailing wage survey methodology, bid-protests, and competitive bid processes. All of this work involves both the protections of workers, and the establishment of fair bidding processes for contractors. Compliance reviews are the natural extension of these and they constitute most of REBOUND's work. I have served as the Executive Director of REBOUND since 2002.

About Curt Zander's Letter:

Mr. Zander's letter contains several misconceptions about REBOUND's review. The most apparent of these is that he somehow believes that the review is about him, his relationship with the city, how he runs his companies, and his management of the Ocean Shores Golf Course. This is an unfortunate set of perceptions because REBOUND's review, in fact, involves none of these. Our review was about the City's contracting procedures and its compliance with statutory regulations. It was never about Curt Zander; however, since Turf Care is the contractor who was awarded this contract, it is impossible to review one without noting the compliance level of the other. They are inextricably tied.

Who Initiated the Review:

It seems to be very important to both Mr. Zander, and other Councilmembers who contacted me find out who brought this project to our attention and how it came to be reviewed. While it seems to me that the City would be more interested in the contents of the review, to determine whether there are ways in which it might improve its public contracting processes and procedures, there seemed to be a greater interest in finding out who contacted us about the project, and what the consequences of our review might be.

REBOUND prides itself on not revealing its sources because often, they are workers, forepersons, or supervisors, who believe that their jobs might be in jeopardy if their identities were revealed. Sometimes a union organizer finds violations during a regular jobsite visit, still other times, it can be a signatory or non-signatory contractor, who loses a bid to another contractor whose bid was so low, that the unsuccessful bidder does not believe that the project can be performed legally for such low price. Since the question of who initiated the review seems to be first and foremost on everyone's mind, I will dispense with our standard policy of not revealing sources and advise you as follows:

The request for a review of the Ocean Shores Golf Course, Phase 1 Irrigation Project, came from a member of one of REBOUND's affiliated unions who, because of the nature of the work and the exceptionally low bid submitted by Turf Care, had reason to believe that the City's award of the contract, as well as its oversight of the project might be lacking in compliance with the public contracting laws to which the City is subject. This is not an unusual occurrence for us and, while these two factors alone might well have pointed to violations of prevailing wage law, which they often do; one of our union affiliates also took an interest in this project because a signatory contractor was among the unsuccessful bidders. Often, that bidder may contact the union expressing some concern and the union will contact us. This is also not unusual and as such, we agreed to take a preliminary look at the project to see whether there was anything that immediately caught our attention.

REBOUND's Standard Initial Review Process:

Information Gleaned from the Statement of Intent to Pay Prevailing Wages:

REBOUND's preliminary reviews of public works projects almost always start with a review of the Statements of Intent to Pay Prevailing Wages filed by the prime contractor and sub-contractors working on the project. These are all public records and easily accessible on L&I's website. The information on these forms, while not legally binding, gives us a sense of what the contractors "intend" to do, such as when they plan to start work. From what we found in our preliminary review of these forms, we determined that a further review was appropriate.

Basic Information on Forms:

This information includes, among other things, the date[s] of filing and approval, contractor registration numbers, amounts of contracts, which Scopes of Work contractors intend to use, whether they will be performing work as Owner/Operators, and whether they will be subcontracting all or any part of the work.

Date of Filing:

This cursory review found that both Turf Care and Ocean Shores Golf Course, Inc., did not file their Intent Forms until four months after the project started, while all of the other contractors filed their forms on time, or prior to the start of work on the project.

Mr. Zander claims, in his letter, that he went to L&I in Aberdeen to file his Statement of Intent during the third week of December. Had he filed the forms at that time, he would have been in compliance with the filing requirements and the City would have also been compliance when it released progress payments to him. He explains in his letter, however, that in January of 2020, L&I began requiring contractors to report their wages online.

This narration of the sequence of events is misleading at best. Mr. Zander's reference to the online reporting of wages refers to a new law that requires Certified Payroll Records to be filed on-line – not Intents and Affidavits. The Intent and Affidavit Reporting System, which contains the Statements of Intent that REBOUND reviewed, has been online for years and Mr. Zander could have filed those forms from anywhere at any time.

Contractor Registration:

The form for Ocean Shores Golf Course, Inc. contained no contractor registration number. A quick check on L&I's site showed that Ocean Shores Golf Course Inc., is not a registered contractor. Mr. Zander affirms in his letter, that the City was aware that Turf Care would be subcontracting to his alter-ego company, Ocean Shores Golf Course, Inc., for work that required workers on the construction site. His letter seems to imply that, because he informed the City of this, he was somehow justified in doing it, even though it is a violation of the law.

Under 18.27 RCW, it is expressly prohibited for a non-registered contractor to perform any construction work, or have employees performing construction work, and it is also prohibited for any contractor to subcontract with a non-registered contractor to perform construction work. The City should have known this but, instead, both the City and Mr. Zander, have treated these alter-ego companies as interchangeable. Clearly, they are not. REBOUND did not report this infraction; however, had the City performed its due diligence, the infraction would not have occurred.

Jobsite Posting, and Progress Payments Requirements:

The date of the Intent filings also raised concerns because it meant that, just on the surface, there seemed to be immediate potential infractions. Besides the use of a non-registered contractor, when an Intent form is not filed and approved, it cannot be posted on the jobsite as required by RCW 39.12050(1). Further, when an approved Intent form has not been received by the City, no progress payments should have been released under RCW 39.12.040(1)(a). But the City did, in fact, release progress payments to Turf Care prior to its receipt of this form.

Scopes of Work:

Mr. Zander's Intent forms listed the Scopes of Work that he would be using as Landscape Construction and Landscape Operator. He advised the City in an email, that L&I advised him that these Scopes of Work were appropriate for the work that his companies would be performing. While we fully believe Mr. Zander's statement, that L&I told him to use these Scopes of Work and related wages, we also believe that, if he had actually told them that he would be performing electrical work they would have advised him differently.

Electrical Work:

The City was well aware that Mr. Zander would be performing electrical work on this project and, as such, the City should have also been aware that no electrical permit was obtained by either Mr. Zander or the City for this work. If a permit had been obtained, the city should have had a copy of it. Without the permit, there would be no electrical inspection of the work, because no one at L&I would have any idea that this electrical work was being done. These inspections are critical to the safety and efficacy of the work performed and not obtaining a permit and having an inspection is a violation of the laws governing electrical work. But it is not only the electrical permit that is at issue.

Whenever electrical work will be performed on a project, as a standard operating procedure, we look up the person performing the work to make sure that s/he is properly licensed. This information is readily accessible on L&I's website. We found that Mr. Zander is not a licensed electrician, and that Turf Care is not a licensed and bonded electrical contractor. When an L&I Electrical Inspector in the area happened to see the job (REBOUND did not contact them,) Turf Care and Mr. Zander were cited for five violations of the regulations governing electrical work.

Certainly, the City could have been expected to know that the performance of electrical work requires a licensed electrician, an electrical contractor with an additional \$4,000 bond, and an electrical permit. Absent adherence to these requirements, the City should not have permitted Mr. Zander or his company to perform this work. If the City had fulfilled its obligation, and made certain that the contractor performing this work was licensed, and that a permit had been obtained, Turf Care would not have been sighted for five electrical violations by L&I. It should also be noted that, if Mr. Zander had been required to subcontract this work to a licensed electrical contractor, it might have raised the dollar amount of his bid significantly.

REBOUND's Findings:

It was these preliminary findings, which were the result of our very cursory review of the information on a set of standard required forms that turned our attention to the City's award, administration, and oversight of this contract. Because of the potential infractions, we believed that the level of oversight by the City required a more intensive review. The first element of our review was the bid document, itself. When we reviewed this document, we noted that Turf Care, failed to meet the "supplemental" bidder responsibility criteria. These are voluntarily established by the City which contractors are required to meet. Turf Care did not meet them.

The law provides a specific method for dealing with a failure to meet these requirements in RCW 39.04.350(3); however, neither the contractor nor the City engaged in this legally mandated process for revising the responsible bidder criteria. Rather, the City simply decided that the criteria was too strict for Turf Care to meet (it is unknown whether it was too strict for the other bidders to meet) and simply discounted it in its entirety, without following the protocols established in the law.

The Context of REBOUND's Review:

It should be noted that, while we did fulfill our mission in reporting to L&I specific violations of prevailing wage law, which resulted in findings that back wages, along with fines, fees and penalties were owed by Turf Care (and subsequently paid,) and that forms were not correctly filed (requiring correction and refiling,) because our focus was on the City's award and its oversight of the contract, we did not report any of the other potential infractions committed by Mr. Zander's or his companies. Had we any intention of pursuing (or witch-hunting) Mr. Zander, beyond prevailing wage compliance, we most assuredly would have done so.

The goal of our review was to encourage the City to improve its practices and procedures with respect to its compliance with its governing statutes for the administration of public works contracts. We are not in the least bit interested in [as Mr. Zander portrays it] "witch-hunting" the lessee of its golf course. Put simply, if the City had followed its governing statutes, it is likely that Mr. Zander's companies would have been far more compliant with the public contracting laws. It is the City's administration of this project, and not Mr. Zander's lack of compliance that were under review. Reviews of Mr. Zander's work, and findings of non-compliance, were unintended and unexpected consequences of REBOUND's review.

REBOUND's review was addressed to the State Auditor. Other than for prevailing wage purposes, it was not addressed to any contractor compliance or enforcement division of L&I. Certainly, as noted, a review of the City's award and administration of this contract is inextricably tied to a review of Mr. Zander's companies both as a contractor and as a lessee; but it was the City's level of compliance with its own governing statutes in its award and administration of this contract that was the focus of our review. Absent this focus, our request for a new audit would be moot, thus raising the likelihood that the City might continue to engage in what we perceive to be inappropriate public contracting award and administration practices.

While I have found no formal report, I have been advised by a representative of the State Auditor's Office, that this project was reviewed during an audit performed in the summer of 2020. Other than the issue involving the "responsible bidder" criteria, which the auditor essentially dismissed when the City advised that they found it too strict, she found no other issues with the City's administration of this contract. We, of course, beg to differ. That is why our review was addressed to the State Auditor, whose function it is to perform these reviews, and why we have asked the State Auditor to put this project on the docket for another review.

In closing, I wish to make clear that, while I have no doubt that Mr. Zander's long-term dedication and work on the Golf Course has been greatly appreciated by the City and the Golf Course patrons; his closing statement, that REBOUND's review brought him to a place where he "had to laugh" is a strong indicator of his erroneous perception of the importance of the role he believes himself to have played in REBOUND's review. He is neither the subject of it, nor the victim of it. It is simply not about him. It was and is about the City of Ocean Shores.

I truly believe that there is no further point in arguments, accusations, or the affixing of blame. I believe that all concerned should allow, and even encourage, the State Auditor to fully review the City's administration of this project. Let the Auditor identify the issues and assist the City in correcting them so that they do not recur. With that accomplished, I believe that this matter should be put to rest.

Thank you to both Councilmember Conniry and to the City of Ocean Shores, for giving me the opportunity to respond.

Sincerely,



Miriam Israel Moses
Executive Director

cc: Pat McCarthy, WA State Auditor's Office

Mayor Crystal Dingler
Scott R. Anderson, City Administrator
Nick Bird, Public Works Director, City of Ocean Shores

City Council Members, City of Ocean Shores

Susan Conniry, City Councilmember, City of Ocean Shores
Frank Elduen, City Councilmember, City of Ocean Shores
Jon Martin, City Councilmember, City of Ocean Shores
Eric Noble, City Councilmember, City of Ocean Shores
Robert Peterson, City Councilmember, City of Ocean Shores
Lisa Scott, City Councilmember, City of Ocean Shores
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