

The Honorable Beth M. Andrus
Hearing: April 6, 2017 at 10:00 a.m., Dept. 35

FILED
KING COUNTY, WASHINGTON

APR 13 2017

SUPERIOR COURT CLERK
BY Eileen McLeod
DEPUTY

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY, a regional transit
authority, dba SOUND TRANSIT,

Plaintiff,

v.

CITY OF MERCER ISLAND,
WASHINGTON, a municipal corporation,

Defendant.

No.

17-2-05193-4SEA

ORDER ISSUING PRELIMINARY
INJUNCTION AND DENYING MOTION
TO DISMISS

THIS MATTER came before this Court on Plaintiff's Application for Writs of Prohibition and Mandamus and Declaratory and Injunctive Relief. The Court considered the record and files in this case, including the following:

1. Plaintiff's Verified Complaint for Writs of Prohibition and Mandamus;
2. Plaintiff's Application for Writs of Prohibition and Mandamus;
3. The First Declaration of Perry Weinberg;
4. The First Declaration of Michael Truman;
5. The First Declaration of Matthew Preedy, P.E.;
6. The First Declaration of John Sleavin, P.E.;
7. The First Declaration of Ellie Ziegler; and
8. The First Declaration of Patrick Schneider;
9. Declaration of Notice in Compliance with LCF 98.40;

ORDER ISSUING PRELIMINARY INJUNCTION AND
DENYING MOTION TO DISMISS - 1

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10. Defendant's Opposition to Request for Alternative Writ;
11. Declaration of Eric Christensen;
12. Declaration of Scott Greenberg;
13. Declaration of Michael Lapham;
14. Declaration of Randall Thomsen;
15. Defendant's Notice of Withdrawal of Suspension of Shoreline Substantial Development Permit No. SHL 15-023;
16. Defendant's Response to Court's Order Finding Adequate Cause and Motion to Dismiss;
17. Declaration of Scott Greenberg, dated March 17, 2017;
18. Plaintiff's Opposition to Defendant's Motion to Dismiss;
19. Defendant's Reply re Motion to Dismiss;
20. Declaration of Randall Thomsen in support of Reply to Motion to Dismiss; and
21. Defendant's Statement of Non-Washington Authorities.

FINDINGS OF FACT

1. The Court will grant the motion for a preliminary injunction under the analysis of factors set forth in *Tyler Pipe Indus., Inc. v. State, Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213, 1217 (1982).

2. Under the first element of *Tyler Pipe*, Sound Transit has demonstrated that it has a clear legal or equitable right. Sound Transit has a valid Shoreline Substantial Development Permit, SHL 15-023 (SSDP), with the effective date of July 5, 2016, and under the vested rights doctrine it has legal rights to proceed under that permit.

3. Under the second element of *Tyler Pipe*, the moving party must show that it has a well-grounded fear of immediate invasion of that right. The Court finds that Sound Transit has

1 made that showing hearing here. The City of Mercer Island's action of suspending the SSDP
2 and then revoking the suspension, but still asserting authority to act under WAC 173.27.100 even
3 though Sound Transit has not proposed changes to the project within the shoreline jurisdiction,
4 together with the legal and factual arguments made by the City on March 10, 2017, and again
5 during the April 6, 2017 hearing, indicate to this Court that there is a real likelihood that the
6 City may seek to again revoke, rescind or otherwise interfere with Sound Transit's vested rights
7 under the SSDP. Sound Transit, therefore, has a well-grounded fear of an invasion of Sound
8 Transit's rights under the permit.
9

10 4. There is a substantial likelihood that Sound Transit will prevail on the merits of its
11 legal argument that the City does not have the legal authority, based on alleged traffic impacts at
12 highway entrances that are outside the 200-foot landward limit of the jurisdiction of the
13 Shoreline Hearings Board, to rescind the SSPD.
14

15 5. The Court seriously considered whether it would be more prudent to dismiss this
16 action, let the City revoke or rescind the permit and have the parties battle out jurisdiction in the
17 Shoreline Hearings Board, but this Court ultimately concluded that that would not be an
18 appropriate method of proceeding given the substantial likelihood that the parties would simply
19 be back before this Court, arguing the jurisdictional issues that they are arguing today, which
20 could also deny Sound Transit an adequate remedy.
21

22 6. Under the third element under *Tyler Pipe*, that the act complained of either results
23 in or will result in actual and substantial injury to the moving party, the Court finds that Sound
24 Transit has demonstrated to the Court's satisfaction that the City's rescission of the SSPD would
25 result in actual and substantial injury as it would cause substantial delay to the project, which has
26

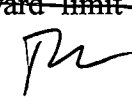
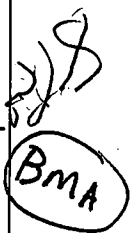
1 been under development and planning for years, and that such delay would cause significant
2 financial impact to the project and Sound Transit. The evidence supports a finding that the
3 project could be delayed for eight months at substantial cost if Sound Transit cannot begin
4 certain work on the I-90 Bridge in time to complete the work by October 1, 2017, after which
5 time no construction can occur on the bridge's external structure until Spring 2018.

6
7 7. When the Court examines the above *Tyler Pipe* factors and criteria in light of
8 equities, the Court finds that the balancing of the relative interests of the parties and the interests
9 of the public favors the issuance of the preliminary injunction.

10 8. This Court does not believe it is appropriate for it to rule on the pending petition
11 for the writ.

12 CONCLUSIONS OF LAW

13 1. Sound Transit has carried its burden under *Tyler Pipe* and the balancing of the
14 equities by the Court favors the issuance of a preliminary injunction.

15
16 2. A preliminary injunction should issue from this Court, enjoining and prohibiting
17 the City of Mercer Island from rescinding Shoreline Substantial Development Permit SHL 15-
18 023 (SSDP) based upon any alleged adverse environmental impacts or changes to the project
19 outside of the shoreline jurisdiction (~~the 200-foot landward limit of the jurisdiction of the~~
20 ~~Shoreline Hearings Board~~).  

21
22 3. The Court certifies under RAP 2.3(b)(4) that the preliminary injunction involves a
23 controlling question of law as to which there is a substantial ground for a difference of opinion
24 and that immediate review of the order may materially advance the ultimate termination of this
25 litigation.

26 4. The Court is not requiring a bond under CR 65(c) ("Pursuant to RCW 4.92.080 no

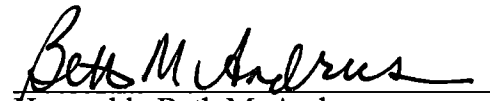
1 security shall be required of the State of Washington, municipal corporations or political
2 subdivisions of the State of Washington.”)

3 **ORDER ISSUING PRELIMINARY INJUNCTION**

4 Having considered the records and files in this case, including those listed above, and
5 having issued the Findings of Fact and Conclusions of Law listed above, it is hereby
6 **ORDERED, ADJUDGED, AND DECREED** that Sound Transit’s Motion for a Preliminary
7 Injunction is GRANTED. By this Order, a preliminary injunction is hereby issued to the City of
8 Mercer Island, enjoining and prohibiting the City from rescinding Shoreline Substantial
9 Development Permit SHL 15-023 (SSDP) based upon any alleged adverse environmental
10 impacts or changes to the project outside of the shoreline jurisdiction as defined herein. The
11 Court does not require Sound Transit to post any bond or other security for this preliminary
12 injunction.
13
14

15 It is further **ORDERED, ADJUDGED, AND DECREED** that the City of Mercer
16 Island’s motion to dismiss is DENIED.

17 ENTERED this 13th day of April, 2017.

18 
19 Honorable Beth M. Andrus
20

21 Presented by:
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2 authority, d/b/a SOUND TRANSIT

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