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~~No. 86894-8~~

SUPREME COURT OF THE STATE OF WASHINGTON

ARTHUR LANE, JOHN ALLERTON and KENNETH GOROHOFF,

Appellants,

v.

PORT OF SEATTLE; KING COUNTY; BNSF RAILWAY COMPANY;
GNP RLY, INC.; and CITY OF REDMOND,

Respondents.

**RESPONDENT CITY OF REDMOND'S ANSWER TO
APPELLANTS' PETITION FOR REVIEW**

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I. INTRODUCTION

This case involves a claim by three disgruntled taxpayers of the Port of Seattle who challenge the Port's authority to acquire railroad property in East King County commonly known as the "Eastside Rail Corridor" or "ERC." The Court of Appeals correctly held that the Port acted within its statutory authority when it acquired the ERC from Respondent BNSF Railway Company.

The Respondent City of Redmond joins in and incorporates by reference the arguments set forth in the Answers of the Respondents Port of Seattle and King County. The City writes separately to address issues specific to the Redmond Spur, a portion of which the City now owns.

II. ARGUMENT

A. The Court of Appeals' Decision Regarding the Redmond Spur Does Not Conflict with this Court's Decision in *State ex rel. Huggins v. Bridges*.

The Court of Appeals correctly held that the Port's purchase of the Spur was authorized by RCW 53.08.010, which grants a port district the authority to "acquire by purchase... all lands, property, property rights, leases, or easements necessary for its purposes." The Court of Appeals recognized that economic development is an express statutory purpose of port districts under RCW 53.08.245 and that there is "impressive documentation" in the record showing that development of the Spur as

envisioned by the City of Redmond will create significant economic development within the City limits and the limits of the port district. *Slip Op.* at 23. The Court of Appeals thus correctly agreed with the trial court's conclusion that "Given the record before the Court, it was reasonable for the port commissioners to conclude that purchasing the Redmond Spur would advance trade and commerce, promote industrial growth and stimulate economic development, and was thus 'necessary for its purposes' under RCW 53.08.010." *Id.*

Against this solid reasoning of the Court of Appeals, Appellants beat the tired drum of *State ex rel. Huggins v. Bridges*, 97 Wash. 553, 166 P. 780 (1917), arguing that the Court of Appeals' decision in this case conflicts with that 96-year old holding of the Supreme Court. Appellants continue to overstate the importance of *Huggins* to the exclusion of all that has occurred since. In *Huggins*, the specific issue before this Court was whether the statutes governing port districts granted the Port of Seattle authority to construct and operate a belt line railway as a common carrier. 97 Wash. at 556. This Court answered in the negative, holding that such a power was neither expressly granted by the port district statutes nor clearly implied therein. *Id.* at 558.

In this case, by contrast, the port district statutes clearly and unequivocally gave the Port of Seattle the authority to buy the Redmond

Spur for its economic development potential. RCW 53.08.010 provides that a port district can “acquire by purchase... all property necessary for its purposes” and RCW 53.08.245 provides that “it shall be in the public purpose for all port districts to engage in economic development programs.” The undisputed evidence in this matter is that the City of Redmond’s redevelopment of the Spur will foster economic development within the boundaries of the Port of Seattle. Because there is clear authority for the Port’s purchase of the Spur in RCW 53.08.010 and 53.08.245, there is no conflict between the Court of Appeals’ decision in this case and the Supreme Court’s holding in *Huggins*. Appellants’ reliance on *Huggins* as providing support for discretionary review is misplaced.

Appellants assert that the Court of Appeals ignored the word “programs” in RCW 53.08.245 and thereby stretched the statute beyond its intended meaning. While this argument was never made to the Court of Appeals, it is easily answered. The term “programs” is not defined in RCW 53.08.245. When a term in a statute is undefined, courts may look to the ordinary dictionary definition. *Cornu-Labat v. Hosp. Dist. No. 2 of Grant County*, 177 Wn.2d 221, 231, 298 P.3d 741 (2013); *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). *Webster’s Third New International Dictionary* (2002) defines the term “program” as

a plan of procedure: a schedule or system under which action may be taken toward a desired goal: a proposed project or scheme...

The Port's acquisition of the ERC was the culmination of years of cooperative work by a number of public agencies, including the Port of Seattle, King County, the City of Redmond, and Sound Transit. Prior to the closing of the Port's acquisition, these agencies and others entered into a Memorandum of Understanding under which each agency expressed its commitment to acquire an interest in the ERC from the Port and to develop that interest for regional, not just local, benefit while preserving the corridor for possible freight rail use in the future. CP 1397; CP 1437 - 41. There was clearly a plan under which the public agencies involved were committed to taking actions aimed at achieving a desired goal - the goal of preserving an irreplaceable asset and providing for its development in a manner benefitting the entire Puget Sound region.

With respect to the Redmond Spur, the desired goal was always regional economic development. Downtown Redmond has been designated as a "regional growth center" or "urban center" under the King County Countywide Planning Policies and the Puget Sound Regional Council's Vision 2040. CP 2354. More than 6,000 new residents and 4,000 new workers are expected to come to Downtown Redmond by 2020. CP 2351. In anticipation of this growth, the City of Redmond acquired its

portion of the Redmond Spur from the Port for \$10 million and has proceeded to invest more than \$20 million in developing the Spur by constructing new street crossings across the railroad tracks in order to unite the two divided halves of the City's downtown, constructing a major stormwater trunk line to serve the City's downtown and thereby eliminate the need for property owners to devote precious land to on-site detention facilities, and making various other improvements in anticipation of the future construction of a regional trail, a linear park, and Sound Transit's East Link light rail project. CP 2347-2384. These investments were all made with the overarching goal of using the Redmond Spur as a catalyst for revitalizing Downtown Redmond, thereby stimulating economic growth in that part of the City and enabling the City to accommodate the commercial and residential growth that the City and the region have chosen to allocate to this major urban center. The Appellants' comparison of the Redmond Spur acquisition to "opening a McDonald's franchise" or "subsidizing a shoe shine stand" ignores the comprehensive regional planning and multi-agency agreements that went into the acquisition.

The Court of Appeals correctly decided that the Port's acquisition of the Redmond Spur was within the express statutory authority provided to the Port by RCW 53.08.010 and RCW 53.08.245 to acquire property for economic development purposes. Because of this express statutory

authority, there is no conflict with *State ex rel. Huggins v. Bridges* and discretionary review is not warranted under RAP 13.4(b)(1).

B. This Case Does Not Involve an Issue of Substantial Public Interest.

Appellants also rely on RAP 13.4(b)(4) in requesting review by the Supreme Court. Under that rule, Appellants must establish that this is a case involving “a substantial public interest that should be determined by the Supreme Court.” Appellants have failed to do so, for the reasons set forth in the Answers of the Respondents Port of Seattle and King County and for the further reasons set forth below.

The issue in this case is not one of substantial public interest as far as the Redmond Spur is concerned. The Port of Seattle has been fully reimbursed by the City of Redmond for the cost of acquiring the Redmond Spur and the City has invested over \$30 million in fulfilling its commitments to the Port, King County, and the City’s other regional partners to purchase and develop the Spur for regional economic benefit. The interests of the Port’s taxpayers, who include all of the residents and businesses within the City of Redmond, have been protected and those taxpayers made more than whole.

Moreover, as the Court of Appeals held, the Port’s authority to acquire the Spur was clear under RCW 53.08.010 and 53.08.245. There is no need for the Supreme Court to weigh in on this issue as the Court of

Appeals conducted a thorough analysis of the statutes and case law in question.

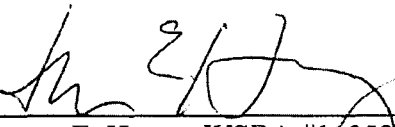
Finally, this case involves, at most, a disagreement over the wisdom of the Port's acquisition of the ERC and a challenge by the Appellants to the Port's authority to make what they consider a wasteful expenditure. As the Court of Appeals recognized, *Slip Op.* at 18, "the ballot box is the appropriate mechanism for deciding whether the Port has exercised poor judgment by spending taxpayer dollars," not the courts. There is no substantial public interest here that needs to be addressed by the Supreme Court.

V. CONCLUSION

For all of the reasons set forth above and in the Answers of the Respondents Port of Seattle and King County, this Court should decline review and allow the Court of Appeals' decision in favor of the Respondents to stand.

Respectfully submitted this 22nd day of January, 2014.

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No. 86894-8

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I, Gloria J. Zak, hereby certify under penalty of perjury under the laws of the State of Washington:

1. I am a citizen of the United States of America and I am now and have been at all times over the age of 18 years and make this declaration based upon my personal knowledge of the facts stated below.

2. On this 22nd day of January, 2014, I provided a true and correct copy of Respondent City of Redmond's Answer to Appellants' Petition for Review via email and regular mail to the following:

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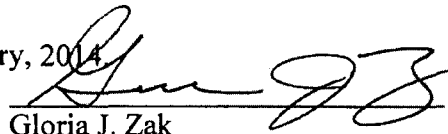
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Subject: Lane, et al v. Port of Seattle, et al - Case No. 86894-8
Attachments: 4783_001.pdf

Attached is Respondent City of Redmond's Answer to Appellants' Petition for Review. A hard copy follows to counsel only.

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