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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 71827-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CITY OF BELLEVUE, a Washington municipal corporation;

Respondent,

v.

PINE FOREST PROPERTIES, INC., a Washington corporation,

Petitioner-Appellant;

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New
Jersey corporation; PRUDENTIAL ASSET RESOURCES, INC., a
Delaware corporation; SHAREBUILDER CORPORATION, a
Washington corporation; CLEARWIRE LEGACY, LLC, a Delaware
limited liability company;

Defendants.

**RESPONDENT CITY OF BELLEVUE'S ANSWER TO
PETITION FOR REVIEW**

Matthew J. Segal, WSBA # 29797
Jessica A. Skelton, WSBA # 36748
Jamie L. Lisagor, WSBA # 39946
PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2100
Seattle, WA 98101
(206) 245-1700

Attorneys for Respondent City of
Bellevue

 ORIGINAL

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I. INTRODUCTION

Appellant property developer Pine Forest Properties, Inc. (“Pine Forest”) seeks review of Court of Appeals and trial court decisions affirming the City of Bellevue’s (“City’s”) decision to acquire property necessary to complete two important road and transit projects. Review is unwarranted. The Court of Appeals and trial court both correctly applied this Court’s precedent to reach a result consistent with established precedent under article I, section 16 of the Washington Constitution. Focusing particularly on *HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.* (“*Monorail*”), 155 Wn.2d 612, 634, 121 P.3d 1166 (2005), the Court of Appeals affirmed that public use and necessity supports the City’s decision to acquire property (“Property”) owned by Pine Forest. Pine Forest conceded before the trial court that the City will use approximately two-thirds of the Property for a permanent public use and the remaining one-third for a long-term public use. This satisfies the public use requirement under *Monorail* and its progeny.

What Pine Forest attempts to label as a challenge to public use for one-third of the Property is actually a necessity challenge to the City’s determination that it needs to acquire the entire parcel for two public projects. Pine Forest cloaks its necessity challenge as one of public use in an effort to obtain a more deferential standard of review, even though this

Court repeatedly has rejected analogous attempts to do so. *Pub. Util. Dist. No. 2 of Grant Cnty. v. N. Am. Foreign Trade Zone Indus., LLC* (“*PUD v. NAFTZP*”), 159 Wn.2d 555, 575, 151 P.3d 176 (2007) (“We have explicitly held that a public entity need not plan to use condemned property for a public purpose forever to justify the initial public use.”). The City’s determination that it needs the entire parcel for the projects is reviewable only for actual fraud or arbitrary and capricious conduct as amounts to constructive fraud. The City’s careful study of the project requirements and the undisputed permanent need for the majority of the Property and long-term need for the remainder more than justify necessity. In fact, Pine Forest conceded at oral argument that it was not even alleging actual or constructive fraud. RP (March 7, 2014) at 15:16-21.

Because Pine Forest fails to demonstrate that the Court of Appeals’ decision conflicts with a decision of this Court or raises a significant question of constitutional law, Pine Forest’s Petition for Review (“Petition”) should be denied.¹ *See* RAP 13.4(b).

¹ Concurrent with this Answer, the City is filing a motion requesting that the Court expedite its review of this appeal.

II. STATEMENT OF THE CASE

A. The Property Is Necessary for the East Link Project and Other City Transportation Improvements.

The City seeks to acquire a single parcel² of Property from Pine Forest for use in two separate transportation projects, the East Link Project³ and other City transportation improvements. As part of an extensive inter-local agreement with Sound Transit, known as the Memorandum of Understanding (“MOU”), the City agreed to acquire the Property in fee simple for Sound Transit’s use for construction staging, which is expected to continue for as long as eight years, and for construction of a permanent fixed guideway system. CP 130 (¶ 7). The MOU specified that the City would acquire the Property in fee (as opposed to a partial take or temporary construction easement). CP 222. In the MOU, the City also committed to ensure the Property is vacant and deliver the Property to Sound Transit. CP 130 (¶ 7).

Pine Forest does not (and cannot) dispute the public purpose of, or the need for, the East Link Project, which is a critical component of the

² Although the Petition refers to a separate or adjoining “TOD Parcel,” this reference is not to a separate parcel, but to a portion of the Property that Pine Forest wishes to retain.

³ In 2008, local voters approved the Central Puget Sound Regional Transit Authority’s (“Sound Transit’s”) East Link Project, a plan to construct light rail from Seattle to Bellevue to address increasing congestion caused by growth and development in the region. CP 138.

City's and the region's long-term land use and transportation strategies.⁴ The City Council found the City's implementation of the Memorandum of Understanding and the construction of the East Link Project, including condemnation of the Property for Sound Transit's use for construction staging through the course of construction, to be necessary and in the best interest of the public. CP 266-70 (Ordinance).

In addition to the East Link Project, the City plans to complete a second transportation project, the Bel-Red Transportation Improvements, which will result in the construction of a new road and other multi-modal transportation corridors along and across the Property. CP 130-31 (¶¶ 9, 11). Pine Forest does not (and cannot) dispute that the Bel-Red Transportation Improvements constitute a necessary public use. The City Council found the Bel-Red Transportation Improvements to be necessary, and in the best interests of the citizens. CP 266-70 (Ordinance).

B. The City Reasonably Determined It Needs the Property for Both East Link and the Bel-Red Improvements.

The City reasonably decided to acquire the Property in fee for the East Link Project and Bel-Red Transit Improvements given both the undisputed need for the City to take a permanent interest in at least two-thirds of the Property, and Sound Transit's and the City's long-term need

⁴ As the trial court found, the East Link Project is necessary to preserve the City's neighborhoods, to provide mobility in and out of downtown Bellevue, and to support economic growth and development. See CP 447 (Findings of Fact ("FOF"), ¶ 4).

to use the remainder of the Property through 2030 or beyond. CP 432 (§ 17). The Property is located in areas where lengthy construction staging must occur and a permanent fixed guideway system must be installed, as determined by Sound Transit in consultation with the City and after careful consideration of several alternatives. *See* CP 130 (§ 8). The City agreed to acquire the Property in fee for Sound Transit's use during this construction. CP 130 (§ 7), CP 222. Additionally, the City will expand 120th Avenue NE along the eastern frontage of the Property and construct the extension of NE 15th Street across the Property. CP 132 (§ 14).

Pine Forest does not dispute the need for a permanent use of approximately two-thirds of the Property, but it erroneously suggests a portion of the Property will be used by the City and Sound Transit only for a limited duration. *See* Petition at 8. There are, however, significant design, scheduling, and coordination decisions yet to be made by both Sound Transit and the City with respect to both the East Link and the Bel-Red Transportation Improvements Projects, which could lengthen the duration of construction and increase the amount of property needed for these projects. CP 432 (§ 17).

Moreover, although Sound Transit has established an estimated construction schedule for the East Link Project, the City and Sound Transit have not fixed a time frame for Sound Transit's temporary use of

the Property. CP 429 (¶ 10), CP 440 (¶ 5). Nor have Sound Transit and the City “committed” that construction for both the East Link and Bel-Red transportation projects will be complete by 2022 or 2023, when the East Link trains are scheduled to be operational. *See* Petition at 3-5 (relying on *Pine Forest’s* own analysis of construction costs to conclude the Improvements must be completed before East Link is operational at CP 313 (¶ 8), CP 398-404).

On October 16, 2013, shortly after the City Council passed an ordinance authorizing condemnation of the Property, Pine Forest made a written offer to sell two-thirds of the Property to the City and to allow use of the construction staging area through a temporary ground lease subject to a number of conditions (“October Offer”). CP 406-08. The conditions included an unspecified future agreement on a concrete expiration date for the ground lease, a monthly net rental payment, and holdover costs. *Id.* The City engaged in extensive dialogue with Pine Forest about its October Offer but, after careful consideration, the City reasonably determined that it is necessary to acquire the Property in fee. CP 428-34.

C. The Trial Court and Court of Appeals Determined that Public Use and Necessity Supports the Acquisition.

The City followed the required process to initiate condemnation proceedings in August 2013. *See* CP 76-77. The City retained an

appraiser to determine just compensation for the Property, as well as a review appraiser to review the first appraiser's determination. CP 133 (¶ 17). The City offered Pine Forest compensation in the amount determined by the appraiser and review appraiser, but the City and Pine Forest were unable to reach agreement on the compensation for the Property. CP 134 (¶ 18).

The City instituted proceedings to condemn the Property in fee on October 18, 2013. CP 1-96. After consenting to two extensions to allow the parties to pursue alternative dispute resolution and further discuss the October Offer, CP 97-126, the City moved for an order determining public use and necessity, noting the hearing for early February 2014, CP 236-50. Pine Forest was the only party to oppose the City's motion.⁵

After the completion of briefing on public use and necessity, Pine Forest provided a revision to its October Offer, dated February 18, 2014 ("February Revised Offer"). Ex. 1. The February Revised Offer proposed a temporary construction easement, rather than a ground lease as set forth in the October Offer. *See id.* The February Revised Offer assigned the same value to the Property as the October Offer, offered similar limited

⁵ The City's Petition in Eminent Domain named all parties with an interest in the Property, including property owner Pine Forest, Clearwire Communications, a tenant at the Property, and The Prudential Insurance Company of America, the beneficiary on a Deed of Trust recorded on the Property. CP 2 (¶ 2). Respondent Sharebuilder Corporation, a former tenant at the Property, was voluntarily dismissed in a November 22, 2013, agreed order. CP 450 (FOF, ¶ 12 n.1).

property interests in exchange for a “savings,” and remained subject to similar conditions, including an unspecified agreement “on a timetable that provides flexibility for the City, and provides certainty that the property will be returned to Pine Forest.” *Id.*

The trial court granted the City’s motion for public use and necessity⁶ and entered detailed findings of fact and conclusions of law. The trial court specifically ruled that the City’s determination of the type and extent of property interest taken is a question of necessity, not public use. CP 453 (FOF, ¶ 14). The trial court further ruled that there is “no evidence” that the City’s determination that it requires the Property in fee was the result of actual fraud or constructive fraud. *Id.* (FOF, ¶ 16).

On April 16, 2014, the last possible day to do so, Pine Forest appealed the trial court’s determination of public use and necessity. CP 463-65. The Court of Appeals granted expedited review in response to the City’s argument that “delay in resolution of the appeal would result in

⁶ To grant a motion for public use and necessity, a trial court need only conclude that: (1) the proposed use is a public use; (2) the interest of the general public requires the use; and (3) the property at issue is necessary to facilitate the public use. *See* RCW 8.12.090; *PUD v. NAFTZI*, 159 Wn.2d at 575-76. The first question (public use) is a judicial determination. *See* Const. art. I, § 16; RCW 8.12.090; *PUD v. NAFTZI*, 159 Wn.2d at 573. The second question, public interest, is related to and overlaps with the third question, public necessity, and thus, these determinations typically are made together. *PUD v. NAFTZI*, 159 Wn.2d at 575-76. The second and third questions are legislative determinations, meaning that courts defer to the condemnor’s determination of public interest and necessity absent proof of actual fraud or such arbitrary and capricious actions as amount to constructive fraud. *See id.*

significant disruption and adverse construction consequences for the East Link Project.” Opinion, ¶ 35.⁷

In a 25-page published Opinion, the Court of Appeals affirmed the trial court’s ruling in full. The Court of Appeals rejected Pine Forest’s attempt to “characterize the type and extent of the property interest the City seeks to condemn as a question of public use rather than necessity,” emphasizing that this Court “considered and rejected the same argument in the *Monorail* case.” *Id.*, ¶¶ 41, 44 (“The Supreme Court held that use of the property for construction staging was a public purpose even though the condemning authority did not identify ‘a public use planned for property forever.’” (quoting *Monorail*, 155 Wn.2d at 634)).

The Court of Appeals further held that substantial evidence supported the trial court’s determination of necessity for acquisition of the Property in fee.⁸ *Id.*, ¶ 60. As the Court of Appeals explained, “the record shows there were a number of reasons the City decided to acquire the Property in fee, including the difficulties and risk involved in trying to coordinate the East Link Project and road improvement project with Pine

⁷ A copy of the Court of Appeals’ published opinion (“Opinion”) is attached to Pine Forest’s Petition as Appendix A.

⁸ Pine Forest does not challenge the Court of Appeals’ decision to review the trial court’s necessity determination under the substantial evidence standard of review, rather than under the *de novo* standard of review. See Opinion, ¶¶ 52-53. Regardless, the Court of Appeals noted that it would reach the same conclusion if it applied a *de novo* standard of review. *Id.*, ¶ 53 n.9.

Forest[.]’ *Id.*, ¶ 58. The Court of Appeals further explained that the City considered the relative cost of a fee acquisition as compared to Pine Forest’s October Proposal or February Revised Offer. *Id.*, ¶ 59.

Pine Forest moved for reconsideration on the basis that the Court of Appeals overlooked the February Revised Offer—even though the Opinion specifically analyzed the February Revised Offer and referenced its terms in upholding the trial court’s necessity determination. *See id.*, ¶¶ 32, 59 n.11. After requesting and considering a response from the City, the Court of Appeals denied the motion for reconsideration. *See* Petition, App’x B. Pine Forest now petitions for review of the Court of Appeals’ Opinion. The City respectfully requests that review be denied.

III. ARGUMENT

To obtain review, Pine Forest must demonstrate that the case meets the standards in RAP 13.4(b). Relevant here, review is proper only where the Petition establishes that the lower court opinion conflicts with a prior decision of this Court or raises significant questions of law under the Washington or United States Constitution. *See* Petition at 14-15 (citing RAP 13.4(b)(1), (3)). The Court of Appeals decision is entirely consistent with this Court’s application of article I, section 16 and thus raises no ground for review.

A. This Court Consistently Has Held that the Determination of the Type and Extent of Property Interest to Be Acquired Is a Question of Necessity.

The Court of Appeals correctly affirmed the City’s decision to acquire the Property as necessary to support multiple, valid public uses. Opinion, ¶¶ 40-44. Pine Forest does not dispute that construction of either public transit or roads is a valid public use. *See id.*

Pine Forest nonetheless incorrectly attempts to cast the amount of property taken as a question of public use, rather than one of necessity. *See* Petition at 8-9. Thus, although Pine Forest does not dispute that the entire Property will be put to a public use at least during the protracted construction of the East Link Project and Bel-Red Transportation Improvements, Pine Forest contends this Court should grant review of the Court of Appeals’ holding that the City’s decision to take a fee interest in the Property must be reviewed under the more deferential “necessity” prong, rather than first prong of the test for “public use.” But the Court of Appeals’ holding does not conflict with—and, in fact, is compelled by—this Court’s precedent. *See* RAP 13.4(b)(1).

This Court already has rejected the idea that the amount of property taken should be addressed under the public use prong. *See Monorail*, 155 Wn.2d at 633-34; *see also PUD v. NAFTZI*, 159 Wn.2d at 576-78 (claims that excess property has been taken are addressed under

the necessity prong). In the *Monorail* case, the agency needed an entire parcel for five to ten years during construction of a monorail station on the property and had not identified a permanent public use for a substantial portion of the property. 155 Wn.2d at 633. The Court held that the agency's decision to condemn a fee interest was a legislative determination subject to the deferential test for "necessity." *Id.* at 634-35.

The *Monorail* Court expressly distinguished *State ex rel. Wash. State Convention & Trade Center v. Evans* ("Convention Center"), 136 Wn.2d 811, 966 P.2d 1252 (1998), upon which Pine Forest relies, because in that case "a significant part [of the property] was *never* going to be put to a public use." *Monorail*, 155 Wn.2d at 633 (emphasis in original). There, the agency planned to sell three stories of the proposed four-story expansion to a private developer. *Convention Ctr.*, 136 Wn.2d at 820. Still, this Court affirmed the agency's public use determination because the private use was incidental to the public use. *Id.* at 822-23.

Not surprisingly, Pine Forest fails to identify any case where the condemning authority's determination of the particular land interests required for the contemplated project was reviewed under the public use prong. For example, in *City of Tacoma v. Humble Oil & Ref. Co.*, 57 Wn.2d 257, 258, 356 P.2d 586 (1960) (quoted in Petition at 15), this Court rejected a land owner's challenge to the city's determination to take fee

simple title to land, rather than allowing the owner to retain mineral rights, under the deferential necessity prong.⁹

In sum, the Court of Appeals correctly held that there is no legal basis to review the amount of property taken under the public use prong. The necessity analysis squarely applies to assertions by the condemnee that excess property is being taken, the exact issue in this case. *PUD v. NAFTZI*, 159 Wn.2d at 576. Here, the City has identified valid and undisputed public uses supporting acquisition of the Property. Pine Forest's argument raises solely the question of necessity for the City to acquire a fee interest, a question that does not merit review.

B. The Court of Appeals Applied the Correct Standard in Reviewing the City's Necessity Determination.

Because the question of the amount of property to be taken is one of necessity, the City's legislative determination of the amount of property necessary is conclusive absent a showing by Pine Forest of actual fraud or arbitrary and capricious conduct as would constitute constructive fraud.

⁹ See also *State ex rel. Tacoma Sch. Dist. No. 10, Pierce Cnty. v. Stojack*, 53 Wn.2d 55, 64, 330 P.2d 567 (1958) ("selection of land to be condemned by the proper public agency is conclusive" absent actual or constructive fraud); *City of Pullman, Whitman Cnty. v. Glover*, 73 Wn.2d 592, 595, 439 P.2d 975 (1968) (deferring to City's "administrative decision" that "its public purpose will be best served by taking the described property subject to the existing lease in favor of the United States"); *Neitzel v. Spokane Int'l Ry. Co.*, 65 Wash. 100, 105, 117 Pac. 864 (1911) (holding that the Legislature did not authorize railroad company to condemn fee simple interest); *State v. Larson*, 54 Wn.2d 86, 89, 338 P.2d 135 (1959) (affirming condemnor's determination of the extent of land interests "reasonably necessary to accomplish the public use or necessity"); *State ex rel. Eastvold v. Superior Court for Snohomish Cnty.*, 48 Wn.2d 417, 421, 294 P.2d 418 (1956) (same); *City of Seattle v. Faussett*, 123 Wash. 613, 619, 212 Pac. 1085 (1923) (same).

See *PUD v. NAFTZI*, 159 Wn.2d at 575-76. Pine Forest argues the Court of Appeals was overly deferential to the City's necessity determination, but the authorities Pine Forest cites for this proposition are all cases arising from statutory damages claims,¹⁰ rather than eminent domain cases. See Petition at 15-16 (quoting *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962, 954 P.2d 250 (1998); *Hayes v. City of Seattle*, 131 Wn.2d 706, 717-18, 934 P.2d 1179 (1997)). By contrast, this Court repeatedly has held that a condemnor's necessity determination is conclusive absent proof of actual or constructive fraud. See, e.g., *PUD v. NAFTZI*, 159 Wn.2d at 575-76; *Monorail*, 155 Wn.2d at 629; *Convention Ctr.*, 136 Wn.2d at 823.

A condemnor does not need to have "a public use planned for the property forever." *Monorail*, 155 Wn.2d at 620 (emphasis in original); *PUD v. NAFTZI*, 159 Wn.2d at 575. Thus, in *Monorail*, this Court held that a long-term need for the entire parcel during construction of a public facility covering only a portion of that land is "of an intensity and duration to justify the taking of the fee interest." 155 Wn.2d at 636. Contrary to Pine Forest's suggestion, the agency in that case conceded that it "currently ha[d] no planned use for any portion of the property that may remain uncovered by the final station design" and explained (as the City

¹⁰ RCW 64.40.020 provides monetary relief from acts of an agency that are "arbitrary, capricious, unlawful, or exceed lawful authority[.]"

does here) “that it would be premature to make definitive plans for the property that may possibly fall outside of the footprint.” 155 Wn.2d at 620. The Court agreed it was proper to defer to the agency’s determination that a fee take was necessary. *Id.* at 634-35.

Here, the Court of Appeals and the trial court correctly deferred to the City Council’s reasonable legislative determination that a fee interest is necessary and in the public’s best interest for the East Link Project and Bel-Red Transportation Improvements. Similar to *Monorail*, the City has an undisputed need to take a permanent interest in approximately two-thirds of the Property, and Sound Transit and the City have a long-term need to use the remainder of the Property through 2030 or beyond. Opinion, ¶ 55. Sound Transit and the City have yet to make certain budgeting, design, and coordination decisions that could extend the construction timeframe and shift or increase the size of the permanent public facilities that will be built on the Property. *Id.* Under these circumstances, a fee simple acquisition best serves both public projects. *See id.*

Tellingly, Pine Forest identifies only one case rejecting a condemnor’s necessity determination. *See* Petition at 18 (citing *Port of Everett v. Everett Improvement Co.*, 124 Wash. 486, 494, 214 Pac. 1064 (1923)); *see also Cent. Puget Sound Reg’l Transit Auth. v. Miller*, 156

Wn.2d 403, 412, 128 P.3d 588 (2006) (“Seldom has [our Supreme Court] held that a condemning authority has abused its trust in making a declaration of public necessity. This should not be surprising, for it is not to be presumed that such abuses often occur.”) (internal citation omitted)). In that one case, the condemnor had literally “no map, plan, specification or detailed description of the work intended to be constructed[.]” *Port of Everett*, 124 Wash. at 492; *see also* Opinion, ¶ 48 (condemnor “had neither a present nor a future use for the property it sought to condemn”). The *Port of Everett* Court concluded the necessity prong was not satisfied where the Port determined that it did not need the property it was seeking to condemn at the time but that it may need the property in the future. *Port of Everett*, 124 Wash. at 494. But “nothing in *Port of Everett* requires...a definitive use plan for the entire life of the property[.]” *Monorail*, 155 Wn.2d at 638 n.21. The Court of Appeals and the trial court correctly concluded that the current case presents the opposite situation as *Port of Everett*, because the City undeniably needs all of the Property now and for a substantial duration, even though it may not need an undefined portion of the Property at an undetermined future date. Opinion, ¶¶ 48-50; *see also* CP 452 (FOF, ¶ 11).

The Court of Appeals also correctly determined that the City did not commit fraud or constructive fraud by rejecting Pine Forest’s

proposals that the City take only a temporary interest in a portion of the Property. Opinion, ¶ 60. Pine Forest’s temporary use proposals included significant limitations on Sound Transit’s and the City’s abilities to use the Property. *Id.*, ¶ 56. For example, the October Proposal set an expiration date for completion of the project with significant holdover penalties. CP 406-08. Similarly, the February Revised Offer, while purporting to offer “flexibility for the City,” required the City to “agree[] on a timetable” and “provide[] certainty that the property will be returned to Pine Forest.” Ex. 1. These restrictions are particularly problematic because of uncertainty about the duration and scope of Sound Transit’s and the City’s uses. *See* CP 432 (¶ 17).

Although Pine Forest claims to have “guaranteed” millions of dollars in savings if the City agreed to a partial take, those promises proved illusory and contrary to the City’s own financial analysis. CP 433-34 (¶ 19); *see also* Opinion, ¶¶ 56, 59. Pine Forest’s “guarantee” argument rests on the February Revised Offer, a two-page settlement letter not provided to the trial court until the day of the public use and necessity hearing. Ex. 1; *see also* Opinion, ¶ 32. Contrary to Pine Forest’s suggestion, *see* Petition at 16-17, the Court of Appeals properly considered and rejected Pine Forest’s argument that the City’s decision not

to accept the February Revised Offer amounted to actual or constructive fraud. *See supra* at 10.¹¹

The February Revised Offer did not guarantee millions of dollars in savings—it did not even guarantee that Pine Forest would proceed with its proposed development project. *See* Ex. 1. The letter merely suggested that the City would pay less money for a lesser property interest, which is no savings at all. CP 433-34 (¶ 19). The February Revised Offer also failed to address other key questions such as how to reconcile Pine Forest’s inability to presently and definitively commit to its development project with the City’s need to proceed now with the acquisition of the Property; how transaction costs and other issues identified in the record would be addressed; how liability issues associated with co-development projects would be addressed; who exactly is making the “guarantee,” from what amount, with what means of enforcement, and with what, if any, collateral; and how the guarantee would be enforced. *See generally* CP 432-35.

¹¹ Although Pine Forest disingenuously suggests that any reliance on evidence discussing the October Offer is improper, *see* Petition at 16-17, Pine Forest fails to acknowledge that the briefing and evidence in support of the City’s motion for public use and necessity could not have addressed the February Revised Offer because Pine Forest did not provide the February Revised Offer to the City until *after* briefing on the motion for public use and necessity was complete. *See* Opinion, ¶ 32. Thus, the Court of Appeals (like the trial court and the City) correctly relied on evidence in the record discussing the October Offer to illustrate the fundamental issues that would arise if the City and Sound Transit attempt to coordinate multiple large public infrastructure projects with Pine Forest’s private development.

In arguing its “guarantee” in the Petition, Pine Forest also reverses the burden of proof, suggesting that the City was required to prove that Pine Forest’s proposal was unworkable. *Compare* Petition at 18-19 with *City of Blaine v. Feldstein*, 129 Wn. App. 73, 81, 117 P.3d 1169 (2005) (condemnee bears the burden to show actual or constructive fraud sufficient to reverse a condemnor’s decision of necessity). There is no requirement, however, that a public entity conclusively disprove the feasibility of every for-profit proposal of a private party. The City may choose between competing options where reasonable minds might differ as to the best alternative. *See e.g., Miller*, 156 Wn.2d at 417-18. Here, the City made its decision following “extensive discussions,” as well as multiple mediations, with Pine Forest about its proposal. Opinion, ¶ 57.

In sum, the City’s exercise of its discretion to proceed with a fee acquisition is neither actual nor constructive fraud simply because Pine Forest made an alternative proposal. If it were, any private party could defeat the exercise of eminent domain by making a proposal more to its liking (and benefit).

IV. CONCLUSION

The Court of Appeals correctly applied this Court’s precedent under article I, section 16 of the Washington Constitution governing judicial review of public use and necessity determinations. Here, the City

identified a valid public use (construction of public transit and roads) as well as numerous factors supporting a fee acquisition of the Property from Pine Forest. Pine Forest disagreed, and requested to retain a portion of the Property. The City carefully considered Pine Forest's proposal but ultimately did not accept it. This does not amount to actual or constructive fraud, and the decisions of the trial court and the Court of Appeals raise no conflict or constitutional issue mandating review. The City, therefore, respectfully requests that this Court deny Pine Forest's Petition and allow the City to proceed with construction of these critical infrastructure projects without further delay.

RESPECTFULLY SUBMITTED this 21st day of April, 2015.

PACIFICA LAW GROUP LLP

By s/ Jessica A. Skelton

Matthew J. Segal, WSBA # 29797

Jessica A. Skelton, WSBA # 36748

Jamie L. Lisagor, WSBA # 39946

Attorneys for Respondent City of Bellevue

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 21st day of April, 2015 I caused to be served a true copy of the foregoing document upon:

John W. Hempelmann
Stephen P. VanDerhoef
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle WA 98104-2323
Phone: 206-254-4400
Fax: 206-254-4500
jhempelmann@cairncross.com
svanderhoef@cairncross.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

Attorneys for Respondent Pine Forest Properties, Inc.

Howard M. Goodfriend Esq.
Smith Goodfriend, P.S.
1619 8th Ave N
Seattle, WA 98109-3007
Phone: 206-624-0974
Fax: 206-624-0809
Email: howard@washingtonappeals.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

Attorneys for Respondent Pine Forest Properties, Inc.

Jackson Schmidt
Jeffrey M. Odom
Daniel P. Pepple
Pepple Cantu Schmidt PLLC
1000 Second Ave Ste 2950
Seattle, WA 98104
Phone: (206) 625-1720
Fax: (206) 625-1627
jacksonschmidt@pjcs.com
jodom@pcslegal.com
dpepple@pcslegal.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

Attorneys for Respondents Prudential
Insurance Company and Prudential Asset
Resources

Bart Freedman
Thomas H. Wolfendale
K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Phone: 206-370-7655
Fax: 206-370-6064
Email: bart.freedman@klgates.com
Email: thomas.wolfendale@klgates.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

Attorneys for Clearwire Legacy LLC

I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct

DATED this 21st day of April, 2015.



Sydney Henderson

OFFICE RECEPTIONIST, CLERK

To: Sydney Henderson
Cc: jhempelmann@cairncross.com; svanderhoef@cairncross.com;
howard@washingtonappeals.com; jschmidt@pcslegal.com; jodom@pcslegal.com;
dpepple@pcslegal.com; bart.freedman@klgates.com; thomas.wolfendale@klgates.com;
Matthew Segal; Jessica Skelton; Jamie Lisagor
Subject: RE: City of Bellevue v. Pine Forest Properties, Inc., No. 91436-2 / City of Bellevue's Answer to
Petition for Review

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jschmidt@pcslegal.com; jodom@pcslegal.com; dpepple@pcslegal.com; bart.freedman@klgates.com;
thomas.wolfendale@klgates.com; Matthew Segal; Jessica Skelton; Jamie Lisagor
Subject: City of Bellevue v. Pine Forest Properties, Inc., No. 91436-2 / City of Bellevue's Answer to Petition for Review

Dear Clerk of the Court:

Attached for filing with the Court, please find Respondent City of Bellevue's Answer to Petition for Review.

Case Name: City of Bellevue v. Pine Forest Properties, Inc. ,et al.

Case Number: 91436-2

Sydney Henderson
Legal Assistant to:
Jessica A. Skelton, Kymberly K. Evanson
and Tania M. Culbertson



D 206.245.1730 F 206.245.1780
1191 Second Avenue, Suite 2000 Seattle, WA 98101-3404
Sydney.Henderson@PacificaLawGroup.com