

SUPREME COURT OF
THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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CITY OF BELLEVUE, a
Washington municipal corporation,

No. 91436-2

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Respondent,

v.

RESPONDENT CITY OF
BELLEVUE'S MOTION FOR
ACCELERATED REVIEW

PINE FOREST PROPERTIES,
INC., a Washington corporation,

Appellant,

and

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.

 ORIGINAL

RESPONDENT CITY OF BELLEVUE'S
MOTION FOR ACCELERATED REVIEW - 1

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I. INTRODUCTION

In this eminent domain action, Respondent City of Bellevue (“City”) seeks to condemn certain property (“Property”) owned by Petitioner Pine Forest Properties, Inc. (“Pine Forest”) needed for the East Link light rail project and other transportation improvements. The Court of Appeals correctly affirmed the trial court’s determination that the City has satisfied the requirements of public use and necessity, rejecting Pine Forest’s erroneous suggestion that the City must identify a public use for the entire parcel in perpetuity. *See City of Bellevue v. Pine Forest Props., Inc.* (“*Pine Forest Props.*”), ___ Wn. App. ___, 340 P.3d 938, 946-47 (2014) (citing *HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 634, 121 P.3d 1166 (2005) (condemning authority is not required “to have a public use planned for property *forever*”) (emphasis in original)).

Despite this clear authority, Pine Forest now seeks review by this Court of the Court of Appeals decision. Further delay of these condemnation proceedings pending resolution of Pine Forest’s Petition will continue to disrupt the planned extension of light rail, City transportation projects, and other related development, substantially impacting both public and private stakeholders. Accordingly, based on the City’s need for the Property and consistent with the Legislature’s direction

to expedite condemnation actions instituted by municipalities, *see* RCW 8.12.090, the City respectfully requests that the Court accelerate the disposition of Pine Forest's Petition for Review.

II. IDENTITY OF MOVING PARTY

Respondent City of Bellevue respectfully requests that the Court expedite review of this matter.

III. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 18.12, the City requests that the Court accelerate disposition of this appeal, including Pine Forest's Petition for Review. The City has filed an Answer to the Petition for Review concurrent with this Motion. Thus, briefing on the Petition for Review is complete and ripe for disposition.

IV. FACTS RELEVANT TO MOTION

The City needs to acquire the Property for at least two purposes: first, to further construction of the East Link light rail project in the City by agreement with the Central Puget Sound Regional Transit Authority ("Sound Transit"); and, second, to construct transportation improvements to accommodate growth stimulated by light rail and other development in the area. *See Pine Forest Props.*, 340 P.3d at 940. Pine Forest is creating delay and uncertainty for two important public projects involving the City,

Sound Transit, other coordinating local governments, and the public. *See* CP 432 (¶ 17).

The City instituted condemnation proceedings against Pine Forest nearly two years ago, in the fall of 2013. CP 1-96. After consenting to two extensions to allow the parties to pursue alternative dispute resolution, CP 97-126, the City moved for an order determining public use and necessity on January 23, 2014. CP 236-60. Pine Forest opposed the City's motion and, for the first time, requested a continuance to take discovery. *See* CP 282 (n.62) (footnote suggesting Pine Forest "*will propound* written discovery" (emphasis added)).

On March 17, 2014, following full briefing by the parties and oral argument, the trial court correctly determined that the City's condemnation of the Property satisfies the requirements of public use and necessity. CP 445-55. As the trial court found, Pine Forest did not dispute, and in fact stipulated, to the existence of public use and necessity for the City's acquisition of at least two-thirds of the Property and essentially conceded that the City's long-term use of the remaining third of the Property for construction staging is a public use. CP 448 (Findings of Fact ("FOF") ¶¶ 7-8). But Pine Forest asked the trial court to second guess the City's legislative determination that it needs to acquire the entire Property, something courts may only do where there is evidence of actual

or constructive fraud. *See Pub. Util. Dist. No. 2 of Grant Cnty. v. N. Am. Foreign Trade Zone Indus., LLC* (“*PUD v. NAFTZI*”), 159 Wn.2d 555, 575-76, 151 P.3d 176 (2007).

The trial court rejected Pine Forest’s suggestion that the City must identify a permanent use for the entire property, a proposition repeatedly rejected by this Court. CP 453 (Conclusions of Law (“COL”) ¶ 15); *see also PUD v. NAFTZI*, 159 Wn.2d at 573 (“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 trial court also properly rejected Pine Forest’s request for a discovery continuance, finding that Pine Forest failed to act with due diligence or show good cause for a continuance. CP 451 (FOF ¶ 15).¹ To date, Pine Forest has refused to agree to immediate use and possession upon the City’s deposit into the court registry the amount of the City’s offer of just compensation pursuant to RCW 8.25.070(3)—even though Pine Forest has *never* disputed that the City needs to entire Property for a public purpose for many years. *See* CP 305 (¶ 5), CP 306 (¶ 7).

Pine Forest subsequently filed a Notice of Appeal on April 16, 2014, the last possible day to do so. The Court of Appeals granted expedited review in response to the City’s argument that “delay in

¹ Pine Forest does not seek review of this issue.

resolution of the appeal would result in significant disruption and adverse construction consequences for the East Link Project.” *See Pine Forest Props.*, 340 P.3d at 945. In a 25-page published opinion, the Court of Appeals affirmed the trial court’s ruling in full. The Court of Appeals concluded that 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 Forest[.]” *Id.* at 949. Pine Forest moved for reconsideration, which motion was denied.

On March 19, 2015, Pine Forest filed a Petition for Review by this Court. The City has filed an Answer to the Petition for Review, and concurrently moves for expedited review.

**V. STATEMENT OF GROUNDS FOR RELIEF
AND ARGUMENT**

Pursuant to RAP 18.12, this Court “may set any review proceeding for accelerated disposition.” RAP 18.12 references RAP 1.2(c) and 18.8(a), both of which authorize alteration of the usual procedures under the Rules of Appellate Procedure “in order to serve the ends of justice[.]”

The ends of justice will be best served by speedy resolution of this appeal, including disposition of Pine Forest’s request for discretionary review of the Court of Appeals’ published opinion affirming the trial

court's determination of public use and necessity. Pine Forest's protracted appellate proceedings have already delayed the City's acquisition of the Property for two important public projects. *See* CP 130 (¶¶ 8-9).

Accelerated review is particularly appropriate here because the Legislature has provided that eminent domain actions brought by the City "shall have precedence of all cases in court except criminal cases." RCW 8.12.090; *see also In re Custody of Osborne*, 119 Wn. App. 133, 148 n.8, 79 P.3d 465 (2003) ("same policies favoring speedy resolution" of certain disputes at the trial court level "justify utilizing the procedures that are available to obtain accelerated review on appeal"); 3 Wash. Prac., Rules Practice, RAP 18.12 (7th ed.) ("There are times when it is necessary for the court to act swiftly, particularly in matters relating to affairs of the state or local government, or when irreparable harm to a party would result from delay."). Indeed, courts have granted accelerated review of similar appeals in the past. *See, e.g., HTK Mgmt., L.L.C.*, 155 Wn.2d at 621 (Court of Appeals granted accelerated review of appeal from public use and necessity determination).

Accordingly the City requests that this Court accelerate disposition of this appeal, and expedite review of Pine Forest's Petition for Review, which has been fully briefed.

RESPECTFULLY SUBMITTED this 21st day of April, 2015.

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PROOF 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 counsel listed below:

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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.



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Rec'd 4/21/2015

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Subject: City of Bellevue v. Pine Forest Properties, Inc. / City of Bellevue's Motion for Accelerated Review

Dear Clerk of the Court:

Attached for filing with the Court, please find Respondent City of Bellevue's Motion for Accelerated Review.

Case Name: City of Bellevue v. Pine Forest Properties, Inc. ,et al.
Case Number: 91436-2

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