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COURT OF APPEALS, DIVISION I NO. 76114-5

Supreme Court
of the State of Washington

95745-2

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THE CITY OF SEATTLE, a municipal corporation,

Petitioner/Appellee,

v.

HUGH K. SISLEY and MARTHA E. SISLEY, husband and wife, et al.,

Respondents/Appellants.

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# PETITION FOR REVIEW OF HUGH AND MARTHA SISLEY

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P. Arley Harrel, WSBA #05170
Patrick E. Byrnes, WSBA #45467
Attorneys for the Sisleys
Williams, Kastner & Gibbs, PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Ph: (206) 628-6600
Fx: (206) 628-6611
Email: aharrel@williamskastner.com
pbyrnes@williamskastner.com

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## I. IDENTITY OF PETITIONER

Hugh and Martha Sisley ask this Court to accept review of the decision designated in Part II.

## II. COURT OF APPEALS DECISION

The Sisleys respectfully submit that the Court of Appeals erred by upholding the trial court's orders restricting the Sisleys' access to information, documents, and witnesses relevant to the condemnation of their property. The Sisleys further submit that the Court of Appeals erred in denying their motion for reconsideration. In short, the Sisleys were denied materials in discovery that showed that the City of Seattle's act of condemning their property was arbitrary and capricious. Further, as the Sisleys learned through the City's responses to their Public Records Act requests seeking documents relating to the condemnation, which responses the City did not provide (in large part) until after briefing at the Court of Appeals level in this matter was closed, the City was sitting on thousands of pages of documents relating to the condemnation which cast the matter in a very different light than the City portrayed it in its presentation to the lower courts.

Indeed, while the City described its selection of the Sisley property as the result of a "perfect" process at the hearing before the trial court and denounced the Sisleys' contention that the City's action was arbitrary and

capricious as a conspiracy theory, RP 53-54, emails from City employees produced by the City just days after briefing before the Court of Appeals closed described the process very differently. In fact, the supervisor for City employee Chip Nevins, the only witness the City offered to be deposed and called at the PUN hearing, characterized the condemnation as "an f'ed up move by Law" that resulted "from lack of leadership under [the] previous administration." Other City employees acknowledged that the Sisley property was just blocks away from two other parks and opined that the Roosevelt neighborhood was not a "high need area."[1]

Thus, contrary to what the City told the lower courts, the selection of the Sisley property was far from perfect. The Sisleys contend that the City's conduct before the lower courts—that is, representing that the park selection process was "perfect" while sitting on internal emails that criticized and questioned the process and supported the Sisleys' arguments—may have been fraudulent and could be a basis for a motion to set aside the trial court's decree of public use and necessity under CR 60. The City's withholding of highly relevant documents allowed it to spin the story it wanted to the lower courts, which story turned out to be

[1] A true and correct copy of several emails produced by the City regarding the condemnation process in response to Public Records Act requests filed by the Sisleys is attached hereto as Appendix 2.

utterly contradicted by the City's own documents. All of this is an example of why robust discovery is necessary in condemnation actions.

A copy of the Court of Appeals' unpublished opinion dated February 12, 2018 and its March 16, 2018 order denying the Sisleys' motion for reconsideration are attached to this petition as Appendix 1.

## III. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err in affirming the trial court's orders denying the Sisleys access to information, documents, and witnesses relevant to the condemnation of their property?

## IV. STATEMENT OF THE CASE

### A. The City's Code Enforcement Efforts

Martha (84) and Hugh Sisley (91) have been a popular target of elected officials in the City of Seattle. Longtime residents of the Roosevelt neighborhood, the Sisleys own several properties in the area, which they had made available as affordable housing for tenants in a neighborhood rapidly becoming devoid of affordable housing. CP 166; RP 10:10-11:18.

Unfortunately, this is not a space devoid of detractors and critics. In 2008, the City received a complaint from a man who got into a dispute with the Sisleys' tenant. The City issued a notice of violation, and fined the Sisleys at a rate of $500 per day. CP 184-86. On direct orders from

the City Attorney's Office, City staff then sat back and "let the penalties continue to rack up on this one." CP 170.

And that is precisely what happened. By 2014, when combined with two smaller judgments, the Sisleys' liability ballooned to over $3 million. CP 172-72.

B. City Attorney Holmes's Press Conference.

In March 2015, the City Attorney's Office took its dispute with the Sisleys to the press. With judgment in hand, City Attorney Pete Holmes, along with the Mayor, convened a rally on the Sisley property—with neither permission nor apology—and declared to over 40 onlookers and members of the media that unless the Sisleys agreed to peaceably transfer their property to the City, it would be "seized by the sheriff." CP 165; CP 167. Mayor Murray was also quoted as planning to "take" the property, and turn it into something "the community can enjoy." CP 163.

The Seattle Times ran the story of Mayor Murray's press conference on the Sisleys' property on the front page of the newspaper in an article titled: "Park may replace Roosevelt-area blight." *Id.* Online, the story was "Seattle plans park on notorious landlords' property." CP 165.

Significantly, at the time of the media blitz, there was no plan for what the Sisley park "would look like," nor funding for it. CP 165-66.

C. The Sisley "Pocket Park".

City Acquisition Planner Chip Nevins has been with the City since 2008 (CP 740), but had never been involved in a condemnation before his involvement with the Sisleys' property. CP 741. He had no intrinsic interest in the Sisley property, or even in the Roosevelt neighborhood. The "first focus" in parks acquisition is always "serving the gap"; that is, trying to site parks in urban areas that are more than a quarter mile from a park. RP 19:22-20:1. According to Mr. Nevins, there were "many… other urban villages in greater need than Roosevelt." CP 758. For example, Bitter Lake, Lake City, Westwood Southwest, and North Rainier all have significant "gaps" which could be served by additional parks. CP 757-58.

But around the time City Attorney Holmes did his press conference on the Sisley property, Mr. Nevins began getting pulled into "multiple meetings" with high level officials in the City Attorney's Office. CP 751-52; CP 754. As Mr. Nevins recalled it, the Sisleys' name was raised by the City Attorney's Office before it was raised in Mr. Nevins' own department. *Id.* Under instructions, Mr. Nevins limited his focus to Roosevelt. CP 758.

The condemnation process became something of a black box. The City produced no documents, and refused to produce witnesses to testify

about the process other than Mr. Nevins. Despite this, the Sisleys did learn that Mr. Nevins sharply diverged from his usual process in connection with the condemnation of the Sisleys' property. Instead of using the spreadsheet he had always used to identify acquisition properties, he prepared a memorandum discussing the Sisleys' property that was never produced in discovery. CP 750. Mr. Nevins considered no alternative properties, and had no backup properties in mind. CP 765. And though the taking of the Sisley property was argued to be, after-the-fact, a way of serving Roosevelt High School, Mr. Nevins admitted that he did not talk to a single school official. CP 761-62.[2]

The City ultimately selected the Sisleys' property located at 1322 NE 65th Street. CP 168. Two blocks east of Whole Foods, the Sisley property was clearly not in a park "gap." Rather, it was approximately four blocks from Cowen/Ravenna Park, eight blocks from Froula Park, and a half mile from Greenlake Park. CP 1529; *see also* CP 766 (deposition testimony).

Though withheld in discovery, the Sisleys managed to secure two draft ordinances online. Both authorized "the acquisition of [the Sisleys'] real property… *to satisfy judgments...*" (CP 302; CP 306) (emphasis

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[2] Similarly, contamination is always a significant consideration in condemnations. The City skipped that step, too. CP 764.

supplied), effectively making good on City Attorney Holmes's promise at the rally (CP 167). And both draft ordinances go on to detail the City's history with the Sisleys, including the code enforcement cases and amounts owed. CP 302-311.

The City ultimately scrubbed these drafts in favor of a benign ordinance with form language about the "need for open space" and desire to "promote the livability of the Roosevelt Residential Urban Village." CP 6-9. This scrubbed ordinance came before the City Council, which passed it after a cursory discussion. *See* RP 9:12-14:13.

Condemnation proceedings against the Sisleys were then initiated by the City Attorney's Office. CP 1.

D. Proceedings Below.

The case was initially set for a Public Use and Necessity hearing on the papers. But the Sisleys pointed out that rushing public use and necessity through, on the papers, would deprive them of due process – especially given their argument that they needed an opportunity to marshal evidence showing that the City had condemned their property not simply to provide a park, but to get back at them for providing what some considered to be unsightly low-income housing in the Roosevelt neighborhood. CP 110. The City agreed to hold a hearing on this issue

and the case scheduling order was rewritten to schedule a day for a live testimony hearing. CP 354; CP 368.

The parties proceeded to litigate the case.

1. <u>The City Persuades the Trial Court to Sharply Limit Discovery</u>

The Sisleys propounded relatively targeted discovery seeking:

- Correspondence and emails related to the acquisition of the Sisley property and purpose therefor (CP 229);
- Documents related to the nature and timing of the park's funding (*id.*);
- Minutes and annual reports related to the Parks Department and Oversight Committee (CP 230);
- Documents related to the City's evaluation of the property for park purposes, and consideration of other properties (CP 230; CP 232);
- All draft ordinances related to the property (*id.*);
- Documents related to City Attorney Holmes's press conference (CP 231-32); and
- The City's most recent parks master plan (CP 232);

The Sisleys also served deposition notices for key officials involved in the decision-making, including Mr. Nevins. *See* CP 124-139.

In August 2016, the City served limited responses and broad objections. It took the position that the only relevant information was the "extant record," comprised of its lawyer-drafted legislative record and

scrubbed condemnation Ordinance 124880. *See* CP 354. All other documents, notes, conversations, details, and ideas relating to the Sisleys that predated the passage of Ordinance 124800 were "irrelevant and undiscoverable." CP 477- 487. When discussions failed, the parties brought discovery motions. CP 201; CP 414.

The trial court accepted the City's reasoning wholesale, ruling that it need not produce any further discovery. CP 573-74. It also precluded all depositions, with the exception of Mr. Nevins, who the City voluntarily made available. CP 575-76. The trial court went on to deny additional motions to compel brought by the Sisleys and grant additional motions to preclude discovery brought by the City. *See* CP 647-50. In total, four discovery orders were granted in favor of the City – effectively leaving the Sisleys with the public record, and whatever they could find independent of discovery.

2. The City Objects More Than 20 Times, Over the Course of the Sisleys' Limited Presentation of Evidence at the Public Use and Necessity Hearing, and then Mocks Their Position As "Unsupported Conspiracy Theory"

At the public use and necessity hearing, the City's case-in-chief consisted of a video from the City Council meeting, when it deliberated—for two to three minutes—and voted on the Ordinance 124880. RP 9:11-14:14. At no point did the council explain why the Roosevelt area was in

need of a park—when three other parks were close by—let alone why it should jump ahead of more underserved neighborhoods.

Intending to rebut the nearly nonexistent evidence, the Sisleys subpoenaed Ed Murray, Patrick Downs, Donald Harris, Chip Nevins, Ben Noble, and Michael Shiosaki. CP 1071. The City immediately moved to quash the subpoenas (with the exception of Chip Nevins). The trial court, again, agreed—preventing the Sisleys from offering testimony or evidence from the individuals who had involvement with the decision-makers, the subject matter, and the Sisleys.

The entire hearing was limited to two hours, with over 20 objections interposed during the Sisleys' questioning of the only witness available to them, Mr. Nevins. *See* RP 16-47.

Thereafter, in argument, after having completely prevented any meaningful access to the evidence, the City characterized its selection of this park property as "perfect," while deriding the Sisleys' allegation of bad faith as "unsupported by evidence" and "conspiracy theory":

> This is the one that the council picked, and it does a perfect job of providing the community with a public park.
>
> On the issue of arbitrary and capricious conduct, there's been no showing that the council acted arbitrarily and capriciously. There's this idea that there's a plot to somehow, you know, get back at the Sisleys for years of trying to collect on judgments for violations of the code.

> So there's no showing that a public park and the selection of the park was done fraudulently, and just because they -- the Sisleys might believe that there's some ill will behind the mayor's selection or the parks department's recommendation -- or mayor's recommendation and the park department's recommendation, that doesn't negate a showing of necessity that the council has made and the determination of necessity that the council has made.
>
> As long as we've made that showing of necessity, which we have here, and the record reflects, any other conspiracy theory otherwise is really irrelevant to the public use and necessity determination.

RP 53-54.

The trial court, predictably, in a three page order, found in favor of the City with respect to public use and necessity. CP 1646-48.

E. The Public Records Act Requests.

After the City entirely resisted producing documents in discovery in the condemnation case, the Sisleys filed two Public Records Act requests with the City seeking documents and internal communications relating to the condemnation in November 2016. The City only began to substantively respond to the request in May 2017—just six days after briefing before the Court of Appeals in this matter closed. The City's responsive documents included incriminating emails, including one in which the City's star witness's *supervisor* characterized the condemnation this way:

> … yes was (sic) an f'ed up move by Law, but by the time we got involved they had coopted Parks.

> Actually results from lack of leadership under previous administration; that is when this got hatched.

The documents also revealed that, contrary to the City's arguments before the trial court, the City's employees did not actually think that the Sisleys' property was "perfect" for a park. Instead, City employees all but mocked the idea:

> "If we were condemn [sic] Sisley's properties, I have a feeling we might be thinking differently about priority use. This is blocks from Ravenna Park and Cowen Park and RIGHT NEXT to the light rail station."
>
> "Don't think [Roosevelt] is a high need area."

The Sisleys, believing that the City held records responsive to their PRA requests beyond what it produced initially, then filed a lawsuit against the City alleging violations of the Public Records Act in July 2017. The City confirmed the Sisleys' suspicions that not all responsive records had been produced when it belatedly produced over 1,600 pages of additional records responsive to the PRA requests in January 2018. Among those records were emails that further showed the City's condemnation to be arbitrary and capricious, including an email describing the condemnation as the idea of the City's legal department and an email stating that, contrary to the City's later representations, the Roosevelt neighborhood did not have an open space deficit. These are precisely the kind of documents that tend to show that the City's conduct was arbitrary and

capricious, and the Sisleys should have had access to them prior to the PUN hearing.

## V. ARGUMENT

RAP 13.4(b)(3) provides that the Supreme Court may accept a petition for review "[i]f a significant question of law under the Constitution of the State of Washington or of the United States is involved." Further, RAP 13.4(b)(4) provides that the Supreme Court may accept review of a petition "[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court. The Sisleys submit that review by this Court is appropriate on both of these bases.

### A. Discovery in Civil Cases is of Constitutional Importance.

In a civil case, "the right of discovery authorized by the civil rules" is of constitutional dimension. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991); *see also Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009) ("As we have said before, 'it is common legal knowledge that extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense."); *Lowy v. PeaceHealth*, 174 Wn.2d 769, 776-77, 280 P.3d 1078 (2012) (discovery rules effectuate the constitutional mandate through "a broad right of discovery" and "relatively narrow restrictions"). A party's

interest in discovery is even more pronounced when the information sought in discovery is held by only one source. *Puget Sound Blood Ctr.*, 117 Wn.2d at 783.

Here, the City stymied virtually all efforts by the Sisleys to try to uncover the true reason for the condemnation proceeding. Despite the fact that the Sisleys served targeted discovery, the City served broad objections and took the position that the only relevant information was the "extant record," comprised of its lawyer-drafted legislative record and scrubbed Ordinance 124880. *See* CP 354. All other documents, notes, conversations, details, and ideas relating to the Sisleys that predated the passage of Ordinance 124800, were, according to the City, "irrelevant and undiscoverable." CP 477- 487. The trial court ultimately entered four discovery orders in favor of the City, effectively leaving the Sisleys with the public record and any information they could find independent of discovery.

Despite the fact that the City never produced its internal communications about the Sisleys in this action, it argued that there was no bad faith or ill-will connected to the condemnation and that the condemnation reflected a perfect process.[3] The City's characterization of the condemnation as "perfect" was shown to be blatantly incorrect based

[3] RP 53:15-54:13.

on internal communications the City belatedly produced only days after the Sisleys' deadline for submitting their reply brief to the Court of Appeals had passed. This led to the Sisleys filing a motion for leave to supplement the appellate record on July 7, 2017, which motion was denied on July 12, 2017. The Sisleys' suspicion that responsive documents were withheld from them was further confirmed when the City produced an additional 1,600 pages of records in January 2018. The additional documents relating to the condemnation proceeding withheld by the City in discovery in this matter but produced in response to the Sisleys' Public Records Act request demonstrate that the Sisleys were not accorded a due process opportunity for discovery.

Further, to take an individual's property for public use while denying that individual the opportunity to examine documents related to the condemnation or examine key decision makers is patently one-sided, particularly where the condemnor holds thousands of pages of documents related to the condemnation. Yet that is precisely what happened here.

A determination of public necessity is generally legislative in nature, so long as it is made "in the absence of bad faith, arbitrary, capricious or fraudulent action." *State ex rel. Lange v. Superior Court*, 61 Wn.2d 153, 157, 377 P.2d 425 (1963); *see also Port of Everett v. Everett Improvement Co.*, 124 Wash. 486, 214 P. 1064 (1923) (condemnation

disallowed as arbitrary when agency had "no map, plan, specification, or detailed description of the work intended to be constructed accompanied the resolution"). The Sisleys simply were denied a fair opportunity to demonstrate that the City's conduct was arbitrary and capricious, or done in bad faith.

The Constitution guarantees "a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (must "survive the crucible of meaningful adversarial testing"). This was originally a criminal law principle, to be sure, but it has since been expanded to civil cases—and even administrative proceedings. *See, e.g., State ex rel. Puget Sound Navigation Co. v. Dep't of Transp.*, 33 Wn.2d 448, 489, 206 P.2d 456 (1949) (workers' compensation applicant denied due process if deprived of opportunity to introduce evidence); *Robles v. Dep't of Labor & Indus.*, 48 Wn. App. 490, 495, 739 P.2d 727 (1987) (must have the opportunity "to meet, explain, or rebut"); *State ex rel. Puget Sound Nav. Co. v. Dep't of Transp. of Wash.*, 33 Wn.2d 448, 486, 206 P.2d 456 (1949) ("All parties... must be given opportunity to... offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.").

That did not happen below, however. The City was permitted to make representations, offer witnesses, and present sanitized documents—

all free from scrutiny—and later tout "the lack of evidence" supporting the Sisleys' position. This is facially unjust, in addition to being a sharp departure from the authorities cited in the City's own appellate brief.

The Sisleys submit that this denial of access to discovery, and the concomitant denial of their right to present the full story of the condemnation to the trial court, presents a significant question of law under the Washington Constitution that should be addressed by this Court.

B. The Condemnation Proceeding Also Presents an Issue of Substantial Public Interest.

This is, ultimately, a case about governmental power and transparency. "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." Letter to W.T. Barry, Aug. 4, 1822, 9 *The Writings of James Madison* 103 (Gaillard Hunt, ed. 1910).

Local government in Washington is—rightly—held to a high standard. As the Legislature eloquently put it:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

RCW 42.56.030; *see also* Wash. Const. art. I, § 1 ("All political power is inherent in the people, and governments derive their just powers from the

consent of the governed, and are established to protect and maintain individual rights."); *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (identifying the accountability to the people of public officials as one of "the most central tenets of representative government"); *cf. Metro. Park Dist. of Tacoma v. State, Dep't of Nat. Res.*, 85 Wn.2d 821, 829, 539 P.2d 854 (1975) ("The conduct of government should always be scrupulously just in dealing with its citizens").

There is a substantial public interest, as here, when a case issue has the potential to repeat and impact other disputes. *See, e.g., State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (test satisfied where the issue before it, "while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County ... where a DOSA [drug offender sentencing alternative] was or is at issue").[4] There will not be any credible dispute on this issue. How the Court interprets the scope of access to documents, information and witnesses in condemnation

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[4] *See also In re Adoption of T.A.W.*, 387 P.3d 636, 638 (2016) (granting review under RAP 13.4(b)(4) because if impact on future cases where "[t]his context may also provide grounds for difference of opinion in resolving the plain meaning of the words in RCW 13.34.040."); *Sessom v. Mentor*, 155 Wn. App. 191, 195 (2010) (granting review as a substantial public interest where "[a]lthough the underlying case involved a money judgment in a suit between private parties only, the issue of how the extension of judgments statues is to be applied could potentially affect many cases and it is thus a matter of broad public import.").

proceedings affects every condemnation proceeding initiated in Washington.

The City's position—accepted by the trial court—was that the only inquiries were whether there was a "need" for the given use of property, and whether the City "intends to use the property for the avowed purpose." CP 1683. By this logic, there are no limits on the government's authority to take property, so long as it "actually" uses the property in the stated way. To illustrate:

- The City of Seattle has a colorable need for "open space." See Seattle OPCD – Parks and Open Space Element, https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web../p2450578.pdf (last visited March 1, 2017). So the City Council votes to take the home of every person running against an incumbent councilperson for use as open space.

- The City of Seattle has a problem with "fats, oils, and grease" (FOG) causing costly blockages and backups in the sewer lines. Drainage and Sewer, http://www.seattle.gov/util/MyServices/DrainageSewer/ (last visited March 1, 2017). So the City Council votes to place a depository for all of the City's FOG next to the home of Sergeant Ella Elias, who recently secured a verdict against the City police department for unlawful retaliation.

- The City of Seattle can point to a vague need for "parks," which "people" advocated for some years ago. *See* RP 48:18-24. A new city council is elected, based upon racially-charged appeals to the voters, and promptly votes to turn the Masjid al-Taqwa Mosque into a public park.

These examples are admittedly extreme. But they are also *entirely* permissible if the City's reasoning were law. The legislative motives

cannot be questioned; the decision is legislative; *ipso facto*, the City gets to do what it wants—so long as the property will "actually" be used for open space, a sewage dumping ground, or as a park.

And not only is authority unchecked—in a context where the State Constitution gives determinative authority to the courts[5]—but the party having property taken cannot even secure equal access to the evidence in discovery. The inherent power imbalance, strong public interest in agency transparency, and constitutional overlay all militate in favor of review.

## VI. CONCLUSION

The courts below erred in denying the Sisleys access to information, documents, and witnesses relevant to City's true reasons for condemning their property. As a result, the Sisleys respectfully request that this Court accept review of this matter.

[5] *See* Wash. Const. Art. 1, Sect. 16; *see also Manufactured Hous. Cmtys. v. State,* 142 Wn.2d 347, 359, 13 P.3d 183 (2000) (Washington "has a long history of extending greater protections against governmental takings of private property by literally defining what constitutes 'private use.'")

RESPECTFULLY SUBMITTED this 16th day of April, 2018.

P. Arley Harrel, WSBA #05170
Patrick E. Byrnes, WSBA #45467
Williams Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Ph. (206) 628-6600
Fx: (206) 628-6611
Email: aharrel@williamskastner.com
pbyrnes@williamskastner.com

*Counsel for Appellants Hugh and Martha Sisley*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that, on the date indicated below, a copy of the foregoing document was forwarded for service upon counsel of record in the manner indicated below:

*Attorneys for Petitioner The City of Seattle:*

| | |
|---|---|
| Jessica Nadelman<br>Peter S. Holmes, Seattle City Attorney<br>701 Fifth Avenue, Suite 2050<br>Seattle, WA 98104<br>Telephone: (206) 233-2169<br>Fax: (206) 682-8284<br>Email: jessica.nadelman@seattle.gov | ☐ Via ECF/Filing<br>☐ Via Legal Messenger<br>☐ Via Facsimile<br>☑ Via Electronic Mail<br>☐ Via U.S. Mail<br>☐ Via Overnight Courier |
| Stephen C. Willey, WSBA #24499<br>Brandi B. Balanda, WSBA #48836<br>Savitt Bruce & Willey LLP<br>1425 Fourth Avenue, Suite 800<br>Seattle, WA 98101<br>Telephone (206) 749-0500<br>Fax: (206) 749-0600<br>Email: swilley@sbwllp.com<br>Email: bbalanda@sbwllp.com | ☐ Via ECF/Filing<br>☐ Via Legal Messenger<br>☐ Via Facsimile<br>☑ Via Electronic Mail<br>☐ Via U.S. Mail<br>☐ Via Overnight Courier |

*Attorneys for Respondents Roosevelt Development Group, LLC and Roosevelt Development Group, LLC (RDG, LLC):*

| | |
|---|---|
| Mathew L. Harrington, WSBA #33276<br>Lance A. Pelletier, WSBA #49030<br>Stokes Lawrence, P.S.<br>1420 Fifth Avenue, Suite 3000<br>Seattle, WA 98104<br>Telephone: (206) 626-6000<br>Fax: (206) 464-1496<br>Email: MLH@stokeslaw.com<br>Email: LAP@stokeslaw.com | ☐Via ECF/Filing<br>☐ Via Legal Messenger<br>☐ Via Facsimile<br>☑ Via Electronic Mail<br>☐ Via U.S. Mail<br>☐ Via Overnight Courier |

*Attorneys for Respondent King County*

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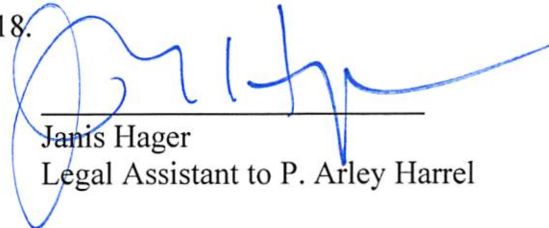
|---|---|
| Jenifer Merkel, WSBA #34472<br>King County Prosecutor's Office - Civil<br>516 3rd Avenue, Room W400<br>Seattle, WA 98104-2388<br>Telephone: (206) 477-2728<br>Fax: (206) 296-0191<br>Email: jenifer.merkel@kingcounty.gov | ☐Via ECF/Filing<br>☐ Via Legal Messenger<br>☐ Via Facsimile<br>☑ Via Electronic Mail<br>☐ Via U.S. Mail<br>☐ Via Overnight Courier |

DATED this 16th day of April, 2018.



Janis Hager
Legal Assistant to P. Arley Harrel



6411217.2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

| | | |
|---|---|---|
| THE CITY OF SEATTLE, a municipal corporation,<br><br>Respondent,<br><br>v.<br><br>HUGH K. SISLEY and MARTHA E. SISLEY, husband and wife; HUGH K. SISLEY, individually and on behalf of their marital community;<br><br>Appellants,<br><br>JOHN SANDIFER in his capacity as judgment creditor; ROOSEVELT DEVELOPMENT GROUP, LLC, a Washington limited liability company, in its capacity as lessee; ROOSEVELT DEVELOPMENT GROUP, LLC (RDG, LLC), a Washington limited liability company by Jonathan Breiner, managing member, in its capacity as lessee; and KING COUNTY, a subdivision of the state of Washington,<br><br>Additional Respondents. | ) | No. 76114-5-I<br><br>UNPUBLISHED OPINION<br><br>FILED: February 12, 2018 |

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2018 FEB 12 AM 11:07

VERELLEN, C.J. — Hugh and Martha Sisley challenge the superior court decree of public use and necessity supporting the condemnation of their property (the property) by the City of Seattle (City). Specifically, they contend the City's selection of the property in the Roosevelt neighborhood for a park was a pretext borne out of animus arising from legal disputes with the City.

Appendix 1

The Seattle City Council (City Council) reviewed reports and heard public comment about the proposed acquisition, and the trial court reviewed the evidence and held a hearing. Because there is no evidence or allegation that the City condemned the property for private use or to block another lawful use and the facts and circumstances support a genuine need for public park space in Roosevelt, the Sisleys' allegations of animus do not establish actual or constructive fraud amounting to arbitrary and capricious conduct. The City is not required to establish a lack of other viable alternatives for park space.

The Sisleys argue the court's restrictive discovery rulings frustrated their efforts to document the level and extent of animus and bad faith. But the trial court has broad discretion to narrow discovery requests. Restricting discovery to the contemplated acquisition of the property, including the criteria used for selecting the property and whether the City followed the criteria was within the discretion of the trial court.

Therefore, we affirm.

## FACTS

The City considers the Roosevelt neighborhood in northeast Seattle an "underserved community that lacks enough quality open space for public use."[1] The City has identified the need for more park space in Roosevelt dating back to neighborhood plans developed in 1998 and a gap report in 2006.

[1] Clerk's Papers (CP) at 357.

Chip Nevins, the City's Department of Parks and Recreation (DPR) acquisition planner, worked with the Roosevelt community to identify possible park spaces. Roosevelt community members and the neighborhood association met with DPR and discussed adding park space to preserve Roosevelt High School's view corridors. The City upzoned the Roosevelt neighborhood to allow for increased density. Sound Transit is scheduled to open a new light rail station in the neighborhood in 2020.

As part of city-wide planning, DPR prepared a 2011 development plan and a 2011 gap update report reflecting Roosevelt's planned density increase and the lack of sufficient park and open space. In January 2012, the City Council passed Resolution 31347, which declared the City's intent "to promote and enhance the livability" of Roosevelt in the face of new development and to further "livability, social equity, and neighborhood revitalization."[2]

In 2015, the City allocated funds to address Roosevelt's park needs and the goal of increasing green space and livability in view of increasing density and urbanization.[3] Nevins evaluated areas in Roosevelt as potential park sites. He consulted the 1998 Roosevelt neighborhood plan, the 2011 development plan, the 2011 gap report, and Resolution 31347. Nevins used the general criteria that DPR considers when evaluating potential park space such as does a potential park space service an identified gap in park space within a neighborhood, is it on a

[2] CP at 71-76.

[3] A portion of the funding was contemplated to come from several judgments against the Sisleys totaling approximately $3,000,000.

pedestrian route, is it relatively flat with good solar access, etc. Additionally, the City prioritizes underutilized and non-contaminated sites. Nevins and DPR concluded the property satisfied the criteria.

On September 25, 2015, a committee of the City Council met to consider acquiring the property for a public park through Council Bill 118509. The committee heard public comment and discussed e-mails from community members and information it received from the Roosevelt Neighborhood Association regarding the proposed park. The committee also heard from Ben Noble, the City's budget director, and DPR representatives about Roosevelt's historical open space and park needs, the impact of the planned light rail station, the anticipated increase in density, and DPR's selection of the property as a park site. The committee discussed the City's competing policy goals to provide open space and affordable housing given increasing neighborhood density, and how acquiring the property for a park would foster the former goal. The committee unanimously passed the council bill for consideration by the full City Council.

On October 5, 2015, the full City Council heard public comment regarding the proposed acquisition. The Sisleys did not attend the meeting. Community members expressed support. The City Council unanimously adopted the ordinance that the property "be acquired for open space, park, and recreation purposes for the City through negotiations and the use of eminent domain (condemnation) if necessary."[4]

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[4] CP at 359.

The City's attempts to negotiate with the Sisleys failed, and the City initiated this condemnation action.

The City filed a public use and necessity application. The Sisleys propounded extensive discovery which focused on the City's collection of its judgments against them. The Sisleys requested discovery regarding (1) a voter-approved funding mechanism for Seattle parks unrelated to this condemnation, (2) other Sisley-owned properties, (3) all communications regarding the property, and (4) other conduct by and court judgments against the Sisleys. The Sisleys also noted six depositions, including that of Mayor Edward Murray.

The City provided responses and objections to the Sisleys' written discovery, produced documents, and made Chip Nevins available for deposition.

The court granted the City's motion for a protective order and denied the Sisleys' motion to compel. The court observed:

> The scope of discovery in this matter (including depositions) with respect to the Court's assessment of public use and necessity is and shall be limited to the contemplated acquisition of the Sisleys' property for a public park pursuant to Council Bill 118509 and Ordinance 124880.[5]

The court ruled the Sisleys were not entitled to depose Mayor Murray or parks personnel other than Nevins. The Sisleys served additional discovery requests similar to their initial requests. The day after the City provided responses and objections, the Sisleys propounded more discovery, noting four depositions of City employees, officials, and a member of the board of park commissioners. The

[5] CP at 576.

Sisleys made a subsequent request for information relating to the City's 2000 and 2008 parks levies. The trial court granted the City's motion for a second protective order. The order prohibited "any further discovery, including depositions, regarding or relating to public use and necessity without prior court authorization."[6]

Four days before the scheduled public use and necessity hearing, the Sisleys issued six subpoenas commanding Mayor Murray, an assistant city attorney, and four others to testify at the hearing. The City filed a motion to quash the subpoenas. The court granted the motion in part, allowing the Sisleys to call Nevins as a witness with his testimony limited to

> matters within his personal knowledge that strictly relate to the three part test enunciated in Petition of City of Seattle, 96 WA.2d 616, 625 (1981): (1) whether the use is really public, (2) whether the public interest requires it, and (3) whether the property appropriated is necessary for the purpose.[7]

The court held an evidentiary hearing. The City presented an excerpt of the video recording of the City Council's October 5 meeting. The City also confirmed, through Nevins' live testimony, (1) the entire property will be used for a public park, (2) it is a flat and vacant lot adjacent to Roosevelt High School, (3) using the property as a public park will preserve view corridors of that neighborhood landmark, and (4) it will also help satisfy a longstanding and documented need for additional park and open space in the area.

On November 21, 2016, King County Superior Court entered findings and ordered that "the proposed acquisition is for a public use, is in the public interest

[6] CP at 987.

[7] CP at 1363.

and that the acquisition is necessary to serve the public use."[8] The court ordered the matter of just compensation to proceed to trial.

The Sisleys appeal.

ANALYSIS

I. Public Use and Necessity Decree

The Sisleys contend the public use and necessity decree was arbitrary, a result of bad faith, collusion, and fraud.

To enter a decree of public use and necessity, a court must find the contemplated use of the property is really a public use, public interest requires the public use, and the property to be acquired is necessary to facilitate this public use.[9] "The question of whether the use is really a public use is a judicial determination."[10] But "a legislative declaration will be accorded great weight."[11]

The necessity determination is a legislative question, and a "declaration of necessity by a legislative body is 'conclusive in the absence of proof of actual fraud or arbitrary and capricious conduct, as would constitute constructive fraud.'"[12] Arbitrary and capricious conduct is "willful and unreasoning action,

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[8] CP at 1648.

[9] Public Util. Dist. No. 2 of Grant County v. N. Am. Foreign Trade Zone Indus., LLC, 159 Wn.2d 555, 573, 151 P.3d 176 (2007).

[10] Id.; WASH. CONST. art I, § 16.

[11] City of Des Moines v. Hemenway, 73 Wn.2d 130, 133, 437 P.2d 171 (1968).

[12] N. Am. Foreign Trade Zone Indus., 159 Wn.2d at 575-76 (quoting HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth., 155 Wn.2d 612, 629, 121 P.3d 1166 (2005)).

without consideration and regard for facts or circumstances."[13] "A condemnation of private property is necessary if it is 'reasonably necessary' under the circumstances."[14] A particular condemnation is necessary as long as it appropriately facilitates a public use

> when there is a reasonable connection between the public use and the actual property, this element is satisfied. It need not be the best or only way to accomplish a public goal. [Our Supreme Court] has held already that the "mere showing" that another location is just as reasonable does not make the selection arbitrary and capricious.[15]

For fraud or constructive fraud in this setting, there must be evidence showing

> the public use was merely a pretext to effectuate a private use on the condemned lands. . . . [S]ome relevant considerations are the dollar contribution of the private party, the percentage of public versus private use, and whether the private use is occurring in an architectural surplus of usable space.[16]

Where the trial court has weighed the evidence supporting public necessity, we review the record to determine only whether the factual findings are supported by substantial evidence.[17] "Substantial evidence is viewed in the light most

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[13] State v. Hutch, 30 Wn. App. 28, 35, 631 P.2d 1014 (1981).

[14] N. Am. Foreign Trade Zone Indus., 159 Wn.2d at 576 (internal quotation marks omitted) (quoting Seattle Popular Monorail Auth., 156 Wn.2d at 636 n.19).

[15] Cent. Puget Sound Transit Auth. v. Miller, 156 Wn.2d 403, 421, 28 P.3d 588 (2006) (quoting State ex rel. Hunter v. Superior Court, 34 Wn.2d 214, 219, 208 P.2d 866 (1949)).

[16] State ex rel. Wash. State Convention and Trade Ctr. v. Evans, 136 Wn.2d 811, 823, 966 P.2d 1252 (1998).

[17] Miller, 156 Wn.2d at 419.

favorable to the respondent and is evidence that would 'persuade a fair-minded, rational person of the truth of the finding.'"[18]

The Sisleys do not dispute that a public park constitutes a valid public use.[19] The Sisleys suggest it was not necessary because there were other better suited areas for this project. But "[i]t need not be the best or only way to accomplish a public goal."[20]

And there is a reasonable connection between the public use of a park in Roosevelt's core and the property. The property is a flat vacant lot immediately south of Roosevelt High School, within walking distance from the planned light rail station. The City's report, public comment, and City Council's remarks indicate the use of the property as public park space will serve a recognized gap in Roosevelt park space, further the City's commitment to provide more park and open space, and provide an important public amenity for the neighborhood.

The Sisleys argue the City engaged in fraud, specifically, "the entire taking was a pretext borne out of animus."[21] But fraud in this setting relates to a pretext for a private use.[22] The ordinance describes the need for additional park space in Roosevelt, explains the property's qualifications to be a "new neighborhood park,"

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[18] Id. (quoting State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)).

[19] See RCW 8.12.030 (authorizing Washington municipalities to "condemn land and property" for a wide range of public uses, including "public parks").

[20] Miller, 156 Wn.2d at 421.

[21] Reply Br. at 11.

[22] See Evans, 136 Wn.2d at 823 ("Fraud or constructive fraud would occur if the public use was merely a pretext to effectuate a private use on the condemned lands.").

and provides for acquisition of the property to "be placed under the jurisdiction of [DPR] and designated for open space, park, and recreation purposes."[23] The Sisleys suggest this was "a dispute pertaining to 'public necessity,' largely arising out of private benefit being conferred,"[24] but do not identify any private benefit. There is no showing of actual fraud.

The Sisleys also suggest the City engaged in constructive fraud, but do not establish arbitrary and capricious conduct amounting to constructive fraud.

In view of the voluminous evidence documenting the need for parks and open space in the increasingly dense neighborhood, the City's contemplated acquisition of the property is consistent with reasoned action with regard to the facts and circumstances and therefore is not arbitrary or capricious.

The Sisleys' arguments about the City's animus are not compelling. In State v. Hutch, a community college installed lights on its baseball field.[25] The lights shined into Mrs. Hutch's adjacent property, and she sued the college for injunctive relief and damages.[26] The college offered a settlement and told Hutch if she did not settle, it would initiate condemnation proceedings to take her property.[27] Hutch rejected the offer. The State Board passed a resolution

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[23] CP at 6-8.

[24] Appellant's Br. at 18.

[25] 30 Wn. App. 28, 30, 631 P.2d 1014 (1981).

[26] Id.

[27] Id. at 30-31.

authorizing condemnation, but the trial court found the primary motivation behind the condemnation action was to settle the lighting system dispute with Hutch.[28]

Division Two of this court acknowledged the motive may well have been to pressure Hutch into a settlement, but noted "the underlying motive of a condemnor is of limited utility in determining *whether the condemnor has acted arbitrarily and capriciously*."[29] The court recognized that "any attempt to focus on the motives underlying a condemnation request *presents the dilemma of deciding whose motive is determinative*."[30] The court reasoned the proper inquiry is to focus on the facts and circumstances of the condemnor's request and, even if motivated in part by improper considerations, "if examination of the facts and circumstances of proposed condemnation *demonstrates a genuine need and if in fact the condemnor intends to use the property for its avowed purpose*, the condemnor's action cannot be arbitrary and capricious."[31] This continues to be the prevailing approach in Washington.[32]

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[28] Id. at 36.

[29] Id. at 37 (emphasis added).

[30] Id. at 38 (emphasis added).

[31] Id. (emphasis added).

[32] See N. Am. Foreign Trade Zone Indus., 159 Wn.2d at 577-78 (acknowledging that motivation to install generators on condemned property was, in part, to maximize profits from energy sales, but the record also contained "ample evidence that the generators were purchased in response to a real energy crisis" and the government entity was "acting primarily to protect its ability to provide energy to its customers"); Miller, 156 Wn.2d at 418 ("Even if the decision was partially motivated by improper considerations, it will not be vacated so long 'as the proposed condemnation demonstrates a genuine need . . . and the condemnor in fact intends to use the property for the avowed purpose.") (quoting In re Petition of Port of Grays Harbor, 30 Wn. App. 855, 864, 628 P.2d 633 (1982)).

The Sisleys argue such a standard promotes the misuse of condemnation powers. We disagree. The standards governing public use and necessity reflect deference to the legislative decisions underlying the selection of property for condemnation. Such deference is not unwarranted.

The Sisleys suggest the condemnation was based entirely on the City's ulterior motives, to collect a debt owed to the City, to "score political points," and act with "animus" towards the Sisleys.[33] But as discussed, there is ample evidence the City talked to and engaged with members of the community and applied its criteria for parks.[34] The Sisleys rely on several cases from other jurisdictions, but those cases are not helpful in this setting.[35]

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[33] Appellant's Br. at 20.

[34] The Sisleys contend Nevins departed from the normal procedure, for example, by skipping the step of considering contamination. But the testimony they rely on reveals merely that Nevins did not know of any environmental impact statements or declarations of nonsignificance done for any properties acquired for neighborhood parks. See CP at 764. EIS and declarations of nonsignificance are not the exclusive means to determine whether property is contaminated. Nevins testified the general criteria, including priority given to property that is not contaminated, were satisfied. And the Sisleys offered no evidence that their property was contaminated.

[35] City of Miami v. Wolfe, 150 So.2d 489 (Fla. Dist. Ct. App. 1963) (Florida appellate court affirmed dismissal of condemnation where the record showed the City was not actually going to use the acquired land for the proposed purpose); Pheasant Ridge Assocs., Ltd. v. Town of Burlington, 399 Mass. 771, 506 N.E.2d 1152 (Mass. 1987) (the record did not show the property would be actually used for the avowed public use of a park or for affordable housing); City of Freeman v. Salis, 630 N.W.2d 699 (S.D. 2001) (South Dakota Supreme Court held "[a] choice to condemn must grossly violate fact and logic or be wholly arbitrary to support a finding of abuse" sufficient to dismiss a condemnation petition); Carroll County v. City of Breman, 256 Ga. 281, 347 S.E.2d 598 (Ga. 1986) ("the use put forth by the county is a public purpose, but there is evidence that the actual purpose was to stop another use, also public, but one which the county officers oppose"); Borough of Essex Fells v. Kessler Inst. for Rehab., 289 N.J.Super. 329, 673 A.2d 856, 858 (N.J. Super. Ct. Law Div. 1995) (city purported to condemn land to use as a public

We conclude the public use and necessity determination is supported by substantial evidence. There is no showing of fraud or constructive fraud.

II. Discovery Limitations

The Sisleys contend the trial court erred in denying discovery "probative to the City's bad faith and arbitrary conduct."[36]

We review the trial court's discovery orders for abuse of discretion.[37] The trial court has broad discretion to manage the discovery process and limit the scope of discovery.[38] CR 26(c) "'was adopted as a safeguard for the protection of parties and witnesses in view of the almost unlimited right of discovery given by [CR] 26 (b)(1). The provision emphasizes the complete control the court has over the discovery process.'"[39]

The Sisleys contend an internal memorandum should have been produced, but, as clarified at oral argument, the Sisleys did not request in-camera review by

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park, but admitted all of its park needs had been met by another acquired property, the city used the condemnation to block another use on the property); Denver W. Metro Dist. v. Geudner, 786 P.2d 434, 436-37 (Colo. Ct. App. 1989) (Colorado appellate court concluded there was substantial evidence in the record to support the trial court's conclusion that the essential purpose underlying the District's decision to condemn was to further private interests).

[36] Appellant's Br. at 28.

[37] City of Lakewood v. Koenig, 160 Wn. App. 883, 892, 250 P.3d 113 (2011).

[38] Dalsing v. Pierce Cty., 190 Wn. App. 251, 262-66, 357 P.3d 80 (2015).

[39] Id. at 262 (alteration in original) (quoting 8A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2036 (2010)).

the trial court.[40] The Sisleys also argue they were denied a meaningful opportunity to depose Nevins because the City instructed him to not answer on several occasions, but the Sisleys did not pursue those refusals with the trial court.

Here, the trial court focused on whether the use sought is public, whether the property reasonably facilitated that use and, if so, whether the selection of the property through the legislative process was fraudulent or arbitrary and capricious, constituting constructive fraud. The City provided interrogatory responses and documents and produced Nevins for deposition. The Sisleys had a reasonable opportunity to explore the criteria used, the information relied upon to support the criteria, how past studies and planning document the need for a park, and how this property fits that need.

We conclude the trial court did not abuse its discretion when it limited the scope of discovery to "the contemplated acquisition of the Sisleys' property for a public park pursuant to Council bill 118509 and Ordinance 124880."[41]

The Sisleys contend the community statements were inadmissible double hearsay, but the City properly conducted open public comment periods to gauge public support and address concerns regarding the property. The Sisleys neither offer authority barring evidence of public comments taken as part of the public use and necessity process, nor explain specifically how such public comments offend

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[40] We do not have before us any version of such a memorandum called to the attention of the trial court.

[41] CP at 576.

the hearsay rule limiting testimony offered to prove the truth of the matter asserted.[42]

We conclude the Sisleys had a meaningful opportunity to be heard.

Therefore, we affirm.

WE CONCUR:

Leach, J.

Becker, J.

[42] ER 801(c); Sisley v. Seattle School Dist., 171 Wn. App. 227, 232-33, 286 P.3d 974 (2012).

FILED
3/16/2018
Court of Appeals
Division I
State of Washington

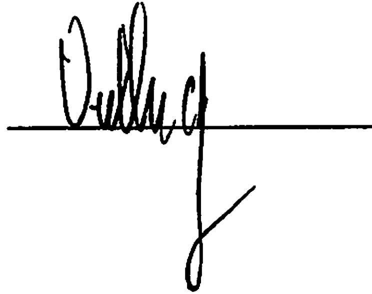
# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
## DIVISION ONE

| | |
|---|---|
| THE CITY OF SEATTLE, a municipal corporation,<br><br>Respondent,<br><br>v.<br><br>HUGH K. SISLEY and MARTHA E. SISLEY, husband and wife; HUGH K. SISLEY, individually and on behalf of their marital community;<br><br>Appellants,<br><br>ROOSEVELT DEVELOPMENT GROUP, LLC, a Washington limited liability company, in its capacity as lessee; ROOSEVELT DEVELOPMENT GROUP, LLC (RDG, LLC), a Washington limited liability company by Jonathan Breiner, managing member, in its capacity as lessee; and KING COUNTY, a subdivision of the state of Washington,<br><br>Additional Respondents. | No. 76114-5-I<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

Appellants filed a motion for reconsideration of the court's February 12, 2018 opinion. Following consideration of the motion, the panel has determined it should be denied. Now, therefore, it is hereby

ORDERED that the appellants' motion for reconsideration is denied.

FOR THE PANEL:



**From:** Harris, Donald
**To:** Longman, Forrest W
**Subject:** RE: Sisley Alternatives
**Date:** Tuesday, April 22, 2014 2:54:10 PM

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Was what Chip Nevins sent yesterday adequate ?

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**From:** Longman, Forrest W
**Sent:** Monday, April 21, 2014 1:29 PM
**To:** Harris, Donald
**Cc:** Cornwall, Catherine
**Subject:** RE: Sisley Alternatives

Hi Donald,

Can you provide two or three specific sites you considered and the reasons why they aren't viable? It's okay that there are no other viable alternatives, but we need to be able to give specific examples that were considered and why they won't work.

Thanks,
Forrest

---

**From:** Harris, Donald
**Sent:** Tuesday, April 15, 2014 12:12 PM
**To:** Longman, Forrest W
**Subject:** RE: Sisley Alternatives

Simplify put we have carefully evaluated the area thru site analysis and a view trip and have not identified any viable alternatives.

-----Original Message-----
**From:** Longman, Forrest W
**Sent:** Tuesday, April 15, 2014 11:14 AM Pacific Standard Time
**To:** Harris, Donald
**Subject:** Sisley Alternatives

Hi Donald,

Catherine asked me to check in with you about identifying alternatives for a Park space near Roosevelt (in the context of the Sisley legislation). Have you been able to ID some other possible locations?

Thanks.

Forrest

Appendix 2

**From:** Sugimura, Diane
**To:** Noble, Ben
**Subject:** RE: Sisley Properties
**Date:** Wednesday, February 11, 2015 8:33:13 AM

Will get you more info.

IF you are ever curious, I have a story to tell on this one!

---

**From:** Noble, Ben
**Sent:** Wednesday, February 11, 2015 8:16 AM
**To:** Sugimura, Diane
**Subject:** Fwd: Sisley Properties

Diane,

See Tim's inquiry below regarding Sisely. Do your folks have any info I can share or is this a question for Law?

(I have already provided an update on the park issue.)

ben.
Sent from my iPhone

Begin forwarded message:

> **From:** "Burgess, Tim" <Tim.Burgess@seattle.gov>
> **Date:** February 9, 2015, 3:17:57 PM PST
> **To:** "Noble, Ben" <Ben.Noble@seattle.gov>
> **Subject: Sisley Properties**
>
> Hi, Ben.
>
> I understand that the CBO is reviewing a proposal to use Sisley settlement funds to develop a small neighborhood park. I also understand this potentially includes abatement of the remaining Sisley properties that are boarded up in the Roosevelt neighborhood. What's the status of all of this?
>
> I received another email from a nearby resident who is frustrated that the City has not been more proactive in resolving all of this.

| | |
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| **From:** | Feldstein, Robert |
| **To:** | Noble, Ben |
| **Subject:** | RE: City Attorney press conference on Friday |
| **Date:** | Tuesday, March 10, 2015 5:04:00 PM |
| **Attachments:** | image012.png<br>image013.png<br>image014.png<br>image015.png<br>image017.png<br>image018.png<br>image019.png<br>image020.png |

OK. That "sort of" makes sense. It seemed weird to me, and you're confirming that it was weird. I can live with that.

**From:** Noble, Ben
**Sent:** Tuesday, March 10, 2015 5:03 PM
**To:** Feldstein, Robert
**Subject:** RE: City Attorney press conference on Friday

Got sorted out a long time ago – like practically a year. But yes was an f'ed up move by Law, but by the time we got involved they had coopted Parks. Actually results from lack of leadership under previous administration; that is when this got hatched.

**From:** Feldstein, Robert
**Sent:** Tuesday, March 10, 2015 5:01 PM
**To:** Noble, Ben
**Subject:** RE: City Attorney press conference on Friday

Ben –

Admittedly I don't know back story here, but a bit confused. It doesn't seem weird that CAO would work on leg to condemn Sissley property. That's good. But does seem a bit weird that CAO would decide what becomes of the land. Maybe what it becomes is part of why they can take it?

Love to understand better at some point.

**From:** Noble, Ben
**Sent:** Tuesday, March 10, 2015 4:44 PM
**To:** Caldirola-Davis, Carlo; Price, Leslie; Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Cornwall, Catherine
**Subject:** RE: City Attorney press conference on Friday

We (CBO) have been working the related Sisely legislation. Exemption 1

Exemption 1

**From:** Caldirola-Davis, Carlo
**Sent:** Tuesday, March 10, 2015 4:39 PM
**To:** Price, Leslie; Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy
**Subject:** RE: City Attorney press conference on Friday

I'll check with parks. Don't think this is a high need area. Also, intent of raising the height limits was to encourage dev on that block.

**From:** Price, Leslie
**Sent:** Tuesday, March 10, 2015 4:38 PM
**To:** Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo
**Subject:** RE: City Attorney press conference on Friday

And just to put it out there... If we were condemn Sisley's properties, I have a feeling we might be thinking differently about the priority use. This is blocks from Ravenna Park and Cowen Park and RIGHT NEXT TO the light rail station.

Leslie Brinson Price
Senior Policy Advisor, Office of Policy and Innovation
City of Seattle, Office of the Mayor
O: 206.386.9136 | M: 206.375.2625 | leslie.price@seattle.gov

**From:** Feldstein, Robert
**Sent:** Tuesday, March 10, 2015 4:32 PM
**To:** Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** RE: City Attorney press conference on Friday

And do we know anything about this? Can we check with DPD to see if they know about/support?

Seems odd.

**From:** Shelton, Viet
**Sent:** Tuesday, March 10, 2015 4:31 PM
**To:** Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** RE: City Attorney press conference on Friday

Um. Do WE need to be there?

-VS

**From:** Kelly, Jason W
**Sent:** Tuesday, March 10, 2015 4:29 PM
**To:** MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** City Attorney press conference on Friday

City Attorney is going to call for a new ordinance to allow the city to seize property in cases where landowners have long-delinquent fines and judgments against them. His vision is for a new park at the site of the Sisley properties near Roosevelt High School.

COA has invited DPD, Parks, councilmembers to attend the event on Friday at 10am. Location NE 14th and 65th.

---


Jason W. Kelly
Press Secretary
City of Seattle, Office of the Mayor
PO Box 94747, Seattle, WA 98124-4747
O: 206.684.8379 | C: 206.639.0595 | jason.w.kelly@seattle.gov

|  |  |
| --- | --- |
| **From:** | Noble, Ben |
| **To:** | Shelton, Viet; Caldirola-Davis, Carlo; Price, Leslie; Feldstein, Robert; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Cornwall, Catherine |
| **Subject:** | RE: City Attorney press conference on Friday |
| **Date:** | Tuesday, March 10, 2015 5:03:35 PM |
| **Attachments:** | image001.png<br>image007.png<br>image009.png<br>image010.png<br>image018.png |

---

Boss knows about planned Park Acquisition. Exemption 1 Their right and left hands were not communicating. Catherine and Forrest have details on substance of plan for Park in Roosevelt area.

**From:** Shelton, Viet
**Sent:** Tuesday, March 10, 2015 4:59 PM
**To:** Noble, Ben; Caldirola-Davis, Carlo; Price, Leslie; Feldstein, Robert; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Cornwall, Catherine
**Subject:** RE: City Attorney press conference on Friday

Sigh.

Seems like this should involve the boss.

-vs

Sent from my Windows Phone

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**From:** Noble, Ben
**Sent:** 3/10/2015 4:44 PM
**To:** Caldirola-Davis, Carlo; Price, Leslie; Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Cornwall, Catherine
**Subject:** RE: City Attorney press conference on Friday

We (CBO) have been working the related Sisely legislation. Exemption 1

**From:** Caldirola-Davis, Carlo
**Sent:** Tuesday, March 10, 2015 4:39 PM
**To:** Price, Leslie; Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy
**Subject:** RE: City Attorney press conference on Friday

I'll check with parks. Don't think this is a high need area. Also, intent of raising the height limits was to encourage dev on that block.

**From:** Price, Leslie
**Sent:** Tuesday, March 10, 2015 4:38 PM
**To:** Feldstein, Robert; Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo
**Subject:** RE: City Attorney press conference on Friday

And just to put it out there... If we were condemn Sisley's properties, I have a feeling we might be thinking differently about the priority use. This is blocks from Ravenna Park and Cowen Park and RIGHT NEXT TO the light rail station.

Leslie Brinson Price
Senior Policy Advisor, Office of Policy and Innovation
City of Seattle, Office of the Mayor
O: 206.386.9136 | M: 206.375.2625 | leslie.price@seattle.gov

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**To:** Shelton, Viet; Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** RE: City Attorney press conference on Friday

And do we know anything about this? Can we check with DPD to see if they know about/support?

Seems odd.

---

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**Sent:** Tuesday, March 10, 2015 4:31 PM
**To:** Kelly, Jason W; MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** RE: City Attorney press conference on Friday

Um. Do WE need to be there?

-vs

---

**From:** Kelly, Jason W
**Sent:** Tuesday, March 10, 2015 4:29 PM
**To:** MOS_Executive_Leadership_Team; Nyland, Kathy; Caldirola-Davis, Carlo; Price, Leslie
**Subject:** City Attorney press conference on Friday

City Attorney is going to call for a new ordinance to allow the city to seize property in cases where landowners have long-delinquent fines and judgments against them. His vision is for a new park at the site of the Sisley properties near Roosevelt High School.

COA has invited DPD, Parks, councilmembers to attend the event on Friday at 10am. Location NE 14th and 65th.

---


Jason W. Kelly
Press Secretary
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O: 206.684.8379 | C: 206.639.0595 | jason.w.kelly@seattle.gov

**From:** Noble, Ben
**Sent:** Thu 03/19/2015 12:26 PM
**To:** Fong, Michael;Feldstein, Robert
**Subject:** FW: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

AAAAARGGH!!!!!!!!!!!

---

**From:** Noble, Ben
**Sent:** Thursday, March 19, 2015 12:26 PM
**To:** Golub, Susan; Williams, Christopher
**Subject:** RE: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

So I don't want to get caught in a technical argument here, the stakes are rather high. Can you quickly develop and send a map that clearly shows the relevant 1/4 (1/8?) mile buffers around the existing parks and what that implies about gap?

ben.

---

**From:** Golub, Susan
**Sent:** Thursday, March 19, 2015 9:59 AM
**To:** Noble, Ben; Williams, Christopher
**Subject:** RE: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

We do technically have a gap per the urban village standards; the language I provided earlier (below) came from our property management staff (Chip Nevins) who worked on the Sisley legislation:

The Roosevelt Residential Urban Village has a gap in usable open space, not meeting Parks criteria to have usable open space within 1/4 mile of urban village residents. The Sisley property will serve the Roosevelt Residential Urban Village, and will lessen the open space service gap.

This doesn't mean we can't work something else out.
Susan

---

**From:** Noble, Ben
**Sent:** Thursday, March 19, 2015 8:33 AM
**To:** Williams, Christopher; Golub, Susan
**Subject:** RE: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

So . . . Susan told me something else with respect to the open space deficit question. We need clarity on this point.

Ben.

**From:** Williams, Christopher
**Sent:** Thursday, March 19, 2015 8:32 AM
**To:** Noble, Ben; Golub, Susan
**Subject:** RE: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

Ben,
If the Mayor decided to go in direction, I think we could support this. We do not currently have a parks and open spaces deficit in this neighborhood and with the right agreement with SDOT the street option could work.
CW

---

**From:** Noble, Ben
**Sent:** Thursday, March 19, 2015 8:23 AM
**To:** Golub, Susan; Williams, Christopher
**Subject:** FW: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

FYI

**From:** Feldstein, Robert
**Sent:** Thursday, March 19, 2015 8:08 AM
**To:** Noble, Ben
**Subject:** FW: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

It continues...

**From:** Price, Leslie
**Sent:** Thursday, March 19, 2015 8:05 AM
**To:** Feldstein, Robert
**Cc:** Nyenhuis, Drue
**Subject:** FW: City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

FYI attached

Sent with Good (www.good.com)

-----Original Message-----
**From:** Roger Valdez [seattlecitybuilder@gmail.com]
**Sent:** Wednesday, March 18, 2015 11:22 PM Pacific Standard Time
**To:** Burgess, Tim; Bagshaw, Sally; Clark, Sally; Godden, Jean; Harrell, Bruce; Licata, Nick; O'Brien, Mike; Rasmussen, Tom; Sawant, Kshama; Murray, Edward; Holmes, Peter; Price, Leslie
**Subject:** City Builder: Affordable Housing, Open Space, and Sustainability Possible in Roosevelt

**City Builder Group Suggests Compromise for Roosevelt Parcels**

See attached petition.

For more information see the City Builder Facebook page or contact Rob Harrison:

Rob Harrison
(206) 956-0883
rob@harrisonarchitects.com

**From:** Running Deer, Tyler
**Sent:** Thu 07/03/2014 09:00 AM
**To:** Longman, Forrest W
**Subject:** RE: Sisleyville Park

Ok, thanks.

-Tyler

---

**From:** Longman, Forrest W
**Sent:** Thursday, July 03, 2014 9:00 AM
**To:** Running Deer, Tyler
**Subject:** RE: Sisleyville Park

Not really, Catherine has been the lead on this project. My understanding is that it is with us for review prior to jacketing.

---

**From:** Running Deer, Tyler
**Sent:** Thursday, July 03, 2014 8:51 AM
**To:** Longman, Forrest W
**Subject:** FW: Sisleyville Park

Forrest,
Do you have any information on this?

-Tyler

---

**From:** DuComb, Darby
**Sent:** Thursday, July 03, 2014 8:21 AM
**To:** Cornwall, Catherine
**Cc:** Running Deer, Tyler
**Subject:** FW: Sisleyville Park

Catherine,

Thanks.

Darby

-----Original Message-----
**From:** Holmes, Peter
**Sent:** Wednesday, July 02, 2014 09:53 PM Pacific Standard Time
**To:** Landino, Gina T; Wynne, Roger; DuComb, Darby; Boler, Jean
**Cc:** Anderson, Dana
**Subject:** FW: Sisleyville Park

I suspect Patrick may be out.


Pete Holmes, City Attorney
Seattle City Hall, 4th Floor
600 Fourth Avenue
PO Box 94769
Seattle, WA 98124-4769
206.684.8288
www.seattle.gov/law


---

**From:** Holmes, Peter
**Sent:** Wednesday, July 02, 2014 5:00 PM
**To:** Downs, Patrick
**Cc:** Anderson, Dana
**Subject:** Sisleyville Park

**Peter S. Holmes**
City Attorney

City of Seattle
600 4th Avenue, 4th Floor
P.O. Box 94769
Seattle WA 98124-4769
206-684-8288/Office
206-684-8284/Fax
peter.holmes@seattle.gov

**From:** Blankenship, Jeanette
**Sent:** Fri 09/04/2015 08:23 AM
**To:** Cornwall, Catherine;Noble, Ben
**Subject:** RE: Sisley follow-up & Q3 timing

I think that works and gives us a few weeks to get our story straight for Council.

---

**From:** Cornwall, Catherine
**Sent:** Thursday, September 03, 2015 6:55 PM
**To:** Noble, Ben <Ben.Noble@seattle.gov>
**Cc:** Blankenship, Jeanette <Jeanette.Blankenship@seattle.gov>
**Subject:** RE: Sisley follow-up & Q3 timing

I'll talk to Jeanette and Lisa but seems like we should be able to make that work.

---

**From:** Noble, Ben
**Sent:** Thursday, September 03, 2015 6:35 PM
**To:** Cornwall, Catherine
**Subject:** RE: Sisley follow-up & Q3 timing

What if put the "tenant protection" stuff in OH for the purposes of the supplemental – and the communication to Council about our intent for the money – and move it elsewhere if necessary with a future supplemental. Then we could hit tomorrow's deadline and maintain good will with Tom and Scott. More painful would be a stand alone.

---

**From:** Cornwall, Catherine
**Sent:** Thursday, September 03, 2015 4:37 PM
**To:** Noble, Ben <Ben.Noble@seattle.gov>; Taylor, Tom <Tom.Taylor@seattle.gov>
**Cc:** Blankenship, Jeanette <Jeanette.Blankenship@seattle.gov>; Longman, Forrest W <Forrest.Longman@seattle.gov>
**Subject:** FW: Sisley follow-up & Q3 timing

Hi Ben and Tom - just want to check in and see how long we have to nail down the details of how we'll spend the $3.48 million of Sisley proceeds and include it in Q3. The parks piece and the chunk for the DPD abatement are fairly straightforward in that we know what departments they go to (Parks and DPD). However, the component for "tenant protections" could be split between DPD, OH and HSD depending on what components are picked and who is going to adminster them.

In her email below, Lindsay from OH says she thinks OH has until Wednesday to present a narrowed down set of options. That means we won't have them in the database for Q3 until next Thursday or Friday (Sept. 10 - 11). Tom - is that doable from your side? Or do you need the items in there earlier?

---

**From:** Masters, Lindsay
**Sent:** Thursday, September 03, 2015 4:15 PM
**To:** Cornwall, Catherine; Walker, Steve; Alvarado, Emily
**Cc:** Blankenship, Jeanette
**Subject:** RE: Sisley follow-up

Hi Catherine,
Below in red are answers to your questions. Emily ran into Ben just now and heard we might have until Wednesday to present a narrowed down set of options with more specifics/deliverables. Does that sound OK? Unfortunately Emily and I are both out of the office tomorrow and for the long weekend. Let us know if that works, thanks.

Lindsay Masters
Strategic Advisor for Housing Policy
City of Seattle Office of Housing
O: 206.684.0340 | lindsay.masters@seattle.gov


---

**From:** Cornwall, Catherine
**Sent:** Thursday, September 03, 2015 1:35 PM
**To:** Masters, Lindsay; Walker, Steve; Alvarado, Emily
**Cc:** Blankenship, Jeanette
**Subject:** Sisley follow-up

Hi – I want to follow up on the meeting we had on Tuesday. I'm trying to finalize what we're going to fund and what departments the funding will go to.

OH was going to check into:

- RDG MFTE – I understand this is for property not owned by Sisley (across the street?)? Could you get me the address and let me know how many units it would be? And when they'd be built? RDG has active applications for the following projects – actually they identified two of these (Ecoluxe 2 and 3) as Sisley-owned properties, but these are south of 65th so not the ones that were discussed during this process:

| Year of Approval | Name | Address | Total Units | Affordable |
|---|---|---|---|---|
| 2015 | EcoLuxe 1 | 1319 NE 65th St | 41 | 9 |
| 2015 | EcoLuxe 2 | 6418 Brooklyn Ave NE | 41 | 9 |
| 2015 | EcoLuxe 3 | 1403 NE 65th St | 41 | 9 |
| 2015 | 1216 66th Apartments | 1216 NE 66th St | 206 | 42 |

  - I assume (but want to confirm) that RDG doesn't have any other applications for MFTE? Correct
- Are there any other MFTE applications or projects in the neighborhood? Yes, we recently received an application for one other project at 6800 Roosevelt (79 units).

From the Tenant Funding Options you shared on Tuesday, I want to follow up on a couple:

- **"Fund counseling and housing search services to ensure tenants with language and other barriers…" If this option is selected, is this something OH would administer? Or another department? The explanation says it's an existing program – who currently administers this?** This is to supplement the existing TRAO program administered by DPD. They recently awarded $20k for similar services provided by SCIDPDA to help relocate tenants from a building in the ID. I assume the contract was through DPD but you would have to confirm with Faith.
- **"Target outreach and education to worst offending landlords…" (HALA recommendation) – who would administer this? OH?** Our initial thought is it makes more sense for HSD to do the contracting, but we want to check with them to make sure that would be OK. We will have more details for you next week if you can wait until then.

Catherine Cornwall
Fiscal & Policy Manager, Seattle City Budget Office
catherine.cornwall@seattle.gov
206-684-8725

**From:** Fong, Michael
**Sent:** Mon 09/14/2015 09:34 PM
**To:** Shelton, Viet
**Cc:** Cornwall, Catherine;Noble, Ben;Fong, Michael
**Subject:** Re: The land we want in roosevelt

Yes. Same parcel we've been interested in from beginning.

Sent from my iPhone

On Sep 14, 2015, at 9:08 PM, Shelton, Viet <Viet.Shelton@seattle.gov> wrote:

> Is the same land we've wanted all year, right?
>
> And its owned by sisley currently, right?
>
> -vs
>
> Sent from my Windows Phone

**From:** Cornwall, Catherine
**To:** Noble, Ben
**Subject:** FW: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged
**Date:** Wednesday, February 05, 2014 9:12:34 AM

---

I just talked to Eric Friedli. He said that Law had been taking the lead and Parks was only peripherally involved. Eric hadn't realized that it was getting ready to go to Council. The other issue is that the person from Parks working on it is Donald Harris. Donald seems to be a free agent in the Parks department (Eric agreed with this characterization).

Usually, all parks legislation goes through Susan Golub, their legislative liaison. Susan is great about working with CBO. I'm guessing Susan wasn't aware of this legislation.

---

**From:** Cornwall, Catherine
**Sent:** Wednesday, February 05, 2014 8:52 AM
**To:** Noble, Ben
**Subject:** RE: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged

Nope.

---

**From:** Noble, Ben
**Sent:** Wednesday, February 05, 2014 8:44 AM
**To:** Cornwall, Catherine
**Subject:** FW: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged
**Importance:** High

Had you heard anything about this?

---

**From:** Fong, Michael
**Sent:** Wednesday, February 05, 2014 8:40 AM
**To:** Noble, Ben
**Cc:** Feldstein, Robert
**Subject:** FW: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged

Why is this not coming through our process and going straight to Burgess?

If Parks and DPD are working this – then this should come from the Mayor and City Attorney. This seems unusual and a big enough issue in the Roosevelt neighborhood for us to be on top of this.

---

**From:** DuComb, Darby
**Sent:** Tuesday, February 04, 2014 5:10 PM
**To:** Noble, Ben; Schaefer, Adam
**Cc:** Feldstein, Robert; Fong, Michael; Nyland, Kathy
**Subject:** FW: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged

Hi Ben and Adam,

I just wanted to give you a heads up about this legislative package. [redacted]

We have some of the neighbors coming in to meet with Pete. And Parks has done some outreach to the neighborhood as well, and they support the effort. A few councilmembers are aware of the effort and supportive.

Just let me know if you have any questions or concerns. Thank you.

**Darby N. DuComb**
Chief of Staff

Seattle City Attorney's Office
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769
Phone: 206-684-8228
FAX: 206-684-8284
darby.ducomb@seattle.gov

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---

**From:** Downs, Patrick
**Sent:** Tuesday, February 04, 2014 4:49 PM
**To:** DuComb, Darby
**Cc:** Castagna, Thom
**Subject:** RE: Sisley Property Acquisition Ordinance Final Draft -- Attorney-Client Privileged

Darby:

Thanks, Patrick

## WILLIAMS KASTNER

## April 16, 2018 - 2:46 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division I |
| **Appellate Court Case Number:** | 76114-5 |
| **Appellate Court Case Title:** | The City of Seattle, Res. v. Hugh K. Sisley and Martha E. Sisley, Apps. |
| **Superior Court Case Number:** | 16-2-11512-8 |

**The following documents have been uploaded:**

- 761145_Petition_for_Review_20180416144357D1291884_6615.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was Petition for Review of Hugh and Martha Sisley.pdf*

**A copy of the uploaded files will be sent to:**

- Lance.Pelletier@stokeslaw.com
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---

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