

80588-1

No. 58296-8-1

COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

SEATTLE HOUSING AND RESOURCE
EFFORT/WOMEN'S HOUSING EQUALITY AND
ENHANCEMENT PROJECT, a Washington Non-Profit
Corporation,

Petitioner,

v.

CITY OF WOODINVILLE, a Municipal Corporation,

Respondent.

RESPONDENT/CROSS-APPELLANT
CITY OF WOODINVILLE'S
REPLY TO APPELLANT'S RESPONSIVE ARGUMENTS
ON CROSS-APPEAL

Greg A. Rubstello, WSBA #6271
J. Zachary Lell, WSBA # 28744
Attorneys for City of Woodinville
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

{GAR645329.DOC:1/00046.050028/}

ORIGINAL

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2006 NOV -6 PM 3:53

TABLE OF CONTENTS

Page

A. ISSUES RELATING TO THE TEMPORARY RESTRAINING ORDER (“TRO”) AND THE MOTION FOR ATTORNEY FEES. 1

 1. Whether or not the trial court erred in granting and/or extending the TRO. 1

 2. Whether or not the trial court erred in denying the City’s motion for attorney fees after dissolution of the TRO on June 9, 2006..... 1

 3. Whether the standard for review of the above two issues is for *abuse of discretion* or *de novo* review. 1

 4. Whether the strict scrutiny analysis applies to the analysis of Woodinville’s temporary use permit regulations and it’s R-1 zoning district moratorium under RLUIPA and the Washington State Constitution..... 1

B. STATEMENT OF THE CASE REGARDING THE ENTRY, TERMINATION, REVIVAL AND DISSOLUTION OF THE TRO. 1

 1. Entry of Agreed Temporary Restraining Order. 1

 2. City’s Motion to Quash the TRO and Entry of a Stipulated Order For a Time Certain End Date for the TRO. 2

 3. TRO is Revived at the Request of the NUCC and SHARE/WHEEL and Over the Objection of the City. 3

 4. Judge Mertel Grants Subsequent Motions Made by NUCC and Joined by SHARE/WHEEL Further Extending the TRO Through Noon on Friday June 9, 2006. 5

 5. Motion for Attorney Fees and Denial of the Motion by Judge Mertel..... 5

C. SUMMARY OF ARGUMENT 6

D. ARGUMENT 7

 1. The TRO and the Extensions Were “Wrongfully Issued.” . 7

 2. Tenable Grounds for the TRO and the Extensions Did Not Exist and Were Not Supported By Reasons or Findings of Fact. 8

 3. The Trial Court Abused Its Discretion By Denying the City’s Request for Attorney Fees Without Reason Supported By Findings of Fact..... 9

 4. The Full Hearing Was Necessary to Dissolve the TRO and The Legal Expenses Incurred by the City From Its Motion

to Quash to the TRO Through the Decision on June 9, 2006
Should be Awarded. 11

5. Strict Scrutiny Does Not Apply Because The City Did Not
Impose a *Substantial Burden* On The NUCC's Religious
Exercise Under RLUIPA Nor *Unreasonably Burden*
Religious Exercise Under the Washington Constitution... 12

E. CONCLUSION 15

TABLE OF AUTHORITIES

Page

CASES

Chin On v. Culinary Workers, 195 Wn. 350, 81 P.2d 803 (1983)----- 11
Cornell Pump Company v. City of Bellingham, 123 Wn. App. 226, 228, 98 P.3d 84
 (2004)----- 10
Fisher v. Parkview Properties, Inc., 71 Wn. App. 468, 859 P.2d 77 (1993) ----- 8
Guru Nanak Sikh Society of Yuba City v. County of Sutter, 456 F.3d 978 (9th Cir. 2006)
 ----- 13
Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 143, 937 P.2d 154 (1997), *cert. denied*,
 522 U.S. 1077, 118 S.Ct. 856, 139 L.Ed.2d 755 (1998)----- 8
Loeffelholz v. Citizens, 119 Wn. App. 665, 82 P.3d 1199 (2004) ----- 12
Marriage of Firorito, 112 Wn. App. 657, 654, 50 P.3d 298 (2002) ----- 9
Marriage of Lindgren, 58 Wn. App. 588, 595, 794 P.2d 526 (1990)----- 9
North Pacific Union Conference Ass'n of Seventh Day Adventists v. Clark Cty., 118 Wn.
 App. 22, 74 P.3d 140 (2003)----- 14
Pannell v. Food Servs. of Am., 61 Wash. App. 418, 447, 810 P.2d 812 (1991), *review*
denied, 118 Wash.2d 1008, 824 P.2d 490 (1992).----- 12
San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024 (9th Cir. 2004) ----- 13

STATUTES

42 U.S.C. § 2000cc(2)(C) ----- 14
 RCW 7.40.020 ----- 6, 8

A. ISSUES RELATING TO THE TEMPORARY RESTRAINING ORDER (“TRO”) AND THE MOTION FOR ATTORNEY FEES.

1. Whether or not the trial court erred in granting and/or extending the TRO.
2. Whether or not the trial court erred in denying the City’s motion for attorney fees after dissolution of the TRO on June 9, 2006.
3. Whether the standard for review of the above two issues is for *abuse of discretion* or *de novo* review.
4. Whether the strict scrutiny analysis applies to the analysis of Woodinville’s temporary use permit regulations and it’s R-1 zoning district moratorium under RLUIPA and the Washington State Constitution.

B. STATEMENT OF THE CASE REGARDING THE ENTRY, TERMINATION, REVIVAL AND DISSOLUTION OF THE TRO.

1. Entry of Agreed Temporary Restraining Order.

The City of Woodinville as plaintiff, filed a complaint and a motion for a TRO on **May 12, 2006**. (CP 1-6 and CP 7-71). Notice of the motion was given to both the NUCC and SHARE/WHEEL who appeared in opposition to the granting of the motion for a TRO. (CP-72-76). The City filed its motion because the City reasonably feared that the NUCC and SHARE/WHEEL would move the Tent City IV encampment to the NUCC property in Woodinville the following day. (CP 7-71 and VTRP for June 5 at 49-51 and Exhibit 17). The City requested temporary

injunctive relief prohibiting Tent City IV from locating on the NUCC property. (CP-7-71).

At the hearing, the superior court judge declined to enter the City's requested TRO prohibiting Tent City IV from locating on the NUCC property. (NUCC Reply Brief at 5). Instead, the Court invited the parties to work out an agreed order which would place conditions and restrictions on the encampment, should it locate on the NUCC property. (CP 72-76). The superior court judge placed the City in the position of either participating in the agreed order or watch the encampment locate on the NUCC property uninhibited by any court ordered restraints or conditions. Under the immediate circumstances, the City participated in the drafting of the TRO and did sign the TRO as noted by the NUCC. REPLY BRIEF OF NUCC at 5; CP 76). However, within a week, the City took action to quash the TRO and obtained an order for the dissolution of the TRO at 8:30 a.m. on May 30, 2006. (CP 151-15).

2. City's Motion to Quash the TRO and Entry of a Stipulated Order For a Time Certain End Date for the TRO.

Tent City IV moved on to the NUCC property the following day, **May 13, 2006**. A hearing on the as yet filed motion for preliminary injunction was set to commence on May 24 before Judge Mertel. On **May 22, 2006**, the City served and filed *PLAINTIFF'S MOTION TO QUASH THE EXISTING TEMPORARY RESTRAINING ORDER; AND FOR PRELIMINARY AND FINAL INJUNCTION RELIEF PROHIBITING*

{GAR645329.DOC;1/00046.050028/}

THE TENT CITY 4 HOMELESS ENCAMPMENT ON R-1 ZONED PROPERTY IN THE CITY OF WOODINVILLE AND FROM RELOCATING ANYWHERE IN THE CITY OF WOODINVILLE WITHOUT FIRST OBTAINING ALL PERMITS REQUIRED BY CITY ORDINANCE. (CP 77-148). After service of the City's motion, SHARE/WHEEL requested and the City stipulated to entry of an Order continuing the May 24 hearing date. (CP 151-153). The hearing was continued to Tuesday May 30, 2006. The stipulated order for continuance also placed a time certain date for the expiration of the TRO.¹ The Order states:

... The temporary restraining order issued by the Court on May 12, 2006 shall continue in effect until Tuesday May 30, 2006. At 8:30 am in E942 of the King Co. courthouse." (emphasis added)

CP 152.

Thus, the TRO issued on May 12, 2006, expired the morning of May 30, 2006, by the agreed order of all parties under the signature of the assigned judge.

3. TRO is Revived at the Request of the NUCC and SHARE/WHEEL and Over the Objection of the City.

At the close of the hearing on May 30 counsel for the NUCC had the following exchange with Judge Mertel:

¹ The language of the TRO (CP 72-76) is ambiguous as to whether the TRO expired at the start of the hearing on the motion for a preliminary injunction or continued throughout the hearing.
{GAR645329.DOC:1/00046.050028/}

THE COURT: We're going to recess this matter until eight tomorrow morning. We're going to literally keep at this. Miss Hayes, you're standing up. You got something to say?

MS. HAYES: I am standing up. Thank you, your Honor. The T.R.O. conditions expire[d] today. Per the last order entered by the Court. I'd ask that the Court extend the conditions of the T.R.O. until we resolve this matter.

THE COURT: Yeah. If I have to do that, I guess I will do that.

I guess, technically, maybe I have to sign an order extending it. I envisage that we're going to be at this every morning this week because it's the only time I have.

So you -- Here's what I'm going to have you do. I'm going to be here all day. I'm not going anywhere.

I'm going to order counsel to meet and confer today about the need for an additional order at least extending this through Friday so we can spend some time together and try and figure a way through this thing. So I want you to meet and confer on that.

...

VRPT for May 30 at 50-51.

The parties could not agree on extending the dissolved TRO. The City would not agree to any extension of the TRO. As a result, the parties met with Judge Mertel the afternoon of May 30. Over the objection of the City, Judge Mertel signed an Order offered by the NUCC and joined in by

SHARE/WHEEL extending the TRO through "12 noon Friday, June 2, 2006." (CP 401-403). See also VRPT for May 31 at 1:10-13.²

4. Judge Mertel Grants Subsequent Motions Made by NUCC and Joined by SHARE/WHEEL Further Extending the TRO Through Noon on Friday June 9, 2006.

Recognizing the City's continuing objection, Judge Mertel granted additional extensions of the TRO on motions made by NUCC and joined by SHARE/WHEEL. See VRPT for June 2 at 2:14-25 and 3:1-25 and 4:1; also see VRPT for June 6 at 69:17-25 and 70:1-6; also see VRPT for June 7 at 87:22-25. Also see CP 407-409 and CP 470-472 for the signed orders.

5. Motion for Attorney Fees and Denial of the Motion by Judge Mertel.

The City filed its motion for attorney fees on July 7, 2006. (CP 579-615). The basis for the motion was that the hearing on the City's motion for injunctive relief commencing on May 30, 2006 and ending June 9, 2006 was the only procedure available to the City after the entry of the TRO on May 12, 2006 to bring about the ultimate dissolution of the TRO. The motion was supported by declarations of counsel. (CP 66, 67 and 76).

² The verbatim transcription of proceedings provided to the court does not include the brief meeting with Judge Mertel on the afternoon of May 30, 2006, where he signed the Order over the objection of the City.
{GAR645329.DOC;1/00046.050028/}

On July 18, 2006, Judge Mertel signed an order denying the motion for attorney fees. (CP 644-645). No reasons for the denial are given in the order signed without oral argument. No findings of fact were made by Judge Mertel.

On June 22, 2006, the City served and filed its Notice of Cross-Appeal. The TRO as well as the orders reviving and extending the TRO were all included in the notice of cross-appeal.³

C. SUMMARY OF ARGUMENT

The TRO entered *sua sponte* on May 12, 2006, was wrongfully issued because it *allowed* what the City's complaint, motion and supporting declarations sought to *prohibit*. The TRO and the orders extending the TRO were issued in violation of RCW 7.40.0210. The orders extending the TRO were issued over the objection of the City. The need for the continued injunctive relief allowing the encampment was never explained by the Appellants or by the court. Appellants did not have a tenable basis for the injunctive relief.

De novo review is appropriate because the trial court did not enter any findings of fact in support of its entry of the orders reviving and continuing the TRO and denying the City's motion for attorney fees. In any event, the trial court abused its discretion both in entering temporary restraining orders not in compliance with RCW 7.40.010 and in denying

³ The Notice of Appeal has been requested as additional clerk papers for the Court. Page numbers are not yet assigned.
{GAR645329.DOC;1/00046.050028/}

the motion for attorney fees without stating any reason or entering findings of fact in support of the denial.

The NUCC and SHARE/WHEEL both unnecessarily sought injunctive relief on May 30, 2006. They sought and obtained relief by TRO through out the combined hearing and trial on the City's request for injunctive relief. The injunctive relief they obtained was contrary to the relief sought by the City.

The City's motion for attorney fees is consistent with the purpose of the equitable rule requiring a party that wrongfully obtains a temporary restraining order to pay the costs and fees associated with dissolving the order.

Lastly, the City correctly argues that the "strict scrutiny" test does not apply under RLUIPA unless the land use regulations impose a "substantial burden" or under the Washington constitution unless the regulations "unreasonably burden" the exercise of religion. The trial court correctly found that Woodinville's regulations did not impose such burdens.

D. ARGUMENT

1. The TRO and the Extensions Were "Wrongfully Issued."

Due to the insistence by the Appellants that the TRO be revived and continued throughout the combined hearing and trial, the TRO was not dissolved until the conclusion of the full hearing. A *temporary*

restraining order is “wrongful” if it is dissolved at the conclusion of a full hearing. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 143, 937 P.2d 154 (1997), *cert. denied*, 522 U.S. 1077, 118 S. Ct. 856, 139 L.Ed.2d 755 (1998). A temporary restraining order is wrongfully issued when it would not have been ordered had the court been presented with all the facts. See *Fisher v. Parkview Properties, Inc.*, 71 Wn. App. 468, 859 P.2d 77 (1993). When all the facts were heard by the court, the TRO was dissolved. Injunctive relief in opposite to the TRO and as initially sought by the City was finally granted.

2. Tenable Grounds for the TRO and the Extensions Did Not Exist and Were Not Supported By Reasons or Findings of Fact.

The court lacked tenable grounds for the issuance of the TRO and the orders granting its extension. The standard for issuance of any injunctive relief is found in RCW 7.40.020:

When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order

or judgment, **an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion.** And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property. (emphasis added)

The TRO by allowing the encampment granted injunctive relief in opposite to the relief requested in the plaintiff City's Complaint. The TRO and its continuances resulted in rendering substantially ineffectual the ultimate judgment obtained by the City. The TRO was issued on untenable grounds not meeting the standards of RCW 7.40.020. Even if the trial court's decisions to enter the TRO and to continue it throughout the full hearing are to be reviewed for abuse of discretion, the trial court has abused that discretion because the orders are based on untenable grounds. *Marriage of Firorito*, 112 Wn. App. 657, 654, 50 P.3d 298 (2002); and *Marriage of Lindgren*, 58 Wn. App. 588, 595, 794 P.2d 526 (1990).

3. The Trial Court Abused Its Discretion By Denying the City's Request for Attorney Fees Without Reason Supported By Findings of Fact.

The trial court gave no reasons and made no findings of fact in support of its denial of the motion for attorney fees. How can this

appellate court review the trial court's decision other than *de novo* or to remand for entry of reasons and findings of fact?

The purpose of the equitable rule allowing attorney fees on the dissolution of a TRO after full hearing is to prevent a party from seeking unnecessary injunctive relief. *Cornell Pump Company v. City of Bellingham*, 123 Wn. App. 226, 228, 98 P.3d 84 (2004). where attorney fees were awarded after a TRO obtained by a disappointed bidder was dissolved because the disappointed bidder did not have a tenable basis for challenging the bid award. Here, the Appellants did not have a tenable basis for the issuance of a TRO allowing them to locate Tent City IV on NUCC property. The City appropriately and at considerable expense sought to enforce its zoning code and the contractual agreement it had with the two Appellants. The award of attorney fees is consistent with the purpose of the equitable rule. No reason or factual finding as grounds for denial of attorney fees was articulated by the trial court.

The TRO would not have continued beyond 8:30 a.m. on May 30, 2006, had the Appellants not requested its continuance. The TRO would not have been granted in the first place had the Appellants not resisted the entry of the TRO as sought by the City. The Appellants were not required by the TRO to move Tent City IV to the NUCC property but did so voluntarily and at risk that the TRO would be dissolved and the injunctive relief sought by the City granted after full hearing.

4. The Full Hearing Was Necessary to Dissolve the TRO and The Legal Expenses Incurred by the City From Its Motion to Quash to the TRO Through the Decision on June 9, 2006 Should be Awarded.

The City promptly made motion to quash the TRO after its entry. It obtained an order that terminated the TRO on May 30, 2006. Due to the orders extending the TRO the full hearing was necessary for the City to quash the TRO. Quashing the TRO and obtaining an order requiring the removal of Tent City IV from NUCC property was not ancillary but central to the relief sought and obtained by the City.

Unlike *Chin On v. Culinary Workers*, 195 Wn. 350, 81 P.2d 803 (1983) cited by Appellants, the TRO did not expire, or at least remain expired, at the time fixed for the start of the hearing. The City moved that the TRO be quashed as part of its motion for preliminary and final injunctive relief. The City objected to the orders continuing the TRO throughout the hearing. There was no factual basis for the trial court to deny an award of attorney fees. The denial of attorney fees is not supported by the facts in the record.

Appellants complain that the City must segregate attorney time spent to dissolve the TRO from other time spent in obtaining the injunctive relief set out in the Final Order. These complaints are not well taken.

Where , however, the trial court finds the claims to be so related that no reasonable segregation of successful and unsuccessful

claims can be made, there need be no segregation of attorney fees. *Pannell v. Food Servs. of Am.*, 61 Wash. App. 418, 447, 810 P.2d 812 (1991), *review denied*, 118 Wash.2d 1008, 824 P.2d 490 (1992).

Loeffelholz v. Citizens, 119 Wn. App. 665, 82 P.3d 1199 (2004). In *Pannell v. Food Services of Am.* the Court stated at 447:

The trial court found that the Managers claims were based on a common core of facts and that no reasonable segregation of successful and unsuccessful claims could be made. This judgment clearly falling within the trial court's discretion. Tradewell's argument against the award cannot be sustained.

It is not reasonably possible to segregate the City's attorney time between obtaining the preliminary and final injunctive relief from the time necessary to dissolve the TRO. The time is one and the same. The trial court would not dissolve the TRO until a full hearing was completed.

The Revised Declaration of Greg A. Rubstello in Support of an Award of Attorney Fees (CP 622-643) explained the litigation rates for the attorneys and gave detailed cost and time information upon which the request was based.

5. Strict Scrutiny Does Not Apply Because The City Did Not Impose a Substantial Burden On The NUCC's Religious Exercise Under RLUIPA Nor Unreasonably Burden Religious Exercise Under the Washington Constitution.

First, the NUCC inaccurately states the City's argument. The City does not state or argue that "strict scrutiny does not apply to RLUIPA

claims.” (NUCC Reply Brief at 35.) Instead, the City argues that the strict scrutiny test required under RLUIPA the Religious Land Use and Institutionalized Persons Act (RLUIPA) is inapplicable absent a showing by the NUCC that the zoning regulation in question does in fact “substantially burden” its religious exercise. (City’s Response Brief at 39.) Here, the record does not support a conclusion that the City’s Temporary Use Permit regulations or the Moratorium “substantially burden” the exercise of religious freedom. The temporary moratorium was adopted without knowledge by the City of any need or desire for Tent City IV to move to the R-1 zoning district of Woodinville during the period of the moratorium. (VRPT for May 31 at 4-5). The City had gone out of its way in the past to permit the encampment on short notice. (Exhibit 1).

NUCC relies upon the Case of *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006) to divert attention from *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004). *Guru Nanak Sikh Society of Yuba City* is, however, very distinguishable from the instant case on its facts. The county planning commission had responded to public pressure in denying a conditional use permit to build a temple in an agricultural zone. There had been a previous denial of a permit to build a temple in a residential zone. The court found that the facts lessened to a significantly great extent the possibility of Guru Nanak constructing a temple in the future. On this basis the court found

the “substantial burden” test had been met. The court in *Guru Nanak* recognized that:

RLUIPA applies only if one of three conditions obtain: (3) or, as Guru Nanak argues here, if “the substantial burden is imposed in the *implementation of a land use regulation* or system of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, *individualized assessments* of the proposed uses for the property involved.” 42 U.S.C. § 2000cc(2)(C) (emphasis added).

In addition, the court recognized at 998:

Accordingly, interpreting RLUIPA, this court has held: “[F]or a land use regulation to impose a “substantial burden,” it must be “oppressive” to a “significantly great” extent. That is, a “substantial burden” on “religious exercise” must impose a significantly great restriction or onus upon such exercise.’ (citations omitted).

Similarly, the Washington Supreme Court has applied the “unreasonably burdensome” requirement before applying a strict scrutiny analysis under the Washington State Constitution. *North Pacific Union Conference Ass’n of Seventh Day Adventists v. Clark Cty.*, 118 Wn. App. 22, 74 P.3d 140 (2003). Here as in *North Pacific Union Conference*, the denial of a permit is for a particular site. Furthermore, here the denial is based on a limited time moratorium rather than a continuing land use regulation as in *North Pacific Union Conference*. The Woodinville limited

time moratorium and TUP regulations are not “unreasonably burdensome.”

The trial court correctly found based upon the exhibits and the testimony that the Woodinville zoning regulations and moratorium did not unreasonably burden or substantially burden the exercise of religion by the NUCC.

E. CONCLUSION

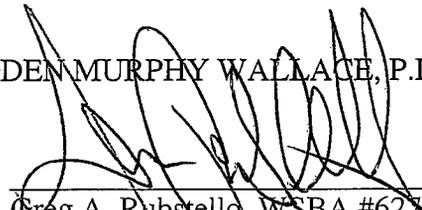
The Court should reverse the trial court’s denial of the City’s motion for attorney fees. The Court should grant the requested relief or remand to the trial court for determination of the amount of the award.⁴ The court should find that the trial court’s conclusion that a strict scrutiny analysis applied, was mistaken in light of the facts and the court’s own factual findings, but harmless error in light of the correctness of its decision on the merits of Woodinville’s claims for injunctive relief.

RESPECTFULLY SUBMITTED this 6th day of November, 2006.

⁴ ADDITIONAL COMMENT FOR THE RECORD. The NUCC chose to begin its Response Brief with what it called an “Overview” in which it disparaged the City for among other things trivializing *the challenges that homeless people face and the consequences of summarily tossing dozens of men and women out on the street*. In response the words of Judge Mertel at VRPT for June 7 at 89:99 are appropriate. JUDGE MERTEL: “ *I wanted to say to Mr. Rose, who is not here now. And I’m going to go ahead and say it to everyone that is here. It’s clear to me however this ends up being resolved that the City of Woodinville has gone out its way. Certainly the staff of the City of Woodinville. I haven’t met any of the council folks. So I won’t comment on their efforts, though I’m sure some of them have worked hard on this, too. But the staff of the City of Woodinville are to be commended for their compassion and their work both in 2004 and currently to try and assist the church and SHARE/WHEEL and the folks at Tent City IV in finding themselves a home. So I think that just has to said. The City expended a great deal of money some years ago. It’s clear to me that they continued to be caring and concerned about these folks. And that just needs to be on the record. ...* {GAR645329.DOC;1/00046.050028/}

OGDEN MURPHY WALLACE, P.L.L.C.

By



Greg A. Rubstello, WSBA #6271
J. Zachary Dell, WSBA # 28744
Attorneys for Respondent, City Of Woodinville