70958-5

70958-5

NO. 70958-5-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT,

Respondent,

vs.

AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn;
HORIZON AIR INDUSTRIES, INC., a Washington corporation; IBEW 77 INTERNATIONAL BOULEVARD, LLC, a Washington limited liability company; JP MORGAN CHASE BANK, N.A., fka The Chase Manhattan Bank, as Trustee for the Registered Holders of Prudential Securities Financing Corporation Commercial Mortgage Pass-Through Certificates, Series 199-C2; KING COUNTY; and ALL UNKNOWN OWNERS and UNKNOWN TENANTS,

Appellants.

APPELLANT AIRPORT INVESTMENT CO.'S OPENING BRIEF

Averil Rothrock, WSBA #24248
Joaquin M. Hernandez, WSBA #31619
Dennis Dunphy, WSBA #12144
Christopher H. Howard, WSBA #11074
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711
Facsimile: 206.292.0460
Attorneys for Appellant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAR 28 PM 3:54

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 4

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 4

IV. STATEMENT OF THE CASE 7

A. Landowner Airport Investment owns a franchise-quality hotel property: The Hampton Inn 8

B. Sound Transit petitioned to take by eminent domain easements across the Hampton Inn property for construction, placement, and operation of an elevated light rail train 8

1. Sound Transit's petition regarding a temporary construction easement 9

2. Sound Transit's petition regarding a permanent guideway easement for the placement and operation of the elevated train rail on the property 10

C. The parties tried the issue of "just compensation" for the partial takings to a jury 10

1. The trial court ruled *in limine* to prevent the landowner from supporting its expert's valuation opinion according to the well-accepted income method of appraisal with evidence concerning the Hampton Inn franchise agreement and related business practices. 11

2. The trial court denied Airport Investment's motion *in limine* to exclude evidence of its consulting appraiser's preliminary valuation opinion. 12

TABLE OF CONTENTS

Page

3. Over objection, the trial court required Airport Investment's president to reveal to the jury the valuation opinion of the non-testifying consulting appraiser. 13

4. Sound Transit changed the temporary construction easement during trial 16

5. Closing argument, jury deliberations and the verdict 18

D. The trial court denied the landowner's post-trial motion for fees under the eminent domain statutes RCW 8.25.070(1)(a) and RCW 8.25.075(1)(b) 20

V. STANDARDS OF REVIEW 21

VI. ARGUMENT 23

A. The trial court erred when it prevented the landowner's appraiser from supporting his opinion according to the well-accepted income method of appraisal through reference to the Hampton Inn franchise agreement and related business practices 23

B. The trial court erred when it required Airport Investment's president to reveal to the jury a consulting appraiser's out-of-court valuation opinion 34

1. The trial court should have granted Airport Investment's motion *in limine* to exclude the consulting expert's out-of-court valuation opinion. 35

2. The consulting expert's out-of-court valuation opinion was not admissible as Ms. Oh's "belief." 36

C. The trial court erred as a matter of law when it held that the fee-shifting provisions of the eminent

TABLE OF CONTENTS

Page

domain statute did not require an award of fees to the landowner when Sound Transit changed the temporary construction easement during trial.....40

VII. REQUEST FOR ATTORNEY FEES ON APPEAL PURSUANT TO STATUTE 46

VIII. CONCLUSION.....47

APPENDIX

1. 7/22/13 Order *in Limine* re Franchise Agreement (CP 736-37)
2. 7/24/13 Order *in Limine* re: #5 initial appraisal (CP 904-907)
3. 10/21/13 Order Denying Fees (CP 1430-31)
4. 7/31/13 Verdict (CP 995)
5. Original TCE in Order on Possession and Use (CP 1315-32)
6. Changed TCE (CP 1338-45)
7. Unadmitted Exhibit 158
8. Transcript Excerpt Concerning Sandra Oh's testimony (7/26/13 VBR 1186-1207).
9. RCW 8.25.070
10. RCW 8.25.075

TABLE OF AUTHORITIES

Page

CASES

Central Puget Sound Regional Transit Authority v. Eastey,
135 Wn. App. 446, 144 P.3d 322 (2006). 25, 34

City of Medina v. Cook,
69 Wn.2d 574, 418 P.2d 1020 (1966). 25

Council House, Inc. v. Hawk,
136 Wn. App. 153, 147 P.3d 1305 (2006) 21-22

County of Kern v. Galatas,
200 Cal. App. 2d 353, 19 Cal. Rptr. 348 (1962) .....41 n. 3

Department of Transportation v. Northern Trust Co.,
376 N.E.2d 286 (Ill. App. 1987) .....41 n. 3

FKM Partnership, LTD. v. Board of Regents of the University of Houston System,
225 S.W. 3d 619, 2008 Tex. LEXIS 530, 51 Tex. Sup. J. 989 (2007) .....42 n. 3

Lange v. State,
86 Wn.2d 585, 547 P.2d 282 (1976) 25, 34

Mahone v. Lehman,
347 F.3d 1170 (9th Cir. 2003) 22

Martin v. Port of Seattle,
64 Wn.2d 309, 391 P.2d 540 (1964) 32, 34

Montgomery County v. McQuary,
265 N.E.2d 812 (Oh. 1971) .....42 n. 3

Nevers v. Fireside, Inc.,
133 Wn.2d 804, 947 P.2d 721 (1997) 22

Port of Seattle v. Rio,
16 Wn. App. 718, 559 P.2d 18 (1977) 44

Renton v. Scott Pac. Terminal,
9 Wn. App. 364, 512 P.2d 1137 (1973) 47

TABLE OF AUTHORITIES

Page

Seattle P.A. & L.C. Ry. V. Land,
81 Wash. 206, 142 P. 680 (1914).....33, 34

State ex rel. Wash. State Convention & Trade Ctr. v. Allerdice,
101 Wn. App. 25, 1 P.3d 595 (2000).....23

State v. Costich,
152 Wn.2d 463, 98 P.3d 795 (2004).....23, 44

State v. McDonald,
98 Wn.2d 521, 656 P.2d 1043 (1983).....25, 34

State v. Obie Outdoor Amer.,
9 Wn. App. 943, 516 P.2d 233 (1973).....26, 34

State v. Powell,
126 Wn.2d 244, 893 P.2d 615 (1995).....21

State v. Rifle & Sportsman's Club,
132 Wn. App. 85, 130 P.3d 414 (2006).....21

State v. Roth,
78 Wn.2d 711, 479 P.2d 55 (1971).....44

State v. Tobin,
161 Wn.2d 517, 166 P.3d 1167 (2007).....22

State v. Wandermere Co.,
89 Wn. App. 369, 949 P.2d 392 (1997).....47

Thomas v. French,
99 Wn.2d 95, 659 P.2d 1097 (1983).....22

Udall v. T.D. Escrow Servs., Inc.,
159 Wn.2d 903, 154 P.3d 882 (2007).....23

United States v. Alvarez,
358 F.3d 1194 (9th Cir. 2004).....22

STATUTES

RCW 8.12.100.....40

TABLE OF AUTHORITIES

Page

RCW 8.25 44

RCW 8.25.070(1)(a) ..... passim

RCW 8.25.070(3).....43

RCW 8.25.075(1)(b) ..... passim

OTHER AUTHORITIES

ER 801(d)(2) 38

4 *Nichols on Eminent Domain* (3d ed.) § 12.31[2]. 26

5 *Nichols on Eminent Domain* (3d ed.) § 19.01.....26

RAP 18.1(a), (f), and (i).....46

Washington Constitution, Article 1, Section 16 1

I. INTRODUCTION

This Court should reverse because of two prejudicial evidentiary errors during a just compensation trial that prevented landowner Airport Investment Company dba Hampton Inn from receiving just compensation as guaranteed by Article 1, Section 16 of the Washington State Constitution.

A twelve-person jury determined just compensation for two takings by Sound Transit from Airport Investment's franchise-quality Hampton Inn property to extend light rail in SeaTac. Sound Transit condemned a temporary construction easement and a permanent easement for the placement of an elevated guideway rail across the property where the commuter train will run. Airport Investment was denied just compensation for these takings as a result of two prejudicial evidentiary errors. The Constitution guaranties just compensation; these errors are of constitutional magnitude. Sound Transit gained unfair advantage through its tactics. The unfair trial requires reversal.

First, this Court should reverse a prejudicial order *in limine* that prevented the landowner from presenting and supporting its expert's valuation opinion. This critically undercut the landowner's theory of the case, which it was not able to present to the jury. The trial court excluded evidence "of hotel operation requirements and business

practices" related to Airport Investment's franchise agreement. The excluded evidence properly supported the appraiser's assessment of the price a willing buyer would pay for this franchise-quality hotel property in its post-taking condition. The ruling prohibited Airport Investment from explaining to the jury that the taking reduced the value of the remainder by compromising the property's ability to meet the requirements necessary to maintain its franchise, and that this factor influenced post-taking value. The ruling prohibited explanation that the taking reasonably can be expected to reduce anticipated revenue from this income-producing property, also a factor influencing post-taking value. It is undisputed that commercial property is valued by its future income stream. These two factors were—contrary to the trial court's ruling—relevant and necessary to the landowner's valuation case. The order *in limine* undermined Airport Investment's case, denying the landowner just compensation for the property actually taken.

The second prejudicial evidentiary error occurred when the trial court incorrectly required Airport Investment's president to reveal to the jury the valuation opinion of a consulting expert appraiser whom no party called to testify. The out-of-court appraisal opinion first should have been excluded on Airport Investment's motion *in limine*. During trial, the trial court should have sustained Airport Investment's objection

and prevented Sound Transit from eliciting that expert's valuation opinion of $485,000 from Sandra Oh as her "belief." Through the back door, Sound Transit introduced this out-of-court appraisal opinion of a consulting expert. In its closing argument, Sound Transit manipulated the testimony of Ms. Oh's "belief" to argue both the veracity of the out-of-court appraisal opinion and Airport Investment's credibility. This was harmful, as directly demonstrated by an express question from the jury during deliberations whether it could consider the out-of-court opinion of value. The trial court instructed the jury that it could. The remedy for these prejudicial errors is a new trial.

Additionally, the trial court as a matter of law incorrectly construed and applied the fee statutes RCW 8.25.070(1)(a) and RCW 8.25.075(1)(b) to deny an award to Airport Investment. This Court should reverse on *de novo* review and hold that these provisions entitled the landowner to fees because (1) Sound Transit's disregard of statutory formalities and mid-trial change of the temporary construction easement disqualified its pre-trial offer as a basis to resist a fee award, or (2) the change constitutes abandonment of the original taking for which Sound Transit petitioned and obtained possession and use.

This Court should reverse to correct these errors.

II. ASSIGNMENTS OF ERROR

1. The trial court abused its discretion and committed harmful error in its 7/22/13 *Order Granting Sound Transit's Motion* in Limine *to Exclude Evidence of Franchise Requirements and Business Practices* (CP 736-37) (App. 1) when it excluded on relevancy grounds any testimony about "hotel operation requirements and business practices imposed by Airport Investment's current franchise agreement." This testimony was relevant and essential to the valuation opinion of Sound Transit's expert consistent with the well-accepted "income approach" to appraisals of income-producing properties.

2. The trial court abused its discretion and committed harmful error in its 7/24/13 *Order on Airport Investment's Motions* in Limine (CP 904-07 at #5 initial appraisals) (App. 2) when it failed to grant Airport Investment's motion to exclude evidence of Airport Investment's preliminary appraisal by a consulting expert. *See also* 7/16/13 VBR 47:8 to 55:12.

3. The trial court erred as a matter of law or abused its discretion and committed harmful error when, over the hearsay objection of Airport Investment, it required Airport Investment's president to testify during Sound Transit's case-in-chief to the preliminary valuation opinion of $485,000 by its consulting expert that Sound Transit did not call to testify. *See* VBR 7/26/13 1201-07 (App. 8).

4. The trial court erred as a matter of law in its post-trial 10/21/13 *Order Denying Respondent AIC's Motion for an Award of Attorney Fees, Expert Witness Fees and Expenses* (CP 1430-31) (App. 3) denying Airport Investment's motion for fees pursuant to RCW 8.25.070(1)(a) or 8.25.075(1)(b) when Sound Transit had changed the temporary construction easement mid-trial and failed to make a settlement offer for that easement as required by statute, or, alternatively, abandoned its original taking.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Issues Related to Assignment of Error 1 (*In Limine* Order Regarding Hampton Inn Franchise Agreement and Business Practices)

1. Was it legal error, or otherwise an abuse of discretion, to exclude on grounds of relevancy any evidence of "hotel operation requirements and business practices imposed by Airport Investment's current franchise agreement" when this evidence supported the valuation opinion of the landowner's appraiser and was consistent with the well-accepted "income method" of appraisal to determine fair market value of an income-producing property like this franchise-quality hotel property?

2. Was this error harmful when it prevented the landowner's expert Mr. Biethan from adequately explaining and supporting his opinion regarding the amount a willing buyer would pay for this property after the taking, undercutting the landowner's case for just compensation?

B. Issues Related to Assignments of Error 2 and 3 (Out-Of-Court Valuation by Consulting Appraiser)

1. Did the trial court abuse its discretion when it denied Airport Investment's motion *in limine* to exclude evidence of Airport Investment's preliminary appraisal by a consulting expert on the ground that the court only would grant the exclusion of Airport Investment's preliminary appraisal if

Airport Investment would agree not to cross-examine Sound Transit's testifying appraiser on his change of opinion?

2. Did the trial court commit legal error, or otherwise abuse its discretion and commit harmful error, when, at trial over the objection of Airport Investment Co., it permitted Sound Transit on direct examination to elicit from Airport Investment's president Sandra Oh as her "belief" the out-of-court appraisal opinion of the consulting expert whom Sound Transit did not call?

3. Does the record support the conclusion that the consulting appraiser's opinion of value, which the trial court characterized as Ms. Oh's "belief," fit within a proper exception to the hearsay rule, when Ms. Oh testified she had no independent basis for an opinion but was relying exclusively on the out-of-court opinion of her consulting appraiser?

4. Were these errors prejudicial where the jury during deliberations inquired whether it could consider the opinion of value by the non-testifying appraiser and was instructed that it could, and where Sound Transit referred to the appraiser's opinion in its closing to argue against Airport Investment's credibility on valuation and—after Sound Transit

had elicited the hearsay evidence in its case-in-chief—to attack Airport Investment for failing to present the witness in court?

C. Issues Related to Assignment of Error 4 (Denial of Fees Under Eminent Domain Fee Statutes)

1. Was Airport Investment entitled to fees as a matter of law pursuant to RCW 8.25.070(1)(a) because the thirty-day offer that Sound Transit made before trial was obviated by Sound Transit's change of the temporary construction easement during trial and therefore the offer did not provide a basis for Sound Transit to avoid a fee award, or pursuant to RCW 8.25.075(1)(b) because the change demonstrated abandonment of the taking for which Sound Transit petitioned and obtained possession and use?

2. Do the fee statutes, legislative intent, and public policy permit a condemnor to condemn a specific temporary construction easement, obtain possession and use of that easement, and make an offer of just compensation for that easement, but at trial reduce the scope of that easement and still avoid paying the landowner's fees?

IV. STATEMENT OF THE CASE

Airport Investment appeals from a jury trial to determine the just

compensation constitutionally required in an eminent domain proceeding by Sound Transit. As part of a "design-build" project to create service to SeaTac Airport known as the "South Link" light rail project, Sound Transit sought easements across Airport Investment's franchise-quality "Hampton Inn" hotel property. CP 1-56 (Petition); CP 401-02 ("design-build project" where third party contractor completes the design and construction schedule for the project). Airport Investment stipulated to possession and use as of November 26, 2012. CP 111-14. The fair value trial took place over ten days from July 17 to July 30, 2013, before the Honorable Catherine Shaffer.

A. Landowner Airport Investment owns a franchise-quality hotel property: The Hampton Inn

Airport Investment owns a franchise-quality hotel property doing business as The Hampton Inn in SeaTac. The building is a 4-story, 130-room hotel with a pool constructed in 1988. CP 535; 544, 525, 558; Exhibit 135; 7/22/13 VBR 531-32. The family business is run by Sandra Oh, who took responsibility for it on behalf of her family after her Korean immigrant father unexpectedly died in 2008. 7/25/13 VBR 1215:18-1222:1.

B. Sound Transit petitioned to take by eminent domain easements across the Hampton Inn property for construction, placement, and operation of an elevated light rail train

Sound Transit petitioned to condemn a temporary construction easement and a permanent "guideway easement." CP 116-28.

To facilitate discussions about its condemnation action, Sound Transit offered to reimburse Airport Investment for an appraisal of its property. 7/25/13 VBR 1201:20 to 1202:3. Accepting Sound Transit's offer, Airport Investment obtained a preliminary appraisal from Lamb Hanson Lamb, who prepared an appraisal valuing "just compensation" at $485,000. *Id. See* Exhibit 158 (Not Admitted) (Hanson appraisal and invoice in letter from Airport Investment's Mr. Choi to Sound Transit). At this time, Airport Investment was ignorant of many factors relevant to the taking. *See* 7/25/13 VBR 1209 (testimony of Oh). This occurred before Airport Investment was represented by counsel. CP 1438 ¶ 4.

1. Sound Transit's petition regarding a temporary construction easement

Sound Transit sought a temporary easement to facilitate construction of an elevated track and light rail system spanning the hotel property. CP 52-56. Sound Transit refers to this as the "TCE." Sound Transit sought a three-year TCE encompassing the permanent easement area and extending an additional 10 feet onto the property, i.e., where the permanent easement is 11.5 feet wide; the temporary easement is 21.5 feet wide. CP 52-56. Sound Transit petitioned for the right to use the TCE exclusively at times it designates for three years. CP 53.

2. Sound Transit's petition regarding a permanent guideway easement for the placement and operation of the elevated train rail on the property

Sound Transit sought a permanent taking in fee simple of property for the elevated light rail line across the property. CP 44-50. Sound Transit refers to this as the "aerial guideway easement" or the permanent easement. The width of the guideway easement is 11.5 feet. CP 49. The light rail track will be elevated 31 to 33 feet above the grade level of the property. 7/24/13 VBR 1032. The track will run 77 feet from the hotel room windows along the western end of the property. 7/22/13 VBR 538. The impact of noise and vibrations from the rail operations across the hotel property was an issue addressed at trial. *See* 7/23/13 VBR 636-674 and 7/23/13 687-84 (Sound Transit's sound and vibration expert). The elevated track will run by the swimming pool of the hotel. Exhibit 135; Exhibit 146; 7/22/13 VBR 531-32.

Sound Transit made a lump sum pre-trial offer of settlement of $463,500 for the two described takings on June 14, 2013. CP 1067.

C. The parties tried the issue of "just compensation" for the partial takings to a jury

During a ten-day trial before twelve jurors, the parties presented competing evidence regarding just compensation for these partial takings. The jury was charged to determine just compensation as of Sound Transit's possession and use of the property on November 26,

2012. CP 961.

Airport Investment's appraiser Scott Biethan testified that the value of the TCE is $32,124, the value of the permanent guideway easement is $210,000, and the remainder will be diminished in value by $1,547,000. 7/29/13 VBR 1502-03, 1538-39. Sound Transit's appraiser Murray Brackett valued the TCE at $61,503, the permanent guideway easement at $113,169, and concluded that the diminished value to the remainder after construction was zero. 7/24/13 VBR 1094; 1065-66.

As Sound Transit's expert Mr. Brackett acknowledged prior to trial, the dispute centered on the fair market value of the remainder after the taking. See CP 1901 (Brackett stating that "the big question" is the extent of diminution of value to the remainder).

1. The trial court ruled *in limine* to prevent the landowner from supporting its expert's valuation opinion according to the well-accepted income method of appraisal with evidence concerning the Hampton Inn franchise agreement and related business practices.

Airport Investment's case for just compensation for diminution to the remainder immediately was undercut when the trial court granted Sound Transit's motion *in limine* (see Motion CP 339-45) to exclude for lack of relevance evidence of the hotel operation requirements and business practices pertinent to the property's qualifications for its Hampton Inn franchise. CP 737. Sound Transit argued that such

evidence was irrelevant because "alleged business losses" and "consequential damages" are not compensable in eminent domain proceedings. CP 340-43. Sound Transit also argued that the owner's "specific use and particular business interests are not an appropriate measure of market value." CP 344.

The trial court granted the motion, excluding evidence that supported the landowner's "after" valuation of the property, as follows:

> That the Respondent, its attorneys, and witnesses shall refrain from directly or indirectly attempting to convey to the fact-finder any evidence or inference related to the hotel operation requirements and business practices imposed by Airport Investment's current franchise agreement. This order specifically prohibits, but is not limited to, all references to the current Hampton Inn franchise requirement of one parking stall per room and Hampton Inn's money-back guaranty business practice.

CP 737 (Order).

The trial court granted the motion despite the landowner's opposition articulating that the evidence was relevant to its appraiser's opinion of what a willing buyer would pay for this property after the taking and that such testimony was consistent with the well-accepted income method of appraisal of income-producing property. CP 519-26.

2. The trial court denied Airport Investment's motion *in limine* to exclude evidence of its consulting appraiser's preliminary valuation opinion.

Airport Investment sought to prevent disclosure to the jury of its

initial valuation opinion by consulting appraiser Lamb Hanson Lamb. CP 396 at #5, CP 406-08. This appraisal was obtained before Airport Investment was represented by counsel. CP 1438 ¶ 4. Sound Transit did not object provided the exclusion was "mutual" to also prohibit Airport Investment from cross-examining its testifying expert Murray Brackett on a change in his opinion. CP 661, 672 ("Sound Transit will agree to the exclusion so long as Airport Investment likewise agrees to the same exclusion with respect to evidence of Sound Transit's initial appraisal."). Sound Transit's "initial appraisal," however, was performed by, and later changed by, its testifying expert. The trial court did not grant Airport Investment's motion. CP 904-07 at #5 re: initial appraisals; 7/16/13 VBR 47:8 to 55:12. The trial court concluded that any exclusion should be mutual and concluded oral argument of Airport Investment's motion by directing the parties to reach agreement, or, "pick your poison." 7/16/13 VBR 53:4-54:23.

3. Over objection, the trial court required Airport Investment's president to reveal to the jury the valuation opinion of the non-testifying consulting appraiser.

In Sound Transit's case-in-chief, Sound Transit called as experts John Taffin, a "hotel" expert, 7/23/13 VBR 785-919, and Murray Brackett, an appraiser. 7/24/13 VBR 152-1172. Sound Transit then called Airport Investment's president, Sandra Oh. 7/25/13 VBR

1191:15. On direct examination, Sound Transit did not ask Ms. Oh for her lay opinion of valuation. See *id.* at 1191-1207. Instead, Sound Transit questioned Ms. Oh regarding a settlement communication between Sound Transit and Airport Investment in May 2012. *Id.* Sound Transit had indicated before Ms. Oh took the stand that it sought to introduce a letter—unadmitted Exhibit 158—containing the preliminary valuation opinion of consulting expert appraiser Lamb Hanson Lamb of $485,000. *See* 7/25/13 VBR 1186:13 to 1191:4. No party disclosed Mr. Hanson as a testifying expert or called him at trial regarding his preliminary appraisal. *See* CP 498-99 (Joint Statement of Evidence). Further, no party's expert relied on Mr. Hanson's work.

The trial court interrupted Sound Transit's direct examination and sent the jury out. *Id.* at 1198:10. The trial court then conducted voir dire of Ms. Oh, *id.* at 1198-1202, including this exchange concluding that Sound Transit could introduce the non-testifying appraiser's opinion of value as Ms. Oh's belief:

> **THE COURT:** Was there a belief that you were entitled to $485,000 for just compensation?
> **MS. OH:** Whatever was in the appraisal and what the appraiser came up with with—
> **THE COURT:** Is that an accurate statement, Ms. Oh? Did you believe you're entitled to $485,000? When you said it in July, was that an accurate statement about what your belief was?
> **MS. OH:** My belief was whatever the appraiser said was—
> **THE COURT:** Yes. Focus on the letter and the date and tell me

> if this was your belief.
> **MS. OH:** Well, that was my belief from the information from the appraiser.
> **THE COURT:** Okay. Thank you. May I have this?
> **MS. OH:** Oh, sorry.
> **THE COURT:** I'm going to let you question her about this letter—
> **MS. LINDELL:** Okay.
> **THE COURT:** —okay, directly. We don't need to get into whether Mr. Choi did or didn't have authority, because I don't think we're ever going to get a clear answer on, but I do think it's clear that this is a statement of something that she believed at the time and you can bring it in as her party admission.

7/25/13 VBR 1202:4 to 1203:5.

Airport Investment's attorney objected based on hearsay to the trial court's ruling that Sound Transit could communicate the valuation opinion to the jury through Ms. Oh, advising the trial court that the exception for a party admission did not apply. *Id.* at 1203, line 12 ("I don't think we meet the hearsay exception."). The trial court responded, "She just said that this was her belief at the time. That's not hearsay. It's her belief." *Id.* at lines 14-16.

Before the jury, Sound Transit then asked questions requiring Ms. Oh to reveal Mr. Hanson's initial valuation opinion:

> **Q:** Ms. Oh, I'm handing you what has been marked as Petitioner's Exhibit 158, and ask you if you recognize that letterhead, SOIM Airport Investment Company LLC?
> **A:** Yes, I recognize the letterhead.
> **Q:** And that's letterhead for your company, correct?
> **A:** Yes, for that office.
> **Q:** And the three hotels at the top are the three hotels that your

> family owns?
> **A:** Yes.
> **Q:** And this letter is dated July 16, 2012; is that right?
> **A:** Yes, that's what it says.
> **Q:** Okay. And as of July 16, 2012, was it Airport Investment Company's and your belief, strong belief, that Airport Investment Company was entitled to a total of $485,000 for just compensation?
> **A:** I based compensation based on whatever the appraiser said.
> **THE COURT:** That's a yes or no question.
> **Q (BY MS. LINDELL):** That's a yes or no question.
> **A:** Okay. Yes.

7/25/13 VBR 1205:3 to 1206:2. Throughout this questioning by the trial court and Sound Transit's attorneys, Ms. Oh was consistent that $485,000 was not her personal opinion of value but that at the time of these discussions with Sound Transit, she "based compensation based on whatever the appraiser said." *Id.* at 1205:20.

Subsequently, this testimony would be highlighted in Sound Transit's closing and was the basis of a jury question during deliberations. *See infra*, IV.C.5.

4. Sound Transit changed the temporary construction easement during trial

In the weeks leading up to trial, Sound Transit stated to Airport Investment that the scope and use of the TCE would be different than the temporary easement set out in the Order on Possession and Use, but did not provide further details or agree to put such changes in writing. CP 1312 ¶¶4-6. While simultaneously preparing for trial, Airport

Investment's counsel repeatedly sought additional information from Sound Transit on changes to the TCE. *Id.* Airport Investment requested information related to the construction schedule and Sound Transit's "actual" use of the TCE. *Id.* AIC's counsel repeatedly attempted to depose Sound Transit to receive updated information, but Sound Transit refused to schedule any deposition until the day before trial. CP 1312 ¶ 5. On May 30, 2013, Sound Transit permitted AIC's counsel to discuss the schedule with its engineer off the record, an unhelpful conversation indicating that Sound Transit's proposed modifications were in a state of flux. CP 1312 ¶ 6.

On July 16, 2013, the parties argued motions *in limine*. 7/16/13 VBR. Airport Investment moved to prevent Sound Transit from presenting the jury with a different TCE. CP 396 at #1, 398-99 (seeking to exclude "Evidence That Sound Transit will use the Construction Easement for a period of time less than the term set forth in the easement."). *See* 7/16/13 VBR 30:7-37:12. During the oral argument, Airport Investment explained Sound Transit's constantly changing description of use of the TCE. 7/16/13 VBR 30:11-31:24. The trial court at first identified the problem, stating to Sound Transit, "If you're taking for three years, then you can't undercut their compensation by saying to the jury, But actually we'll be taking for less than that period."

Id. at 33:11-14; *see also* 33:15-37:3. Yet that's exactly what the trial court permitted Sound Transit to do during the trial. The transcript (*id.* at 37:3-4) and written order reflect that the trial court "granted" Airport Investment's motion (CP 904 at #1), but with two important caveats in the written order that were implemented during trial. First, the ruling "does not preclude evidence regarding actual activity within the easement area" and, second, the ruling "does not preclude Petitioner from submitting a revised form of [TCE] providing for the actual time of use of the easement area." *Id.*

On July 17, 2013, the trial began. CP 1312-13 ¶¶ 7-8. Sound Transit withdrew its thirty-day settlement offer. CP 1312 ¶ 7; CP 1336. On the second day of trial and just one day after withdrawing its thirty-day offer, Sound Transit presented through Exhibits 148 and 149 a new TCE and construction schedule. CP 1313 ¶ 8; CP 1336-45 (revised TCE); Exhibits 148-49. Cf. CP 1048-65 (Order on Possession and Use).

5. Closing argument, jury deliberations and the verdict

During deliberations, the jury sent a question referring to Ms. Oh's testimony on direct examination by Sound Transit when the trial court overruled the landowner's hearsay objection. The jurors asked about an estimate "from a third appraiser":

How should we consider the estimate from a third

> appraiser, who was briefly mentioned? We think that estimate was $485,000. Can we consider this as evidence or witness testimony?

CP 952. The trial court responded to that question as follows:

> You may consider all the testimony and exhibits that were admitted into evidence, and assign it what weight you believe it is worth.

CP 953.

The jury's question demonstrates that it considered the appraiser Mr. Hanson's valuation opinion as substantive evidence of another appraisal, not merely as Ms. Oh's supposed belief of value. The trial court's instruction in response to the question permitted the jury to do that. In Sound Transit's closing statement, Sound Transit argued for exactly this treatment of the evidence, urging that the jury consider Appraiser Hanson's appraisal substantively—for its own truth—when Sound Transit's counsel argued about the out-of-court appraisal, not about Ms. Oh's "belief":

> Let's talk about other opinions in this case. Ms. Oh, the president of Airport Investment, testified that Airport Investment hired someone to come in and to research and locate the best appraiser they could find and to value this property for the condemnation, and they did that. The appraiser came back with an opinion of value in the amount of $485,000 as of July of 2012. Airport Investment Company, after considering the appraisal, told Sound Transit that the $485,000 accurately, quote, accurately reflects just compensation, end quote, and that Airport Investment, quote, strongly believes that we're entitled to a

> total of $485,000 for just compensation, end quote.
>
> Ms. Oh testified to that. Where is that appraiser? It's a matter of that appraiser not having enough information. Let's get that appraiser the information; he can update his report. Mr. Brackett updated his report for time. What prevented them from updating that report?

7/30/2013 VBR 1761, line 21, to 1762, line 15. Sound Transit deliberately used the so-called belief testimony to introduce the consulting appraiser's out-of-court opinion for its own truth, to attack that opinion, and to blame Airport Investment before the jury for not calling the appraiser. Sound Transit utilized the erroneous admission of this hearsay to discredit Airport Investment.

A twelve-person jury awarded the landowner $163,497 for the permanent taking and $61,503 for the TCE. CP 995 (App. 4).

D. The trial court denied the landowner's post-trial motion for fees under the eminent domain statutes RCW 8.25.070(1)(a) and RCW 8.25.075(1)(b)

Airport Investment moved post-verdict for an award of fees required by 8.25.070(1)(a) and 8.25.075(1)(b) because Sound Transit changed its TCE on the second day of trial. CP 1295-306. As noted, the possession and use order incorporated the original TCE. CP 1048-65 (App. 5). That description was in effect when Sound Transit made its pre-trial, lump sum offer of settlement. CP 1334. Airport Investment was statutorily entitled to fees under either RCW 8.25.070(1)(a) for lack of a qualifying pre-trial offer, or RCW 8.25.075(1)(b) for abandonment

of the original TCE after Sound Transit changed the taking at trial.

Sound Transit opposed the motion, detouring through a factual discussion of discovery and Sound Transit's ever-changing construction schedules "provided" to Airport Investment. Sound Transit appeared to place the onus on Airport Investment to discover and vet the contours of its taking. *See* CP 1398-401. Sound Transit admits—where it could do nothing less—that it changed the TCE, blaming Airport Investment for Sound Transit's tardy delineation of the property it needed, as follows: "The TCE changes, which AIC prompted and did not oppose, were made to ameliorate some of AIC's concerns about the TCE's impact on its business." CP 1396.

The trial court without explanation denied Airport Investment's motion for fees. *See* CP 1430-31.

V. STANDARDS OF REVIEW

Appellate courts review rulings on motions *in limine* or the admissibility of evidence for abuse of discretion, which standard includes legal error. *See State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). "A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds." *State v. Rifle & Sportsman's Club*, 132 Wn. App. 85, 91, 130 P.3d 414 (2006). "Untenable reasons include errors of law." *Council House, Inc. v.*

Hawk, 136 Wn. App. 153, 159, 147 P.3d 1305 (2006). *See also State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007) ("[A]pplication of an incorrect legal analysis . . . can constitute abuse of discretion.").

Construction of court rules is reviewed *de novo*. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 809, 947 P.2d 721 (1997). *See also Mahone v. Lehman*, 347 F.3d 1170, 1173-74 (9th Cir. 2003) ("We review the district court's construction of the hearsay rule de novo...."); *United States v. Alvarez*, 358 F.3d 1194, 1214 (9th Cir. 2004) (reviewing *de novo* construction of hearsay rule and for abuse of discretion decision to admit non-hearsay).

Error is prejudicial if it affects, or presumptively affects, the outcome of a trial. *Thomas v. French*, 99 Wn.2d 95, 104, 659 P.2d 1097 (1983) overruled on other grounds, *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 815 P.2d 1362 (1991). In *Thomas v. French*, the Supreme Court reversed and granted a new trial based upon improper admission of hearsay contained in a letter where the "prejudicial value" of the improperly admitted letter was "evident on its face," reinforced one side's credibility, and presumptively influenced the outcome where "there is no way to know what value the jury placed upon the improperly admitted evidence." *Id.*

Whether a condemnee is entitled to fees under RCW 8.25.070 or

RCW 8.25.075 is a legal question reviewed *de novo*. *See State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004) (addressing RCW 8.25.070); *State ex rel. Wash. State Convention & Trade Ctr. v. Allerdice*, 101 Wn. App. 25, 28, 1 P.3d 595 (2000) (same). *See also Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 908, 154 P.3d 882 (2007) (statutory interpretation reviewed *de novo*).

Application of these standards should result in reversal.

VI. ARGUMENT

This Court should reverse because serious evidentiary errors prejudiced Airport Investment and denied it just compensation required by Washington's constitution. Denial of just compensation harms a constitutional right. The erroneous evidentiary rulings, most of which turn on errors of law, require reversal and remand for a new trial. This Court should reverse on *de novo* review the order denying fee recovery to Airport Investment.

A. The trial court erred when it prevented the landowner's appraiser from supporting his opinion according to the well-accepted income method of appraisal through reference to the Hampton Inn franchise agreement and related business practices

The trial court committed harmful error when it prevented Airport Investment from presenting evidence to support its expert's valuation opinion concerning the remainder by prohibiting any reference

to "hotel operation requirements and business practices imposed by Airport Investment's current franchise agreement." CP 737 (Order) (App. 1). The trial court ruled these factors were not relevant to just compensation. This was wrong.

The value of the property is directly related both to its qualification for a franchise-quality hotel operation and to any reduction in income that the project's impacts could be expected to produce. These factors supported expert Scott Beithan's opinion regarding the price a willing buyer would pay for this hotel property in its "after" condition according to the accepted income method of appraisal. The ruling deprived Airport Investment of the opportunity to support its evaluation of the property and to present to the jury its theory of the case. The ruling severely prejudiced Airport Investment.

The error was legal. The trial court misapplied case law that holds that evidence of lost profits is not admissible. This law did not support exclusion in this case because Airport Investment did not offer the evidence to establish lost profits. Airport Investment offered the evidence to support valuation pursuant to the well-accepted income method of appraisal of income-producing properties. In this context, this Court should hold as a matter of law that the evidence was relevant and admissible.

The purpose of a just compensation trial is to treat the landowner fairly. *Lange v. State*, 86 Wn.2d 585, 589 (1976), citing Wash. Const., art 1 § 16. "It is well established that the condemnee is entitled to be put in the same position monetarily as he would have occupied had his property not been taken." *Id.* Courts have a duty to achieve fairness in condemnation awards. *Id.*

For partial takings like this one, "just compensation is the difference between the fair market value of the entire tract before the acquisition and the fair market value of the remainder after the acquisition." *State v. McDonald*, 98 Wn.2d 521, 526, 656 P.2d 1043 (1983). In other words, "[c]ompensation is due for damage 'caused to the remainder by reason of the taking.'" *Central Puget Sound Regional Transit Authority v. Eastey*, 135 Wn. App. 446, 456, 144 P.3d 322 (2006). In measuring just compensation, "due consideration" should be given to "all the elements reasonably affecting value." *City of Medina v. Cook*, 69 Wn.2d 574, 578, 418 P.2d 1020 (1966).

Both parties acknowledged the "before and after" rule as an appropriate measure of just compensation for the partial taking at issue. *See* CP 351 (Sound Transit's Trial Brief), citing WPI 150.06 ("Measure of Compensation—Partial Taking") and *Sound Transit v. Eastey*, *supra*, 135 Wn. App. at 456; CP 308 (Airport Investment's Trial Brief) citing

WPI 150.06 and 150.08 ("Fair Market Value- Definition"). Under the "before and after" rule, the difference in the value of the hotel property before and after the taking establishes the just compensation. *Id.*

Both parties' experts utilized the same well-established income approach to property valuation of this commercial hotel property. CP 521, 560, 569-73, 578, 585-87 (Brackett for Sound Transit); CP 311-12 (Airport Investment's Trial Brief describing Biethan's opinion based on the income approach); 7/25/13 VBR 1328-30; 7/29/13 VBR 1502-03, 1538-39 (Beithan for Airport Investment). Washington courts endorse this approach. *See State v. Obie Outdoor Amer.*, 9 Wn. App. 943, 946-47, 516 P.2d 233 (1973) (endorsing income approach), citing 4 *Nichols on Eminent Domain* (3d ed.) § 12.31[2] and 5 *Nichols on Eminent Domain* (3d ed.) § 19.01. *See also Tiger Oil Corp. v. Yakima County*, 158 Wn. App. 553, 563, 242 P.3d 936 (recognizing income approach as accepted appraisal method).

Sound Transit's expert Mr. Brackett prior to trial described the income approach as the "best" measure of a hotel property's value because "folks purchase properties like that [i.e., commercial], . . . for the income." CP 521. Mr. Brackett explained how the income approach utilizes a projected net operating income and applies a capitalization rate to it to determine value, as follows:

> The Income Approach to Value, as applied to the subject property, involves the estimation of a gross economic rental, which is then processed by subtracting an estimated vacancy and credit loss and operating expenses to obtain an estimated net operating income. The net operating income is then capitalized into a value estimate by the appropriate capitalization rate derived from the market.

CP 560 (Brackett Appraisal). *See also* CP 569. By multiplying the estimated net operating income by an appropriate "cap" rate, fair market value for a commercial property is determined.

Sound Transit did not dispute the income approach. But it sought to gut Airport Investment's valuation by excluding on grounds of relevancy evidence that was critical to Mr. Biethan's opinion of the post-taking value of this hotel property based on that approach. CP 339-45.

Airport Investment opposed exclusion of this vital evidence. CP 519-26. Airport Investment demonstrated that the evidence was relevant and necessary to show the negative impact of the taking on the value of the remaining property. CP 521. The evidence would substantiate an impact on the revenue stream for the hotel, thereby reducing its value in the "after" condition. *Id.* Where the Hampton Inn provides a 100% Guaranty entitling a guest to request a refund for any reason, the property reasonably could expect decreased income from guests dissatisfied by the noise, proximity, and view obstruction resulting from

the light rail placement and operation directly overhead in the parking lot and swimming pool areas and in front of guest rooms. CP 522, 524. Appraiser Mr. Biethan further would testify that the easements created the risk that the property characteristics would not continue to satisfy Hilton's requirements for a Hampton Inn franchise, again negatively influencing the value of the property to a prospective buyer in its "after" condition. CP 524.

The relevance of these factors is underscored by the fact that appraisers for both Sound Transit and the landowner testified that their "before" valuation of the property was influenced by the property's ability to secure its strong Hampton Inn brand. CP 523. As Airport Investment explained to the trial court, both experts relied on the property's "strong" national branding as a Hampton Inn to arrive at their "before" estimates of value, with Sound Transit's appraiser testifying about the stength of the Hampton Inn brand, as follows:

> **Q:** Tell me some of the characteristics you were looking for in selecting the [comparable properties to the subject property].
>
> **A:** Well, generally, in the same category, select-service, limited-service hotel; typically, *sales with similar branding*, similar room size, overall size in terms of rooms; to the extent we were able to find properties of similar ages, but the ages in the assignments we had varied quite a bit.
>
> —

> **A:** *Those hotel properties in good condition with strong branding* and location are generating investor returns on par with the pre-recession climate.
>
> **Q:** What do you mean by *strong branding*?
>
> **A:** Where you've got a national affiliation.
>
> **Q:** Does the old Hampton Inn have a national affiliation?
>
> **A:** Yes.
>
> **Q:** *Do you consider the Hampton Inn a strong brand?*
>
> **A:** *Yes.*
>
> **Q:** Why?
>
> **A:** *It's a good, national brand with a good reputation.*

CP 523 (emphasis added). That the property qualified for a Hampton Inn franchise was obviously relevant to Sound Transit's "before" estimate of value. Whether the property could continue to qualify for this status after the taking was relevant and essential to any accurate "after" estimate of value. The trial court's prohibition resulted in lop-sided evidence: the property's "before" value was enhanced by its ability to sustain a Hampton Inn franchise, but the jury was not allowed to consider whether, in its "after" condition, the property would continue to have the necessary characteristics.

Oddly, during trial Sound Transit's hotel expert John Taffin was permitted to testify about Red Lion standards for its franchises, but the trial court continued to prevent testimony about the more pertinent Hampton Inn standards. *See* 7/23/13 VBR 868:11-869:18, 876:10-

877:23, 879:9 to 880:24; 919:18 to 921:6. It made no sense to exclude evidence of the Hampton Inn standards.

During trial Mr. Brackett for Sound Transit supported his opinion that the capilization rate would not change post-taking by asserting that Airport Investment offered no evidence to support a change to the cap rate. 7/24/13 VBR 1154:11-19. Airport Investment was hamstrung by Sound Transit's successful motion to exclude such evidence, and Sound Transit took advantage of it.

The trial court should have allowed Airport Investment's appraiser to testify regarding his opinion of diminished value in the "after" condition based on changes to the property that would put its ability to qualify for its Hampton Inn branding at risk, and the more likely than not resultant decrease in revenues based on the 100% money back guaranty required by Hampton Inn. CP 523-24. The trial court's ruling prevented appraiser Scott Biethan from adequately supporting and explaining his valuation opinion that Airport Investment would suffer a loss of $2.5 million dollars for diminution to the remainder based on these factors. *Id.* These factors supported Mr. Biethan's opinion that a willing buyer interested but not obligated to purchase would pay that much *less* for this specific hotel property after the project than before. By excluding this evidence on the mistaken ground that it was not

relevant to the income method of appraisal, the trial court excluded a relevantand essential element of the basis for evaluation using the income approach that both sides agreed was fair and proper.

The trial court appeared to think that Mr. Biethan could support his opinion with more general evidence that the property was franchise quality. *See* 7/16/13 VBR 20:6 to 23:8 and 28:11-25. This missed the mark. The excluded evidence was specific and not speculative as to the property at issue, supporting the appraisal valuation of this specific property as a Hampton Inn franchise. The appraiser's valuation opinion was based on these factors. The trial court had no basis to disallow evidence of these factors, offer suggested alternatives, or require different evidence. Airport Investment was entitled to present its valuation opinion and the factors that supported it.[1]

The trial court's ruling finds no support in the case law. Sound Transit misdirected the trial court by arguing that the evidence should be excluded as evidence of lost profits. See CP 340-343. Airport Investment was not seeking to recover actual lost profits or revenues

---

[1] The exclusion on grounds of relevancy of this evidence should be distinguished from a *Frye* objection seeking to discredit the appraiser's valuation method. Sound Transit never moved—where such a motion could not succeed—on the basis of *Frye* or attempted to demonstrate that the expert's consideration of these factors was not accepted practice among appraisers appraising income properties.

from paying hotel customers through the excluded testimony. CP 519, 525. The proffered testimony was relevant as a necessary basis to determine *the fair market value* of the property after the taking. The trial court applied the wrong law to prevent presentation of factors relevant to evaluation of the commercial property's value.

Similarly, Sound Transit misdirected the trial court when it argued that the evidence was not relevant because it was "specific" to the "particular business interests" of Airport Investment. CP 344. The only response needed is that the evidence was relevant to, and informed, Mr. Biethan's opinions according to the income method of appraisal. The jury should have been allowed to hear the evidence and judge the credibility of Mr. Biethan's opinion.

Sound Transit raised authorities that do no support affirmance. For example, in *Martin v. Port of Seattle*, 64 Wn.2d 309, 319, 391 P.2d 540 (1964), the Supreme Court held that just compensation may not reflect a "personal injury to the individual," but must reflect "the lesser desirability of the land to the general public; i.e., to a ready, able and willing buyer." *Id.* Airport Investment sought only to establish the latter. The evidence the trial court precluded was directly relevant to the fair market value of the remainder under *Martin*, which supports reversal and remand for a new trial.

Sound Transit cited *Seattle P.A. & L.C. Ry. v. Land*, 81 Wash. 206, 214-16, 142 Pac. 680 (1914), which concerned a landowner's attempt to establish compensation based on speculative plans to develop the property in the future. 81 Wash. at 213-14. The Supreme Court characterized the testimony at issue as failing to focus on the fair market value of the land, presenting instead "the loss of speculative profits on a business which might be conducted as some future time on the land." *Id.* at 215. The present case is distinguishable. Airport Investment sought to show precisely what the Supreme Court authorized: diminishment of the fair market value. This diminishment was based on impacts to *existing*, *actual* characteristics of the property as developed. "If land has a peculiar value for some determinate purpose, testimony to that effect is admissible . . . " *Id.* at 212. Here, the land already has a peculiar value as a nationally franchised hotel property. Testimony "to this effect" was relevant. The evidence did not concern personal needs, but characteristics of the property whose alteration jeopardized its high end use. It was admissible.

Moreover, *Seattle P.A.* supports determining value based on "many and varied" "circumstances to be taken into account." The Supreme Court noted that "it is perhaps impossible to formulate a rule to govern its appraisement in all cases." *Id.* at 213. "[A]s a general thing,

we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future." *Id.* The case does not support the trial court's ruling.

The trial court committed legal error when it was persuaded by Sound Transit to misapply case authorities and hold that the evidence was not relevant because a landowner may not recover lost profits. Consistent with *Martin v. Port of Seattle*, *Seattle P.A.*, *McDonald*, *Lange*, *Eastey*, and *Obie Outdoor Advertising*, the evidence was relevant to the "after" valuation of this commercial property.

As a result of this harmful ruling, Sound Transit obtained the benefit of a partial taking of this franchise-quality hotel property without paying any diminishment in value attributable to the impacts of the taking on the property's exceptional status or the reasonably expected reduction of income as a result of the taking. The jury never considered these factors. The Court should reverse this prejudicial error and remand for a new trial of just compensation.

B. The trial court erred when it required Airport Investment's president to reveal to the jury a consulting appraiser's out-of-court valuation opinion

Airport Investment is entitled to a new trial because the trial

court erred when it required Airport Investment's president, Sandra Oh, to reveal the valuation opinion of a consulting appraiser whom neither side called to testify. The trial court overruled Airport Investment's hearsay objection and allowed Sound Transit to elicit the hearsay opinion, i.e., the dollar figure arrived at by another appraiser. 7/26/13 VBR 1202-03 (App. 8). This error was unfair and harmful as evidenced by the jury's question during deliberations. The trial court previously should have excluded evidence of the preliminary appraisal based on Airport Investment's motion *in limine*.

1. The trial court should have granted Airport Investment's motion *in limine* to exclude the consulting expert's out-of-court valuation opinion.

The trial court first erred when it failed to grant Airport Investment's motion *in limine* to exclude the preliminary expert appraisal. *See* CP 904-07 at #5 re: initial appraisals (App. 2). Sound Transit raised no meritorious objection to this well-grounded motion. *See* CP 661, 672; 7/16/13 VBR 4712:18. Instead, Sound Transit argued that what was good for the goose was good for the gander, asserting that its "preliminary appraisal" also should be excluded. *Id.* This was incorrect because the landowner's expert was a *consulting* expert, but Sound Transit's "preliminary appraisal" was performed by its *testifying* expert. Whether the testifying expert could be cross-examined on his

change of opinion between his preliminary and subsequent appraisals was not equivalent to whether the landowner's appraisal by a true consultant was admissible. No party intended to call the consulting expert Lamb Hanson Lamb. *See* CP 499. The consulting appraisal, moreover, had been obtained before Airport Investment even had counsel and was utilized for settlement discussions. CP 1438 ¶ 4.

Airport Investment explained the difference to the trial judge, arguing that it should be able to impeach Sound Transit's testifying appraiser on the basis of his first appraisal without threat that its initial appraisal from a consulting expert who would not be testifying also must be admitted. 7/16/13 VBR 47:23-49:15.

But the trial court accepted Sound Transit's argument that the same ruling should apply to both preliminary appraisals, refusing to grant Airport Investment's motion *in limine* and instructing the parties to "figure it out." 7/16/13 VBR 55:9-11 ("I'm not granting this motion for either side"). No tenable basis supports this denial where the two positions could not be equated.

2. The consulting expert's out-of-court valuation opinion was not admissible as Ms. Oh's "belief."

Sound Transit later succeeded in getting "through the back door" what it could not have achieved through the front: presentation to the

jury of the $485,000 valuation opinion of that consulting expert who was not called to testify. This was legal error based on incorrect construction of the evidence rules and abuse of discretion.

As noted, prior to being represented by counsel, Airport Investment had obtained Lamb Hanson Lamb's $485,000 preliminary valuation opinion under threat of condemnation using funds offered by Sound Transit for the purpose of a preliminary appraisal so that settlement discussions could be pursued intelligently. *See* Unadmitted Exhibit 158 (App. 7); 7/25/13 VBR 1201-04 (App. 8). Ms. Oh testified during voir dire that she did <u>not</u> hold a personal opinion of value but instead relied on her consulting expert. *Id.* at 1202:6-7 ("Whatever was in the appraisal and what the appraiser came up with. . . ."), 16-17 ("Well, that was my belief from the information from the appraiser."). She maintained that she simply "based compensation on whatever the appraiser said." *Id.* at 1205:21-22. Her testimony on voir dire provided no basis for the admission of the out-of-court opinion of value, which was rank hearsay.

The trial court incorrectly reasoned that the testimony was not hearsay since it constituted Ms. Oh's belief. See 7/25/13 VBR 1202:4 to 1204:11. Although no party argued based on a specific evidence rule,

the trial court appeared to rely on ER 801(d)(2).[2] The trial court's conclusion is directly contradicted by Ms. Oh's explanation that she based compensation on what her expert told her and held no independent "belief" as to value. *Id.* Ms. Oh's voir dire testimony belies the trial court's conclusion that the $485,000 valuation opinion testified to by Ms. Oh was "not hearsay" on the grounds that the appraisal figure "was her belief." Ms. Oh's testimony in fact shows the opposite. The trial court's reasoning is not tenable. The testimony communicated the fact of an out-of-court, professional opinion of value, which is far beyond the scope of ER 801(d)(2).

Airport Investment objected to the introduction of this appraisal opinion by stating that, contrary to the court's indication that this testimony was admissible as Ms. Oh's "belief," an exception to the hearsay rule had not been established. *Id.* at 1203, line 12 ("I don't think

---

[2] ER 801(d)(2) reads:

> Admission by Party-Opponent. The statement is offered against a party and is (i) the party's own statement, in either an individual or a representative capacity or (ii) <u>a statement of which the party has manifested an adoption or belief in its truth</u>, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. (emphasis added).

we meet the hearsay exception."). The trial court overruled the objection by restating its original rationale that it qualified for admission as Ms. Oh's "belief." *Id.* at lines 14-16.

The sole question of fact at issue for trial is "to ascertain the just compensation to be paid for the property taken or damaged." RCW 8.12.100. Sound Transit admitted through the back door the opinion of a consulting appraiser that just compensation was $485,000. This out-of-court statement served—and could serve—no other purpose than to support the truth of the matter asserted, i.e., the value of the property according to an appraisal. It was inadmissible hearsay.

This testimony was harmful, as conclusively demonstrated by Sound Transit's closing argument and the only jury question presented during deliberations. In closing, Sound Transit used the so-called belief testimony to introduce the consulting appraiser's out-of-court opinion for its own truth, referring at length to the out-of-court appraisal and criticizing Airport Investment for not presenting the expert. *See supra*, IV.C.5, citing 7/30/2013 VBR 1761, line 21, to 1762, line 15. Then, the jury during deliberations asked about the estimate "from a third appraiser," inquiring:

> How should we consider the estimate from a third appraiser, who was briefly mentioned? We think that estimate was $485,000. Can we consider this as evidence

or witness testimony?

CP 952. The trial court's response was affirmative. CP 953. The jury's question demonstrates that—as Sound Transit invited them to do in closing—the jurors understood Ms. Oh's testimony as substantive evidence of another appraiser's opinion of value.

Airport Investment's hearsay objection should have been sustained to prevent the jury's consideration of this hearsay opinion. And Sound Transit should not have been allowed to set up an argument that Airport Investment was hiding evidence. The harmful error entitles Airport Investment to a new trial on just compensation.

C. The trial court erred as a matter of law when it held that the fee-shifting provisions of the eminent domain statute did not require an award of fees to the landowner when Sound Transit changed the temporary construction easement during trial

Sound Transit legally was entitled to an award of fees pursuant to Washington's eminent domain statutes because Sound Transit changed the TCE during trial. These changes triggered Airport Investment's right to fees under RCW 8.25.070(1)(a) (App. 9) or RCW 8.25.075(1)(b) (App. 10). The trial court erred as a matter of law when it denied Airport Investment's motion for fees. *See* CP 1430-31 (App. 3).

As a matter of law, the changed TCE justifies an award of fees to Airport Investment under 8.25.070(1)(a). This statute provides that "the

court shall award" reasonable attorney fees and witness fees when "the condemnor fails to make any written offer of settlement to a condemnee at least thirty days prior to commencement of said trial." RCW 8.25.070(1)(a). The entire provision, read as a whole, demonstrates that the offer must relate to "the property being condemned," a phrase that recurs throughout. *Id.* at (1)-(3). This is what the statute plainly says. It is common sense. An offer related to property other than that being condemned does not qualify under RCW 8.25.070(1)(a) to avoid an award. As further discussed below, Sound Transit's offer was **not** an offer for the TCE that it actually presented to the jury.

The change of the TCE also justifies an award of fees for abandonment of its original taking. Abandonment entitles Airport Investment to its fees and costs under RCW 8.25.075(1)(b), which provides, "A superior court... shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if: (b) The proceeding is abandoned by the condemnor." RCW 8.25.075(1)(b).[3] Becaue Sound Transit put before the jury a different

[3] Persuasive authorities from other jurisdictions support the conclusion that a material change in the property taken constitutes abandonment. See *Department of Transportation v. Northern Trust Co.*, 376 N.E.2d 286, 287 (Ill. App. 1987) (post-complaint change of taking justified award of attorney fees and costs under abandonment theory); *County of Kern v. Galatas*, 200 Cal. App. 2d 353, 356-57, 19 Cal. Rptr.

taking than the one for which it petitioned and obtained possession and use, it abandoned the original taking. An award of fees to Airport Investment is proper as a matter of law under either statute.

In opposing a fee award, Sound Transit admitted that it changed the TCE, attempting to downplay its changes by asserting that Airport Investment "prompted and did not oppose" the changes, and that the changes "were made to ameliorate some of AIC's concerns about the TCE's impact on its business." CP 1398-401. Sound Transit could not dispute the changes in any event, as the parties plainly stipulated to possession and use of the original TCE. CP 1315-32 (App. 5). That TCE was different from the one Sound Transit ultimately presented at trial, both in terms of the square footage being taken and the duration of the taking.[4] On the second day of trial, Sound Transit disregarded the formality of the possession and use order and the description of the TCE to which it had

---

348, 350 (1962) (same); *Montgomery County v. McQuary*, 265 N.E.2d 812, 814 (Oh. 1971) (same); *FKM Partnership, LTD. v. Board of Regents of the University of Houston System*, 225 S.W. 3d 619, 2008 Tex. LEXIS 530, 51 Tex. Sup. J. 989 (2007) (post-complaint reduction to size of taking amounted to a voluntary dismissal of the claim against the larger tract, justifying recovery of some fees and expenses).

[4] The original TCE included 3882 square feet for a period of 3 years. CP 1315-32 (Order on Possession and Use) (App. 5). The TCE that Sound Transit presented at trial included only 2886 square feet for a much shorter period of no more than 160 non-continuous days of usage. CP 1338-45 (App. 6); Exhibits 148-149; CP 1313 ¶ 8-9.

stipulated, presenting a different TCE. Exhibits 148-49. The changes included a 25% decrease in the area of the easement and a reduction of duration of 2.5 years. CP 1299 citing CP 1314-32 and CP 1337-44.

The trial court allowed Sound Transit to do **exactly** what the landowner had feared and what the trial court had previously stated would be inappropriate: present a different picture of the taking to the jury than its pleadings and pretrial offer had shown. *See supra*, IV.C.4, citing 7/16/13 VBR 33:11-14. Sound Transit capitalized on its changes to the TCE to argue to the jury in closing that it *generously* valued the TCE for 3 years of compensation instead of the actual 160 days it actually would use the property, drawing attention to the "two and a half years of nonuse by the contractor." 7/30/13 VBR 1696:15-25. Sound Transit argued that during those two and half years Airport Investment "will have full use of the easement area," but Sound Transit still would be paying Sound Transit for three years use. *Id.* at 1696:21-1697:4. This was highly prejudicial and unfair.

In addition to these persuasive facts, an award also was warranted based on Sound Transit's position that no jury—and consequently no condemnee—fairly could evaluate the taking without the additional information that was not forthcoming until the second day of trial. When arguing to the trial court its desire to present the new

TCE to the jury, Sound Transit claimed the changes were enormously important to the valuation issue. CP 661. In support of presenting the changes over Airport Investment's opposition, Sound Transit stated that the "**testimony as to the anticipated duration and character of Sound Transit's use of the TCE during the three-year term is essential to determining the TCE's fair market value**." CP 661. This admission further demonstrates that the original TCE description was insufficient for evaluation of Sound Transit's offer and that an award was due.

Legislative intent supports an award to Airport Investment in these circumstances. Prior to 1965, a condemnee faced certain inequities if they sought to be justly compensated for their property by going to trial because fees were not available. *State v. Roth*, 78 Wn.2d 711, 712, 479 P.2d 55 (1971). The legislature enacted RCW 8.25 in 1965 to correct the unfairness to a landowner resulting when a landowner's jury award of just compensation was diminished by legitimate costs of litigation. *Id.* The resulting legislation sought to encourage settlement before trial and encourage condemnors to make reasonable settlement offers. *Port of Seattle v. Rio*, 16 Wn. App. 718, 559 P.2d 18 (1977); *Costich*, 152 Wn.2d at 470. The mid-trial change to the TCE did not comport with legislative intent to encourage good faith settlement negotiations prior to trial. And it

disadvantaged Airport Investment's trial preparations.[5]

Significant policy considerations justify an award. If fees are not due in these circumstances, a condemnor can exaggerate its taking at the commencement of condemnation proceedings, only later to present the jury with a lesser taking to insulate itself from exposure for a fee award. There must be a consequence if the condemnor chooses to go forward with its condemnation action, obtain possession and use, and make an offer of settlement, only later to reduce the taking during trial. Sound Transit did just that in this case. It makes no difference if this was done intentionally or through disorganization or inability fully to delineate the terms of its "design-build" taking when it commenced the proceedings, took possession, and made its pre-trial settlement offer. The reasons that Sound Transit later changed its taking are immaterial. To prevent manipulation of the statutes, protect the legislative scheme, and serve the public good, this Court should order an award of fees to Airport Investment.

---

[5] Airport Investment's attorneys begged Sound Transit to reveal the new TCE in the lead up to and during the trial. Airport Investment's attorneys had numerous pre-trial discussions and discovery issues on this topic just before trial, *see* CP 1312 ¶¶ 4-6, moved *in limine* on the issue, CP 396 #1, 398-99, and were forced to address the outstanding TCE description in open court on the first day of trial. See 7/16/13 VBR 30:7-37:12. Sound Transit's actions caused unjustified and prejudicial disruption to the landowner's trial preparations.

Sound Transit had due notice of its risk for a fee award. Airport Investment raised these issues in its motion *in limine* seeking to prevent Sound Transit from presenting the jury with a reduced temporary construction easement. CP 396 at #1. Airport Investment specifically addressed the prejudice of a change to Airport Investment's rights under the fee statutes. CP 402. Sound Transit chose to proceed anyway.

The mid-trial disclosure of a reduced use of the TCE compels an award of fees. Sound Transit's tactics were unfair. Sound Transit complied with neither the letter nor the spirit of the statutes controlling fee awards. It made no qualifying offer on the correct TCE. It abandoned the original TCE in favor of a reduced taking. This Court should reverse the trial court's denial of the landowner's post-trial motion for fees with instruction to award fees to Airport Investment.

VII. REQUEST FOR ATTORNEY FEES ON APPEAL PURSUANT TO STATUTE

Airport Investment has had to seek recourse to this Court, including for its proper fee award pursuant to RCW 8.25.070(1)(a) and RCW 8.25.075(1)(b). Should it prevail, Airport Investment is entitled to recover fees incurred on appeal. RAP 18.1(a), (f), and (i). This is consistent with the terms and purposes of these statutes and with precedent. *Sintra, Inc. v. Seattle*, 131 Wn.2d 640, 666-68, 935 P.2d 555 (1997) (awarding fees on appeal for successful taking claim including

fee award under RCW 8.25.075), rev den., 140 Wn.2d 1021 (2000); *State v. Wandermere Co.*, 89 Wn. App. 369, 384, 949 P.2d 392 (1997) (awarding fees on appeal under RCW 8.25.070); *Renton v. Scott Pac. Terminal*, 9 Wn. App. 364, 377-78, 512 P.2d 1137, 1146 (1973).

VIII. CONCLUSION

Americans and Washingtonians required in both constitutions that the government provide just compensation to a landowner forced to relinquish private property for public good. The goal is fairness to the landowner. Significant errors deprived Airport Investment of a just award. Sound Transit gained unfair advantage through incorrect exclusion of evidence that fairly supported the critical valuation opinion of Airport Investment's appraiser. Airport Investment's case was damaged unfairly by the incorrect admission of an out-of-court expert appraisal as Sandra Oh's "belief." Airport Investment asks this Court for the remedy of a new trial.

Finally, after weeks of suggesting that it might do so, Sound Transit changed the TCE on the second day of trial. This prejudiced Airport Investment's trial preparations, further undermined its expert's opinions, prevented Airport Investment from fairly evaluating Sound Transit's pre-trial offer of settlement and allowed Sound Transit to argue the generosity of its valuation in closing argument. The controlling

statutes required an award of fees to Airport Investment. This Court should reverse denial of the landowner's motion for an award of fees, with instruction that the motion be granted and fees awarded.

Respectfully submitted on this 28th day of March, 2014.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: Averil Rothrock

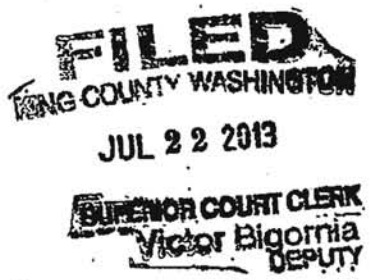
Averil Rothrock, WSBA #24248
arothrock@schwabe.com
Joaquin M. Hernandez, WSBA #31619
jhernandez@schwabe.com
Dennis Dunphy, WSBA #12144
ddunphy@schwabe.com
Christopher H. Howard, WSBA #11074
choward@schwabe.com
Attorneys for Appellant Airport Investment Co.

APPENDIX

1. 7/22/13 Order in Limine re Franchise Agreement (CP 736-37)
2. 7/24/13 Order in Limine re: #5 initial appraisal (CP 904-907)
3. 10/21/13 Order Denying Fees (CP 1430-31)
4. 7/31/13 Verdict (CP 995)
5. Original TCE in Order on Possession and Use (CP 1315-32)
6. Changed TCE (CP 1338-45)
7. Unadmitted Exhibit 158
8. Transcript Excerpt Concerning Sandra Oh's testimony (7/26/13 VBR 1186-1207).
9. RCW 8.25.070
10. RCW 8.25.075

APPENDIX - 1

The Honorable Catherine Shaffer



SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT, Petitioner, vs. AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn; HORIZON AIR INDUSTRIES, INC., a Washington corporation; IBEW 77 INTERNATIONAL BOULEVARD, LLC, a Washington limited liability company; JPMORGAN CHASE BANK, N.A., fka The Chase Manhattan Bank, as Trustee for the Registered Holders of Prudential Securities Financing Corporation Commercial Mortgage Pass-Through Certificates, Series 199-C2; KING COUNTY; and ALL UNKNOWN OWNERS and UNKNOWN TENANTS, Respondents.	No. 12-2-33275-4 KNT ORDER GRANTING SOUND TRANSIT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF FRANCHISE REQUIREMENTS AND BUSINESS PRACTICES Tax Parcel No. 042204-9122

This matter came on regularly before the Court on Sound Transit's Motion in Limine to Exclude Franchise Requirements and Business Practices. The Court has reviewed the files and records herein, heard oral argument, and is fully advised. Now, therefore, based on the foregoing, it is hereby

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

ORDERED, ADJUDGED AND DECREED:

A. That the Respondent, its attorneys, and witnesses shall refrain from directly or indirectly attempting to convey to the fact-finder any evidence or inferences related to the hotel operation requirements and business practices imposed by Airport Investment's current franchise agreement. This order specifically prohibits, but is not limited to, all reference to the current Hampton Inn franchise requirement of one parking stall per room and Hampton Inn's money-back guaranty business practice.

~~B. That Respondent, its attorneys, and witnesses shall refrain from making reference to any of the above unless they have first obtained the entry of an order specifically allowing the evidence.~~

DONE IN OPEN COURT this 22 day of July, 2013.

The Honorable Catherine Shaffer

Presented by:
GRAHAM & DUNN

By
Marisa Velling Lindell
WSBA# 18201
Email: mlindell@grahamdunn.com
Matthew R. Hansen
WSBA# 36631
Email: mhansen@grahamdunn.com
Attorneys for Sound Transit

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

APPENDIX - 2

The Honorable Catherine Shaffer

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT, Petitioner, vs. AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn; HORIZON AIR INDUSTRIES, INC., a Washington corporation; IBEW 77 INTERNATIONAL BOULEVARD, LLC, a Washington limited liability company; JP MORGAN CHASE BANK, N.A., fka The Chase Manhattan Bank, as Trustee for the Registered Holders of Prudential Securities Financing Corporation Commercial Mortgage Pass-Through Certificates, Series 199-C2; KING COUNTY; and ALL UNKNOWN OWNERS and UNKNOWN TENANTS, Respondents.	No. 12-2-33275-4 KNT ORDER ON AIRPORT INVESTMENTS' MOTIONS IN LIMINE

This matter came on for hearing on Airport Investment's Motions in Limine. The Court has reviewed the files and records herein and the materials submitted by the parties in support of and opposition on to the motions, and is fully advised. Now, therefore, based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED:

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711

1. AIC's Motion in Limine No. 1 is granted. Petitioner is excluded from presenting evidence that Sound Transit will use the Temporary Construction Easement for a period of time less than the term set forth in the easement, provided, however, this ruling (a) does not preclude evidence regarding actual activity within the easement area and (b) does not preclude Petitioner from submitting a revised form of Temporary Construction Easement providing for the actual time of use of the easement area.

2. AIC's Motion in Limine No. 2 is granted, and evidence of that Sound Transit's Project provides "Special Benefits" to the subject property. Such evidence is excluded. This exclusion does not impact Sound Transit's right to present evidence of the general configuration and anticipated scope and design of the Project as a whole as well as detailed evidence of the configuration, scope, design, and maintenance of the portions of the Project in proximity to the Subject Property

3. AIC's Motion in Limine No. 3 is granted as to evidence of earlier design and construction methods and areas, and the parties' discussions regarding same. Valuation of the easements shall be based on current design and construction methods and areas.

4. AIC's Motion in Limine No. 4 is granted. Petitioner is prohibited from presenting evidence of the benefits of the Project to King County residents or the public as a whole, provided, however, Petitioner is not precluded from describing the project as a public project or presenting evidence that will enable the jury to generally understand the nature of the public project.

5. AIC's Motion in Limine No. 5 is denied, but if evidence of either party's initial appraisal and/or appraisal values concluded to therein is offered, evidence of both party's initial appraisals and/or appraisal values concluded to therein may be offered. This order does not exclude evidence of a party's opinions of value (even if reached after consideration of any such appraisal).

6. AIC's Motion in Limine No. 6 is granted. The parties are prohibited from

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711

presenting evidence of offers or settlement negotiations by and between both parties, provided that communications where this protection ~~has protection~~ has been waived may be ~~admissible. Such evidence is excluded.~~ admitted. NE merit

7. AIC's Motion in Limine No. 7 is granted, and evidence of payment by Petitioner to other property owners or pending litigation with other properties subject to condemnation as a result of this Project is excluded.

8. AIC's Motion in Limine No. 8 is granted, and evidence of Respondent's consulting expert, Jerry Lilly, is excluded.

9. AIC's Motion in Limine No. 9 is denied, and Petitioner may present appraisal conclusions regarding the permanent easement.

10. AIC's Motion in Limine No. 10 is granted, and evidence that Respondent might be entitled to attorney and/or expert fees is excluded.

11. AIC's Motion in Limine No. 11 is granted, and testimony by Ken Barnes and Bates McKee is excluded.

12. AIC's Motion in Limine No. 12 is granted, and direct or indirect testimony and evidence inferring that a just compensation award is paid through tax revenue is excluded. This exclusion does not bar evidence that that includes references to the public nature of the Project.

13. AIC's Motion in Limine No. 13 is granted, and evidence relating to payment for early possession and use is excluded.

14. AIC's Motion in Limine No. 14 is granted, and evidence relating to interest on an award of just compensation is excluded.

15. AIC's Motion in Limine No. 15 is granted and evidence relating to the existence of other claims or lawsuits involving Respondent Airport Investment Company and its representatives is excluded.

16. AIC's Motion in Limine No. 16 is granted in part. The hotel study exhibit

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711

prepared by McKee & Schalka shall not be independently admitted as evidence or shown to the jury. Petitioner's appraiser, Murray Brackett, may testify as to whether and how he relied on the hotel study prepared by McKee & Schalka as part of his ongoing investigation and how it informs his opinion. Photos of the hotels surveyed that were considered by Mr. Brackett may be admitted.

17. AIC's Motion in Limine No. 17 to exclude rebuttal testimony is premature and the Court reserves ruling on this motion.

18. AIC's Motion in Limine No. 18 to exclude evidence that was untimely disclosed or has yet to be disclosed is premature and the Court reserves ruling on the respective exhibits until the time they are presented for entry.

19. AIC's Motion in Limine No. 19 to exclude exhibits that are irrelevant, will present waste of time, confusing, and misleading is premature and the Court reserves ruling on the respective exhibits until the time they are presented for entry.

20. To the extent that the foregoing Order excludes evidence, Petitioner and Respondent, and their respective attorneys and witnesses shall refrain from directly or indirectly attempting to convey any such evidence to the fact-finder.

DONE IN OPEN COURT this 24 day of July, 2013.

THE HONORABLE CATHERINE SHAFFER

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711

Presented by:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: _____
Dennis J. Dunphy, WSBA #12144
Joaquin M. Hernandez, WSBA #31619
Milton A. Reimers, WSBA #39390
Attorneys for Respondents

GRAHAM & DUNN PC

By _____
Marisa Velling Lindell, WSBA# 18201
Matthew R. Hansen, WSBA# 36631
Jacqualyne J. Walker, WSBA# 45355
Attorneys for Petitioner

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711

APPENDIX

FILED
KING COUNTY, WASHINGTON

OCT 2 2 2013

SUPERIOR COURT CLERK
BY Ed Gueco
DEPUTY

The Honorable Catherine Shaffer
Date of Hearing: October 11, 2013
Without Oral Argument

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT, Petitioner, vs. AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn; HORIZON AIR INDUSTRIES, INC., a Washington corporation; IBEW 77 INTERNATIONAL BOULEVARD, LLC, a Washington limited liability company; JPMORGAN CHASE BANK, N.A., fka The Chase Manhattan Bank, as Trustee for the Registered Holders of Prudential Securities Financing Corporation Commercial Mortgage Pass-Through Certificates, Series 199-C2; KING COUNTY; and ALL UNKNOWN OWNERS and UNKNOWN TENANTS, Respondents.	No. 12-2-33275-4 KNT [PROPOSED] ORDER DENYING RESPONDENT AIC'S MOTION FOR AN AWARD OF ATTORNEY FEES, EXPERT WITNESS FEES, AND EXPENSES Tax Parcel No. 042204-9122

THIS MATTER came before the Court on Respondent AIC's Motion for an Award of Attorney Fees, Expert Witness Fees, and Expenses. The Court has reviewed the files and records in this matter, including AIC's motion and the supporting Declaration of Joaquin Hernandez in Support of Respondent Airport Investment Company's Motion For Fees, and Sound Transit's

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

Response to Fee Motion and Declaration of Marisa Velling Lindell Opposing Fee Award to AIC, and ~~is fully informed~~ the Reply Pleadings. Now, therefore, based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED:

That AIC's Motion for an Award of Attorney Fees, Expert Witness Fees, and Expenses is hereby DENIED.

DONE IN OPEN COURT this 21 day of October, 2013.

JUDGE CATHERINE SHAFFER

Presented by:

GRAHAM & DUNN PC

By /s/ Marisa Velling Lindell
Marisa Velling Lindell, WSBA# 18201
Matthew R. Hansen, WSBA# 36631
Attorneys for Sound Transit

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

APPENDIX - 4

FILED
KING COUNTY, WASHINGTON

JUL 31 2013

SUPERIOR COURT CLERK
Victor Bigornia
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT, Petitioner, vs. AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn; et al., Respondents.	NO. 12-2-33275-4 KNT Verdict Form

We, the jury, find the just compensation to be paid by Sound Transit to Airport Investment Company for the taking of property rights as to Parcel No. 042204-9122 is:

For the permanent easement: $ 163,497

For the temporary easement: $ 61,503

31 July 2013
Date

Presiding Juror

ORIGINAL

APPENDIX - 5

RECEIVED
NOV 29 2012
SCHWABE WILLIAMSON & WYATT

FILED
KING COUNTY, WASHINGTON
NOV 26 2012
SUPERIOR COURT CLERK

The Honorable LeRoy McCullough

EXP07

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT, Petitioner, vs. AIRPORT INVESTMENT COMPANY, a Washington corporation, dba Hampton Inn; HORIZON AIR INDUSTRIES, INC., a Washington corporation; 1BEW 77 INTERNATIONAL BOULEVARD, LLC, a Washington limited liability company; JPMORGAN CHASE BANK, N.A., fka The Chase Manhattan Bank, as Trustee for the Registered Holders of Prudential Securities Financing Corporation Commercial Mortgage Pass-Through Certificates, Series 199-C2; KING COUNTY; and ALL UNKNOWN OWNERS and UNKNOWN TENANTS, Respondents.	No. 12-2-33275-4 KNT STIPULATION FOR ORDER AND JUDGMENT GRANTING POSSESSION AND USE Tax Parcel No. 042204-9122 (CLERK'S ACTION REQUIRED)

STIPULATION

THIS MATTER having come before this Court upon the Stipulation of the parties upon the Petition of Central Puget Sound Regional Transit Authority ("Petitioner"), seeking:

1. A determination of just compensation to be paid in money for the taking and appropriation of the subject property;

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way – Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax (206) 340-9599

ORIGINAL

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and

3. A decree of appropriation appropriating certain property rights, title and interest to the subject property in Petitioner and adjudging that Petitioner be entitled to immediate possession thereof.

Petitioner through its attorneys Jeffrey A. Beaver, Marisa Velling Lindell, and Matthew R. Hansen of Graham & Dunn, PC, and Respondents either appearing pro se or through their undersigned attorneys, hereby stipulate to the following Facts and entry of the following Order.

FACTS

1. With this condemnation action, Petitioner seeks to condemn certain property rights, title and interest to the subject property in order to locate, construct, operate and maintain the Central Link Light Rail Project and its related facilities (the "Link Light Rail"), in King County, Washington, as contemplated in Petitioner's Resolution No. R2011-06 (the "Resolution").

2. The Resolution authorizes the acquisition by condemnation of certain land, property, and property rights including real property identified as King County Tax Parcel No. 042204-9122 (the "Parcel").

3. Specifically, with this condemnation Petitioner seeks to appropriate a permanent taking of a portion of the Parcel for a permanent guideway easement, as legally described and depicted in, and in substantially the form of, Exhibit 1 hereto. In addition, Petitioner seeks to appropriate a temporary taking of a portion of the Parcel for a temporary construction easement, as depicted in, and in substantially the form of, Exhibit 2 hereto. Exhibits 1 and 2 hereto are incorporated here by this reference and the real property and real property interests described and/or depicted in Exhibits 1 and 2 are hereinafter collectively referred to herein as the "Condemned Property."

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way - Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

4. An Order Adjudicating Public Use and Necessity was entered in this case on November 6, 2012.

5. Petitioner offers to deposit with the Clerk of the Court, as its offer of Just Compensation and in exchange for possession and use of the Condemned Property the sum of One Hundred Forty-Two Thousand Three Hundred and No/100 Dollars ($142,300.00) (the "Deposit"). In exchange for such Deposit, Respondents agree to entry of an Order of Possession and Use in the form below.

Stipulated and Agreed to this 20th day of November, 2012, by:

GRAHAM & DUNN

By _____
Jeffrey A. Beaver, WSBA# 16091
Marisa Velling Lindell, WSBA# 18201
Matthew R. Hansen, WSBA# 36631
Attorneys for Petitioner

Stipulated and Agreed to this 8th day of November, 2012, by:

SCHWABE, WILLIAMSON & WYATT

By _____
Dennis J. Dunphy, WSBA# 12144
Joaquin M. Hernandez, WSBA# 31619
Attorneys for Respondent Airport Investment Company dba Hampton Inn

ORDER

IT IS HEREBY ORDERED:

1. That at the time Petitioner deposits the sum of One Hundred Forty-Two Thousand Three Hundred and No/100 Dollars ($142,300.00), into the registry of the court ("Date of Deposit"), as its offer of Just Compensation for the taking and appropriation of the Condemned Property as legally described and/or depicted in Exhibits 1 and 2 to this Stipulation and Order, Petitioner shall have, and is hereby awarded and granted immediate possession and use of the Condemned Property.

2. That the Deposit is subject to any liens of taxes, including surface water management service charges. The Clerk of the Court shall not disburse any of the funds deposited until after

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way, Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax (206) 340-9599

receiving proof, sufficient to the Clerk of the Court, that any such liens have been paid to the City and/or County Treasurer and all such liens discharged. Chap. 84.60 RCW.

3. That interest, if any, shall be awarded on the difference, if any, between the One Hundred Forty-Two Thousand Three Hundred and No/100 Dollars ($142,300.00) deposited pursuant to this Stipulation and Order and the final award of Just Compensation as determined at trial by the court or jury, as the case may be. Interest, if any, shall be calculated, at the statutory rate, from the Date of Deposit through to the date of payment of the final award of Just Compensation as determined at trial by the court or jury, as the case may be.

4. That the date of legal possession and use of the Property shall be the Date of Deposit. The Date of Deposit shall also be the date of valuation for a condemnation trial to ascertain the Just Compensation for the taking of the Condemned Property.

DONE IN OPEN COURT this ____ day of Nov, 2012.

JUDGE/COURT COMMISSIONER

Stipulated to and Presented by:

GRAHAM & DUNN

By _____
Jeffrey A. Beaver, WSBA# 16091
Marisa Velling Lindell, WSBA# 18201
Matthew R. Hansen, WSBA# 36631
Attorneys for Petitioner Sound Transit

Stipulated and Agreed to this 1st day of November, 2012, by:

SCHWABE, WILLIAMSON & WYATT

By _____
Dennis J. Dunphy, WSBA#12144
Joaquin M. Hernandez, WSBA# 31619
Attorneys for Respondent Airport Investment Company dba Hampton Inn

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way – Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax (206) 340-9599

EXHIBIT 1

When Recorded Return to:
Sound Transit
Real Property Division
401 S. Jackson Street, M/S O4N-4
Seattle, WA 98104-2826

GUIDEWAY EASEMENT

Grantor: Airport Investment Company, Inc., a Washington corporation

Grantee: Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington

Abbreviated Legal Description: POR OF NE 1/4 OF S-T-R 04-22N-04E, W.M.

Assessor's Property Tax Parcel Account Number: 042204-9122

Reference Numbers of Documents Assigned or Released, if applicable: N/A

AIRPORT INVESTMENT COMPANY, INC., a Washington corporation, (the "Grantor") is the owner of real property located in the City of SeaTac commonly known as 19415 International Boulevard, SeaTac, WA 98188, and more particularly described in the legal description attached as Exhibit A (the "Property").

THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, (the "Grantee"), a regional transit authority of the State of Washington, is developing high capacity transit service in the central Puget Sound region, including the South Link light rail system that will extend from Sea-Tac Airport to South 200th Street in SeaTac (the "Project").

Grantee desires to use a certain portion of the Property in connection with the construction, operation and maintenance of the Project. The boundaries (the "Easement Area") are more fully described in the attached Exhibit B and depicted in attached Exhibit C.

AGREEMENT

1. Grant of Easement. Grantor, for and in consideration of Ten ($10.00) Dollars and Other Good and Valuable Consideration, receipt of which is hereby acknowledged by Grantor, hereby conveys and warrants to Grantee, its successors and/or assigns, a permanent easement within and through the Easement Area in connection with the Project, including but not limited to the construction, operation, inspection, maintenance, replacement, improvement, removal and use of a segment of Grantee's South Link light rail system and all appurtenances thereto, and related uses that Grantee may hereafter deem appropriate. Grantee's use of the Easement Area shall include, but not be limited to, columns, foundations, and aerial guideway.

Grantee shall have the right to access property in addition to that described in Exhibit B, as determined by the Grantee, for the purpose of trimming trees and vegetation that are higher than the top of rail and within ten feet of the aerial guideway, and inspection and maintenance within ten feet of the aerial guideway.

In the event private improvements in the Easement Area are disturbed or damaged by Grantee's use of the easement, on or before the end of any associated Temporary Construction Easement (TCE), they shall be replaced with a paved surface, a gravel surface, a hydro-seeded surface, or a combination thereof. During the term of any associated TCE, disturbed or damaged fences shall be replaced with chain-link or wood fence. During the Term of any associated TCE, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition.

Grantee shall have the right, but not the obligation, to enter the Easement Area to remove structures or other impediments and to maintain the Easement Area for its intended use, together with the right to inspect and to construct, maintain, repair and replace aerial structures within the Easement Area.

2. Grantor's Use of Easement Area. Grantor shall retain the right to use the property within the Easement Area, so long as Grantor's use does not interfere with Grantee's use of the Easement Area. Grantor may park vehicles, landscape and/or pave the surface of the Easement Area. Any other use is subject to written approval by Sound Transit, which approval shall not be unreasonably withheld.

In no event may Grantor construct permanent structures or store flammable, explosive, or hazardous materials within the Easement Area. In the event the Grantee discovers such items in the easement area the Grantee has the right to immediately remove such items at the Grantor's expense. No obstructions of any kind whatsoever, other than those identified above in this Section 2 shall be allowed within 5 feet of Grantee's aerial guideway or appurtenances thereto. The Grantor shall make no use of the Easement Area whatsoever in the area above the aerial guideway structure, or the area 5 feet below the bottom of the aerial guideway structure. Vehicles carrying flammable materials cannot park under the aerial guideway.

3. Representations and Indemnifications. Grantee shall at all times exercise its rights under this easement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction. Grantee does hereby indemnify Grantor from and against any and all liability, loss, damage, expense, actions, and claims incurred by Grantor in connection therewith, to the extent arising from the exercise by Grantee, its servants, agents, employees and contractors of the rights granted in this easement.

4. Binding Effect. This easement is appurtenant to and shall run with all real property now owned or hereafter acquired by Grantee as part of the South Link light rail project, which includes aerial and at-grade facilities in the Project area operated by Grantee for high capacity transportation system purposes and shall inure to the benefit of Grantee, its successors and assigns and shall be binding upon the Property and Grantor, and their respective heirs, successors and assigns.

5. Insurance. Grantee shall maintain commercial general liability insurance with reasonable limits of liability covering the Easement Area or activities of Grantee or its agents, employees or contractors upon and the use, maintenance or repair by Grantee or its agent's employees or contractors of the Easement Area. Grantee shall provide Grantor, on request, certificates of insurance evidencing such coverage. Grantee shall have the right to provide the coverage required herein under blanket policies provided that the coverage shall not be diminished by reason thereof.

6. Legal Proceedings. The parties hereto agree that in the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either party to comply with this easement, it is understood and agreed that the prevailing party in such litigation shall be entitled to be reimbursed for all costs incurred or expended in connection therewith, including, but not limited to, reasonable attorney's fees (including paralegal fees and fees for any appeals) and court costs.

7. Condemnation. This easement is granted under the threat of condemnation.

8. Recording. This easement shall be recorded in the real property records of King County, Washington.

Dated and signed on this _____ day of _____, 20____.

Grantor: Airport Investment Company, Inc., a Washington corporation

By: _____
George D. Oh

Its: _____

STATE OF WASHINGTON)
: ss.
County of)

I certify that I know or have satisfactory evidence that George D. Oh is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the _____ of Airport Investment Company, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

(Signature) _____

(Please print name legibly) _____

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires: _____

EXHIBIT "A" EASEMENT

R/W No. 440-SL-125
PIN 0422049122
Airport Investment Company, Inc.

Grantor's Entire Parcel (Servient):
(According to Chicago Title Insurance Company Order No. 1303960, dated April 12, 2010.)

BEGINNING AT THE EXISTING MONUMENT OF THE SOUTH 1/16 CORNER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
THENCE NORTH 88° 56' 34" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER 13.98 FEET TO THE CENTERLINE OF 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST 1,836.24 FEET ALONG SAID CENTERLINE TO THE INTERSECTION WITH THE ORIGINAL NECK OF SOUTH 196TH PLACE, AS ESTABLISHED IN THE PLAT OF RICKARD HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGE 19, IN KING COUNTY, WASHINGTON;
THENCE NORTH 01° 07' 36" WEST ALONG SAID CENTERLINE OF 28TH AVENUE SOUTH 458.38 FEET TO A POINT WHICH IS SOUTH 01° 07' 36" EAST 22.00 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SOUTH 194TH STREET, AS ESTABLISHED IN THE PLAT OF LOWES TERRACE NO. 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 61, IN KING COUNTY, WASHINGTON;
THENCE SOUTH 78° 01' 36" EAST 20.54 FEET TO THE EASTERLY MARGIN OF 28TH AVENUE SOUTH AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 133.38 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO SHEELOEG BY DEED RECORDED UNDER RECORDING NUMBER 8306149;
THENCE SOUTH 89° 28' 35" EAST 271.39 FEET TO THE SOUTHEAST CORNER OF SAID SHEELOEG TRACT AND A POINT ON A LINE MIDWAY BETWEEN THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (100 FEET WIDE) AND 28TH AVENUE SOUTH (40 FEET WIDE);
THENCE SOUTH 82° 28' 35" WEST ALONG SAID MIDWAY LINE 177.95 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO MARR BY DEED RECORDED UNDER RECORDING NUMBER 2945739;
THENCE SOUTH 78° 01' 36" EAST ALONG THE SOUTHERLY LINE OF SAID MARR TRACT 252.98 FEET TO THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;
THENCE SOUTH 06° 04' 47" WEST ALONG SAID WESTERLY MARGIN 132.24 FEET TO A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT BETWEEN ALTHEA C. WARE AND MILTON G. KUOLT, II AND KATHLEEN L. KUOLT, DESCRIBED IN THE RECIPROCAL DEEDS THEREOF FILED UNDER RECORDING NUMBERS 8409260293 AND 8409280294, IN KING COUNTY, WASHINGTON;
THENCE NORTH 87° 52' 50" WEST ALONG SAID LINE AND ITS WESTERLY EXTENSION 476.36 FEET TO THE EASTERLY MARGIN OF SAID 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 215.95 FEET TO THE TRUE POINT OF BEGINNING;
EXCEPT THAT PORTION THEREOF FOR ROAD CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NUMBER 8801070440;
AND EXCEPT THAT PORTION FOR ROAD AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER RECORDING NUMBER 20000302000897;

Earl J. Bone 8/27/12

SL-125-T100.doc Earl J. Bone 8/27/2012

EXHIBIT B

R/W No. 460-SL-125
PIN 0422049122
Airport Investment Company, Inc.

Grantor's Entire Parcel (Servient):
(According to Chicago Title Insurance Company Order No. 1303960, dated April 12, 2010.)

BEGINNING AT THE EXISTING MONUMENT OF THE SOUTH 1/16 CORNER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
THENCE NORTH 88° 26' 34" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER 33.96 FEET TO THE CENTERLINE OF 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST 1,285.24 FEET ALONG SAID CENTERLINE TO THE INTERSECTION WITH THE CENTERLINE OF SOUTH 199TH PLACE, AS ESTABLISHED IN THE PLAT OF RICHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;
THENCE NORTH 01° 07' 36" WEST ALONG SAID CENTERLINE OF 28TH AVENUE SOUTH 458.38 FEET TO A POINT WHICH IS SOUTH 01° 07' 36" EAST 27.20 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SOUTH 194TH STREET, AS ESTABLISHED IN THE PLAT OF LOWES TERRACE NO. 4 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 63, IN KING COUNTY, WASHINGTON;
THENCE SOUTH 78° 01' 36" EAST 26.54 FEET TO THE EASTERLY MARGIN OF 28TH AVENUE SOUTH AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 137.38 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO REEPLOEG BY DEED RECORDED UNDER RECORDING NUMBER 4206149;
THENCE SOUTH 87° 08' 01" EAST 257.89 FEET TO THE SOUTHEAST CORNER OF SAID REEPLOEG TRACT AND A POINT ON A LINE MIDWAY BETWEEN THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (100 FEET WIDE) AND 28TH AVENUE SOUTH (60 FEET WIDE);
THENCE SOUTH 04° 24' 35" WEST ALONG SAID MIDWAY LINE 197.15 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO MARZITY BY DEED RECORDED UNDER RECORDING NUMBER 2941723;
THENCE SOUTH 78° 01' 36" EAST ALONG THE SOUTHERLY LINE OF SAID MARZITY TRACT 252.35 FEET TO THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;
THENCE SOUTH 06° 06' 47" WEST ALONG SAID WESTERLY MARGIN 121.20 FEET TO A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT BETWEEN ALTHEA D. WARE AND MILTON G. KNOLL, II AND KATHLEEN L. KNOLL, DESCRIBED IN THE RECORDS THEREON FILED UNDER RECORDING NUMBERS 8409260293 AND 8407260284, IN KING COUNTY, WASHINGTON;
THENCE NORTH 87° 22' 30" WEST ALONG SAID LINE AND ITS WESTERLY EXTENSION 476.36 FEET TO THE EASTERLY MARGIN OF SAID 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 213.93 FEET TO THE TRUE POINT OF BEGINNING;
EXCEPT THAT PORTION THEREOF FOR ROAD CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NUMBER 8801070440;
AND EXCEPT THAT PORTION FOR ROAD AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER RECORDING NUMBER 20000302000897.

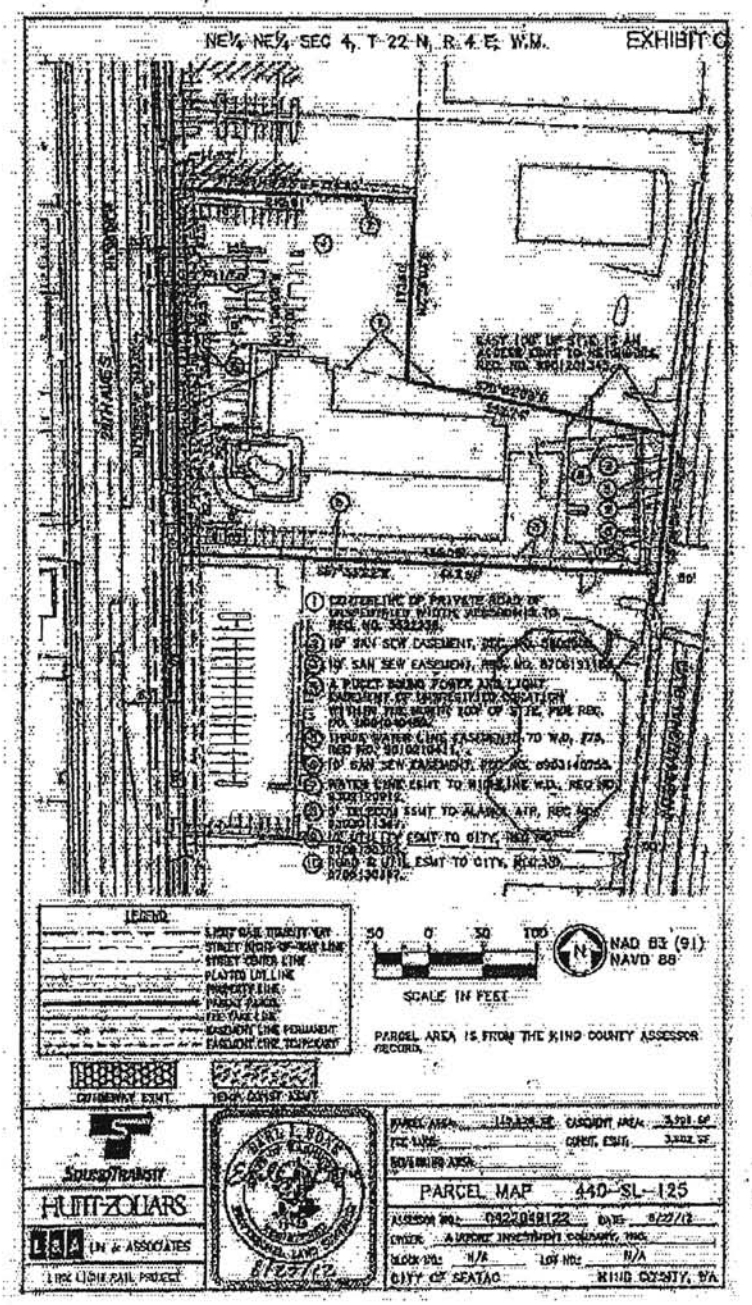
Guideway Easement Area Acquired by Grantee (Dominant):

THAT PORTION OF THE ABOVE DESCRIBED GRANTOR'S PARCEL DESCRIBED AS FOLLOWS:
THE WEST 11.50 FEET THEREOF AS MEASURED AT RIGHT ANGLES TO THE WEST LINE THEREOF.

CONTAINING 3,921 SQUARE FEET, MORE OR LESS.

Earl J. Bone · 8/27/12

SL-125-Takings Earl J. Bone 8/27/2012


NE¼ NE¼ SEC 4, T 22 N, R 4 E, W.M.
EXHIBIT C
LEGEND
SCALE IN FEET
NAD 83 (91)
NAVD 88
PARCEL AREA IS FROM THE KING COUNTY ASSESSOR RECORDS.
SOUNDTRANSIT
HUITT-ZOLLARS
LIN & ASSOCIATES
LINK LIGHT RAIL PROJECT
PARCEL MAP 440-SL-125
CITY OF SEATAC
KING COUNTY, WA

12-2-33275-4, KNT

EXHIBIT 2

When Recorded Return to:
Sound Transit
Real Property Division
401 S. Jackson Street, M/S.04N-4
Seattle, WA 98104-2826

TEMPORARY CONSTRUCTION EASEMENT

Grantor: Airport Investment Company, Inc., a Washington corporation

Grantee: Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington

Abbreviated Legal Description: POR OF NE 1/4 OF S-T-R 04-22N-04E, W.M.

Assessor's Property Tax Parcel Account Number: 042204-9122

Reference Numbers of Documents Assigned or Released, if applicable: N/A

THIS INSTRUMENT is made this ____ day of _____, 20___, by and between, **AIRPORT INVESTMENT COMPANY, INC.**, a Washington corporation hereinafter called the "Grantor", and the **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**, a regional transit authority of the State of Washington, hereinafter called the "Grantee".

WITNESSETH:

Airport Investment Company, Inc., (the "Grantor") is the owner of real property located in the City of SeaTac commonly known as 19445 International Boulevard, SeaTac, WA 98188, and more particularly described in the legal description attached as Exhibit A (the "Property").

1. Grant of Easement. The Grantor, for and in consideration of the public good and other valuable consideration, does by these presents, convey and warrant unto the Grantee a temporary construction easement (the "Easement") for access over, through, across and upon the portion of the Property depicted in Exhibit B (the "Easement Area") situated in the County of King, State of Washington, for construction of public street improvements with necessary appurtenances, including placement of public and private utilities and construction of adjacent

aerial guideway, within the adjoining public right of way. Grantee is authorized to purchase real property and real property interests under the provisions of RCW 81.112.080, and has the right of eminent domain under the provisions of RCW 81.112.030. By its Resolution No. R2011-06, Grantee's Board of Directors authorized acquisition of the real property interests by negotiation or by exercise of eminent domain.

2. Purpose of Easement. The Grantee, its contractors, agents, and permittees, shall have the right at such times as may be necessary, to enter upon the Easement Area, including entry into private improvements located in the Easement Area for the purpose of constructing aerial guideway, street connections, and utility connections. Grantee shall have the right to re-grade slopes and/or make cuts and fills to match new driveways, parking lot area, street grade and construct sidewalks and retaining walls. Grantee shall have the right to fence all or a portion of the Easement Area from time to time during the Term. Grantee's right to use the Easement Area shall be exclusive at such times and for such durations, as Grantee's construction requires, in Grantee's discretion. At all other times, Grantee's right to use the Easement Area shall be non exclusive. Grantee shall have the right to have an aerial truss pass over portions of the Property in addition to that depicted in Exhibit B. Such entry shall be governed by the terms of this Easement.

In the event Grantee's utility connection work requires access to portions of the Property in addition to that depicted in Exhibit B, Grantee shall have the right to enter into such additional property for the purpose of reconnecting utilities that serve the Property and such entry shall be governed by the terms of this Easement.

In the event private improvements in the Easement Area are disturbed or damaged by Grantee's use of the Easement, on or before the end of the Term, they shall be replaced with a paved surface, a gravel surface, a hydroseeded surface, or a combination thereof. Disturbed or damaged fences shall be replaced with chain-link or wood fence. During the Term, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition.

3. Grantor's Right to Use Easement Area. Except for those times when Grantee is making exclusive use of the Easement Area, the Grantor shall retain the right to use and enjoy the Easement Area, including the right to use existing private improvements located in the Easement Area so long as such use does not interfere with Grantee's construction of the public improvements described in this Easement.

4. Term of Easement. The term of this Easement shall commence upon initiation of Grantee's construction within the easement area, but no sooner than September 1, 2012, and shall remain in force for thirty-six (36) months (the "Term") or until completion of construction and restoration of the property, whichever occurs first. Grantee shall provide fourteen (14) days written notice to the Grantor prior to commencement of construction. This Easement may be extended unilaterally by the Grantee past the initial term for up to twelve (12) months at the monthly rate identified in Paragraph 5 below.

5. Payment for Easement. Grantee shall pay Grantor Forty-Six Thousand, Six Hundred and 00/100ths Dollars ($46,600.00) upon recording of this Easement for the thirty-six (36) month Term. If the Grantee requires additional use past the Term, the Grantee shall pay One Thousand, Two Hundred Ninety-Four and 08/100ths Dollars ($1,294.00) per month for each month, or portion of a month, that Grantee uses the Easement Area for the purposes described in Paragraph 2.

6. Binding Effect. The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee, its successors in interest and assigns. Grantee shall have the right to permit third parties to enter upon the Easement Area to accomplish the purposes described herein, provided that all such parties abide by the terms of this Easement. The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the Property and shall be binding upon and the Grantor and its respective successors, assigns, mortgagees and sublessees and each and every person who shall at any time have a fee, leasehold, mortgage or other interest in any part of the Easement Area. This Easement is granted under the threat of condemnation.

7. Recording. This Easement shall be recorded in the real property records of King County, Washington.

Dated and signed this _____ day of _____, 20 ___.

Grantor: Airport Investment Company, Inc., a Washington corporation

By: _____
George D. Oh

Its: _____

STATE OF WASHINGTON)
: ss.
County of)

I certify that I know or have satisfactory evidence that George D. Oh is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the _____ of Airport Investment Company, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

_____
(Signature)

_____
(Please print name legibly)

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires: _____

R/W# SL125
Form 21-Legal Approved on 11/2011

EXHIBIT "A" EASEMENT

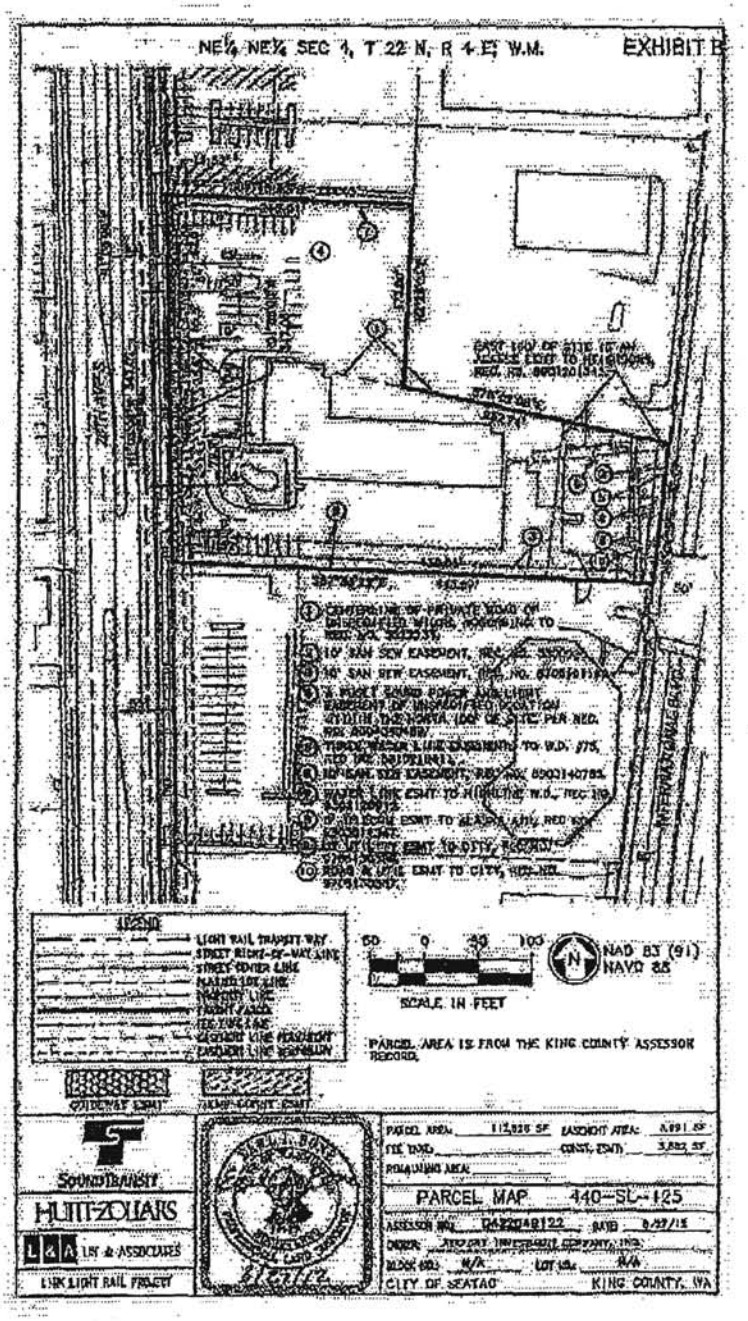
R/W No. 440-SL-125
PIN 042304-9122
Airport Investment Company, Inc.

Grantor's Entire Parcel (Servient):
(According to Chicago Title Insurance Company Order No. 1303960, dated April 12, 2010.)

BEGINNING AT THE EXISTING MONUMENT OF THE SOUTH 1/16 CORNER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
THENCE NORTH 88° 26' 16" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER 31.56 FEET TO THE CENTERLINE OF 24TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST 1,320.76 FEET ALONG SAID CENTERLINE TO THE INTERSECTION WITH THE CENTERLINE OF SOUTH 195TH PLACE, AS ESTABLISHED IN THE PLAT OF RICHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;
THENCE SOUTH 01° 07' 36" WEST ALONG SAID CENTERLINE OF 24TH AVENUE SOUTH 418.38 FEET TO A POINT WHICH IS SOUTH 01° 07' 36" EAST 20.00 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SOUTH 196TH STREET, AS ESTABLISHED IN THE PLAT OF LOWES TRACT NO. 4 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 18 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON;
THENCE SOUTH 88° 01' 36" EAST 20.54 FEET TO THE EASTERLY MARGIN OF 24TH AVENUE SOUTH AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 137.38 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO REED LOEG BY DEED RECORDED UNDER RECORDING NUMBER 8206149;
THENCE SOUTH 88° 01' 01" EAST 232.29 FEET TO THE SOUTHEAST CORNER OF SAID REED LOEG TRACT AND A POINT ON A LINE MIDWAY BETWEEN THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (100 FEET WIDE) AND 24TH AVENUE SOUTH (60 FEET WIDE);
THENCE SOUTH 26° 28' 35" WEST ALONG SAID MIDWAY LINE 177.55 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO MARK BY DEED RECORDED UNDER RECORDING NUMBER 8206120;
THENCE SOUTH 78° 01' 36" EAST ALONG THE SOUTHERLY LINE OF SAID MARK TRACT 26.28 FEET TO THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;
THENCE SOUTH 26° 01' 47" WEST ALONG SAID WESTERLY MARGIN 152.24 FEET TO A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT BETWEEN ALTHEA G. WARE AND MILTON G. KOOLT, II AND KATHLEEN L. KOOLT, DESCRIBED IN THE RECIPROCAL DEEDS RECORDED UNDER RECORDING NUMBERS 8102260293 AND 8102260291, DITTO COUNTY, WASHINGTON;
THENCE NORTH 87° 57' 30" WEST ALONG SAID LINE AND ITS WESTERLY EXTENSION 476.347 FEET TO THE EASTERLY MARGIN OF SAID 24TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 213.45 FEET TO THE TRUE POINT OF BEGINNING;
EXCEPT THAT PORTION THEREOF FOR ROAD CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NUMBER 8810270405;
AND EXCEPT THAT PORTION FOR ROAD AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER RECORDING NUMBER 20021070000237.

Earl J. Bone 8/27/12

SL-125-T-Co.doc Earl J. Bone 8/27/2012


NE¼ NE¼ SEC 1, T 22 N, R 4 E W.M.
EXHIBIT B
LEGEND
LIGHT RAIL TRANSIT WAY
STREET RIGHT-OF-WAY LINE
STREET CENTER LINE
PARCEL LINE
SECTION LINE
RIGHT PARCEL
TEE TURN AREA
EASEMENT LINE REMAINDER
EASEMENT LINE REMOVED
SIDEWALK EXMT
KING COUNTY EXMT
50 0 50 100
SCALE IN FEET
NAD 83 (91)
NAVD 88
PARCEL AREA IS FROM THE KING COUNTY ASSESSOR RECORD.
SOUND TRANSIT
HUITT-ZOLLARS
LDA LIN & ASSOCIATES
LINK LIGHT RAIL PROJECT
PARCEL AREA
EASEMENT AREA
TEE TURN
CONST. EXMT
REMAINING AREA
PARCEL MAP 440-SL-125
ASSESSOR NO.
DATED
OWNER
BLOCK NO.
LOT NO.
CITY OF SEATAC
KING COUNTY, WA

APPENDIX - 6

When Recorded Return to:
Sound Transit
Real Property Division
401 S. Jackson Street, M/S 04N-4
Seattle, WA 98104-2826

TEMPORARY CONSTRUCTION EASEMENT

Grantor: **Airport Investment Company, Inc., a Washington corporation**

Grantee: **Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington**

Abbreviated Legal Description: **POR OF NE 1/4 OF S-T-R 04-22N-04E, W.M.**

Assessor's Property Tax Parcel Account Number: **042204-9122**

Reference Numbers of Documents Assigned or Released, if applicable: **N/A**

THIS INSTRUMENT is made this ____ day of _____, 20___, by and between, **AIRPORT INVESTMENT COMPANY, INC., a Washington corporation** hereinafter called the "Grantor", and the **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington**, hereinafter called the "Grantee",

WITNESSETH:

Airport Investment Company, Inc., (the "Grantor") is the owner of real property located in the City of SeaTac commonly known as 19445 International Boulevard, SeaTac, WA 98188, and more particularly described in the legal description attached as **Exhibit A** (the "Property").

1. **Grant of Easement.** The Grantor, for and in consideration of the public good and other valuable consideration, does by these presents, convey and warrant unto the Grantee a temporary construction easement (the "Easement") for access over, through, across and upon the portion of the Property depicted in **Exhibit B** (the "Easement Area") situated in the County of King, State of Washington, for construction of public street improvements with necessary appurtenances, including placement of public and private utilities and construction of adjacent

R/W# SL125
Form 21-Legal Approved on 11/2011

aerial guideway, within the adjoining public right of way. Grantee is authorized to purchase real property and real property interests under the provisions of RCW 81.112.080, and has the right of eminent domain under the provisions of RCW 81.112.030. By its Resolution No. R2011-06, Grantee's Board of Directors authorized acquisition of the real property interests by negotiation or by exercise of eminent domain.

2. **Purpose of Easement.** The Grantee, its contractors, agents, and permittees, shall have the right at such times as may be necessary, to enter upon the Easement Area, including entry into private improvements located in the Easement Area for the purpose of constructing aerial guideway, street connections, and utility connections. Grantee shall have the right to re-grade slopes and/or make cuts and fills to match new driveways, parking lot area, street grade and construct sidewalks and retaining walls. Grantee's right to displace parking and perform heavy construction in the Easement Area shall be limited to those periods during which Grantee has exclusive use of the Easement Area as provided for in Section 4 below. During any period of exclusive use of the Easement Area by Grantee, Grantee shall have the right to fence all or a portion of the Easement Area, as Grantee's use requires, in Grantee's discretion. Grantee shall have the right to have an aerial truss pass over portions of the Property in addition to that depicted in Exhibit B. Such entry shall be governed by the terms of this Easement.

In the event Grantee's utility connection work requires access to portions of the Property in addition to that depicted in **Exhibit B**, Grantee shall have the right to enter into such additional property for the purpose of reconnecting utilities that serve the Property and such entry shall be governed by the terms of this Easement.

In the event private improvements in the Easement Area are disturbed or damaged by Grantee's use of the Easement, on or before the end of the Term, they shall be replaced with a paved surface, a gravel surface, a hydro-seeded surface, or a combination thereof. Disturbed or damaged fences shall be replaced with chain-link or wood fence. During the Term, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition.

3. **Grantor's Right to Use Easement Area.** Except for those periods of exclusive use of the Easement Area by Grantee, the Grantor shall retain the right to use and enjoy the Easement Area.

4. **Term of Easement.** Grantee's right to exclusive use of the Easement Area shall be limited to a maximum of one hundred sixty (160) non-consecutive days between August 1, 2013 and July 31, 2016. Grantee may group one or more days of exclusive use into periods of exclusive use to accommodate the various phases of construction for which the Easement Area is needed. Grantee shall provide fourteen (14) days' notice to Grantor prior to activating a period of exclusive use (the "Activation Notice"). Each Activation Notice shall identify the date on which the Easement shall be activated and the estimated duration of exclusive use under that Activation Notice.

5. **Payment for Easement.** Grantee shall pay Grantor $_____ ("Total Value of Easement") for the right to use the Easement Area and Property as provided for herein.

6. **Binding Effect.** The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee, its successors in interest and assigns. Grantee shall have the right to permit third parties to enter upon the Easement Area to accomplish the purposes described herein, provided that all such parties abide by the terms of this Easement. The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the Property and shall be binding upon and the Grantor and its respective successors, assigns, mortgagees and sublessees and each and every person who shall at any time have a fee, leasehold, mortgage or other interest in any part of the Easement Area. This Easement is granted under the threat of condemnation.

7. **Recording.** This Easement shall be recorded in the real property records of King County, Washington.

Dated and signed this _____ day of _____, 20 ___.

Grantor:
Airport Investment Company, Inc.,
a Washington corporation

By: _____
Sandra Oh
Its: _____

R/W# SL125
Form 2T-Legal Approved on 11/2011

STATE OF WASHINGTON)
) ss.
County of)

I certify that as of the date below I know or have satisfactory evidence that Sandra Oh is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the _____ of Airport Investment Company, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

_____
(Signature)

_____
(Please print name legibly)

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires: _____

R/W8.SL125
Form 21-Legal Approved on 11/2011

EXHIBIT "A" EASEMENT

R/W No. 440-SL-125
PIN 6422049122
Airport Investment Company, Inc.

Grantor's Entire Parcel (Servient):
(According to Chicago Title Insurance Company Order No. 1203960, dated April 12, 2010)

BEGINNING AT THE EXISTING MONUMENT OF THE SOUTH 1/16 CORNER OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
THENCE NORTH 88° 26' 34" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER 33.96 FEET TO THE CENTERLINE OF 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST 1,620.26 FEET ALONG SAID CENTERLINE TO THE INTERSECTION WITH THE CENTERLINE OF SOUTH 195TH PLACE, AS ESTABLISHED IN THE PLAT OF RICKARD HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;
THENCE NORTH 01° 07' 36" WEST ALONG SAID CENTERLINE OF 28TH AVENUE SOUTH 458.58 FEET TO A POINT WHICH IS SOUTH 01° 07' 36" EAST 27.20 FEET FROM THE INTERSECTION OF THE CENTERLINE OF SOUTH 194TH STREET, AS ESTABLISHED IN THE PLAT OF LOWE'S TERRACE NO. 4 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 61, IN KING COUNTY, WASHINGTON;
THENCE SOUTH 78° 01' 36" EAST 20.54 FEET TO THE EASTERLY MARGIN OF 28TH AVENUE SOUTH AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 137.38 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO REEPLOEG BY DEED RECORDED UNDER RECORDING NUMBER 4206149;
THENCE SOUTH 87° 08' 01" EAST 257.89 FEET TO THE SOUTHEAST CORNER OF SAID REEPLOEG TRACT AND A POINT ON A LINE MIDWAY BETWEEN THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (100 FEET WIDE) AND 28TH AVENUE SOUTH (40 FEET WIDE);
THENCE SOUTH 02° 28' 15" WEST ALONG SAID MIDWAY LINE 177.03 FEET TO THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO MARR BY DEED RECORDED UNDER RECORDING NUMBER 2945723;
THENCE SOUTH 78° 01' 36" EAST ALONG THE SOUTHERLY LINE OF SAID MARR TRACT 257.38 FEET TO THE WESTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;
THENCE SOUTH 06° 04' 47" WEST ALONG SAID WESTERLY MARGIN 132.24 FEET TO A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT BETWEEN ALTHEA O. WARE AND MILTON C. KUOLT, II AND KATHLEEN L. KUOLT, DESCRIBED IN THE RECIPROCAL DEEDS THEREOF FILED UNDER RECORDING NUMBERS 8409260293 AND 8409260294, IN KING COUNTY, WASHINGTON;
THENCE NORTH 87° 32' 50" WEST ALONG SAID LINE AND ITS WESTERLY EXTENSION 476.36 FEET TO THE EASTERLY MARGIN OF SAID 28TH AVENUE SOUTH;
THENCE NORTH 01° 07' 36" WEST ALONG SAID EASTERLY MARGIN 215.95 FEET TO THE TRUE POINT OF BEGINNING;
EXCEPT THAT PORTION THEREOF FOR ROAD CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NUMBER 8801070440;
AND EXCEPT THAT PORTION FOR ROAD AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER RECORDING NUMBER 20000302000897.

Steve T. Weaver Earl J. Bone 6/25/13 Earl J. Bone 6/25/13

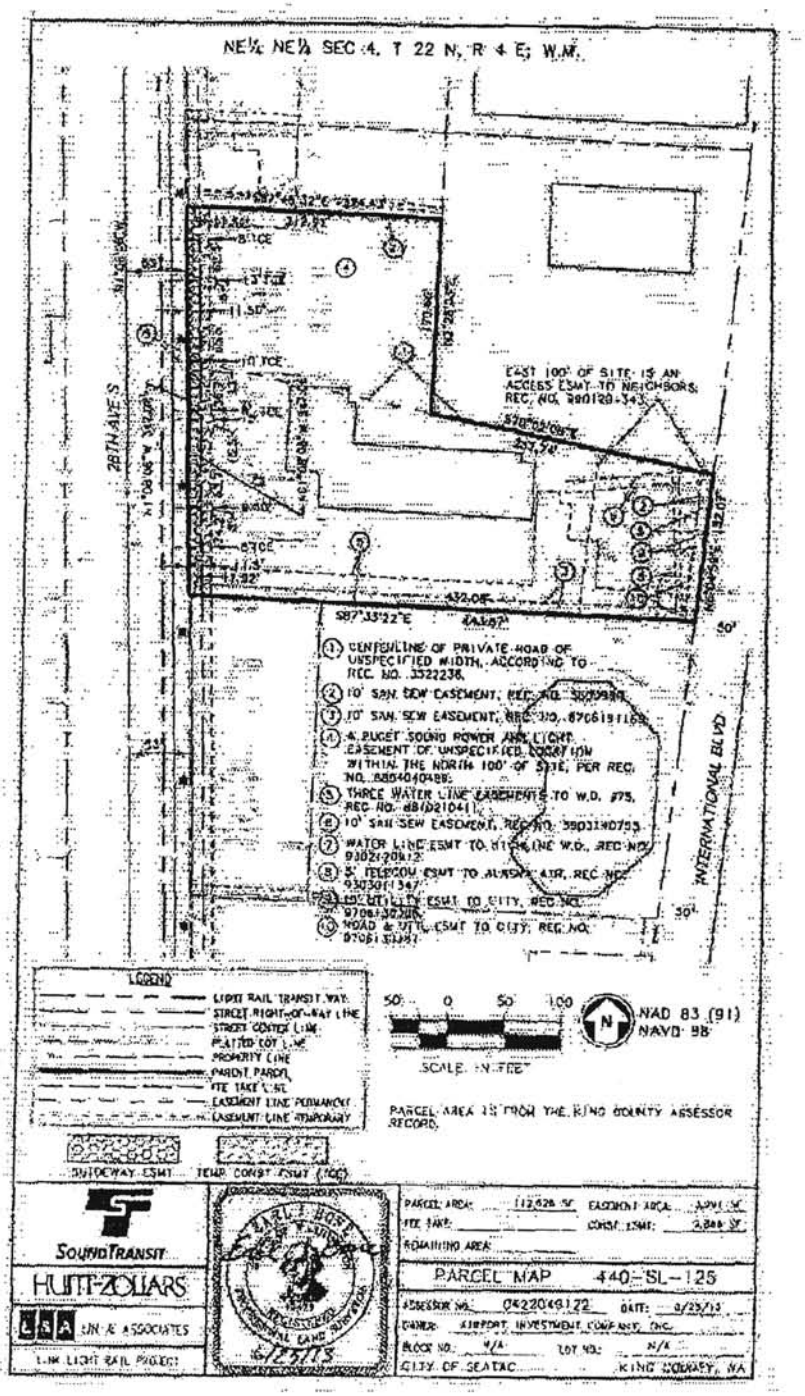
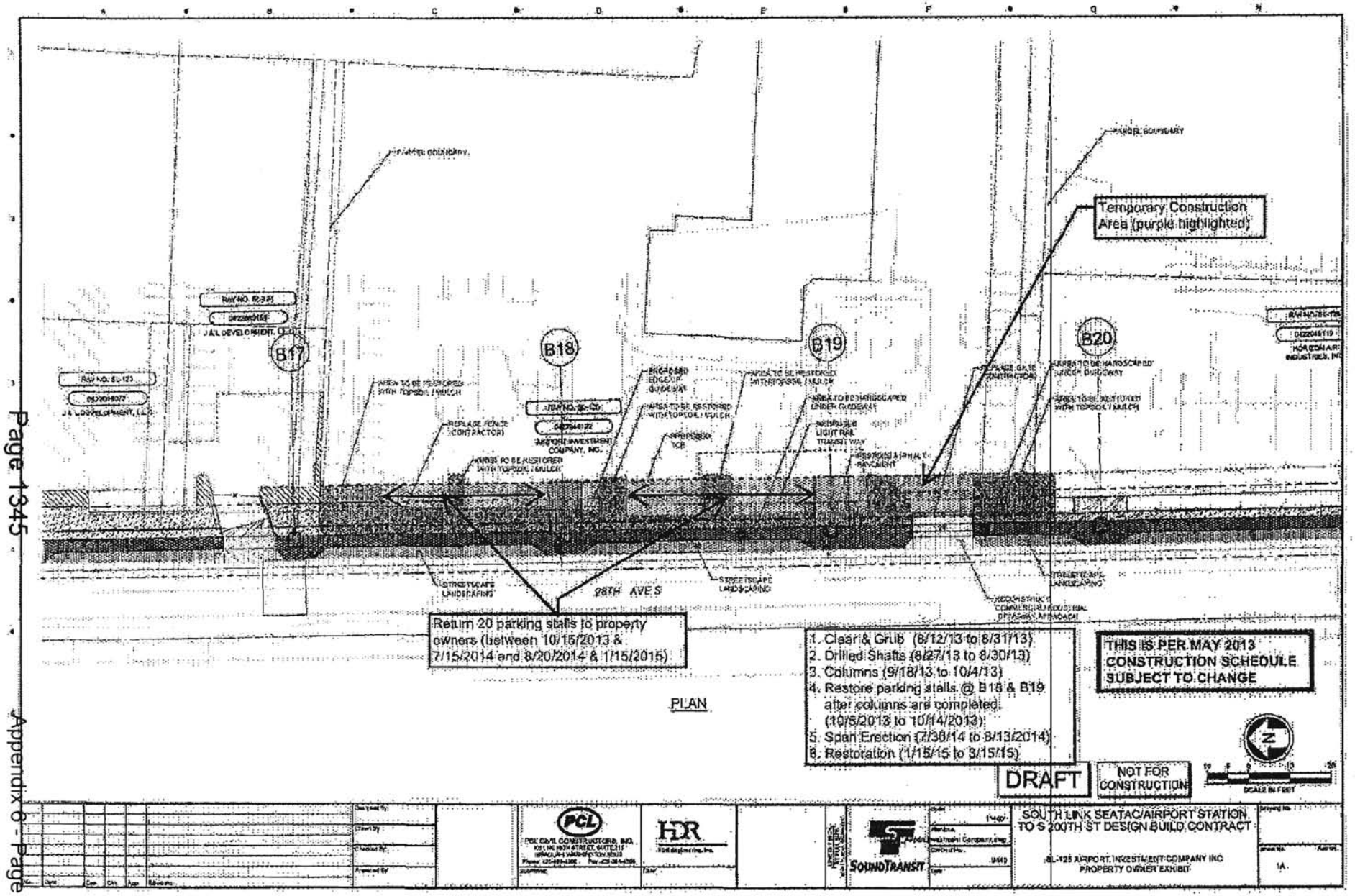

NE¼ NE¼ SEC 4, T 22 N, R 4 E, W.M.
28TH AVE S
INTERNATIONAL BLVD
EAST 100' OF SITE IS AN ACCESS ESMT TO NEIGHBORS, REC. NO. 9801203-343
S87°33'22"E
432.08'
50'
30'
(1) CENTERLINE OF PRIVATE ROAD OF UNSPECIFIED WIDTH, ACCORDING TO REC. NO. 3522238.
(2) 10' SAN SEW EASEMENT, REC. NO. 3079939
(3) 10' SAN SEW EASEMENT, REC. NO. 8706191169
(4) 4' PUGET SOUND POWER AND LIGHT EASEMENT OF UNSPECIFIED LOCATION WITHIN THE NORTH 100' OF SITE, PER REC. NO. 8804040488.
(5) THREE WATER LINE EASEMENTS TO W.D. #75, REC. NO. 8810210411
(6) 10' SAN SEW EASEMENT, REC. NO. 9801140753
(7) WATER LINE ESMT TO WATER LINE W.D., REC. NO. 9302120412
(8) 5' TELEPHONE ESMT TO AUNDY AIR, REC. NO. 9303011347
(9) 10' UTILITY ESMT TO CITY, REC. NO. 9706130308
(10) ROAD & UTIL. ESMT TO CITY, REC. NO. 9706131187
LEGEND
LIGHT RAIL TRANSIT WAY
STREET RIGHT-OF-WAY LINE
STREET CENTER LINE
PLATTED LOT LINE
PROPERTY LINE
PARENT PARCEL
FEE TAKE LINE
EASEMENT LINE PERMANENT
EASEMENT LINE TEMPORARY
SIDEWALK ESMT
TEMP CONST ESMT (TCE)
50 0 50 100
SCALE IN FEET
NAD 83 (91)
NAVD 88
PARCEL AREA IS FROM THE KING COUNTY ASSESSOR RECORD.
SOUNDTRANSIT
HUITT-ZOLLARS
LSA LINK ASSOCIATES
LINK LIGHT RAIL PROJECT
PARCEL AREA: 112,628 SF
EASEMENT AREA: N/A SF
FEE TAKE:
CONST. ESMT: 2,888 SF
REMAINING AREA:
PARCEL MAP 440-SL-125
ASSESSOR NO. 0422049122
DATE: 8/23/13
OWNER: AIRPORT INVESTMENT COMPANY, INC.
BLOCK NO. N/A
LOT NO. N/A
CITY OF SEATAC
KING COUNTY, WA

EXHIBIT E

EXHIBIT E


Temporary Construction Area (purple highlighted)
B17
B18
B19
B20
J & L DEVELOPMENT, LLC
AIRPORT INVESTMENT COMPANY, INC.
REPLACE FENCE (CONTRACTOR)
STREETSCAPE LANDSCAPING
28TH AVE S
Return 20 parking stalls to property owners (between 10/15/2013 & 7/15/2014 and 8/20/2014 & 1/15/2015)
1. Clear & Grub (8/12/13 to 8/31/13)
2. Drilled Shafts (8/27/13 to 8/30/13)
3. Columns (9/18/13 to 10/4/13)
4. Restore parking stalls @ B18 & B19 after columns are completed (10/5/2013 to 10/14/2013)
5. Span Erection (7/30/14 to 8/13/2014)
6. Restoration (1/15/15 to 3/15/15)
THIS IS PER MAY 2013 CONSTRUCTION SCHEDULE SUBJECT TO CHANGE
PLAN
DRAFT
NOT FOR CONSTRUCTION
SCALE IN FEET
PCL
HDR
SOUNDTRANSIT
SOUTH LINK SEATAC/AIRPORT STATION TO S 200TH ST DESIGN BUILD CONTRACT
BL-125 AIRPORT INVESTMENT COMPANY INC PROPERTY OWNER EXHIBIT
1A

APPENDIX - 7

SOIM
Airport Investment Company, LLC

Hampton Inn	Wingate LAX	Scottish Lodge
19445 International Blvd	10300 La Cienega Blvd.	5671 Riverside Dr.
Seatac, WA 98188	Inglewood, CA 90304	Ferndale, WA 98248
T 206-878-1700	T 310-846-3200	T 360-384-4040
F 206-824-0720	F 310-645-6925	F 360-380-1111

Received by_____

JUL 17 2012

Real Estate Dept.

July 16th, 2012

Dear Jennifer Corrigan,

I am sending you the new appraisal, and the invoice for the appraisal service. The total cost of the appraisal service was $6,000. Please advise us of our next step to obtain reimbursement.

After evaluating both appraisals extensively, we have concluded that Allen Brackett Shedd's appraisal to be highly insufficient and inaccurate. We believe they did not have all the right information to appraise our property properly nor did they employ the right tools to asses our property in the "after" state, thus discrediting their conclusion for "just compensation". Contrary to Allen Bracket Shedd's appraisal, we believe Lamb Hanson Lamb's appraisal accurately reflect what compensates for "just compensation".

We strongly believe we are entitled to a total of $485,000 for just compensation.

Please let us know where we go from here. Also, on top of obtaining reimbursement for our appraisal service, we would also like to know what steps we need to take to receive potential reimbursement for attorney fees.

Sincerely,

Jonathan Choi
HR & Legal Department Lead
SOIM Airport Investment Co. LLC.
Email: Seattlemco.jc@gmail.com
Tel: 206-212-6116 (ex.152)

UnAdmitted Ex 158

Lamb Hanson Lamb Appraisal Assoc., Inc.

Professional Real Estate Appraisers & Consultants

Date Number:
File Number: S012-068

********* INVOICE *********

File Number: S012-068

Received by_____

07/03/2012

SOIM Airport Investment Co. LLC
Jonathan Choi
1237 S Sunset Dr
Tacoma, WA 98465

JUL 17 2012

Real Estate Dept.

Borrower:

#28314
pd 7/13/12
(final) 3000.00

Invoice #: S012-068
Order Date: 05/15/2012
Reference/Case#:
PO Number: 0

19445 International Boulevard
Seattle, WA 98188

Hampton Inn Seattle	$6,000.00
Invoice Total:	$6,000.00
State Sales Tax @	
Deposit	($3,000.00)
Deposit	$0.00
Amount Due	$3,000.00

Terms: Balance due upon receipt. We accept Visa, Mastercard & AMEX.

Please make Check Payable To:
Lamb Hanson Lamb Appraisal Assoc., Inc.
4025 Delridge Way SW, Suite 530
Seattle, WA 98106-1262

Fed. I.D. #: 91-1093249

transfer final appraisal

APPENDIX - 8

1 COURT OF APPEALS

2 DIVISION I OF THE STATE OF WASHINGTON

3 NO. 70958-8-I

4

5 CENTRAL PUGET SOUND REGIONAL)
TRANSIT AUTHORITY, a regional)
6 transit authority, dba)
SOUND TRANSIT,) King County Cause
7 Respondent,) No. 12-2-33275-4KNT
)
8 vs.)
)
9 AIRPORT INVESTMENT COMPANY, a)
Washington corporation, dba)
10 Hampton Inn; HORIZON AIR)
INDUSTRIES, INC., a Washington)
11 Corporation; IBEW 77)
INTERNATIONAL BOULEVARD, LLC,)
12 a Washington limited liability)
company; JP MORGAN CHASE BANK,)
13 N.A., fka The Chase Manhattan)
Bank, as Trustee for the)
14 Registered Holders of)
Prudential Securities)
15 Financing Corporation)
Commercial Mortgage Pass-)
16 Through Certificates, Series)
199-C2; KING COUNTY; and ALL)
17 UNKNOWN OWNERS and UNKNOWN)
TENANTS,)
18 Appellants.)
)

19

20 VERBATIM REPORT OF PROCEEDINGS

21 TRIAL - DAY 7, JULY 25, 2013

22 BEFORE THE HONORABLE CATHERINE SHAFFER

23

24 RECORDING TRANSCRIBED BY:

25 CHERYL J. HAMMER, RPR, CCR 2512

INDEX

PROCEEDINGS	PAGE
Recross-Examination by Ms. Lindell	1290
Jury Questions	1294
F'r Recross-Examination by Ms. Lindell	1303
Discussion re: Scott Biethan's Testimony	1306
WITNESS:	
ANDREW OLSEN	
Direct Examination by Mr. Reimers	1310
Cross-Examination by Mr. Hansen	1338
Redirect Examination by Mr. Reimers	1355
Recross-Examination by Mr. Hansen	1357
Jury Questions	1359
Discussion re: Sidebar Discussions	1361
WITNESS:	
SCOTT BIETHAN	
Direct Examination by Mr. Hernandez	1365
Discussion re: Scheduling and Proposed Jury Instructions	1399

RESPONDENT'S EXHIBIT INDEX

EXHIBIT NUMBER	ADMITTED
353	1242

PETITIONER'S EXHIBIT INDEX

FOR ILLUSTRATIVE PURPOSES ONLY	ADMITTED
160	

--oOo--

(BEGINNING OF TRANSCRIPTION)

(Proceedings begin at 9:08 a.m.)

(JURY NOT PRESENT)

THE COURT: Which we're not going to address right now. I want the respondents to get a chance to read it too. We'll talk about it at the break, and I'll resolve it at that point.

All right. Let's go ahead and move along with our last Sound Transit witness, unless petitioner wants to take up something else.

MS. LINDELL: I just would like to briefly raise with Your Honor the results of some of the research that I found last night, just so you have the context in terms of the witness's testimony.

Under the restatement third of agency, a principal may manifest agency, apparent agency, by putting the agent in a defined position in the organization --

THE COURT: Uh-huh.

MS. LINDELL: -- or by placing the agent in charge of a transaction or situation.

THE COURT: Uh-huh.

MS. LINDELL: And there's a Washington

case, Smith v. Hansen -- Hansen no relation -- and Johnson, where the apparent authority combined the principal -- it's actually sort of a negative case, because it says in that case it did not bind the principle because it was not objectively reasonable --

THE COURT: Right.

MS. LINDELL: -- in that the principal hadn't represented authority, there wasn't documentation, and the job title and role in the principal's organization did not reasonably imply authority.

THE COURT: Uh-huh.

MS. LINDELL: And we have the letter that we've been talking about in which Mr. Choi's identified as HR and legal lead. We also have emails for him where it says HR and legal counsel as his title --

THE COURT: Uh-huh.

MS. LINDELL: -- in terms of evidence of objective manifestation, and then there are emails with and to Mr. Choi that copy Ms. Oh, the president of the company, and copy Mr. Ewbank and that in response to an initial meeting at the property Mr. Choi sent an email and said, I will be your contact for this acquisition.

Page 1188

1 THE COURT: Okay.
2 MS. LINDELL: And so... And then
3 there's just one other piece of authority that we --
4 I'm sure there's more, but there's a Washington case,
5 Anson[phonetic] versus McWilliams, where a letter sent
6 in the ordinary course of business is answered by an
7 agent of that corporation, the authority of that
8 person is presumed and the reply letter is admissible
9 against the principal without preliminary proof of
10 authority.
11 And in that context, we have the
12 letter from Sound Transit that said we think your
13 value is X. There was the meeting, then Mr. Choi's
14 email in response that says I'm the contact, and then
15 his letter that says our value is Y.
16 THE COURT: Okay. Mr. Hernandez, let
17 me hear from you on the argument that on the face of
18 it Mr. Choi identified himself as a speaking agent.
19 MR. HERNANDEZ: Your Honor, I cite to
20 Murphy Contractors versus State, authority Wn App 98.
21 Basically says an agent's authority under these
22 circumstances for purposes of hearsay cannot be
23 established by misstatements or conduct of the agent.
24 You have to rely on the principal and what they say.
25 THE COURT: Okay. And is your client

Page 1189

1 going to be testifying or subject to being called?
2 MR. HERNANDEZ: Well, Sound Transit's
3 going to call her in their case in chief.
4 MS. LINDELL: Your Honor, that is not
5 inconsistent with the authority that I cited. I think
6 that's sort of the preliminary rule. And then on top
7 of that you layer the fact that the agency --
8 restatement of agency says by their position they can
9 have apparent authority and then by communications in
10 which Ms. Oh is copied and she does not repudiate his
11 authority, and then followed on and supported by the
12 Anson versus McWilliams case that says the response
13 from the company reflects apparent authority by the
14 person responding.
15 THE COURT: I don't think that
16 apparent authority is going to do it here. Okay. I
17 think you're going to have to establish authority. It
18 doesn't have to be express authority to make this
19 statement, but it has to be a showing that this agent
20 was authorized to speak for this party, and since
21 you've got a principal here, I'll see if he can make
22 that showing or not.
23 MS. LINDELL: Okay.
24 THE COURT: This isn't going to come
25 in for substantive purposes until you make the

Page 1190

1 showing.
2 MS. LINDELL: Okay.
3 THE COURT: All right.
4 MS. LINDELL: Your Honor, at that
5 point where I think I've made it, I just am going to
6 ask you whether or not you're satisfied.
7 THE COURT: I'm not convinced that
8 you've made showing either of apparent or actual
9 authority, but since you have the principal here and
10 she's denying the agent of authority, call her and see
11 if she's willing to deny it under oath.
12 MS. LINDELL: Your Honor, my
13 question's a little bit different. While she's under
14 oath and on the witness stand in front of the jury,
15 before I present the document, I just wanted to know
16 whether you wanted me to check with you before I did
17 that. That's all.
18 THE COURT: I think to get this
19 document in you need to lay a foundation. I don't
20 know how to be more clear than that. I don't read the
21 case law as saying that apparent authority is enough
22 to introduce a party admission.
23 The whole policy of the rule here is
24 it needs to be the party's statement and there may be
25 cases where the showing of apparent authority without

Page 1191

1 a denial is enough, but here I have, allegedly, a
2 denial, okay, and I think you need to deal with that
3 and lay a foundation.
4 MS. LINDELL: Understood. Thank you.
5 THE COURT: All right. Let's bring in
6 the jury, unless there's something from respondent.
7 I'm sorry. No. Okay.
8 MALE VOICE: All rise for the jury.
9 (JURY PRESENT)
10 THE COURT: Be seated, everybody.
11 Good morning, ladies and gentlemen.
12 Sound Transit, you may call your next
13 witness.
14 MS. LINDELL: Thank you, Your Honor.
15 We call Ms. Sandra Oh.
16 THE COURT: Thank you. Come forward
17 if you would, Ms. Oh. Please raise your right hand
18 and face me.
19 Do you solemnly swear or affirm that
20 the testimony you provide will be the truth, the whole
21 truth, and nothing but the truth?
22 MS. OH: Yes, I do.
23 THE COURT: Is that a yes?
24 MS. OH: Yes.
25 THE COURT: Please be seated. Thank

Page 1192

you. Go ahead and help yourself to water, candy, tissue. I think the microphone is in a good place. You may inquire.

MS. LINDELL: Okay. Thank you.

DIRECT EXAMINATION

BY MS. LINDELL:

Q. Good morning.

A. Good morning.

Q. Ms. Oh, could you state your full name and spell your last name for the record, please.

A. Sandra Oh, O-h.

THE COURT: Actually, I think I'm going to ask you to pull that microphone by the holder toward you.

MS. OH: Oh.

THE COURT: Thank you. Go ahead.

Q. (BY MS. LINDELL) And Ms. Oh, you are president of Airport Investment Company LLC; is that right?

A. Yes. Actually, I think it's inc.

Q. Airport Investment Company, Inc.?

A. Yes.

Q. Okay. Are you also a managing member of Airport Investment Company LLC?

Page 1193

A. I don't think that that's active.

Q. Is the owner of the property that is at issue in this condemnation owned by Airport Investment Company, Inc.?

A. Yes.

Q. Okay. And you're the president of that company?

A. Yes.

Q. All right. And that's a family owned company; is that right?

A. Right. It's just my family.

Q. Okay. And your family owns three hotels; is that right?

A. I wouldn't call the third a hotel, but okay.

Q. Okay. One at LAX, one at SeaTac, and one in Ferndale, Washington, right?

A. Right. It's more like a motel.

Q. The Ferndale one is more like a motel?

A. Yes.

Q. You attended a meeting at the subject property on May 2, 2012 with Sound Transit's right-of-way agent to discuss the acquisition, didn't you?

A. I attended a meeting, but I don't remember

Page 1194

the exact date, yes.

Q. Okay. At that meeting, was it also -- it was also attended by Mr. Leigh Ewbank and Mr. Benjamin By for Airport Investment Company, correct?

A. I think so.

Q. Okay. And who is Mr. Ewbank?

A. He is the operations controller.

Q. For Airport Investment Company?

A. Right.

Q. Okay. And who is Mr. Benjamin By?

A. He's -- he's more like an assistant.

Q. And who is he an assistant to?

A. Airport Investment and to me for business operations.

Q. Okay. And what was his title as of May 2012 at Airport Investment?

A. I believe his title was assistant.

Q. And at that meeting, Sound Transit's right-of-way agent Jennifer Corrigan was there?

A. Yes.

Q. And Ms. Corrigan identified herself to you as the Sound Transit representative for purposes of this acquisition; is that correct?

A. Yes.

Q. All right. And her role at that time was

Page 1195

to be Airport Investment Company's primary contact person for the acquisition, correct?

A. Yes. I think she stated that.

Q. Okay. And in May 2012, Jonathan Choi was also employed at Airport Investment Company?

A. I don't remember the exact date he came in, but yes, he was there for the summer.

Q. Okay. And at that meeting there was conversation about follow-up communications from Sound Transit with Airport Investment Company regarding the acquisition, correct?

A. Actually, I think so, but I don't remember who the contact person was supposed to be.

Q. Okay. Are you aware that following that meeting Mr. Jonathan Choi emailed Sound Transit, emailed the right-of-way agent Jennifer Corrigan representing that he and Mr. By would be the primary contact for Airport Investment Company with regard to this acquisition?

A. Just them? I may have received it, but I actually don't recall, because it's been over a year.

Q. Okay. Are you aware that following the meeting on May 2, 2012 with the property, Mr. Choi represented to Sound Transit's right-of-way agent that he would be the primary source for communication?

Page 1196

A. No.
Q. Are you aware --
A. I mean -- okay.
Q. No. I'm sorry. I didn't mean to interrupt. Go ahead.
A. No. I mean, I wasn't aware that he said he was going to be the sole primary source.
Q. Are you aware that he sent an email to Sound Transit that said Mr. By and I will be your contact with Airport Investment Company for purposes of the acquisition, and I will be the primary source for communication?
A. No, I wasn't aware. I mean, I might have something in my email, but I have a lot of email.
Q. Okay. Had you seen -- so you don't know, you don't remember if you saw that email or not?
A. No.
Q. Were you aware that Mr. Choi communicated after that with Sound Transit with regard to the acquisition on behalf of Airport Investment Company?
A. I think he did.
Q. Okay. And did you ever tell Sound Transit you should not communicate with Mr. Choi with regard to the acquisition?
A. I don't think I said anything.

Page 1197

Q. All right. And are you aware of -- at the time in May 2012 when Mr. Choi sent the emails to Sound Transit the signature block read, quote, SOIM, Airport Investment Company LLC, HR and legal counsel?
A. I wasn't aware of that title.
Q. Do you know what SOIM stands for?
A. No.
Q. It's on your letterhead, though, isn't it, for Airport Investment Company?
A. Actually, I thought we were just using regular heading, you know, for the hotel.
Q. All right. Do you have letterhead that reads SOIM Airport Investment Company LLC?
A. I think we have it for SOIM, and we use it mainly for just a form letter for employees.
Q. What does SOIM stand for?
A. I don't remember. Actually, I don't know.
Q. Okay. Is that something that your father would have put in place at the time he was in charge of the company?
A. No, I don't think so. I don't think he had any formal letterhead.
Q. Okay. So letterhead that reads SOIM Airport Investment Company LLC, and you're the president, you're not aware of what SOIM stands for?

Page 1198

A. No. But I know what Airport Investment Company and all of that other stuff is.
Q. All right. And are you aware --
THE COURT: The question is if you know what the meaning is of a logo on your letterhead.
A. No, I don't know what the acronym stands for. I don't recall.
Q. (BY MS. LINDELL) Okay. And are you aware of an email sent --
THE COURT: Can I please have the jury step out. Thanks. Go ahead and head into the jury room if you would.
(JURY NOT PRESENT)
THE COURT: Be seated.
Ms. Oh, are you aware you're under oath?
MS. OH: Yes.
THE COURT: Are you aware that I just swore you in to tell the whole truth?
MS. OH: Yes. I mean, I think it stands for Sandra Oh, but I don't know what IM stands for.
THE COURT: Okay. Sandra Oh are your initials, correct?
MS. OH: Yes.

Page 1199

THE COURT: Okay. Who put this, this logo on your letterhead?
MS. OH: I don't know. It could have been Ben or it could have been John. To be honest, I didn't make the letterhead, so I don't know.
THE COURT: You are aware the first two letters are your initials?
MS. OH: I believe so, because that would be the only thing that makes sense to me, but I don't know what the IM stands for.
THE COURT: How long has this logo been on your letterhead?
MS. OH: Maybe a year. I don't know.
THE COURT: It preceded Mr. Choi, I assume? The existence of this letterhead preceded Mr. Choi?
MS. OH: I think we've only had it for about a year or two.
THE COURT: Okay. And where did it come from?
MS. OH: I think we just made it in the office so we would have something separate.
THE COURT: Okay. And what does it mean besides Sandra Oh?
MS. OH: I don't know what the I is.

Page 1200

1 I am just guessing that M is management.
2 THE COURT: Uh-huh.
3 MS. OH: I don't know what I is.
4 THE COURT: Okay. Tell me about Mr.
5 Choi. When did you hire him?
6 MS. OH: We just hired him for the
7 summer.
8 THE COURT: Okay. When? 2012?
9 MS. OH: I don't -- yes.
10 THE COURT: For what position?
11 MS. OH: He was just a summer intern.
12 He was just going to stay for a few months and then he
13 was going off to school, which he did. He left in
14 like -- I don't know -- end of July, perhaps, because
15 --
16 THE COURT: Is he a lawyer?
17 MS. OH: No.
18 THE COURT: Was he going to law
19 school?
20 MS. OH: Yes. I think he's starting
21 law school now.
22 THE COURT: Was he working as a lawyer
23 in your legal department?
24 MS. OH: We don't have a legal
25 department. We don't have a lawyer. His job was just

Page 1201

1 to do research to help me find the people I need so I
2 could hire the correct -- like, for instance, if I
3 wanted to find a lawyer for a contract we were in
4 dispute for, like, for instance, we were in dispute
5 over the airport advertising, he would try to help,
6 you know, determine what would be the best type of
7 lawyer or what type. So that was his role.
8 THE COURT: Who was he an extern for?
9 MS. OH: Excuse me?
10 THE COURT: Who did he report to?
11 When he came to work, who did he talk to so he could
12 find out what he was supposed do?
13 MS. OH: He kind of talked to all of
14 us. I mean, there was --
15 THE COURT: Including you?
16 MS. OH: Right. There wasn't just one
17 person.
18 THE COURT: Okay. Can you explain
19 these letters we've got here?
20 MS. OH: I wasn't aware of that
21 letter. What I was aware of, he told me that Sound
22 Transit -- it was written somewhere that Sound Transit
23 would reimburse for an appraisal if we didn't agree
24 with their -- what do you call it -- compensation
25 amount, and I said okay.

Page 1202

1 He said that we would just need to
2 have someone appraise the property and, you know,
3 bring it up to Sound Transit. But that, you know --
4 THE COURT: Was there a belief that
5 you were entitled to $485,000 for just compensation?
6 MS. OH: Whatever was in the appraisal
7 and what the appraiser came up with with --
8 THE COURT: Is that an accurate
9 statement, Ms. Oh? Did you believe you're entitled to
10 $485,000? When you said it in July, was that an
11 accurate statement about what your belief was?
12 MS. OH: My belief was whatever the
13 appraiser said was --
14 THE COURT: Yes. Focus on the letter
15 and the date and tell me if this was your belief.
16 MS. OH: Well, that was my belief from
17 the information from the appraiser.
18 THE COURT: Okay. Thank you. May I
19 have this?
20 MS. OH: Oh, sorry.
21 THE COURT: I'm going to let you
22 question her about this letter --
23 MS. LINDELL: Okay.
24 THE COURT: -- okay, directly. We
25 don't need to get into whether Mr. Choi did or didn't

Page 1203

1 have authority, because I don't think we're ever going
2 to get a clear answer on, but I do think it's clear
3 that this is a statement of something that she
4 believed at the time and you can bring it in as her
5 party admission.
6 MS. LINDELL: Okay.
7 THE COURT: Are you clear? Is
8 everybody? Mr. Hernandez?
9 MR. HERNANDEZ: Your Honor, I will
10 object.
11 THE COURT: Based on?
12 MR. HERNANDEZ: I don't think we meet
13 the hearsay exception.
14 THE COURT: She just said that this
15 was her belief at the time. That's not hearsay. It's
16 her belief. Let's bring in our jury. I'm not
17 (unintelligible) but on her own.
18 MR. HANSEN: Maybe you should ask the
19 court.
20 MS. LINDELL: Your Honor?
21 THE COURT: Uh-huh.
22 MS. LINDELL: (Unintelligible.) There
23 is -- the full version of the letter includes a
24 reference to Lam Hanson Lam appraisal.
25 THE COURT: You can ask her about her

Page 1204

1 belief based on Mr. Lam's report. Don't get into what
2 Mr. Choi believed --
3 MS. LINDELL: I understand.
4 THE COURT: -- or what Mr. Choi's
5 authorized to say, because frankly, I don't think I'm
6 ever going to get a straight answer out of Ms. Oh
7 about what Mr. Choi was doing or why he was writing
8 these letters or what she knew about them, but I do
9 think it's clear that this is a reflection of what she
10 was saying and thinking at the time and that you can
11 ask her about.
12 Let's bring in our jury.
13 The door opens up, obviously, Mr.
14 Hernandez, for anything you want to get into with
15 regard to earlier opinions by the (inaudible).
16 MR. HERNANDEZ: Maybe I'll take
17 advantage of that, Your Honor.
18 MALE VOICE: All rise for the jury.
19 (JURY PRESENT)
20 THE COURT: Thanks for your patience,
21 ladies and gentlemen. Be seated, everybody.
22 All right. Ms. Lindell, back to you.
23 MS. LINDELL: Thank you, Your Honor.
24 Permission to approach, Your Honor.
25 THE COURT: Yes.

Page 1205

1 CONTINUING DIRECT EXAMINATION
2 BY MS. LINDELL:
3 Q. Ms. Oh, I'm handing you what has been
4 marked as Petitioner's Exhibit 158, and ask you if you
5 recognize that letterhead, SOIM Airport Investment
6 Company LLC?
7 A. Yes, I recognize the letterhead.
8 Q. And that's letterhead for your company,
9 correct?
10 A. Yes, for that office.
11 Q. And the three hotels at the top are the
12 three hotels that your family owns?
13 A. Yes.
14 Q. And this letter is dated July 16, 2012; is
15 that right?
16 A. Yes, that's what it says.
17 Q. Okay. And as of July 16, 2012, was it
18 Airport Investment Company's and your belief, strong
19 belief, that Airport Investment Company was entitled
20 to a total of $485,000 for just compensation?
21 A. I based compensation based on whatever the
22 appraiser said.
23 THE COURT: That's a yes or no
24 question.
25 Q. (BY MS. LINDELL) That's a yes or no

Page 1206

1 question.
2 A. Okay. Yes.
3 Q. All right. Thank you.
4 MS. LINDELL: Your Honor, we'd move to
5 admit Exhibit 158.
6 THE COURT: Denied. Okay. You have
7 her testimony.
8 MS. LINDELL: Pardon me?
9 THE COURT: Denied. You have her
10 testimony.
11 MS. LINDELL: Thank you.
12 Q. (BY MS. LINDELL) Was that opinion of value
13 communicated to Sound Transit?
14 THE COURT: If you know.
15 A. Well, it says it was sent to Jennifer
16 Corrigan.
17 Q. (BY MS. LINDELL) Okay. And that's Sound
18 Transit's right-of-way agent that you met at the
19 property, correct?
20 A. Yes. I met her, I think, once.
21 Q. And that opinion of value was sent to
22 Jennifer Corrigan at Sound Transit --
23 THE COURT: Ms. Lindell, no. You have
24 her admission. Move on.
25 MS. LINDELL: Thank you. No further

Page 1207

1 questions in terms of our case in chief, Your Honor.
2 THE COURT: Thank you.
3 Cross-examination, Mr. Hernandez.
4
5 CROSS-EXAMINATION
6 BY MR. HERNANDEZ:
7 Q. Good morning, Ms. Oh.
8 A. Good morning.
9 Q. I want to talk about the information you
10 had when that letter was sent. What information about
11 the project did you have at that point?
12 A. I didn't have much. I just had the amount
13 of compensation Sound Transit was offering and X
14 amount of land they were taking and, you know, the
15 three years and that's about it.
16 Q. When you say three years, you mean the
17 temporary construction easement?
18 A. Yes, I think that's what was recorded
19 there.
20 Q. What was Sound Transit's offer that
21 preceded that letter?
22 A. The offer was for about $143,000.
23 Q. So they, Sound Transit, was offering
24 $143,000 just compensation at that point?
25 A. Yes, it was around that much.

TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned Certified Court Reporter in and for the state of Washington, do hereby certify:

That the foregoing transcript was transcribed under my direction; that the transcript is true and accurate to the best of my knowledge and ability to hear the audio; that I am not a relative or employee of any attorney or counsel employed by the parties hereto; nor am I financially interested in the event of the cause.

WITNESS MY HAND this 13th day of January 2014.

CHERYL J. HAMMER
Certified Court Reporter
CCR No. 2512
chammer@yomreporting.com

APPENDIX - 9

Rev. Code Wash. (ARCW) § 8.25.070

ANNOTATED REVISED CODE OF WASHINGTON
2014 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** Statutes current through 2013 3rd special session ***

TITLE 8. EMINENT DOMAIN
CHAPTER 8.25. ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 8.25.070 (2013)

§ 8.25.070. Award of attorney's fees and witness fees to condemnee -- Conditions to award

(1) Except as otherwise provided in subsection (3) of this section, if a trial is held for the fixing of the amount of compensation to be awarded to the owner or party having an interest in the property being condemned, the court shall award the condemnee reasonable attorney's fees and reasonable expert witness fees in the event of any of the following:

(a) If condemnor fails to make any written offer in settlement to condemnee at least thirty days prior to commencement of said trial; or

(b) If the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect thirty days before the trial.

(2) The attorney general or other attorney representing a condemnor in effecting a settlement of an eminent domain proceeding may allow to the condemnee reasonable attorney fees.

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemnor, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemnor upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemnor does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

(4) Reasonable attorney fees as authorized in this section shall not exceed the general trial rate,

per day customarily charged for general trial work by the condemnee's attorney for actual trial time and his or her hourly rate for preparation. Reasonable expert witness fees as authorized in this section shall not exceed the customary rates obtaining in the county by the hour for investigation and research and by the day or half day for trial attendance.

(5) In no event may any offer in settlement be referred to or used during the trial for any purpose in determining the amount of compensation to be paid for the property.

HISTORY: 1984 c 129 § 1; 1971 ex.s. c 39 § 3; 1967 ex.s. c 137 § 3.

APPENDIX - 10

Rev. Code Wash. (ARCW) § 8.25.075

ANNOTATED REVISED CODE OF WASHINGTON
2014 by Matthew Bender & Company, Inc.,
a member of the LexisNexis Group.
All rights reserved.

*** Statutes current through 2013 3rd special session ***

TITLE 8. EMINENT DOMAIN
CHAPTER 8.25. ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 8.25.075 (2013)

§ 8.25.075. Costs -- Award to condemnee or plaintiff -- Conditions

(1) A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemnor cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the condemnor.

(2) In effecting a settlement of any claim or proceeding in which a claimant seeks an award from an acquiring agency for the payment of compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner, the attorney general or other attorney representing the acquiring agency may include in the settlement amount, when appropriate, costs incurred by the claimant, including reasonable attorneys' fees and reasonable expert witness fees.

(3) A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

(4) Reasonable attorney fees and expert witness fees as authorized in this section shall be subject to the provisions of subsection (4) of RCW 8.25.070 as now or hereafter amended.

HISTORY: 1977 ex.s. c 72 § 1; 1971 ex.s. c 240 § 21.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2014, I caused to be served the foregoing APPELLANT AIRPORT INVESTMENT CO.'S OPENING BRIEF on the following parties at the following address by United States Mail, postage first class:

Marisa V. Lindell, WSBA #18201
Matthew R. Hansen, WSBA #36631
Graham & Dunn PC
Pier 70
2801 Alaskan Way, Ste. 300
Seattle, WA 98121-1128
Telephone: (206) 340-9652
Facsimile: (206) 340-9599
E-Mail: mlindell@grahamdunn.com
E-Mail: mhansen@grahamdunn.com
E-Mail: hreynolds@grahamdunn.com
E-Mail: kfielder@grahamdunn.com
Attorneys for Plaintiff Sound Transit

Averil Rothrock

PDX\125435\188268\AAR\13604414.5