

No. 71827-4-I

King County Superior Court Cause No. 13-2-36105-1 SEA

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

CITY OF BELLEVUE, a Washington municipal corporation,

Respondent;

v.

PINE FOREST PROPERTIES, INC., a Washington corporation,

Appellant;

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

Respondents.

**BRIEF OF RESPONDENT
CITY OF BELLEVUE**

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

2014 JUL 18 PM 4:34
COURT OF APPEALS
STATE OF WASHINGTON
M
111

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR.....	3
A. Assignments of Error.....	3
B. Issues Pertaining to Assignments of Error.....	3
III. STATEMENT OF CASE	3
A. The Property Is Necessary for the East Link Project.....	5
B. The Property Is Necessary for the Bel-Red Transportation Improvements.....	7
C. The City Reasonably Determined that a Fee Acquisition Was Required for Both the East Link Project and the Bel-Red Transit Improvements.....	8
D. Procedural History	13
IV. ARGUMENT.....	18
A. Standard of Review.....	18
B. The City Is Acquiring the Property for Valid Public Uses.....	20
C. The City's Determination that the Property in Fee Is Necessary for the Public Projects Is Conclusive Because There Is No Evidence of Actual or Constructive Fraud.....	23
D. Pine Forest Was Not Entitled to a Third Continuance.	30
V. CONCLUSION.....	34

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ameriquest Mortgage Co. v. Office of Attorney Gen.</i> , 177 Wn.2d 467, 300 P.3d 799 (2013).....	19
<i>Avenetti v. Brown</i> , 158 Wash. 517, 291 P. 469 (1930).....	33
<i>Bramall v. Wales</i> , 29 Wn. App. 390, 628 P.2d 511 (1981).....	32
<i>Cent. Puget Sound Reg'l Transit Auth. v. Miller</i> , 156 Wn.2d 403, 128 P.3d 588 (2006).....	passim
<i>City of Blaine v. Feldstein</i> , 129 Wn. App. 73, 117 P.3d 1169 (2005).....	18, 19, 27, 29
<i>City of Des Moines v. Hemenway</i> , 73 Wn.2d 130, 437 P.2d 171 (1968).....	18, 19, 27
<i>City of Pullman, Whitman Cnty. v. Glover</i> , 73 Wn.2d 592, 439 P.2d 975 (1968).....	22
<i>City of Seattle v. Faussett</i> , 123 Wash. 613, 212 P. 1085 (1923).....	23
<i>City of Tacoma v. Humble Oil & Ref. Co.</i> , 57 Wn.2d 257, 356 P.2d 586 (1960).....	22
<i>City of Tacoma v. Welcker</i> , 65 Wn.2d 677, 399 P.2d 330 (1965).....	19, 27
<i>Colwell v. Holy Family Hosp.</i> , 104 Wn. App. 606, 15 P.3d 210 (2001).....	31
<i>Doyle v. Lee</i> , 166 Wn. App. 397, 272 P.3d 256 (2012).....	31
<i>Fruitland Irr. Co. v. Smith</i> , 54 Wash. 185, 102 P. 1031 (1909).....	32, 33

<i>Gronquist v. Dep't of Corr.</i> , 159 Wn. App. 576, 247 P.3d 436 (2011)	19
<i>Hallauer v. Spectrum Props., Inc.</i> , 143 Wn.2d 126, 18 P.3d 540 (2001)	19
<i>HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.</i> , 155 Wn.2d 612, 121 P.3d 1166 (2005)	21
<i>In re City of Lynnwood</i> , 118 Wn. App. 674, 77 P.3d 378 (2003)	24
<i>In re City of Seattle</i> , 104 Wn.2d 621, 707 P.2d 1348 (1985)	19
<i>In re Pappanicolaou's Estate</i> , 58 Wn.2d 924, 364 P.2d 428 (1961)	32
<i>Lane v. Port of Seattle</i> , 178 Wn. App. 110, 316 P.3d 1070 (2013), <i>review denied</i> , 180 Wn.2d 1004, 321 P.3d 1207 (2014)	24
<i>Lowy v. PeaceHealth</i> , 174 Wn.2d 769, 280 P.3d 1078 (2012)	31
<i>Neitzel v. Spokane Int'l Ry. Co.</i> , 65 Wash. 100, 117 P. 864 (1911)	23
<i>Port of Everett v. Everett Improvement Co.</i> , 124 Wash. 486, 214 P. 1064 (1923)	27
<i>Pub. Util. Dist. No. 2 of Grant Cnty. v. N. Am. Foreign Trade Zone Indus., LLC</i> , 159 Wn.2d 555, 151 P.3d 176 (2007)	passim
<i>Spratt v. Toft</i> , 324 P.3d 707 (Wash. Ct. App. 2014)	31
<i>State ex rel. Church v. Superior Court for King County</i> , 40 Wn.2d 90, 240 P.2d 1208 (1952)	32, 33
<i>State ex rel. Devonshire v. Super. Ct. for King Cnty.</i> , 70 Wn.2d 630, 424 P.2d 913 (1967)	20

<i>State ex rel. Eastvold v. Superior Court for Snohomish Cnty.</i> , 48 Wn.2d 417, 294 P.2d 418 (1956).....	23
<i>State ex rel. Tacoma Sch. Dist. No. 10, Pierce Cnty. v. Stojack</i> , 53 Wn.2d 55, 330 P.2d 567 (1958).....	22, 27
<i>State ex rel. Wash. State Convention & Trade Ctr. v. Evans</i> , 136 Wn.2d 811, 966 P.2d 1252 (1998).....	22, 26
<i>State v. Belmont Imp. Co.</i> , 80 Wn.2d 438, 495 P.2d 635 (1972).....	20
<i>State v. Larson</i> , 54 Wn.2d 86, 338 P.2d 135 (1959).....	23
<i>Yakima Cnty. v. Evans</i> , 135 Wn. App. 212, 143 P.3d 891 (2006).....	27

Constitutional Provisions

Const. art. I, § 16	18
---------------------------	----

Statutes and Regulations

Ch. 42.56 RCW.....	19
Ch. 81.104 RCW.....	4
Ch. 81.112 RCW.....	4
RCW 35A.11.010	4
RCW 39.34.060	4
RCW 8.12.030	20
RCW 8.12.090	18, 33
RCW 81.104.010	5
RCW 81.112.080	4

Other Authorities

17 William B. Stoebuck & John W. Weaver, Wash. Prac., Real Estate:
Property Law (2d ed. 2004) § 9.2814

I. INTRODUCTION

Appellant property developer Pine Forest Properties, Inc. (“Pine Forest”) appeals the trial court’s ruling that the City of Bellevue (“City”) has demonstrated the requisite public use and necessity to acquire a parcel of property (“Property”) for two separate transportation projects. The trial court correctly ruled that the two projects, one road expansion, and the other construction of light rail, are a valid public use and that the property is necessary for that use. Importantly, Pine Forest concedes that the City will use approximately two-thirds of the property for a valid permanent public use and that a long-term public use exists for the remaining one-third of the property. Under directly applicable Washington Supreme Court precedent, this is sufficient to satisfy the public use requirement.

Instead, what Pine Forest labels a challenge to public use for one-third of the property, actually is a necessity challenge to the City’s determination that it needs to acquire the entire parcel for the projects. Pine Forest cloaks its necessity challenge as one of public use in the effort to obtain a more deferential standard of review, even though the Washington Supreme Court has repeatedly rejected this premise. *Pub. Util. Dist. No. 2 of Grant Cnty. v. N. Am. Foreign Trade Zone Indus., LLC* (“*PUD v. NAFTZF*”), 159 Wn.2d 555, 575, 151 P.3d 176 (2007) (“We

have explicitly held that a public entity need not plan to use condemned property for a public purpose forever to justify the initial public use.”).

As the trial court properly ruled, the City’s determination that it needs the entire parcel for the projects is reviewable only for actual or constructive fraud. Since Pine Forest conceded before the trial court that it was alleging neither actual nor constructive fraud, the necessity inquiry should end there. At any rate, the City’s careful study of the project requirements and the City’s undisputed permanent need for the majority of the Property and long-term need for the remainder more than justify the finding of necessity under well settled case law. Finally, the trial court did not abuse its discretion in denying Pine Forest’s belated request for discovery.

Pine Forest has appealed the trial court’s public use and necessity determination to serve its own development objectives, well knowing that the City is under a tight deadline to take possession of the Property and that delay could disrupt the planned extension of light rail and other related development, substantially impacting both public and private stakeholders. Pine Forest’s appeal lacks merit, and the trial court should be affirmed in all respects.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

The City assigns no errors.

B. Issues Pertaining to Assignments of Error

1. Whether the trial court correctly concluded that construction of roads and mass transit (the East Link Project and Bel-Red Transportation Improvements) are a valid public use.

2. Whether the trial court correctly ruled that the Property is reasonably necessary to construct the East Link Project and Bel-Red Transportation Improvements where the City made a reasonable determination of necessity, which determination is conclusive because Pine Forest failed to meet its burden to show actual or constructive fraud.

3. Whether the trial court abused its discretion in declining to delay determination of public use and necessity further to allow discovery by Pine Forest where the case had been pending for five months, the hearing on public use and necessity had been twice extended, and trial was scheduled for three months following the hearing.

III. STATEMENT OF CASE

In this eminent domain proceeding, the City seeks to acquire a single parcel of property from Pine Forest for use in two separate transportation projects. The Property is located at 1445 120th Ave. NE in

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

The first transportation project, the East Link Project, derives from local voters’ approval of the Central Puget Sound Regional Transit Authority’s (“Sound Transit’s”)¹ plan to construct light rail from Seattle to Bellevue. As part of an extensive inter-local agreement with Sound Transit, the City agreed to acquire the Property in fee simple for Sound Transit’s use to construct the permanent East Link guideway and for construction staging.² In addition to the East Link Project, the City plans to complete a second transportation project, the Bel-Red³ Transportation Improvements. This second project will result in the construction of a new road and other multi-modal transportation corridors along and across the Property. The City has determined that the Property is necessary for the completion of both of these projects.

¹ Sound Transit is the regional transit authority for King, Snohomish, and Pierce Counties, created pursuant to chapters 81.104 and 81.112 RCW.

² See CP 182-235; see also RCW 39.34.060 (municipalities may supply property through an inter-local agreement); RCW 35A.11.010 (code cities may exercise eminent domain); RCW 81.112.080(2) (regional transit authorities may exercise eminent domain).

³ Bel-Red is a 900-acre area within the City that stretches between SR-520 and Bel-Red Road and extends from I-405 to 156th Avenue NE and is a major employment area in the City. CP 130 (¶ 9).

A. The Property Is Necessary for the East Link Project.

The East Link Project is a coordinated effort by the City and Sound Transit to address increasing congestion caused by growth and development in the region. The Legislature has determined that “[i]ncreasing congestion on Washington’s roadways calls for identification and implementation of high capacity transportation system alternatives,” and has directed local jurisdictions to “coordinate and be responsible for high capacity transportation policy development, program planning, and implementation.” RCW 81.104.010. On November 4, 2008, voters in the central Puget Sound region approved the East Link Project to improve and expand transit in the region, including expansion of the existing light rail system to Mercer Island, South Bellevue, downtown Bellevue, Bel-Red, and Overlake. *See* CP 138.

In conjunction with Sound Transit, the City determined that construction of a light rail tunnel through downtown Bellevue would benefit both the City’s and Sound Transit’s constituents. *See* CP 129-30 (¶ 6). To further their common interests in constructing the East Link Project, including ensuring that construction of a light rail tunnel is financially feasible, the City and Sound Transit entered into a Memorandum of Understanding. CP 182-235. In the Memorandum of Understanding, the City agreed, among other things, to purchase the

Property for Sound Transit's use for construction staging of the East Link Project, which is expected to continue for as long as eight years, and for construction of a permanent fixed guideway system. CP 130 (¶ 7), CP 222. The Memorandum of Understanding specified that the Property would need to be taken in fee (as opposed to a partial take or temporary construction easement). CP 222 (showing a fee take for the Property by reference to its address, 1445 120th Ave. NE, and tax parcel identification, number 1099100005); *see also* CP 267 (Ordinance identifying the Property's address and tax parcel identification number). The City must also ensure the Property is vacant and deliver the Property to Sound Transit no later than June 2015. CP 130 (¶ 7).

Pine Forest does not dispute the public nature and purpose of, or the need for, the East Link Project, which is a critical component of the City's and the region's long-term land use and transportation strategies, CP 129 (¶ 5), CP 184. As the trial court found, the East Link Project is necessary to preserve the City's neighborhoods, to provide mobility in and out of downtown Bellevue, and to support economic growth and development. CP 447 (Findings of Fact ("FOF"), ¶ 4); *see also* CP 129 (¶ 5). The construction of a light rail tunnel through downtown Bellevue, in particular, will avoid additional congestion on downtown streets and impacts to homes and businesses. CP 447 (FOF ¶ 4); *see also* CP 183.

The tunnel also will maximize the ability of the light rail system to meet long-term regional transportation needs and increase run-time predictability and light rail operation performance. CP 447 (FOF ¶ 4); *see also* CP 183. The City Council found the City’s implementation of the Memorandum of Understanding and the construction of the East Link Project, including condemnation of the Property for Sound Transit’s use for construction staging through the course of construction, “to be necessary, and in the best interests of the citizens.” CP 266-70 (Ordinance No. 6122).

B. The Property Is Necessary for the Bel-Red Transportation Improvements.

In addition to construction of the East Link Project, the City needs the Property for independent road transportation purposes. CP 130 (¶ 9). Specifically, the City plans to construct a new road extending NE 15th Street between 116th Avenue NE and 120th Avenue NE, with two lanes in each direction and turn pockets or a center turn lane where necessary, a separated multi-purpose path along the north side, a sidewalk along the south side, and other appropriate infrastructure. CP 131 (¶ 11). The City also plans to widen 120th Avenue NE between NE 12th Street and Northup Way, including expansion of the roadway to five lanes, with two lanes in each direction and turn pockets or a center turn lane, intersection

improvements to accommodate the extension of NE 15th Street, bike lanes, sidewalks, and other infrastructure as needed. *Id.*

Pine Forest does not dispute that the Bel-Red Transportation Improvements constitute a necessary public use. The City Council found the Bel-Red Transportation Improvements “to be necessary, and in the best interests of the citizens.” CP 266-70. The Improvements are a critical component of the City’s long-term strategic plan to encourage and facilitate concentrated growth in a series of mixed-use, pedestrian-friendly, and transit-oriented development nodes around anticipated light rail stations in Bel-Red, which is a major employment area in the City. CP 130-32 (¶¶ 9, 13). The Improvements are necessary to improve access, circulation, and mobility options for passenger cars, transit, freight, pedestrians, and bicycles to and between downtown Bellevue, Wilburton, and the new Bel-Red transit-oriented development nodes and to mitigate impacts on adjoining areas in an environmentally sustainable manner. CP 132 (¶ 13).

C. The City Reasonably Determined that a Fee Acquisition Was Required for Both the East Link Project and the Bel-Red Transit Improvements.

The City reasonably decided to acquire the Property in fee for the East Link Project and Bel-Red Transit Improvements given both the undisputed need for the City to take a permanent interest in approximately

two-thirds of the Property, and Sound Transit's and the City's long-term need to use the remainder of the Property through 2030 or beyond.

In particular, the Property in its entirety is necessary for the construction of the East Link Project as implemented through the City and Sound Transit's Memorandum of Understanding. CP 130 (¶ 8). The Property is located in areas where lengthy construction staging must occur and a permanent fixed guideway system must be installed, as determined by Sound Transit in consultation with the City and after careful consideration of several alternatives. *See id.* The City agreed to purchase the Property in fee for Sound Transit's use during this construction. CP 130 (¶ 7), CP 222. Additionally, the Property is located in an area required for the Bel-Red Transportation Improvements. CP 132 (¶ 14). Specifically, the City will expand 120th Avenue NE along the eastern frontage of the Property and construct the extension of NE 15th Street across the Property. *Id.*

Although Pine Forest does not dispute the need for a permanent take of what it describes as the "rights of way," Pine Forest erroneously suggests there is a particular portion of the Property that will only be used by the City and Sound Transit for a specific limited duration. *See Pine Forest Op. Br.* at 8-9. There are, however, significant design, scheduling, and coordination decisions yet to be made by both Sound Transit and the

City with respect to both the East Link and the Bel-Red Transportation Improvements Projects, which could lengthen the duration of construction and increase the amount of property needed for these projects. CP 432 (¶ 17).

Moreover, although Sound Transit has established an estimated construction schedule for the East Link Project, the City and Sound Transit have not fixed a time frame for Sound Transit's temporary use of the Property. CP 429 (¶ 10), CP 440 (¶ 5). Nor have Sound Transit and the City "confirmed" that construction for both the East Link and Bel-Red transportation projects will be complete by 2022 or 2023, when the East Link trains are scheduled to be operational. *See* Pine Forest Op. Br. at 6 (relying on *Pine Forest's* own analysis of construction costs to conclude the Improvements must be completed before East Link is operational, *see* CP 313 (¶ 8), 398-404). To the contrary, the City's Capital Investment Program for 2013 through 2019 does not include full funding for the Improvements. CP 429-30 (¶ 11). Rather, the current budget recognizes that the full implementation of the extension of NE 15th Street across the Property likely would occur between 2030 and 2040, but recognizes that this schedule could be accelerated to the period of 2020 to 2030. *Id.* The decision on whether to accelerate the NE 15th Street Project has not yet been made and may not be made for another year or more. *Id.*

Pine Forest requested to retain a portion of the Property, which portion Pine Forest potentially could develop at some point in the future as a small piece in a larger private development project proposed by Pine Forest. *See* CP 428 (¶ 6). Pine Forest falsely contends that its proposal was “intentionally and willfully ignored” by the City. *See* Pine Forest Op. Br. at 28. In fact, the record confirms that the City engaged in extensive dialogue with Pine Forest about its ideas to coordinate its private development with construction of the East Link Project and Bel-Red Transportation Improvements but, after careful consideration, the City reasonably determined that it is necessary to acquire the Property in fee. CP 428-34.

Numerous factors weigh against coordinating two extremely complex public infrastructure projects with Pine Forest’s private development. Pine Forest’s proposal includes significant limitations on Sound Transit’s and the City’s abilities to use the Property for these public projects. CP 432-33 (¶ 18).⁴ These restrictions are particularly troubling because of uncertainty about the duration and scope of Sound Transit’s

⁴ For example, Pine Forest’s October 2013 proposal set an expiration date for completion of the project with significant holdover penalties. *Id.* (citing CP 407). Similarly, the February 18, 2014 proposal, while purporting to offer “flexibility for the City,” would require the City to “agree[] on a timetable” and “provide[] certainty that the property will be returned to Pine Forest.” CP ___ (Ex. 1).

and the City's public uses. There is also no guarantee that Pine Forest's development project would be constructed at the same time as the public projects, if at all. Pine Forest's project proposal is still under review and, even if approved, Pine Forest has acknowledged that it will only construct its project if market conditions allow. CP 434 (¶ 20), CP 314 (¶ 10).

While Pine Forest purports to "guarantee" the City will save millions of dollars, the City has not seen any evidence that those cost savings will occur. CP 433-34 (¶ 19). What Pine Forest describes as "savings" is actually just the purchase of a smaller amount of property at the same per square foot price, plus the additional costs associated with a ground lease. *Id.* Further, Pine Forest's claims appear to be based on the erroneous assumption that Sound Transit and the City will need to use a portion of the Property for only six years. CP ___ (Ex. 1)⁵ ("assuming a lease...from 2015-2021"). But the City anticipates that it will need to use the Property for at least ten years, and the possibility remains that the duration could be much longer. CP 433-34 (¶ 19). Pine Forest's proposal would require the City to agree to delineate permanent and long-term use areas prior to making significant design decisions. *Id.* The City has

⁵ The City has been unable to obtain copies of the supplemental clerk's papers designated by Pine Forest because the trial court has apparently rejected all three of Pine Forest's supplemental designations. These portions of the record are cited herein as "CP ___" with explanatory parentheticals.

therefore determined that it must acquire the Property in fee, rather than agree to Pine Forest's proposal. *Id.*

D. Procedural History

The City followed the required process for identifying the Property to be acquired and for notifying Pine Forest of its intent to acquire the Property, including by serving Pine Forest with a Notice of Final Action Authorizing Condemnation Proceedings in August 2013. CP 76-77, CP 431-32. Although Pine Forest does not dispute that it received Notice of the public meeting where the City Council authorized acquisition of the Property, including by eminent domain, neither Pine Forest nor its legal counsel appeared at that meeting. CP 431 (§ 15).

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

The City instituted proceedings to condemn the Property, in fee, on October 18, 2013. CP 1-96. Specifically, the City filed a Petition in

Eminent against parties with an interest in the Property, including property owner Pine Forest, Clearwire Communications, a tenant at the Property, and The Prudential Insurance Company of America, the beneficiary on a Deed of Trust recorded on the Property.⁶ CP 132-33 (¶ 15).

After consenting to two extensions to allow the parties to pursue alternative dispute resolution, CP 97-126, the City moved for an order determining public use and necessity on January 23, 2014, noting the hearing for February 3, 2014.⁷ CP 236-250. Pine Forest was the only party to oppose the City's motion. Although Pine Forest had never mentioned (let alone served) discovery before this point, Pine Forest's Opposition (filed January 28, 2014) requested a continuance to take discovery (although Pine Forest failed to identify what material evidence would be obtained through discovery). *See* CP 282 (n.62) (footnote suggesting Pine Forest "will propound written discovery into the City's

⁶ Respondent Sharebuilder Corporation, a former tenant at the Property, was voluntarily dismissed from this action in a November 22, 2013, agreed order.

⁷ "Once a state agency with the power of eminent domain has made the initial determination that condemnation is necessary, the matter moves into court for a three-stage proceeding. First, there must be a decree of public use and necessity. Second, just compensation must be determined. Finally, just compensation must be paid and title transferred." *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 410, 128 P.3d 588 (2006) (citing 17 William B. Stoebuck & John W. Weaver, Wash. Prac., Real Estate: Property Law (2d ed. 2004) § 9.28, at 635 ("Stoebuck & Weaver")). The trial court hearing and order at issue in this appeal addressed the first issue only, public use and necessity. *See* CP 445-55.

deliberations and financial analysis” (emphasis added)). Pine Forest continued to wait to serve written discovery until *after* the City filed its reply brief (on February 4, 2014), meaning that the public use and necessity hearing occurred *before* the deadline for the City’s responses and objections. *See* VRP, March 7, 2014, at 22:12-23:3.

At the hearing, Pine Forest conceded that the City’s decision to condemn the Property was not the result of actual fraud or constructive fraud:

Pine Forest is not alleging fraud. It’s basic arbitrary and capricious decision-making by the City and manifest [ab]use of discretion. That’s different. It could ultimately - - if one were to argue about, we could talk about constructive fraud, but we’re not even going that far.

Id. at 15:16-21 (emphasis added).

The trial court granted the City’s motion from the bench. The court then entered findings of fact and conclusions of law, including the following:

First, the trial court ruled that the East Link Project and the Bel-Red Improvements constitute public uses justifying condemnation. CP 452-43 (Conclusions of Law (“COL”), ¶¶ 7, 9, 12), CP 454 (Order, ¶ 4). The trial court explained that while it is not sufficient for a condemnor “to determine that it did not need the property it was seeking to condemn at the time but that it may need it in perpetuity[,] [t]he

opposite situation is presented here, because the City undeniably needs all of the Property now but may not need a portion of it in the future, which is an issue of necessity, not public use.” CP 452 (COL ¶ 11).

Second, the trial court concluded that the Property is required and necessary for the East Link Project and Bel-Red Transportation Improvements. CP 454 (Order, ¶ 3). As the trial court held, the City’s determination of necessity, including the type and extent of property interest, is conclusive absent evidence of actual or constructive fraud. CP 453 (COL ¶ 14). Further, the trial court explained that the City does not need to have a public use planned for the Property forever. *Id.* (COL ¶ 15).

Here, the trial court found that the City reasonably determined that it needs to acquire the Property in fee simple based on the undisputed permanent need of approximately two-thirds of the Property and the long term-need to use the remainder of the Property for construction staging, possibly through 2030 and beyond. CP 448 (FOF ¶¶ 7, 9). The trial court further found that “[w]hether it intended to or not, Pine Forest has not established that the City’s determination that it requires the Property in fee simple...was the result of actual fraud or constructive fraud.” CP 448 (FOF ¶ 7).

With regard to Pine Forest's request to retain a portion of the Property, the trial court noted that Pine Forest's proposal had "significant limitations," including restrictions on Sound Transit's and the City's duration of use of the Property and the requirement that the City "agree to separate compensation for the permanent use areas and for the long-term temporary use area at an early stage before all design decisions defining those areas have been made." CP 448-49 (FOF ¶ 10) (quotation omitted). The trial court also found that the City "reasonably considered the relative cost of a complete take as compared to a temporary construction easement over any potential remainder," including the costs of acquiring the Property and transaction costs associated with taking only a temporary interest and coordinating design and development of Sound Transit's and the City's public projects with Pine Forest's private development. CP 449 (FOF ¶ 11).

Finally, the trial court properly rejected Pine Forest's request for a third continuance to conduct discovery. CP 454 (Order, ¶ 5). The trial court found that Pine Forest failed to act with due diligence or show good cause for a continuance because, among other things, Pine Forest failed to raise "the issue of discovery or make any effort to conduct any discovery prior to filing its Opposition to the Motion," to offer "any justification for this delay," or to identify "material evidence that would be obtained

through discovery that would support a finding that the City's determination of public interest and necessity was the result of actual fraud or...constructive fraud." CP 451 (FOF ¶ 15), 453 (COL ¶ 17).

On April 16, 2014, the last possible day to do so, Pine Forest appealed the decision on public use and necessity. CP ____ (Pine Forest Notice of Appeal). The effect of this appeal is to stay the remainder of proceedings at the trial court, thereby preventing the City from completing its acquisition of the Property until the appeal process is complete and there has been a trial of just compensation on remand.

IV. ARGUMENT

A. Standard of Review

To grant a motion for public use and necessity, a trial court need only conclude that: (1) the proposed use is a public use; (2) the interest of the general public requires the use; and (3) the property at issue is necessary to facilitate the public use. *See* RCW 8.12.090; *City of Blaine v. Feldstein*, 129 Wn. App. 73, 78, 117 P.3d 1169 (2005) (citing *City of Des Moines v. Hemenway*, 73 Wn.2d 130, 437 P.2d 171 (1968)).

The first question (public use) is a judicial determination. *See* Const. art. I, § 16; RCW 8.12.090; *PUD v. NAFTZI*, 159 Wn.2d at 573. The second question, public interest, is related to and overlaps with the third question, public necessity, and thus, these determinations typically

are made together. *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 132, 138, 18 P.3d 540 (2001) (citing *In re City of Seattle*, 104 Wn.2d 621, 623, 707 P.2d 1348 (1985)). The second and third questions are legislative determinations, meaning that courts defer to the condemnor's determination of public interest and necessity absent proof of actual fraud or such arbitrary and capricious actions as amount to constructive fraud. See *PUD v. NAFTAZI*, 159 Wn.2d at 575-76; *Cent. Puget Sound Reg'l Transit Auth. v. Miller* ("Miller"), 156 Wn.2d 403, 411, 128 P.3d 588 (2006) (citing *City of Des Moines*, 73 Wn.2d at 139). "[Pine Forest] bears the burden of showing actual or constructive fraud by the City." *City of Blaine*, 129 Wn. App. at 81 (citing *City of Tacoma v. Welcker*, 65 Wn.2d 677, 684, 399 P.2d 330 (1965)). On appeal, this Court reviews whether the trial court "abuse[d] its discretion in finding that substantial evidence supported a determination of public use and necessity." *PUD v. NAFTAZI*, 159 Wn.2d at 578.⁸

⁸ Pine Forest urges the Court to conduct a *de novo* review on appeal, but the authorities it cites for this proposition are all cases arising from show cause hearings under the Public Records Act, ch. 42.56 RCW, rather than eminent domain proceedings. Pine Forest Op. Br. at 14 (citing *Ameriquist Mortgage Co. v. Office of Attorney Gen.*, 177 Wn.2d 467, 300 P.3d 799 (2013); *Gronquist v. Dep't of Corr.*, 159 Wn. App. 576, 590, 247 P.3d 436, 443 (2011)). Nor is this Court's review more deferential because the trial court relied on declarations and other documents. See *Pub. Util. Dist. No. 2 of Grant Cnty., Washington v. N. Am. Foreign Trade Zone Indus., LLC*, 125 Wn. App. 622, 628, 105 P.3d 441 (2005) (trial

In this case, the trial court correctly ruled that the City may acquire the Property because the Property is necessary to support multiple, valid public uses.

B. The City Is Acquiring the Property for Valid Public Uses.

Pine Forest first attempts to argue that the City has failed to establish a valid public use to acquire the Property. But construction of either public transit or roads is a valid public use. *Miller*, 156 Wn.2d at 411 n.2 (noting that “the condemnation of private property for public transportation is within the state’s eminent domain power and almost categorically a public use”) (citing *State ex rel. Devonshire v. Super. Ct. for King Cnty.*, 70 Wn.2d 630, 636-37, 424 P.2d 913 (1967) (holding that condemnation of private property for 1962 Exposition Monorail is a public use) (citation omitted)); RCW 8.12.030 (authorizing road construction as a public use); *State v. Belmont Imp. Co.*, 80 Wn.2d 438, 443, 495 P.2d 635 (1972) (same). Certainly both transportation projects when considered together support the exercise of eminent domain. In fact, Pine Forest conceded as much below with respect to the bulk of the Property. CP 305 (¶ 5).

court in *PUD v. NAFTZI* relied on declarations), *aff’d*, *PUD v. NAFTZI*, 159 Wn.2d 655.

Pine Forest nonetheless incorrectly attempts to cast the amount of property taken as a question of public use, rather than one of necessity. *See* Pine Forest Op. Br. at 16. Thus, although Pine Forest does not dispute that the entire Property will be put to a public use at least during the protracted construction of the East Link Project and Bel-Red Transportation Improvements, Pine Forest erroneously argues that this Court should review the City's decision to take a fee interest in the Property under the first prong of the test for "public use," rather than the more deferential "necessity" prong.

The Washington Supreme Court already has rejected the idea that the amount of property taken should be addressed under the public use prong. *See HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.* ("Seattle Monorail"), 155 Wn.2d 612, 634, 121 P.3d 1166 (2005); *see also PUD v. NAFTZI*, 159 Wn.2d at 575-76 (claims that excess property has been taken are addressed under the necessity prong).

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

The *Seattle Monorail* Court expressly distinguished *State ex rel. Wash. State Convention & Trade Ctr. v. Evans* (“*Convention Ctr.*”), 136 Wn.2d 811, 966 P.2d 1252 (1998), where “a significant part was *never* going to be put to a public use.” *Seattle Monorail*, 155 Wn.2d at 633 (emphasis in original). There, the agency planned to sell three stories of the proposed four-story expansion to a private developer. The Court affirmed the agency’s public use determination because the private use was incidental to the public use. *Convention Ctr.*, 126 Wn.2d at 822-23.

Not surprisingly, Pine Forest fails to identify any case where the condemning authority’s determination of the particular land interests required for the contemplated project was reviewed under the public use prong. For example, in *City of Tacoma v. Humble Oil & Ref. Co.*, 57 Wn.2d 257, 258, 356 P.2d 586 (1960) (quoted in Pine Forest Op. Br. at 19), the Supreme Court rejected a land owner’s challenge to the city’s determination to take fee simple title to land, rather than allowing the owner to retain mineral rights, under the deferential necessity prong. *See also State ex rel. Tacoma Sch. Dist. No. 10, Pierce Cnty. v. Stojack*, 53 Wn.2d 55, 64, 330 P.2d 567 (1958) (“selection of land to be condemned by the proper public agency is conclusive” absent actual or constructive fraud); *City of Pullman, Whitman Cnty. v. Glover*, 73 Wn.2d 592, 595, 439 P.2d 975 (1968) (deferring to City’s “administrative decision” that “its

public purpose will be best served by taking the described property subject to the existing lease in favor of the United States”); *Neitzel v. Spokane Int’l Ry. Co.*, 65 Wash. 100, 105, 117 P. 864 (1911) (holding that the legislature did not authorize railroad company to condemn fee simple interest); *State v. Larson*, 54 Wn.2d 86, 89, 338 P.2d 135 (1959) (affirming condemnor’s determination of the extent of land interests “reasonably necessary to accomplish the public use or necessity”); *State ex rel. Eastvold v. Superior Court for Snohomish Cnty.*, 48 Wn.2d 417, 421, 294 P.2d 418 (1956) (same); *City of Seattle v. Faussett*, 123 Wash. 613, 619, 212 P. 1085 (1923) (same).

In sum, there is no legal basis to review the amount of property taken under the public use prong. The City has identified valid and undisputed public uses supporting acquisition of the Property. Pine Forest’s argument raises solely the question of necessity for the City to acquire a fee interest.

C. The City’s Determination that the Property in Fee Is Necessary for the Public Projects Is Conclusive Because There Is No Evidence of Actual or Constructive Fraud.

Because the question of the amount of property to be taken is one of necessity, the decision of the City on this point is conclusive absent a showing by Pine Forest of actual or constructive fraud. *E.g., Lane v. Port of Seattle*, 178 Wn. App. 110, 126, 316 P.3d 1070 (2013) (citing *PUD v.*

NAFTZI, 159 Wn.2d at 575-76 (quoting *Seattle Monorail*, 155 Wn.2d at 629)), *review denied*, 180 Wn.2d 1004, 321 P.3d 1207 (2014); *see also In re City of Lynnwood*, 118 Wn. App. 674, 687, 77 P.3d 378 (2003). Pine Forest claims that this test applies only to the choice of location of the property to be condemned, but cites no authority in support of that premise. Pine Forest Op. Br. at 24. Nor is the premise supportable because the necessity analysis squarely applies to claims that excess property is being taken, the exact issue in this case. *PUD v. NAFTZI*, 159 Wn.2d at 576.

As an initial matter, Pine Forest conceded on the record at the hearing on public use and necessity that it was not even alleging actual or constructive fraud. VRP, March 7, 2014, at 15:16-21 (“Pine Forest is not alleging fraud.... we could talk about constructive fraud, but we're not even going that far.”) (emphasis added). Under the precedent of this Court and the Washington Supreme Court, Pine Forest’s concession is dispositive of any challenge under the necessity prong and standing alone is sufficient to affirm the trial court.⁹

Pine Forest’s concession aside, however, the requirement of necessity is easily established here. A condemnor does *not* need to have

⁹ In direct contrast to its concession at the trial court, Pine Forest now tries to argue the presence of constructive fraud on appeal. *See* Pine Forest Op. Br. at 16.

“a public use planned for the property forever.” *Seattle Monorail*, 155 Wn.2d at 620 (emphasis in original); *PUD v. NAFTZI*, 159 Wn.2d at 575. Thus, in *Seattle Monorail*, the Court held that a long-term need for an entire parcel during construction of a permanent public facility covering only a portion of that land is “of an intensity and duration to justify the taking of the fee interest.” 155 Wn.2d at 636. Contrary to Pine Forest’s suggestion, the agency in that case conceded that it “currently ha[d] no planned use for any portion of the property that may remain uncovered by the final station design” and explained (as the City does here) “that it would be premature to make definitive plans for the property that may possibly fall outside of the footprint.” 155 Wn.2d at 620; *see also* CP 432-34 (¶¶ 17-19). The Court agreed it was proper to defer to the agency’s determination that a fee take was necessary. *Seattle Monorail*, 155 Wn.2d at 634-35.

Pine Forest mischaracterizes the factual record in *Seattle Monorail*, as well as the Court’s conclusions regarding the necessity prong. The Court did not conduct the searching inquiry suggested by Pine Forest’s fragmented out-of-context quotes. *See* Pine Forest Op. Br. at 21-22. To the contrary, the Court expressly refused “to undertake a searching judicial review of the necessity of [the agency’s] determination to condemn a fee interest” simply because (as the agency conceded) the agency did not have

a permanent planned use for a portion of the parcel. *Seattle Monorail*, 155 Wn.2d at 633-34.

This Court similarly should defer to the City Council's reasonable legislative determination that a fee interest is necessary and in the public's best interest for the East Link Project and Bel-Red Transportation Improvements. CP 266-70 (Ord. No. 6122), CP 432-34 (§§ 17-21). Here, similar to *Seattle Monorail*, the City has an undisputed need to take a permanent interest in approximately two-thirds of the Property, and Sound Transit and the City have a long-term need to use the remainder of the Property through 2030 or beyond. CP 429-30 (§ 11). Sound Transit and the City have yet to make certain budgeting, design, and coordination decisions that could extend the construction timeframe and shift or increase the size of the permanent public facilities that will be built on the Property. CP 430-31 (§ 13). Under these circumstances, a fee simple acquisition minimizes complications, and the potential for additional escalating costs, for both public projects. CP 432 (§ 17).

Tellingly, Pine Forest identifies only *one* case rejecting a condemnor's necessity determination.¹⁰ *See* Pine Forest Op. Br. at 25

¹⁰ In all of the other authority relied on by Pine Forest in support of its necessity challenge, Pine Forest Op. Br. at 26-28, the court affirmed the condemnor's finding of public necessity. *See, e.g., Convention Ctr.*, 136 Wn.2d at 824; *City of Tacoma v. Welcker*, 65 Wn.2d 677, 686, 399 P.2d

(citing *Port of Everett v. Everett Improvement Co.*, 124 Wash. 486, 494, 214 P. 1064 (1923)); *see also Miller*, 156 Wn.2d at 412 (“Seldom has [our Supreme Court] held that a condemning authority has abused its trust in making a declaration of public necessity. This should not be surprising, for it is not to be presumed that such abuses often occur.”) (internal citation omitted)). In that one case, the condemnor had literally “no map, plan, specification or detailed description of the work intended to be constructed[.]” *Port of Everett*, 124 Wash. at 492. The Court concluded the necessity prong was not satisfied where the Port of Everett determined that it did not need the property it was seeking to condemn at the time but that it may need the property in the future. *Id.* at 494. But “nothing in *Port of Everett* requires...a definitive use plan for the entire life of the property[.]” *Seattle Monorail*, 155 Wn.2d at 638 n.21.

The trial court correctly concluded that the current case presents the opposite situation as *Port of Everett*, because the City undeniably needs all of the Property now and for a substantial duration, even though it may not need a portion of the Property at an undetermined future date. CP

330 (1965) (trial court erred in concluding condemnor’s necessity determination was arbitrary and capricious); *see also Yakima Cnty. v. Evans*, 135 Wn. App. 212, 218, 143 P.3d 891 (2006); *City of Blaine v. Feldstein*, 129 Wn. App. 73, 81-83, 117 P.3d 1169 (2005); *City of Des Moines v. Hemenway*, 73 Wn.2d 130, 139-41, 437 P.2d 171 (1968); *State ex rel. Tacoma Sch. Dist. No. 10, Pierce Cnty. v. Stojack*, 53 Wn.2d 55, 64-65, 330 P.2d 567 (1958).

452 (COL ¶ 11). Significant planning, budgeting, and coordination issues also prevent the City from taking only a temporary interest in that portion of the Property. CP 429-32 (FOF ¶¶ 11-13, 17). For example, the trial court found that Pine Forest’s proposal to coordinate its private development project with the public infrastructure projects included “significant limitations” on the duration of use of the Property and would have required the City to agree to “separate compensation” for the permanent and long-term use areas “before design decisions defining those areas have been made.” CP 448-49 (FOF ¶ 10). Further, as the trial court explained, “the City reasonably determined that it would be considerably more cost effective to acquire the Property in fee simple[.]” CP 449 (FOF ¶ 11).

Pine Forest vaguely purported to guarantee “millions of dollars” in savings if the City agrees to a partial take, but those promises proved illusory and contrary to the City’s own financial analysis. *See* CP 433-34 (¶¶ 19-20). Pine Forest’s “guarantee” argument also rests on a two-page settlement letter not provided to the Court until the day of the public use and necessity hearing. CP ____ (Ex. 1).¹¹ The letter did not guarantee millions of dollars in savings—it did not even guarantee that Pine Forest

¹¹ For that reason, and because it would be contrary to ER 408, none of the City’s settlement correspondence addressing this proposal is included in the record.

would proceed with its proposed development project. CP 428 (¶ 7), CP 314 (¶ 10). The letter merely suggested that the City would pay less money for a lesser property interest, which is no savings at all. *See* CP 433-34 (¶ 19). And even that amount was uncertain, since the proposal was based on an inflated fee value proposed by Pine Forest. *Id.*¹²

The letter also failed to address other key questions such as how to reconcile Pine Forest’s inability to presently and definitively commit to its development project with the City’s need to proceed now with the acquisition of the Property as currently framed; how transaction costs and other issues identified in the record would be addressed; how liability issues associated with co-development projects would be addressed; who exactly is making the “guarantee,” from what amount, with what means of enforcement, and with what, if any, collateral; and how the guarantee would be enforced. *See generally* CP 432-35.

In arguing its “guarantee” on appeal, Pine Forest also reverses the burden of proof, suggesting that the City was required to prove that Pine Forest’s proposal was unworkable. *Compare* Pine Forest Op. Br. at 26, *with City of Blaine*, 129 Wn. App. at 81 (holding that the condemnee bears

¹² The suggestion that the temporary easement offered by Pine Forest would be rent free, Pine Forest Op. Br. at 26, is also misleading, since the letter assumed that the temporary easement would run only through 2021, whereas the City’s anticipated use of the Property is through at least 2024 and likely longer. *See* CP 434-35 (¶ 19).

the burden to show actual or constructive fraud sufficient to reverse a decision of necessity by the condemnor). There is no requirement, however, that a public entity conclusively disprove the feasibility of every for-profit proposal of a private party if the public entity concludes in its discretion that another course of action best serves its constituents. The City may choose between competing options where reasonable minds might differ as to the best alternative. *E.g., Miller*, 156 Wn.2d at 417-18. And, here, the City made its determination after engaging in extensive discussions, as well as multiple mediations, with Pine Forest about its proposal. *See* CP 313-14 (¶10), CP 421, CP 428-29.

In sum, the City's exercise of its discretion to proceed with a fee acquisition does not amount to actual or constructive fraud simply because Pine Forest made an alternative proposal. If it did, any private party could defeat the exercise of eminent domain by making a proposal more to its liking (and benefit).

D. Pine Forest Was Not Entitled to a Third Continuance.

Finally, the trial court did not abuse its discretion in denying Pine Forest's request for a third continuance of the hearing on public use and necessity.

Pine Forest attempts to elevate this procedural issue to one of constitutional magnitude, but ignores that any right to discovery is limited

to discovery “authorized by the civil rules, subject to the restrictions contained therein.” *Lowy v. PeaceHealth*, 174 Wn.2d 769, 776, 280 P.3d 1078 (2012) (internal quotations omitted). A discrete ruling on a continuance request, without more, does not implicate the constitutional right to discovery. *See Spratt v. Toft*, 324 P.3d 707, 715 (Wash. Ct. App. 2014) (noting that the “mere fact that discovery [has been] limited” does not mean the constitution has been violated). To the contrary, a trial court “has broad discretion to grant or deny a continuance,” including a “continuance request to engage in discovery,” and the trial court’s decision is reviewed “for a manifest abuse of discretion.” *Doyle v. Lee*, 166 Wn. App. 397, 404, 272 P.3d 256 (2012) (citing *Colwell v. Holy Family Hosp.*, 104 Wn. App. 606, 615, 15 P.3d 210 (2001)).

The trial court did not manifestly abuse its discretion here because Pine Forest had ample opportunity to conduct discovery prior to the hearing on public use and necessity, but did not do so. Pine Forest had notice of the City’s intent to condemn before August 2013, CP 432 (¶ 16), and the Petition was filed October 18, 2013, CP 11. Despite that, Pine Forest waited until February 2014 before serving any discovery. Moreover, Pine Forest twice stipulated to dates to conduct the hearing on public use and necessity, without ever raising the issue of discovery. *See* CP 97-101, CP 112-16.

If a party requesting a continuance for discovery has been dilatory in conducting discovery or in making its request, denying the continuance is proper. *See Bramall v. Wales*, 29 Wn. App. 390, 393, 628 P.2d 511 (1981) (noting that continuance request based on failure to conduct discovery requires “an adequate showing of due diligence”); *Fruitland Irr. Co. v. Smith*, 54 Wash. 185, 186-87, 102 P. 1031 (1909) (no continuance where party did not object at hearing when the date for trial on just compensation was set); *State ex rel. Church v. Superior Court for King County*, 40 Wn.2d 90, 91, 240 P.2d 1208 (1952) (affirming denial of repeated request for continuance of public use and necessity hearing).

Here, as the trial court noted, Pine Forest “failed to raise the issue of discovery or make any effort to conduct discovery prior to” the deadline for the City’s public use and necessity motion, which deadline already had been extended twice. CP 451 (FOF ¶ 15); *cf. In re Pappanicolaou’s Estate*, 58 Wn.2d 924, 924-25, 364 P.2d 428 (1961) (belief that settlement talks would resolve case does not justify failure to prepare for trial). Pine Forest cites the discovery cut-off date under the case schedule, but that date pertained to all discovery in the case including for the just compensation phase, which was set for trial in June. *See Pine Forest Op. Br.* at 30-31; CP 123. Since the discovery cut-off fell several months after the deadline to determine public use and necessity, the case schedule did

not establish a right for Pine Forest to take discovery on public use and necessity until the cut-off for all discovery.

Pine Forest also failed to demonstrate any need for further discovery. *See Avenetti v. Brown*, 158 Wash. 517, 522, 291 P. 469 (1930). As the trial court noted, Pine Forest did not identify “material evidence that would be obtained through discovery.” CP 453 (COL, ¶ 17). In light of Pine Forest’s concession that it was not alleging actual or constructive fraud, VRP, March 7, 2014, at 15:16-21, it is difficult to see what discovery it could have pursued. On appeal, Pine Forest now speculates that discovery might have yielded “definitive evidence” that the City’s permanent take is “economically and practically unfounded and is in fact a pretext” for “a private, non-public use.” Pine Forest Op. Br. at 30. But this assertion is based on nothing more than speculation, and is contrary to the record that details the reasons why the City determined to take the Property in fee.

In sum, the trial court’s refusal to further delay a determination on public use and necessity to conduct unspecified discovery was not a manifest abuse of discretion. *See State ex rel. Church*, 40 Wn.2d at 9; *Fruitland Irr. Co.*, 54 Wash. at 186-87; *see also* RCW 8.12.090 (eminent domain actions by cities have precedence over all but criminal cases).

V. CONCLUSION

The City identified a valid public use (construction of public transit and roads) supporting acquisition of the Property from Pine Forest. The City also determined that due to numerous factors including the duration and scope of use, associated costs, and uncertainty of construction timelines, it is necessary to take the Property in fee. Pine Forest disagreed, and requested to retain a portion of the Property. The City carefully considered Pine Forest's ideas but ultimately did not accept them. This does not amount to actual or constructive fraud on the part of the City. The City, therefore, respectfully requests that this Court affirm the trial court's decision on public use and necessity and allow this matter to proceed without further delay.

RESPECTFULLY SUBMITTED this 18th day of July, 2014.

PACIFICA LAW GROUP LLP

By 
Matthew J. Segal, WSBA # 29797
Jessica A. Skelton, WSBA # 36748
Jamie L. Lisagor, WSBA # 39946
Attorneys for Respondent
City of Bellevue

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 18th day of July, 2014 I caused to be served a true copy of the foregoing document upon:

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

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

Attorneys for Appellant Pine Forest Properties, Inc.

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

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

Attorneys for Appellant Pine Forest Properties, Inc.

COURT OF APPEALS
STATE OF WASHINGTON
2014 JUL 18 PM 4:34

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

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

Attorneys for Prudential Insurance
Company and Prudential Asset
Resources

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

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

Attorneys for Clearwire Legacy LLC

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

DATED this 18th day of July, 2014.



Katie Dillon