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NO. ~~86894-8~~

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ARTHUR LANE, JOHN ALLERTON and KENNETH GOROHOFF,

Appellants,

v.

PORT OF SEATTLE; KING COUNTY; BNSF RAILWAY COMPANY;
GNP RLY, INC.; and CITY OF REDMOND

Respondents.

**RESPONDENT KING COUNTY'S ANSWER TO
APPELLANTS' PETITION FOR REVIEW**

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 ORIGINAL

A. Introduction.

The Supreme Court should deny Appellants' Petition for Review. The Court of Appeals did not expand the Port of Seattle's authority or broadly construe any statute. It correctly held that the Port acted squarely within its statutory authority in preserving the Eastside Rail Corridor ("ERC") in public ownership for future freight or transit use, and in preventing it from being lost to piecemeal private development. The Court of Appeals' sound reasoning and conclusions (like those of Judge Andrus below) do not warrant further scrutiny.

Primarily at issue is a 33-year-old statute (RCW 53.08.290) that no appellate court had ever cited before the Court of Appeals issued its opinion in this case. Neither the Court of Appeals' interpretation of this statute, nor any other aspect of the Court of Appeals' decision, conflicts with any decision of this Court. Nor does this case involve any issue of substantial public interest that the Supreme Court should determine. The only issues of public interest that the case presents are issues of politics, transportation policy and resource allocation – matters for the ballot box, not judicial resolution.

Respondent King County joins in Respondent Port of Seattle's Answer to Petition for Review.

B. The Court of Appeals Ruled Correctly, and Its Decision Does Not Conflict with Any Decision of This Court.

1. The Port was authorized to acquire the King County operating freight line and the Snohomish County interstate rail connection.

The Court of Appeals held that by its plain terms, RCW 53.08.290 authorized the Port to acquire the King County operating freight line and the Snohomish County interstate rail connection (from Woodinville to Snohomish) “for the movement of cargo.” *Slip Op.* at 10. It held that this reading of RCW 53.08.290 was supported by the statement of purpose for the statute. *Id.* (citing LAWS of 1980, ch. 110, § 1(1)). And it rejected Appellants’ argument that the Port could only acquire the ERC “for the purpose of moving cargo to and from its existing facilities.” *Id.* at 7.

It is undisputed that the King County operating freight line and the Snohomish County interstate rail connection are currently used to move cargo (*id.* at 5), that the remainder of the ERC has been railbanked for possible future freight use (Port’s Answer to Petition for Review 4), and that the Port’s objectives in acquiring the ERC included ensuring the ERC’s preservation as an intact freight rail corridor – notwithstanding the projected short-term use of the ERC’s southern portion as a trail.¹ As

¹ *E.g.*, CP 1130-31, 1135, 1144, 1150-51, 1406-09, 1845,1858, 2161-62, 3308-09, 3377, 3385-88, 3396-97, 3405-06, 3412, 3489, 3494, 3496, 3504-07, 3546-47, 3581-82.

Commissioner John Creighton noted in remarks delivered a year and a half before the ERC transaction closed, the acquisition was

in keeping with our core mission to develop strategic economic and transportation assets for King County. Without our investment, the corridor would likely have been fragmented and sold to private developers – and an unbroken transportation corridor in the heart of the Puget Sound region would have been lost. We are investing in the corridor for long-term freight rail use which . . . the Port and many businesses that depend on trade in our state need to thrive.²

The Court of Appeals thus correctly held that the Port was authorized to acquire the King County operating freight line and the Snohomish County interstate rail connection. And in any event, Appellants do not identify any Supreme Court decision with which the Court of Appeals' interpretation of RCW 53.08.290 purportedly conflicts.

2. The Port's acquisition of the King County operating freight line and the Snohomish County interstate rail connection was not *ultra vires*.

The record is clear that the Port acquired the ERC after a lengthy and meaningful public process.³ Appellants' suggestions to the contrary (Petition for Review 13-17) are unsupported.⁴ The Court of Appeals

² CP 3581.

³ *E.g.*, CP 1129-30, 1134, 1140-42, 1394-95, 1403, 1843-88, 2160, 2168-2325, 4575-677.

⁴ Appellants argue that the record contains "no evidence that prior to this lawsuit being filed the commissioners ever considered whether the Port needed the line to link Port rail facilities to the interstate system." (Petition for Review 16.) This is incorrect. The record demonstrates that the commissioners were dedicated to preserving the ERC as an emergency freight line – that is, a backup connection to the interstate rail system. As the

correctly concluded that this public process satisfied RCW 53.08.290's policy of ensuring "careful deliberation about whether a proposed acquisition of rail facilities outside the district is genuinely necessary to link up to an interstate rail system." *Slip Op.* at 14. The Court of Appeals therefore correctly held that the Port's acquisition of the ERC was not *ultra vires* even though the Port Commission did not adopt a resolution of reasonable necessity until after the transaction closed. *Id.* at 15.

The Court of Appeals' decision does not conflict with any decision of this Court. To the contrary, the Court of Appeals correctly applied *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 233 P.3d 871 (2010); and *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982), to the facts of this case.

3. The Port was authorized to acquire the Redmond Spur.

The Court of Appeals correctly held that RCW 53.08.010 and RCW 53.08.245(1) authorized the Port to acquire the Redmond Spur for the purpose of economic development. *Slip Op.* at 23. The acquisition was also supported by the purposes of preserving vital rail corridors and ensuring consummation of the overall ERC transaction. (Port's Answer to Petition for Review 15-18.) As the Port succinctly explains, the Court of Appeals' decision does not conflict in any way with *State ex rel. Huggins*

trial court held and the Court of Appeals recognized, "the only way to connect the in-district rail lines to Burlington Northern's interstate railroad system is via the northern segment of the corridor lying within Snohomish County." *Slip op.* at 20.

v. Bridges, 97 Wash. 553, 166 P. 780 (1917), or any other decision of this Court. (Port’s Answer to Petition for Review 15-16.)

Appellants contend that the Court of Appeals’ decision means port districts can “undertake any business at all if it could be said that doing so would spur economic development” – including “opening a McDonald’s franchise, . . . subsidizing a shoe shine stand, and creating a tech startup.” (Petition for Review 9, 18-19.) This hyperbole entirely misses the mark. The Court of Appeals did not empower port districts to operate shoe shine stands or do “virtually anything” in support of trade or commerce. What port districts can do under RCW 53.08.010 and RCW 53.08.245(1) is *acquire property* for the important purpose of economic development.

C. This Case Does Not Involve Any Issue of Substantial Public Importance that the Supreme Court Should Determine.

The ERC was an important strategic investment for the Port, the citizens of King County, and the Puget Sound region. But that does not mean this case involves issues of substantial public importance that the Supreme Court should determine. Appellants seek to unwind a single four-year-old land purchase. They do not challenge ongoing activity of the Port or any other governmental entity, and the Court of Appeals’ decision is unlikely to impact the activities of port districts in the near term or on a regular basis. To the extent issues of public importance exist,

they relate to politics, transportation policy and resource allocation. As

the Court of Appeals noted:

It is not for this court to weigh the wisdom of the Port's "stitch in time" rationale for the purchase. The ballot box is the appropriate mechanism for deciding whether the Port has exercised poor judgment by spending taxpayer dollars to preserve a rail connection through Snohomish County rather than to undertake projects more traditional and immediate.

The plaintiffs believe the true motive for the purchase was to facilitate recreational trails, not the movement of cargo. . .

This again is a political argument, not a legal one.

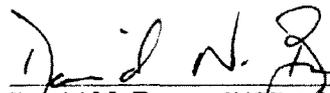
Slip Op. at 18-19. If issues of public importance exist relating to the Port's acquisition of the ERC, they should be decided by the voters of King County, not by this Court.

D. Conclusion.

For the reasons stated above and in the Port of Seattle's Answer to Petition for Review, the Supreme Court should decline to review this case.

DATED: January 22, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date I caused a true
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DATED this 22nd day of January, 2014, at Seattle, Washington.



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