

MEMORANDUM

To: Mr. Philip Olbrechts, City of Mountlake Terrace Hearing Examiner
From: Sound Transit Legal Counsel
Date: June 27, 2019
Subject: Lynnwood Link Extension Conditional Use Permit proposed Conditions 23.b and 24.c for Veteran's Park Trail

This memorandum addresses Conditions of Approval 23.b and 24.c, which City Staff have recommended the Examiner require in the CUP decision for the Lynnwood Link Extension Project in City Staff Report Attachment 4. These conditions provide as follows:

Site B (Station)

23. Pedestrian Access:

- b. A pedestrian/bike trail must be established by Sound Transit to connect the southern end of the existing Veterans Park trail to 236th Street. The trail connection must be designed to meet the following minimum requirements:
 - i. Where properties are owned or controlled by Sound Transit, Sound Transit must transfer property necessary or record an easement benefitting the City for the trail connection across Site B from Veteran's Park to 236th Street. The easement must be a minimum of 12 feet in width and must be recorded prior to the opening of service of the station.
 - ii. Disturbed areas of the trail within Veterans Memorial Park must be restored to an eight-foot-wide trail width as described in Condition of Approval no. [23].b.iii-iv.
 - iii. The constructed trail surface must be two inches (2") of asphalt on four inches (4") of base course. The paved surface must be a minimum of eight feet in width and must be illuminated at a pedestrian scale for safety.
 - iv. The trail must be constructed in compliance with the Americans with Disabilities Act (ADA).
 - v. The trail must not cross the bus loop to protect the safety of trail users.

24. Permanent Fencing & Walls:

- c. A decorative wrought iron fence must be installed for the full length of the Veterans Park pedestrian trail from the end of the south wall to the north wall. The fencing must terminate at the point where the north wall is five feet in height above existing grade. The fence must be six feet in height. Sound Transit must submit a final fencing design detail to the City for review and approval by the Community and Economic Development Director.

* * *

The City Staff Report does not discuss the factual or legal basis for the recommended conditions, beyond the following general statements provided in part below:

Mountlake Terrace Station (Site B)

The City has identified permanent impacts related to station siting, design, and construction:

Pedestrian Access.

. . . As currently proposed, the new trail will end in stairs that are not ADA-accessible. Per federal guidelines and law, new or replaced public improvements should provide equitable access for all trail users, including those with mobility devices or who can otherwise not use a staircase.

Aesthetic Elements. Sound Transit proposes the use of chain-link fencing around the site, including areas that are publicly accessible or visible to the general public. Chain link fencing is a utilitarian fencing style inconsistent with high-quality design and is undesirable for the pedestrian experience in a very public space such as the station. The use of chain-link fencing is inconsistent with the vision in the Town Center design standards. While site security is important to protect the public, fencing should blend aesthetically with the surroundings and provide an open, welcoming, and beautiful space for system users.”

See City Staff Report at 38. The City Staff Report does not cite to any specific, identified impacts of the Project that would warrant an aesthetic upgrade to the City’s trail, nor any provisions of law that support its conclusions related to accessibility of the Project. *See id.* In fact, Sound Transit’s legal obligation with respect to the City’s trail is only to temporarily close the terminus for safety during construction. Sound Transit is replacing a small portion of the trail that is located on the Project site, because it will be impacted by construction of the Project. The replacement trail will be improved from its current condition and paved.

As established during the hearing, the improvements required by these conditions would require construction of a new trail segment on WSDOT property and conveyance of property

rights to the City, which are not necessary to mitigate a Project impact and are very costly (referred to here as the “Trail Extension”). The Trail Extension is a betterment for a City-owned park that would not enhance accessibility for the Project in any way. The Trail Extension is not part of the Project; is not mitigation necessary to address a Project impact and it is not appropriate for the City to require the Project bear this expense.

Sound Transit partnered with each Lynnwood Link city during project final design to identify and implement appropriate pedestrian, bicycle and vehicular enhancements generally focused within a quarter mile of each station. In Motion No. M2017-93, Sound Transit’s board authorized funding assistance for such access enhancements in each city—essentially providing matching funds for city-driven access enhancements. The City of Mountlake Terrace is eligible for \$2 million in Sound Transit funding under this motion, as confirmed in a separate Access Enhancements Funding Agreement between Sound Transit and the City. In this Agreement, Sound Transit and the City agreed that improvements to the Veteran’s Park Trail System would be eligible for these matching funds. *See* Access Enhancements Funding Agreement, ST-06, at Exh. A (“Multimodal Access Improvement Projects”) and B (“List of City Projects for Matching Funds”). The City apparently intends to direct these funds elsewhere and now attempts to condition the CUP to require Sound Transit to build the Trail Extension; a betterment to a City park with a tenuous connection to the Project, at best. It would be inequitable, as well as unlawful, to require Sound Transit to divert public funds intended for a regional light rail project to improve access to a City park.

The Examiner does not have authority to adopt land use conditions that contravene state or federal law. *See HJS Dev., Inc. v. Pierce Cnty. ex rel. Dep’t of Planning & Land Servs.*, 148

Wn.2d 451, 471, 61 P.3d 1141, 1151 (2003) (examiner’s authority limited to that granted by statute); *see also id.* at 477 (municipal police power, including the power to regulate land use, “ceases when in conflict with general state law”). Accordingly, the CUP may not contain conditions that exceed the City’s authority under federal, state, or local law. Both the Mountlake Terrace Municipal Code (the “Code,” or “MTMC”) and the City’s Comprehensive Plan recognize this important limitation on the City’s authority.¹

A. *The City Staff Report’s Statement on the Americans with Disabilities Act is Legally Erroneous.*

The City’s reliance on “federal guidelines and law” to justify the Trail Extension is misplaced. The City is a Title II entity under the Americans with Disabilities Act (“ADA”). As such, the City must comply with the ADA in the construction and operation of its own facilities, as must Sound Transit, but the City has no authority to enforce this federal law, and thus no authority to condition its land use approvals on Sound Transit’s compliance with the City’s interpretation of the ADA.

1. *The City has no Authority to Enforce the ADA.*

The ADA is a federal law. 42 U.S.C. § 12101 *et seq.* Title II of the ADA can be enforced *against* State and local governments, 42 U.S.C. § 12131, but nothing in the ADA gives local governments the right to enforce the ADA against other entities. *See* 42 U.S.C. § 12101 *et seq.*; 28 C.F.R. § 35.101 *et seq.*

¹ The Code states at MTMC 19.23.010 that the objective of the Code’s land use chapter is to guide “future growth and development of the City of Mountlake Terrace in conformance with the Comprehensive Plan, as amended, through the adoption of the land use regulations of this title and the Official Zoning Map *in accordance with state law.*” (italics provided); *see also id.* at MTMC 18.10.10 (“*Consistent with state law, the Comprehensive Plan and any amendments thereto shall serve as the guiding framework for decisions relating to land use.*”) (italics provided); 18.15.050 (“In case of a conflict between the City’s municipal code and state law, *the state law shall prevail.*”) (italics provided).

Under the ADA, complaints can only be filed by “[a]n individual [or by an “authorized representative”] who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity.” 28 C.F.R. § 35.170(a). The City is simply not entitled to impose its interpretation of a federal law on another government agency.

2. The Project Complies with the ADA.

Sound Transit takes seriously its responsibility to comply with the ADA, and Donna Smith, Sound Transit’s Manager of Accessible Services, is available to explain how the Project complies with the ADA, even though the City does not have jurisdiction to impose ADA conditions on the Project.

The ADA requires that new construction “for the use of a public entity shall be designed and constructed in such manner that the facility . . . is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 13.151(a)(1). As demonstrated by the document entitled “Lynnwood Link Extension Mountlake Terrace Station Veteran’s Park and Civic Campus Access Routes,” the Project will provide multiple wheelchair-accessible routes to the Station, including one from the temporary parking lot along 236th St SW. The Trail Extension at condition 23.b would require Sound Transit to build a trail south from the new parking lot stairwell to 236th Street, even though this trail is not required for the Project to comply with the ADA, or to mitigate any Project impact. Such a wheelchair-accessible trail would be meaningless for purposes of the ADA because neither the new parking lot stairwell (which is ADA compliant), nor the existing City trail through Veteran’s Memorial Park, is currently wheelchair accessible. Even if they were, the ADA does not require all access to be wheelchair accessible. The Station will be readily accessible to and usable by people in wheelchairs without the Trail Extension that Condition 23.b would require.

3. Even if the City's statement of ADA law was Correct, Sound Transit Would not be Obligated to Provide Accessibility Improvements to the City's Public Works Project.

The City's Veteran's Park Trail is not currently wheelchair accessible, and the only effect that Sound Transit's project has on this trail is to temporarily block one end of it during construction; once the light rail station is built, the City's trail can be restored to its existing condition. If the City wishes to upgrade the accessibility of its trail (and it has accepted Sound Transit funds in order to do so), the City's newly-accessible trail will be a City public work, not a Sound Transit project. The City's request that Sound Transit build accessible access to an inaccessible trail defies law and logic.

And if the City believes that the ADA requires the City's future trail to provide wheelchair access to the future light rail station, the City can achieve such access by a ramp from the trail to the parking lot, there is no need to extend the trail south to a City street, an extension that would be much more difficult and expensive than a ramp.

B. *State Law Prohibits the City from Requiring Improvements to a City Park in the Absence of Demonstrated, Specific Impacts as a Result of the Project.*

By state law, Washington cities and counties cannot impose any tax, fee or charge, direct or indirect, on the development of land, classification of land, or construction of buildings, except where the city can demonstrate that its requested monetary charge, property interest, or other condition is "reasonably necessary as a direct result of the proposed development" . . . "to mitigate a direct impact that has been identified as a consequence of a proposed development." See RCW 82.02.020, *et seq.*

The Washington State Supreme Court explains that this statute "requires strict compliance with its terms," and therefore has "repeatedly held, as the statute requires, that

development conditions must be tied to a specific, identified impact of a development on a community.” *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 755, 761, 49 P.3d 867, 879 (2002).

Here, the City’s proposed Trail Extension conditions would require that the Project construct and convey property rights for a new pedestrian/bike trail with no nexus to the Project. As discussed in detail *supra* at III, the Trail Extension would create a new wheelchair accessible trail in an area that has no wheelchair access to the Project.² Further, condition 24.c would require Sound Transit to install wrought iron fencing, although the City cites no need for this aesthetic upgrade other than in a conclusory statement that “a utilitarian fencing style [is] inconsistent with high-quality design and is undesirable[.]” City Staff Report at 38 (stating generally that “chain-link fencing is inconsistent with the vision in the Town Center design standards” without any specific reference therein). The City fails to demonstrate any direct or indirect impact from the Project that would warrant this kind of aesthetic improvement. The Trail Extension is thus precisely the type of requirement prohibited by RCW 82.02.020.

The Washington Court of Appeals, Division 1 examined similar facts in *United Dev. Corp. v. City of Mill Creek*. 106 Wn. App. 681, 26 P.3d 943 (2001). In *United Dev. Corp.*, the City of Mill Creek attempted to require the developer to construct street frontage improvements adjacent to the developer’s project. 106 Wn. App. at 689. In that instance, the Court observed that even if a city desires to improve adjacent capital facilities or bring them “up to code,” it can only make those improvements the responsibility of an individual permit applicant “where the

² The City has been aware of this planned stairwell improvement since at least April of 2017, and concurred with this plan without any related objection or comment concerning accessibility. *See* Concurrence Letters, ST-09, at page 7 (email from Chad Oxford to Yvonne Olson, at list item 6).

development itself has an impact to be mitigated.” *Id.* at 698. In Mountlake Terrace, as was the case in Mill Creek, municipal permitting authorities cannot require improvements just because they are “a good idea,” where “the need for the improvements is not directly related. . . . This is not the law.” *Id.* The Washington State Supreme Court rejected a similar attempt to condition a project development permit on unrelated street improvements in *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 49 P.3d 860 (2002). *See also Benchmark Land Co. v. City of Battle Ground*, 94 Wn. App. 537, 541, 972 P.2d 944 (1999) (arriving at the same result with reference to the takings theories discussed *infra* at IV.C).

The City cannot satisfy the strict requirements of the statute through conclusory claims of Project impacts: Washington law is clear that “under RCW 82.02.020 the burden of establishing that a condition is reasonably necessary as a direct result of the proposed development is on the [c]ity.” *Isla Verde*, 146 Wn.2d at 755–56 (finding city’s conclusory legislative determination of need did not satisfy the city’s “burden of proving the required connection between the development and the . . . condition”); *see also Home Builders Ass’n of Kitsap Cnty. v. City of Bainbridge Island*, 137 Wn. App. 338, 341, 153 P.3d 231, 232 (2007) (“We hold that the burden of showing that the fees comply with a statutory exception and are reasonable rests with the City.”) (citing *Isla Verde*). In this case, the City cannot satisfy its burden of showing the Trail Extension is necessary as a result of Sound Transit’s project. The conditions requiring the Trail Extension are thus unlawful under these authorities.

C. *State and Federal Constitutional Principles Prohibit the City from Requiring Sound Transit to Improve and Convey a Trail Easement for a City Park.*

If imposed, the Trail Extension conditions would also violate constitutional standards, and the Hearing Examiner must act consistently with constitutional requirements. Exactions on

property development, where they do not have both a nexus and rough proportionality to the development's impacts, violate the prohibition against government takings without just compensation in Article 1, Section 1 of the Washington State Constitution and the Fifth Amendment of the United States Constitution. *See Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994); *Benchmark*, 94 Wn. App. at 537, 972 P.2d 944, *aff'd on other grounds*, 146 Wn.2d at 695, 49 P.3d 860; *United Dev. Corp. v. City of Mill Creek*, 106 Wn. App. 681, 698, 26 P.3d 943, 952 (2001) (citing Washington State takings jurisprudence for the proposition that "mitigation requirements may be imposed where there is a reasonable and direct relationship between the effects of the proposed development and the required mitigation").

For these reasons, Sound Transit respectfully requests that the Examiner decline to adopt the recommended Trail Extension Conditions 23.b and 24.c and approve the Project without these conditions.

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