

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

OOM LIVING, LLC, a Washington limited liability company; JENNIFER EGUSA WALDEN,

Plaintiffs,

v.

CITY OF SEATTLE, a Washington municipal corporation; SEATTLE PUBLIC UTILITIES,

Defendants.

Case No. 23-2-14374-4 SEA

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING
DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on cross motions for summary judgment, specifically Plaintiffs’ Motion for Partial Summary Judgment (“Plaintiffs’ Motion”) and The City of Seattle’s Motion for Summary Judgment, both filed October 18, 2024. The Court considered the following pleadings and evidence:

1. Plaintiffs’ Motion for Partial Summary Judgment (Dkt. #78);
2. Declaration of Jennifer Egusa Walden Re: Plaintiffs’ Motion for Partial Summary Judgment (Dkt. #79);
3. Declaration of Samuel A. Rodabough Re: Plaintiffs’ Motion for Partial Summary

1 Judgment (Dkt. #80);

2 4. The City of Seattle's Motion for Summary Judgment (Dkt. #81);

3 5. Declaration of Andrew C. Eberle In Support of the City of Seattle's Motion for Summary
4 Judgment (Dkt. #82);

5 6. The City's Opposition to Plaintiffs' Motion for Partial Summary Judgment (Dkt. #84);

6 7. Second Declaration of Andrew C. Eberle In Support of the City of Seattle's Opposition
7 to Plaintiffs' Motion for Partial Summary Judgment (Dkt. #85);

8 8. Plaintiffs' Opposition to City of Seattle's Motion for Summary Judgment (Dkt. #87);

9 9. Second Declaration of Samuel A. Rodabough Re: Plaintiffs' Motion for Partial Summary
10 Judgment (Dkt. #88);

11 10. The City of Seattle's Reply in Support of its Motion for Summary Judgment (Dkt. #91);

12 11. Declaration of Andrew C. Eberle in Support of the City of Seattle's Reply in
13 Support of Its Motion for Summary Judgment (Dkt. #90);

14 12. Reply on Plaintiffs' Motion For Partial Summary Judgment (Dkt. #92); and

15 13. Third Declaration of Samuel A. Rodabough Re: Plaintiffs' Motion for Partial Summary
16 Judgment (Dkt. #93).

17 Having considered the Motions, the oral arguments of counsel, and the other pleadings,
18 filings, and evidence in this matter, and being fully advised, the Court finds that there are no
19 genuine issue of material fact precluding entry of summary judgment in this case and therefore,
20 it is hereby ordered:

21 Plaintiffs' Motion for Partial Summary Judgment is **GRANTED**:

22 1. Plaintiffs' claim for declaratory judgment is *granted* as follows:

- 23 a. The City's conditioning of the Water Availability Certificate violated the plain language of Chapter 21.04 SMC and/or SPU Director's Rule WTR-440. To the extent the City interprets subsection VI.C.3.c of WTR-440 to authorize the water main extension condition, its interpretation of that subsection conflicts with the City code and does not follow from the subsection's plain language.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- b. To the extent that SPU has adopted an unwritten policy of prohibiting private service line connections to an abutting water main via a legally established flag lot configuration, its application of that unwritten policy to Oom Living’s application for a water availability certificate was arbitrary and capricious.
 - c. The City’s water main extension constitutes a fee or charge on development subject to RCW 82.02.020. The City has failed to meet its burden of showing that the extension was “reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.” Thus, the condition violates RCW 82.02.020.
 - d. The City is enjoined from enforcing the water main extension condition and is directed to issue a water availability certificate approving Plaintiffs connection to the abutting water main under SW Elmgrove Street.

2. Plaintiff’s claim for liability under 42 U.S.C. § 1983 is granted as follows:

- a. The City’s demand that Plaintiffs fund the design and installation of a water main extension as a condition of issuing a water availability certificate is an exaction subject to *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).
- b. The City has not met its burden of demonstrating that the condition bears an essential nexus or is roughly proportionate to the impacts of Plaintiffs’ proposed connection to the abutting water main under SW Elmgrove Street. Thus, the condition violates the federal doctrine of unconstitutional conditions.
- c. Plaintiffs suffered a cognizable constitutional injury the moment the City imposed the unconstitutional condition on the water availability certificate.
- d. The City was acting under the color of state law when it placed the water main extension condition on Plaintiffs’ water availability certificate.
- e. The City is liable for damages under 42 U.S.C. § 1983, the amount of which to be proven at trial.

1 3. Having ruled in favor of Plaintiff it is hereby ordered, the City of Seattle's
2 Motion for Summary Judgment re: Plaintiff's Declaratory Judgment claim is
DENIED.


3 4. Likewise, having ruling in favor of Plaintiff it is hereby ordered, the City of
4 Seattle's Motion for Summary Judgment re: Plaintiff's RCW 82.02.020
claim and Section 1983 claim is **DENIED.**

5 Done in open court this 6th day of **December, 2024.**

6
7 *s/electronically signed, filed, and served*
8 HONORABLE NICOLE GAINES PHELPS
King County Superior Court Judge

9 Presented by:

10 LAW OFFICE OF SAMUEL A. RODABOUGH PLLC

11 
12 _____
Samuel A. Rodabough, WSBA #35347
Attorney for Plaintiffs

13
14 PACIFIC LEGAL FOUNDATION

15 *s/ Brian T. Hodges*
16 _____
Brian T. Hodges, WSBA #31976
Attorney for Plaintiffs

17
18 Agreed as to form; Notice of presentation waived:

19 ANN DAVISON
Seattle City Attorney

20
21 _____
Andrew C. Eberle, WSBA #51790
22 *Attorneys for Defendants*

**King County Superior Court
Judicial Electronic Signature Page**

Case Number: 23-2-14374-4 SEA
Case Title: OOM LIVING ET AL VS CITY OF SEATTLE ET AL
Document Title: Order
Date Signed: 12/06/2024



Judge: Nicole Gaines-Phelps

Key/ID Number: *197887178*
Page Count: This document contains 4 page(s) plus this signature page.