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7	SUPERIOR COURT OF WASHINGTON I	N AND FOR SNOHOMISH COUNTY
8	NATHAN RIMMER,	Case No. 23-2-05426-31
10	Plaintiff,	Proposed Order on Cross-Motions for
11	v.	Partial Summary Judgment
12	CITY OF EDMONDS, a municipal corporation of the State of Washington,	
13	Defendant.	
14		J '
15	THIS MATTER, having come before the ur	ndersigned Judge of the above-entitled Court
16	on the Hearing on Plaintiff's Motion for Summary	Judgment and Application for Alternative
17	Writ of Mandate and City's Motion for Partial Sum	mary Judgment held on January 31, 2024, the
18	Court having heard argument and being fully advis	ed and having reviewed the records and files
19	herein regarding the hearing on the merits, namely:	
20	Plaintiff's Motion for Summary Judgment	
21		dgment and Application for Alternative Writ
22	of Mandate 2. Declaration of Nathan Rimmer in S	Support of Motion for Summary Judgment and
23	Application for Alternative Writ of 3. City's Response to Motion for Sum	mary Judgment and Application for
24	Alternative Writ of Mandate	T. OTTO THOU TO THE LETTON
	[Proposed] Order - 1	PACIFIC LEGAL FOUNDATION 555 Capitol Mall, Suite 1290 Sacramento, California 95814

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1		4. Plaintiff's Reply in Support of Motion for Summary Judgment and Application for Writ of Mandamus		
2	<u>Cit</u>	y's Cross-Motion for Partial Summary Judgment		
3		City's Motion for Partial Summary Judgment		
4		2. Declaration of Michael Clugston in Support of City's Motion for Partial Summary Judgment		
5		 Plaintiff's Response to Defendant's Motion for Partial Summary Judgment City's Reply in Support of Motion for Partial Summary Judgment 		
6 7	TH	IE COURT hereby makes this ruling on the merits and adopts the following findings		
	and conclu	usions:		
8		FINDINGS OF FACT		
9	1. Pla	aintiff Nathan Rimmer is the owner of the subject residential zoned property located at		
10	91	9 Cedar Street ("Property") in Edmonds, Washington.		
11	2. De	efendant City of Edmonds is a municipality lawfully created under the laws of		
12	W	Washington.		
13	3. Or	1 March 27, 2022, Mr. Rimmer applied to the City for a residential building permit, No.		
14 15	BI	LD2022-0381.		
16	4. Th	ne City deemed the application complete on April 4, 2022.		
10 17	5. As	s required by the City's tree retention ordinance, Ch.23.10 Edmonds Community		
18	De	evelopment Code (ECDC), Mr. Rimmer paid for an arborist to identify any trees on the		
	pr	operty that fell within the City's definition of "significant" trees and to prepare a "tree		
19	ret	tention and protection plan" accompanied by a site plan indicating the locations on Mr.		
20 21	Ri	mmer's property to where replacement trees would be planted to "mature without		
	co	nflicting with surrounding improvements."		
22	6. Th	ne report identified a single ornamental flowering dogwood located in the middle of the		
23	lo	t that would have to be removed to allow for Mr. Rimmer's proposed home.		
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1	7.	Pursuant to the terms of the tree retention ordinance, Mr. Rimmer was required to replace
2		that single tree with two replacement trees as "a condition of permit issuance." ECDC
3		§ 23.10.085.
4	8.	On May 10, 2022 and pursuant to the terms of its tree retention ordinance, the City
5		demanded that Mr. Rimmer record a Notice to Title with Snohomish County providing
6		future owners with notice of the tree condition contained in the city's permit file.
7	9.	The Notice to Title incorporated Mr. Rimmer's permit file by reference. The permit file
8		included both the tree protection plan and site plan.
9	10.	The Notice to Title denominated Mr. Rimmer as a "grantor" of property and the City as
10		the "grantee."
11	11.	City of Edmonds' Senior Planner Clugston at one point characterized the Notice to Title
12		as a "covenant."
13	12.	Mr. Rimmer did not want the replacement trees and sent several objections to the City,
14		but the City required him, pursuant to its tree retention ordinance, to plant and retain the
15		replacement trees.
16	13.	Mr. Rimmer filed the present lawsuit and application for writs of alternative mandate and
17		prohibition on July 26, 2023.
18		CONCLUSIONS OF LAW
19	1.	This Court has jurisdiction over this matter.
20	2.	Venue is proper in this Court.
21	3.	Mr. Rimmer has standing to bring his claims.
22	4.	Mr. Rimmer's unconstitutional conditions claim is ripe for judicial review.
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1	5.	There are no genuine issues of material fact preventing the Court from reaching the issues
2		presented on the cross-motions for summary judgment.
3	6.	The City's demand that, as a condition of building permit approval, Mr. Rimmer plant
4		and maintain two City-mandated replacement trees is an exaction subject to Nollan v.
5		California Coastal Commission, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987),
6		and Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).
7	7.	The City's demand triggers Nollan-Dolan scrutiny because it requires Mr. Rimmer to
8		plant and maintain two new trees as fixtures on his property in a manner that would effect
9		a per se physical taking within the meaning of Loretto v. Teleprompter CATV Corp., 458
10		U.S. 419, 435, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982).
11	8.	Because the unwanted trees would physically occupy Mr. Rimmer's property, Loretto
12		and the per se physical takings line of cases present the correct legal framework for
13		establishing the predicate taking in this case rather than the regulatory-takings framework
14		of Penn Central Transp. Co. v. New York City, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d
15		631 (1978).
16	9.	The City has not carried its burden under Nollan-Dolan of demonstrating that the
17		exaction satisfies the "essential nexus" and "rough proportionality" tests.
18	10.	With respect to nexus, the City cannot show that the removal of a single tree from Mr.
19		Rimmer's property will cause any public impact requiring mitigation.
20	11.	With respect to proportionality, the City failed to establish that its demand that Mr.

Rimmer plant and maintain two new replacement trees is roughly proportional to any

adverse public impacts of his proposed residential development, including his planned

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removal of a single dogwood tree.

2	13. The remedy for a violation of the doctrine of unconstitutional conditions is to declare the
3	offending condition invalid and strike it from the permit.
4	14. The City's cross-motion for summary judgment, seeking dismissal of Mr. Rimmer's
5	petition for writs of prohibition and mandate and claims under the Uniform Declaratory
6	Judgment Act and under 42 U.S.C. § 1983 is denied.
7	15. The Court will treat Mr. Rimmer's motion for summary judgment as a partial motion for
8	summary judgment on his declaratory judgment, prohibition, and mandamus claims.
9	16. Mr. Rimmer's current motion for summary judgment does not touch his claim alleging a
10	violation of his federal civil rights under 42 U.S.C. § 1983.
11	17. The court recognizes that its above findings and conclusions on the parties' competing
12	motions for partial summary judgment will effectively also determine liability for the
13	City on Mr. Rimmer's federal civil rights claim under 42 U.S.C. § 1983. The court
14	further acknowledges that its above findings and conclusions do not address the
15	calculation of damages on Mr. Rimmer's federal civil rights claim under 42 U.S.C. §
16	1983. In the interest of judicial efficiency, any appeal of this order should be heard before
17	the parties litigate damages under 42 U.S.C. § 1983. Accordingly, there is no just reason
18	to delay entry of a final judgment on the parties' competing motions for partial summary
19	judgment.
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12. The permit condition, therefore, violates the doctrine of unconstitutional conditions.

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1	ORDER
2	NOW, THEREFORE, based on these findings and conclusions, THE COURT HEREBY
3	DECLARES that the challenged permit condition is unconstitutional under the Doctrine of
4	Unconstitutional Conditions, as predicated on the Fifth and Fourteenth Amendments to the U.S.
5	Constitution and is declared invalid. The City is enjoined from enforcing that condition on Mr.
6	Rimmer's building permit application.
7	THE COURT HEREBY FURTHER ORDERS under CR 54(b), that a final judgment be
8	entered on the parties' competing motions for partial summary judgment so that any appeal of
9	this order may be taken before damages are litigated on the remaining 42 U.S.C. § 1983 claim.
10	A CONTRACTOR OF THE CONTRACTOR
11	DONE IN OPEN COURT this day of DECEMBER, 2024.
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13	Honorable George F. Appel
14	Presented by:
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