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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

NATHAN RIMMER,

Plaintiff,

v.

CITY OF EDMONDS, a municipal corporation of
the State of Washington,

Defendant.

Case No. 23-2-05426-31

**~~[Proposed]~~ Order on Cross-Motions for
Partial Summary Judgment**

THIS MATTER, having come before the undersigned Judge of the above-entitled Court on the Hearing on Plaintiff's Motion for Summary Judgment and Application for Alternative Writ of Mandate and City's Motion for Partial Summary Judgment held on January 31, 2024, the Court having heard argument and being fully advised and having reviewed the records and files herein regarding the hearing on the merits, namely:

Plaintiff's Motion for Summary Judgment

1. Plaintiff's Motion for Summary Judgment and Application for Alternative Writ of Mandate
2. Declaration of Nathan Rimmer in Support of Motion for Summary Judgment and Application for Alternative Writ of Mandate
3. City's Response to Motion for Summary Judgment and Application for Alternative Writ of Mandate

- 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.
- 23
- 24

- 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.
21 Rimmer plant and maintain two new replacement trees is roughly proportional to any
22 adverse public impacts of his proposed residential development, including his planned
23 removal of a single dogwood tree.

1 12. The permit condition, therefore, violates the doctrine of unconstitutional conditions.

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.

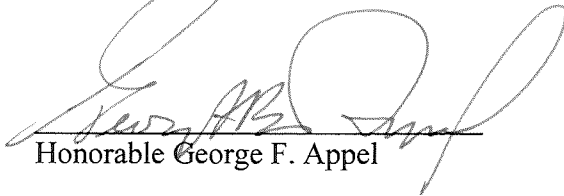
11 17. The court recognizes that its above findings and conclusions on the parties' competing
12 motions for partial summary judgment will effectively also determine liability for the
13 City on Mr. Rimmer's federal civil rights claim under 42 U.S.C. § 1983. The court
14 further acknowledges that its 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.

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 DONE ~~IN OPEN COURT~~ this 9th day of DECEMBER, 2024.

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Honorable George F. Appel

14 Presented by:

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