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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

CITIZENS FOR SENSIBLE  
TRANSPORTATION PLANNING,

Petitioner,

v.

CITY OF SPOKANE,

Respondent,

and

ELLER CORPORATION,

Potential Necessary Party.

No.

LAND USE PETITION

Petitioner Citizens for Sensible Transportation Planning (“CSTP”) by and through their attorneys Gendler & Mann, LLP and David S. Mann, submit the following in support of their Land Use Petition:

**1. Name and Mailing Address of Petitioner**

Citizens for Sensible Transportation Planning  
P.O. Box 785  
Spokane, WA, 99210

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**2. Name and Mailing Address of Petitioner' s Attorney**

David S. Mann  
Gendler & Mann, LLP  
1424 Fourth Ave., Suite 1015  
Seattle, WA 98101  
(206) 621-8868  
[mann@gendlermann.com](mailto:mann@gendlermann.com)

**3. Name and Mailing Address of Local Jurisdiction**

City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, Wa 99201

**4. Decision Making Body and Decision**

On Thursday, June 8, 2006, the Spokane City Council Approved and Authorized a Contract for the construction of the Bernard Street Project. The action approves a bid to the Eller Corporation awarding \$1,839,969.33 (plus tax) for construction of the Bernard Street Project between 14<sup>th</sup> Ave., and 29<sup>th</sup> Ave.

**5. Additional Parties Pursuant to RCW 36.70C.040(2)**

Eller Corporation  
8102 Storr Road  
P.O.Box 117  
Newman Lake, WA 99025

**6. Facts Demonstrating Petitioner Has Standing**

6.1 CSTP has individual members that reside within the area of the proposed Bernard Street Reconstruction Project, the subject of this complaint. Individual members include owners of property on Bernard Street, including owners of trees that will be removed as part of the Bernard Street Project. CSTP and its individual members have relied on the City of Spokane Comprehensive Plan and its policies and goals establishing how future City Street

1 projects will be carried out, including requirements to create narrow, more pedestrian friendly  
2 streets when undertaking capital improvements.

3  
4 6.2 Because the City of Spokane has ignored its comprehensive plan requirements,  
5 residents adjacent to Bernard Street, including members of petitioner, will be significantly  
6 prejudiced by the City’ s decision to move forward with the Bernard Street Plan. As residents  
7 of Spokane, and residents of property involved in the Bernard Street Plan, the CSTP and its  
8 members were among those that the City was supposed to consider when it made its decision.  
9 Judgement in favor of CSTP and its members will redress the prejudice.

10  
11 6.3 CSTP and its members have been actively involved in the administrative  
12 process. CSTP and its members are in the process of completing administrative appeals of a  
13 decision allowing removal of a significant number of trees to make way for the Bernard Street  
14 program. CSTP has also sought review by the Spokane County Superior Court of the City’ s  
15 associated tree cutting action. That action remains pending.

16  
17 6.4 There were no administrative appeals of the City Council’ s decision authorizing  
18 the bid to begin construction of the Bernard Street Project.

19  
20 6.5 CSTP and its members have standing to bring this petition.

21 **7. Concise Statement of Errors.**

22 7.1 SMC 17.B.010.010(B) mandates that “ public improvements through the  
23 investment of public capital funds, regardless of the source, are to conform to and implement  
24 the comprehensive plan.

25  
26 7.2 The Bernard Street project violates the City of Spokane’ s Comprehensive Plan.

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1           7.3     CP policy TR 1.1 proves the following “Transportation Priorities:”

- 2                            Make transportation decisions based upon  
3                            prioritizing the needs of people as follows:  
4                            ◆ Design transportation systems that protect and serve the  
5                            pedestrian first;  
6                            ◆ Next, consider the needs of those who use public  
7                            transportation and non-motorized transportation modes;  
8                            ◆ Then consider the needs of automobile users after the  
9                            two groups above

10           7.4     None of the 2004 Street Bond projects completed to date nor any planned projects,  
11 including Bernard, conform to this policy. Rather, these projects and plans invert these priorities  
12 considering the needs of automobile users above the needs of pedestrians.

13           7.5     The Bernard Street project violates at least the following additional comprehensive  
14 plan policies: CP Transportation 4.4, TR 2.7 at 13 (Transportation Options); CP Transportation  
15 4.4, TR 2.7 at 16 (Safe Sidewalks); CP Transportation 4.4, TR 2.12 at 18 (Pedestrian Access to  
16 Schools); CP Transportation 4.4, TR 4.2 at 22 (Self Enforcing Street Design; CP Transportation  
17 4.4, TR 4.3 at 22 (Narrow Streets); CP Transportation 4.4, TR 4.20 at 27 (Design and  
18 Maintenance of ROW Streetscape Elements); CP Transportation 4.4, TR 5.1 (Neighborhoods for  
19 Pedestrians); CP Transportation 4.4, TR 5.2 at 30 (Neighborhood Transportation Options); CP  
20 Transportation 4.4, TR 5.3 at 31 (Neighborhood Traffic Issues); CP Transportation 4.4, TR 5.4  
21 at 31 (Traffic Calming Measures); CP Transportation 4.4, TR 5.5 at 31 (Arterials and  
22 Neighborhoods); CP Transportation 4.4, TR 7.3 at 35 (Street Trees); CP Transportation 4.4, TR  
23 7.4 at 35, 36 (Pedestrian Buffer Strips); CP Transportation 4.4, TR 10.2 at 38 ( Innovation to  
24 meet Spirit); CP Urban Design and Historic Preservation, 8.4, DP 3.5 at 13 (Urban Forestry  
25 Program); CP Urban Design and Historic Preservation, 8.4, DP 7 at 21 (Local determination); CP  
26 Urban Design and Historic Preservation, 8.4, DP 7.1 at 21 (Design Guidelines in Neighborhood  
27

28

1 Planning); CP Natural Environment, 9.4, 12.1 at 19 (Street Trees); CP Neighborhood 11.4,  
2 N 4.10 at 13 (Pedestrian Design).

3  
4 **8. Concise Statement of Facts**

5 8.1 The City of Spokane began planning under the Washington State Growth  
6 Management Act (GMA) in July, 1993. Based on nearly eight years of process, six years of  
7 meetings with hundreds of civic organizations, input from thousands of citizens, and countless  
8 hours of deliberations, the City Plan Commission recommended a new comprehensive plan to  
9 the City Council on January 17, 2001. After months of public hearings and study sessions with  
10 the City Plan Commission, the City Council adopted their revised version of this  
11 comprehensive plan on May 21, 2001. (Comprehensive Plan page ii.)

12  
13 8.2 With the adoption of the City' s Comprehensive Plan in 2001, many of the  
14 Spokane residents and Neighborhood Council members assumed that the City' s new  
15 Comprehensive Plan would lead to more pedestrian friendly features. Specifically, residents  
16 assumed that when reconstructed, the arterials that run through Spokane neighborhoods would  
17 be more pedestrian friendly, would have traffic calming features and would begin to address  
18 the myriad of transportation concerns that parents of school children bring to our attention.

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20  
21 8.3 In 2004, Mayor Jim West created a political action committee to generate a  
22 street bond proposal and then campaign to get that bond passed by voters. In 2004, City of  
23 Spokane voters passed a ten year, \$117,351,000 Street Bond. With money allotted in the Street  
24 Bond, the City of Spokane Engineering Department began planning a project whose goal  
25 involved the reconstruction of Bernard Street. Having successfully accomplished the task of  
26 having voters adopt the Street Bond, this political action committee was then rolled over into  
27

1 a citizen' s watchdog group to oversee the spending of 2004 Street Bond funds. This Citizens'  
2 Streets Advisory Committee (CSAC) was created by ordinance 12.01.200 on October 11,  
3 2004. Part of CSAC' s mandate reads:

4  
5 i. The CSAC shall propose policies to be adopted by the city  
6 designed to assure the development and maintenance of a  
7 comprehensive and balanced city-wide street system, which will  
8 meet the needs of the people of the City of Spokane. To this end,  
9 the CSAC shall:

10  
11 (a) Develop street policies that are based on the policies, goals  
12 and objectives expressed and inherent in existing federal and state  
13 law, the comprehensive plan and other city ordinances;

14  
15 (b) Inventory the adopted relevant policies, goals, and  
16 objectives of the city, state government and other local  
17 governments in the region;

18 SMC § 12.01.210(1)(a)(b).

19  
20 8.4. In response to a public records request for copies of these policies that CSAC  
21 was to inventory and develop, the City Clerk wrote: "there were no records found responsive  
22 to this request." In a conversation following his semi-annual report to the City Council on  
23 January 25, 2006, summarizing CSAC activities, CSAC chairman Dallas Hawkins admitted that  
24 CSAC had, "likely not considered the Comprehensive Plan as carefully as we should have" when  
25 formulating policy regarding 2004 Street Bond projects.  
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1           8.5.    This series of events demonstrates that CSAC failed to perform the duties required  
2 by ordinance 12.01.210. The city’s municipal code and the comprehensive plan were not given  
3 substantiative consideration as CSAC proceeded to approve the spending of the funds made  
4 available from the 2004 Street Bond.  
5

6           8.6.    Furthermore, CSAC’s “Purpose” under SMC § 12.01.200 reads:

7                   The City of Spokane believes accountability to the public is  
8 critical to successfully maintain and improve city streets.  
9 Accountability requires that citizens are continuously informed  
10 and educated on an ongoing basis as street projects unfold. A  
11 technical accountability commission to review plans, cost,  
12 timeliness, appropriate use of materials and technology and other  
measures relating to street maintenance and improvements is  
essential to ensure that the citizens of Spokane receive full value  
for their investment.

13           8.7.    In August, 2005, the Spokane City Engineering Department declared that the  
14 Bernard Street Reconstruction Project was categorically exempt from review under the State  
15 Environmental Policy Act. No administrative appeal of this decision was provided. This  
16 categorical exemption decision ended the City’ s review under SEPA.  
17

18           8.8.    On November 15, 2005, the Spokane City Engineering Department hosted a  
19 public presentation at Roosevelt School to discuss the proposed Bernard Street Reconstruction  
20 Project. Due to overwhelming neighborhood interest, the Engineering Department repeated  
21 the presentation for the Manito/Cannon Hill Neighborhood Council meeting on December,  
22 2005.  
23

24           8.9.    The Bernard Street Reconstruction Project causes damage to the transportation  
25 environment by removing street trees and failing to provide adequate space to establish new  
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1 street trees. If the Bernard Street project proceeds as planned, there will be no opportunity to  
2 reestablish street trees on Bernard Street for the foreseeable future.

3  
4 8.10. The Bernard Street draft design fails to maintain and even degrades and  
5 decreases the amount of landscaped area in the urban environment. And while the number of  
6 trees that are removed are replanted, they are replanted elsewhere, on private property and side  
7 streets.

8  
9 8.11. The Bernard Street Reconstruction Project includes the removal of 23 trees  
10 between 14<sup>th</sup> and 29<sup>th</sup> on Bernard Street. According to the city's Street Tree Inventory, the  
11 appraised value of the street trees anticipated for removal is \$174,881. The value of the  
12 replacement trees is, at best, reflected in the purchase and installation cost of the replacement  
13 trees, estimated by the city arborist at \$300 per tree or, for 23 trees, \$6900. This represents  
14 a loss of value to the neighborhood and adjacent property owners of over \$166,000, with an  
15 attendant loss to the city's property tax base.

16  
17 8.12. The Spokane Regional Transportation Commission (SRTC) has designated  
18 Bernard Street as a minor arterial. In SRTC's 30-year plan, Bernard is maintained as a two-  
19 lane street. The lane width requirement for a minor arterial that is designated as a "shared use"  
20 (with bicycles) lane is 14'. The total width requirement for Bernard is 28'; the roadway is  
21 presently 40'. This leaves 12' that could be dedicated to a turn lane, parking, pedestrian buffer  
22 strips or a combination thereof.

23  
24 8.13. The Bernard Street draft design maintains a 40' + street width, maximizing the  
25 negative impacts on the neighborhood. This excessive street width has the effect of dividing  
26 the neighborhood and renders pedestrian routes to four elementary schools (Roosevelt,  
27

1 Cataldo, Wilson and Hutton) unusable for some children. The Bernard arterial cannot be  
2 relocated but it can be redesigned to minimize the impacts on the neighborhood and on  
3 appellants who use its pedestrian corridors.  
4

5 8.14. Two elementary schools are adjacent to Bernard Street (Roosevelt and Cataldo)  
6 and two additional elementary schools (Wilson and Hutton) have pedestrian routes that cross  
7 Bernard, most notably at 14<sup>th</sup> Avenue, 18<sup>th</sup> Avenue and 25<sup>th</sup> Avenue. No pedestrian  
8 enhancements are provided in the Bernard Street draft design along these pedestrian routes. The  
9 walking environment will be less safe as drivers will drive faster on a smooth, new street  
10 surface with no street trees to provide a traffic calming effect and subsequent speed reduction.  
11

12 8.15. The Engineering Department has sent representatives to neighborhood council  
13 meetings, the community assembly and before the City Council. They have repeatedly  
14 announced what to expect when they reconstruct Bernard Street. There is no evidence that the  
15 input of neighborhoods over the last five months has been incorporated into any significant  
16 design changes. Lobbying activity by the Engineering Department is not sufficient to constitute  
17 neighborhood involvement in the neighborhood planning and design process.  
18

19 8.16. While over 200 city residents have contacted the mayor and city council  
20 requesting an alternative design for Bernard Street, and the Cliff-Cannon and Manito/Cannon  
21 Hill Neighborhood Councils have unanimously adopted resolutions during meetings with record  
22 attendance requesting an alternative design that implements and conforms to the Comprehensive  
23 Plan, none of the design and development values expressed in the comprehensive plan have  
24 been incorporated into the Bernard Street design.  
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8.17 On Thursday, June 8, 2006, the Spokane City Council approved a bid allowing for the construction of the Bernard Street project.

8.18 This appeal follows.

**9. Request for Relief**

Wherefore, petitioner requests the following relief:

- a. Entry of a temporary restraining order, preliminary injunction and/or permanent injunction prohibiting the City from implementing construction of the Bernard Street project.
- b. Issuance of an order directed to the City to produce its record so that the same may be reviewed by the court.
- c. Entry of an order reversing the City’ s decisions.
- d. Such further relief as the court deems just and necessary.

DATED this \_\_\_\_\_ day of June, 2006.

Respectfully submitted,  
GENDLER & MANN, LLP

By: \_\_\_\_\_  
David S. Mann  
WSBA No. 21068  
Attorneys for Petitioner