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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. 06-2-02484-7

MOTION AND MEMORANDUM
OF AUTHORITIES IN SUPPORT
OF STAY OF ACTION PENDING
REVIEW

I. MOTION

Plaintiff Citizens for Sensible Transportation Planning, ("CSTP"), respectfully move for a stay of action pending review prohibiting the City of Spokane and any of its departments, employees, or contractors, including the Eller Corporation, activities related to the Bernard Street Reconstruction Project. This motion is brought pursuant to RCW 36.70C.070 and based

1 on the following Memorandum of Authorities, the Declarations of Richard Rush, John Covert,
2 Robert Herold, Eileen Hyatt and David S. Mann.

3 II. MEMORANDUM OF AUTHORITIES

4 A. Relevant Facts

5
6 The City of Spokane began planning under the Washington State Growth Management
7 Act (GMA) in July, 1993. Based on nearly eight years of process, six years of meetings with
8 hundreds of civic organizations, input from thousands of citizens, and countless hours of
9 deliberations, the City Plan Commission recommended a new comprehensive plan to the City
10 Council on January 17, 2001. After months of public hearings and study sessions with the City
11 Plan Commission, the City Council adopted their revised version of this comprehensive plan
12 on May 21, 2001. Declaration of Richard Rush, ¶ 3 (“Rush dec.”).

13
14 With the adoption of the City’s Comprehensive Plan in 2001, many of the Spokane
15 residents and Neighborhood Council members assumed that the City’s new Comprehensive
16 Plan would lead to more pedestrian friendly features. Specifically, residents expected that
17 when reconstructed, the arterial streets that run through Spokane neighborhoods would be more
18 pedestrian friendly, would have traffic calming features and would begin to address the myriad
19 of transportation concerns that parents of school children bring to our attention. *Id.*, ¶ 4.

20
21 In 2004, Mayor Jim West created a political action committee to generate a street bond
22 proposal and then campaign to get that bond passed by voters. In 2004, City of Spokane voters
23 passed a ten year, \$117,351,000 Street Bond. With money allotted in the Street Bond, the City
24 of Spokane Engineering Department began planning a project whose goal involved the
25 reconstruction of Bernard Street. Having successfully accomplished the task of having voters
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1 adopt the Street Bond, this political action committee was then rolled over into a citizen's
2 watchdog group to oversee the spending of 2004 Street Bond funds. This Citizens' Streets
3 Advisory Committee (CSAC) was created by ordinance 12.01.200 on October 11, 2004.
4

5 Rush dec., ¶ 5. Part of CSAC's mandate reads:

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

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

17 SMC § 12.01.210(1)(a)(b).

18 In response to a public records request for copies of these policies that CSAC was to
19 inventory and develop, the City Clerk wrote: "there were no records found responsive to this
20 request." In a conversation following his semi-annual report to the City Council on January 25,
21 2006, summarizing CSAC activities, CSAC chairman Dallas Hawkins admitted that CSAC had,
22 "likely not considered the Comprehensive Plan as carefully as we should have" when formulating
23 policy regarding 2004 Street Bond projects. Rush dec., ¶ 6.

24 This series of events demonstrates that CSAC failed to perform the duties required by
25 ordinance 12.01.210. The city's municipal code and the comprehensive plan were not given
26 substantive consideration as CSAC proceeded to approve the spending of the funds made
27 available from the 2004 Street Bond.

28 Furthermore, CSAC's "Purpose" under SMC § 12.01.200 reads:

1 The City of Spokane believes accountability to the public is
2 critical to successfully maintain and improve city streets.
3 Accountability requires that citizens are continuously informed
4 and educated on an ongoing basis as street projects unfold. A
5 technical accountability commission to review plans, cost,
6 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.

7 In August, 2005, the Spokane City Engineering Department declared that the Bernard
8 Street Reconstruction Project was categorically exempt from review under the State
9 Environmental Policy Act. No administrative appeal of this decision was provided. This
10 categorical exemption decision ended the City's review under SEPA. Rush dec., ¶ 8.
11

12 On November 15, 2005, the Spokane City Engineering Department hosted a public
13 presentation at Roosevelt School to discuss the proposed Bernard Street Reconstruction Project.
14 Due to overwhelming neighborhood interest, the Engineering Department repeated the
15 presentation for the Manito/Cannon Hill Neighborhood Council meeting on December, 2005.
16
17 *Id.*, ¶ 9.

18 The Spokane Regional Transportation Commission (SRTC) has designated Bernard Street
19 as a minor arterial. In SRTC's 30-year plan, Bernard is maintained as a two-lane street. The lane
20 width requirement for a minor arterial that is designated as a "shared use" (with bicycles) lane is
21 14'. The total width requirement for Bernard is 28'; the roadway is presently 40'. This leaves 12'
22 that could be dedicated to a turn lane, parking, pedestrian buffer strips or a combination thereof.
23
24 *Id.*, ¶ 11.

25 The Bernard Street draft design maintains a 40'+ street width, maximizing the negative
26 impacts on the neighborhood. This excessive street width has the effect of dividing the
27

1 neighborhood and renders pedestrian routes to four elementary schools (Roosevelt, Cataldo,
2 Wilson and Hutton) unusable for some children. The Bernard arterial cannot be relocated but it
3 can be redesigned to minimize the impacts on the neighborhood and on appellants who use its
4 pedestrian corridors. Rush dec., ¶ 12.

6 Two elementary schools are adjacent to Bernard Street (Roosevelt and Cataldo) and two
7 additional elementary schools (Wilson and Hutton) have pedestrian routes that cross Bernard,
8 most notably at 14th Avenue, 18th Avenue and 25th Avenue. No pedestrian enhancements are
9 provided in the Bernard Street draft design along these pedestrian routes. The walking
10 environment will be less safe as drivers will drive faster on a smooth, new street surface with no
11 street trees to provide a traffic calming effect and subsequent speed reduction. *Id.*, ¶ 13.

13 The Engineering Department has sent representatives to neighborhood council meetings,
14 the community assembly and before the City Council. They have repeatedly announced what to
15 expect when they reconstruct Bernard Street. There is no evidence that the input of
16 neighborhoods over the last five months has been incorporated into any significant design
17 changes. *Id.*, ¶ 14.

19 On February 15, 2006, a member of CSTP (and former Spokane Planning Commissioner),
20 Robert Herold¹, met with Thomas Arnold, Director of Engineering Services for the City of
21 Spokane. Mr. Arnold is responsible for oversight, design and implementation of all 2004 Street
22 Bond projects. In that meeting Mr. Arnold confirmed that “the Comprehensive Plan was not
23

24
25 ¹ Mr. Herold participated in the City’s Horizon process, the city-wide citizens
26 visioning process, the result of which were sued as a basis for development of the City’s
27 Comprehensive Plan. Mr. Herold was also a member of the City’s Planning Commission
28 the entire time during which the Planning Commission considered and authored the City’s
Comprehensive Plan. Declaration of Robert Herold, ¶¶ 3-4.

1 considered” during the design for the Bernard Street project. Declaration of Robert Herold, ¶¶
2 4-9.

3 While over 200 city residents have contacted the mayor and city council requesting an
4 alternative design for Bernard Street, and the Cliff-Cannon and Manito/Cannon Hill
5 Neighborhood Councils have unanimously adopted resolutions during meetings with record
6 attendance requesting an alternative design that implements and conforms to the Comprehensive
7 Plan, none of the design and development values expressed in the comprehensive plan have been
8 incorporated into the Bernard Street draft design. *Id.*, ¶ 15.

9
10
11 On Thursday, June 8, 2006, the Spokane City Council approved a bid to the Eller
12 Corporation allowing for the construction of the Bernard Street project.

13 On Monday, June 12, 2006, this Land Use Petition was filed challenging the City’ s
14 action approving construction of the Bernard Street project. .

15
16 On Thursday, June 15, 2006, the Spokane City Attorney’s office notified petitioner’s
17 attorney that the City intends to sign a Notice to Proceed with respect to the tree removal for
18 the Bernard Street project allowing tree removal to start “ no sooner than June 21, 2006.”
19 Declaration of David S. Mann , ¶4, Ex. A. Tree removal is estimated to take one week.
20 Construction work on the Bernard Street project is expected to start shortly after.

21
22 B. Discussion

23 In order to prevail in this request, CSTP needs to show that: (1) it is likely to prevail on
24 the merits; (2) without a stay the party requesting the stay will suffer irreparable harm; (3) grant
25 of the stay will not substantially harm other parties to the proceeding; and (4) the request for the
26 stay is timely in light of the circumstances of the case. RCW 36.70C.100(2).
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1 1. CSTP has a clear, legal or equitable right to relief

2 Citizens for Sensible Transportation is a Spokane based 501(c)(3) non-profit corporation
3
4 whose mission is to engage the citizens of Spokane County in a dialogue about transportation
5 planning issues that can affect the livability and sustainability of the Spokane urban
6 environment. CSTP has individual members that reside near or adjacent the area of the
7 proposed Bernard Street Reconstruction Project, the subject of this complaint. CSTP and its
8 individual members have relied on the City of Spokane Comprehensive Plan and its policies
9 and goals in determining how future City Street projects will be carried out, including
10 requirements to create narrower, traffic calmed, more pedestrian friendly streets when
11 undertaking capital improvements. Rush dec., ¶2.
12

13 With the adoption of the City's Comprehensive Plan in 2001, many of the Spokane
14 residents and Neighborhood Council members, including CSTP and its members, assumed that
15 the City's new Comprehensive Plan would lead to a more pedestrian friendly environment.
16 Specifically, residents expected that when reconstructed, the arterial streets that run through
17 Spokane neighborhoods would be more pedestrian friendly, would have traffic calming features
18 and would begin to address the myriad of transportation concerns that parents of school
19 children raise at neighborhood council meetings. Rush dec., ¶ 4.
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21

22 CSTP has a clear, legal or equitable right to relief. As citizens of Spokane, CSTP
23 and its members also have a clear legal and equitable right to rely on the City's
24 Comprehensive Plan.² According to SMC 17B.010.010(A):
25

26 _____
27 ² Washington recognizes organizational standing. An organization has standing to
28 participate in legal action if (1) its members would otherwise have standing to sue in their

1 The comprehensive plan of the City is the document, prepared
2 by the city plan commission and adopted by resolution of the city
3 council, containing text and maps setting forth goals and policies
4 to guide decisions about the future orderly development of the
5 City, which are designed to enhance the fiscal, physical, social,
6 cultural and economic well-being of its population.
7 "Comprehensive" means that the plan encompasses all
8 geographic parts of the City and all functional elements such as
9 land use, circulation and community facilities, and their
10 relationship to one another, the environment, and the
11 metropolitan community

12 As residents of Spokane, CSTP and its members are the "population" that the
13 comprehensive plan is designed to serve.

14 2. CSTP is likely to prevail on the merits: The Bernard Street project fails
15 to comply with Spokane's Comprehensive Plan

16 There is no question that the City's Bernard Street Reconstruction Project must comply
17 with the Comprehensive Plan:

18 The adopted comprehensive plan is intended to guide and give
19 direction to City-wide development over a relatively long period
20 of time. The land use codes shall be consistent with and
21 implement the comprehensive plan. **Public improvements**
22 **through the investment of public capital funds, regardless of**
23 **the source, are to conform to and implement the**
24 **comprehensive plan.**

25 SMC 17B.010.010(B).

26 Compliance with the Comprehensive Plan is required also by the Growth Management
27 Act. Ch.36.70A RCW. According to GMA: "Each county and city that is required or

28 _____
own right, (2) the interests that the organization seeks to protect are germane to its purpose,
and (3) neither the claims asserted nor the relief requested require the participation of the
organizations individual members. *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*,
146 Wash.2d 207, 213-14, 45 P.3d 186 (2002).

1 chooses to plan under [the GMA] shall perform its activities and make capital budget decisions
2 in conformity with its comprehensive plan.” RCW 36.70A.120.

3
4 The Bernard Street project falls under the mandates in SMC 17B.01.010(B) and RCW
5 36.70A.120. The Bernard Street project is obviously a “public improvement” and City
6 “activity.” There should also be no dispute that the funding for the Bernard Street project
7 comes out of Spokane’s “capital funds.” Declaration of John Covert.

8
9 There also should be no dispute that the City did not consider the Comprehensive Plan
10 in designing the Bernard Street project. The City’s Director of Engineering Services has
11 confirmed this fact. Herold dec., ¶¶ 4-9.

12 CSTP has identified numerous instances where the proposed Bernard Street
13 Reconstruction Project fails to comply with the comprehensive plan. In particular,
14 Comprehensive Plan policy TR 1.1 proves the following “Transportation Priorities:”
15

- 16 a. Make transportation decisions based upon prioritizing
the needs of people as follows:
- 17 b. Design transportation systems that protect and serve
the pedestrian first;
- 18 c. Next, consider the needs of those who use public
19 transportation and non-motorized transportation
modes;
- 20 d. Then consider the needs of automobile users after
21 the two groups above

22 None of the 2004 Street Bond projects completed to date nor any planned projects,
23 including Bernard, conform to this policy. Rather, these projects and plans invert these priorities
24 considering the needs of automobile users above the needs of pedestrians. Rush dec., ¶¶ 22-33.

25 Section 4.5, Existing and Proposed Transportation Systems explains how the
26 Comprehensive Plan will be implemented on existing streets:
27

1 First, this plan establishes a new priority for considering the
2 transportation needs of people and making transportation
3 decisions. Policy TR 1.1, "Transportation Priorities" establishes
4 that it will be city policy to put pedestrians first, then to consider
5 the needs of those who use transit and non-motorized
6 transportation modes, and finally to consider the needs of the
7 automobile users. The city's current transportation system does
8 not reflect this priority and direction. Spokane's existing
9 transportation system reflects Spokane's existing auto-dependent
10 nature. Indeed, it is partly because of the existing nature of
11 Spokane's built environment that Spokane is auto-dependent and
12 lacking viable transportation options and, as a consequence, that
13 citizens established this new direction. Following this direction
14 with its clear transportation priorities, however, will lead to new
15 transportation systems that reflect the city's new transportation
16 goals. Establishing these new transportation systems for Spokane
17 will take time. It will take careful and steady implementation of
18 the plan, as expressed in its goals, policies, and implementation
19 methods (such as new street standards). But with consistent
20 implementation of the plan on a case by case basis, the
21 community's built environment will change and with it, the
22 opportunity for Spokane to achieve its desired future.

23 This change in priorities – from cars first to pedestrians first – was a key concept in the
24 Comprehensive Planning process. Declaration of Eileen Hyatt, ¶ 5. The Bernard Street project,
25 however, fails to conform. *Id.*, ¶ ¶ 8-9.³

26 The Bernard Street project fails also to implement at least the following additional
27 comprehensive plan policies: CP Transportation 4.4, TR 2.7 at 13 (Transportation Options); CP
28 Transportation 4.4, TR 2.7 at 16 (Safe Sidewalks); CP Transportation 4.4, TR 2.12 at 18
(Pedestrian Access to Schools); CP Transportation 4.4, TR 4.2 at 22 (Self Enforcing Street
Design); CP Transportation 4.4, TR 4.3 at 22 (Narrow Streets); CP Transportation 4.4, TR 4.20

³ Eileen Hyatt is a member of CSTP and was actively involved in the Spokane Horizon
Transportation Work Group, the group that drafted the Transportation section of the
Comprehensive Plan. Hyatt dec., ¶ 4.

1 at 27 (Design and Maintenance of ROW Streetscape Elements); CP Transportation 4.4, TR 5.1
2 (Neighborhoods for Pedestrians); CP Transportation 4.4, TR 5.2 at 30 (Neighborhood
3 Transportation Options); CP Transportation 4.4, TR 5.3 at 31 (Neighborhood Traffic Issues);
4 CP Transportation 4.4, TR 5.4 at 31 (Traffic Calming Measures); CP Transportation 4.4, TR 5.5
5 at 31 (Arterials and Neighborhoods); CP Transportation 4.4, TR 7.3 at 35 (Street Trees); CP
6 Transportation 4.4, TR 7.4 at 35, 36 (Pedestrian Buffer Strips); CP Transportation 4.4, TR 10.2
7 at 38 (Innovation to meet Spirit); CP Urban Design and Historic Preservation, 8.4, DP 3.5 at 13
8 (Urban Forestry Program); CP Urban Design and Historic Preservation, 8.4, DP 7 at 21 (Local
9 determination); CP Urban Design and Historic Preservation, 8.4, DP 7.1 at 21 (Design
10 Guidelines in Neighborhood Planning); CP Natural Environment, 9.4, 12.1 at 19 (Street
11 Trees); CP Neighborhood 11.4, N 4.10 at 13 (Pedestrian Design). Rush dec., ¶24.

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13
14 Since compliance with the Comprehensive Plan is mandatory under both State and City
15 law, CSTP will prevail on the merits.

16
17 3. Without a stay CSTP will suffer irreparable harm

18 As discussed above, the City is poised to begin tree removal for the Bernard Street
19 project as early as June 21. Street construction under the approved contract is expected to
20 immediately follow. Without a stay, the tree removal and a majority of the construction work
21 will likely be complete prior to the this court having an opportunity to review this case on its
22 merits. Rush dec., ¶¶ 26-27; Hyatt dec., ¶¶ 8-9.

23
24 4. Grant of a stay will not substantially harm other parties to the proceeding

25 Grant of a stay will not substantially harm the other parties to this proceeding. The
26 project at issue is a government project – there are no profits or property rights at issues. If
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1 petitioner's fail to prevail, the City will still be able to move forward with its road project as
2 currently designed after the court's review. If petitioners prevail, however, the project will
3 have to be redesigned so that it is consistent with the City's Comprehensive Plan – a benefit
4 to all of the citizens of Spokane.
5

6 5. The request for a stay is timely

7 The Spokane City Council approved the contract allowing the Bernard Street project to
8 go forward on Thursday, June 8, 2006. CSTP filed its land use petition on Monday, June 12.
9

10 On Thursday, June 15, 2006, the City of Spokane notified CSTP that the City would
11 be moving forward with tree removal as early as June 21, 2006. CSTP immediately contacted
12 this court and arranged for a hearing date for this motion. The City's attorney was notified
13 by email of the expected motion. The City has not yet begun work on the project. This
14 request for a stay is timely. Declaration of David S. Mann.
15

16 C. Conclusion

17 For the foregoing reasons, CSTP respectfully request that the Court enter an order
18 prohibiting the City of Spokane or its contractors from moving forward with its Bernard Street
19 Reconstruction Project.
20

21 Dated this 20th day of June, 2006.

22 Respectfully submitted,

23 GENDLER & MANN, LLP

24
25 By: 

26 David S. Mann

27 WSBA No. 21068

28 Attorneys for Petitioners