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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SPOKANE COUNTY

CITIZENS FOR SENSIBLE
TRANSPORTATION PLANNING,

Petitioner,

v.

CITY OF SPOKANE,

Respondent,

And

ELLER CORPORATION,

Potentially Necessary Party

No. 06-2-02484-7

DECLARATION OF RICHARD RUSH

I, Richard Rush, declare as follows:

1. I am a member of petitioner Citizens for Sensible Transportation Planning (“CSTP”). I am competent to testify and base the information in this declaration on my personal knowledge.

2. CSTP has individual members, myself included, that reside near or adjacent the area of the proposed Bernard Street Reconstruction Project, the subject of this complaint. CSTP and its individual members have relied on the City of Spokane

1 Comprehensive Plan and its policies and goals in determining how future City Street
2 projects will be carried out, including requirements to create narrower, traffic calmed,
3 more pedestrian friendly streets when undertaking capital improvements. This reliance
4 stems in part from Comprehensive Plan section 4.5, "Existing and Proposed
5 Transportation Systems:"
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7 First, this plan establishes a new priority for considering the transportation needs of
8 people and making transportation decisions. Policy TR 1.1, "Transportation
9 Priorities," establishes that it will be city policy to put pedestrians first, then to
10 consider the needs of those who use transit and non-motorized transportation
11 modes, and finally to consider the needs of automobile users. The city's current
12 transportation system does not reflect this priority and direction. Spokane's existing
13 transportation system reflects Spokane's existing auto-dependent nature. Indeed, it
14 is partly because of the existing nature of Spokane's built environment that
15 Spokane is auto-dependent and lacking viable transportation options and, as a
16 consequence, that citizens established this new direction. Following this new
17 direction with its clear transportation priorities, however, will lead to new
18 transportation systems that reflect the city's new transportation goals. Establishing
19 these new transportation systems for Spokane will take time. It will take careful
20 and steady implementation of the plan, as expressed in its goals, policies, and
21 implementation methods (such as the new street standards). But with consistent
22 implementation of the plan on a case by case basis, the community's built
23 environment will change and with it, the opportunity for Spokane to achieve its
24 desired future.

18 3. The City of Spokane began planning under the Washington State Growth
19 Management Act (GMA) in July, 1993. Based on nearly eight years of process, six years
20 of meetings with hundreds of civic organizations, input from thousands of citizens, and
21 countless hours of deliberations, the City Plan Commission recommended a new
22 comprehensive plan to the City Council on January 17, 2001. After months of public
23 hearings and study sessions with the City Plan Commission, the City Council adopted
24 their revised version of this comprehensive plan on May 21, 2001.
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1 4. With the adoption of the City 's Comprehensive Plan in 2001, many of the
2 Spokane residents and Neighborhood Council members, including CSTP and its
3 members, assumed that the City 's new Comprehensive Plan would lead to a more
4 pedestrian friendly environment. Specifically, residents expected that when
5 reconstructed, the arterial streets that run through Spokane neighborhoods would be more
6 pedestrian friendly, would have traffic calming features and would begin to address the
7 myriad of transportation concerns that parents of school children raise at neighborhood
8 council meetings.
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11 5. In 2004, then Spokane Mayor Jim West created a political action
12 committee to generate a street bond proposal and then campaign to get that bond passed
13 by voters. In 2004, City of Spokane voters passed a ten year, \$117,351,000 Street Bond.
14 With money allotted in the Street Bond, the City of Spokane Engineering Department
15 began planning a project whose goal involved the reconstruction of Bernard Street.
16 Having successfully accomplished the task of having voters adopt the Street Bond, this
17 political action committee was then rolled over into a citizen 's watchdog group to
18 oversee the spending of 2004 Street Bond funds. This Citizens ' Streets Advisory
19 Committee (CSAC) was created by ordinance 12.01.200 on October 11, 2004. Part of
20 SMC § 12.01.210(1)(a)(b) mandates:
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23 The CSAC shall propose policies to be adopted by the city designed to
24 assure the development and maintenance of a comprehensive and
25 balanced city-wide street system, which will meet the needs of the people
26 of the City of Spokane. To this end, the CSAC shall:

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

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

4 6. In response to a public records request for copies of these policies that
5 CSAC was to inventory and develop, on March 17, 2006, the City Clerk wrote: "there
6 were no records found responsive to this request." In a conversation following his semi-
7 annual report to the City Council on January 25, 2006, summarizing CSAC activities,
8 CSAC chairman Dallas Hawkins admitted that CSAC had, "likely not considered the
9 Comprehensive Plan as carefully as we should have" when formulating policy regarding
10 2004 Street Bond projects.
11

12 7. This series of events demonstrates that CSAC failed to perform the duties
13 required by ordinance 12.01.210. The city's municipal code and the comprehensive plan
14 were not given substantive consideration as CSAC proceeded to approve projects funded
15 by the 2004 Street Bond.
16

17 8 In August, 2005, the Spokane City Engineering Department declared that
18 the Bernard Street Reconstruction Project was categorically exempt from review under the
19 State Environmental Policy Act. No administrative appeal of this decision was provided.
20 This categorical exemption decision ended the City's review under SEPA.

21 9. On November 15, 2005, the Spokane City Engineering Department hosted a
22 public presentation at Roosevelt School to discuss the proposed Bernard Street
23 Reconstruction Project. Due to overwhelming neighborhood interest, the Engineering
24 Department repeated the presentation for the Manito/Cannon Hill Neighborhood Council
25 meeting on December 1, 2005.
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1 10. The Bernard Street Reconstruction Project includes permits to remove 23
2 street trees between 14th and 29th on Bernard Street. According to the city's Street Tree
3 Inventory, the appraised value of the street trees anticipated for removal is \$174,881. The
4 value of the replacement trees is, at best, reflected in the purchase and installation cost of
5 the replacement trees, estimated by the city arborist at \$300 per tree or, for 24 trees, \$7200.
6 This represents a loss of value to the neighborhood and adjacent property owners of over
7 \$166,000, with an attendant loss to the city's property tax base.

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

16 12. The Bernard Street draft design maintains a 40'+ street width, maximizing
17 the negative impacts on the neighborhood. This excessive street width has the effect of
18 dividing the neighborhood and renders pedestrian routes to four elementary schools
19 (Roosevelt, Cataldo, Wilson and Hutton) unusable for some children. The Bernard arterial
20 cannot be relocated but it can be redesigned to minimize the impacts on the neighborhood
21 and on CSTP and its members that use its pedestrian corridors.

23 13. Two elementary schools are adjacent to Bernard Street (Roosevelt and
24 Cataldo) and two additional elementary schools (Wilson and Hutton) have pedestrian
25 routes that cross Bernard, most notably at 14th Avenue, 18th Avenue and 25th Avenue. No
26 pedestrian enhancements are provided in the Bernard Street draft design along these
27

1 pedestrian routes. The walking environment will be less safe as drivers will drive faster on
2 a smooth, new street surface with no street trees to provide a traffic calming effect and
3 subsequent speed reduction.

4 14. The Engineering Department has sent representatives to neighborhood
5 council meetings, the community assembly and before the City Council. They have
6 repeatedly announced what to expect when they reconstruct Bernard Street. There is no
7 evidence that the input of residents or neighborhood councils over the last seven months
8 has been incorporated into any significant design changes.

9 15. While over 200 city residents have contacted the mayor and city council
10 requesting an alternative design for Bernard Street, and the Cliff-Cannon and
11 Manito/Cannon Hill Neighborhood Councils have unanimously adopted resolutions during
12 meetings with record attendance requesting an alternative design that implements and
13 conforms to the Comprehensive Plan, none of the design policies and goals expressed in
14 the comprehensive plan have been incorporated into the Bernard Street draft design.

15 16. On March 16, 2006 Mr. Michael Stone, Director of Parks and Recreation,
16 gave notice to seven property owners on Bernard Street of the City's intent to remove
17 street trees on their property in the city right-of-way. Director Stone cited his authority to
18 permit street tree removal under the Spokane Municipal Code 12.02.912 (D) and (E).
19 Ostensibly, the Director is permitted to grant such permits, according to 12.02.912 (E),
20 "For city projects which will require removing one or more trees." However the project for
21 which the Director has issued this permit only "requires" the removal of street trees
22 because the city's Engineering Department has created a project design that fails to
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1 “prioritize trees in conflict with physical elements such as hardscapes, roads, and
2 sidewalks,” as required by the City’s Vegetative Management Plan

3 17. On Thursday, June 8, 2006, the Spokane City Council approved a bid to
4 the Eller Corporation allowing for the construction of the Bernard Street project.
5

6 18. On Monday, June 12, 2006, this Land Use Petition was filed.

7 19. On Thursday, June 15, 2006, the Spokane City Attorney’s office notified
8 petitioner’s attorney that the City intends to sign a Notice to Proceed with respect to the
9 tree removal for the Bernard Street project allowing tree removal to start “no sooner
10 than June 21, 2006.”
11

12 20. As citizens of Spokane, I believe CSTP and its members also have a clear
13 legal and equitable right to rely on the City’s Comprehensive Plan. According to SMC
14 17B.010.010(A):
15

16 The comprehensive plan of the City is the document, prepared by the
17 city plan commission and adopted by resolution of the city council,
18 containing text and maps setting forth goals and policies to guide
19 decisions about the future orderly development of the City, which are
20 designed to enhance the fiscal, physical, social, cultural and economic
21 well-being of its population. “Comprehensive” means that the plan
22 encompasses all geographic parts of the City and all functional elements
23 such as land use, circulation and community facilities, and their
24 relationship to one another, the environment, and the metropolitan
25 community

22 As residents of Spokane, CSTP and its members are the “population” that the
23 comprehensive plan is designed to serve.
24

25 21. There is no question that the City’s Bernard Street Reconstruction Project
26 must comply with the Comprehensive Plan:
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1 The adopted comprehensive plan is intended to guide and give direction
2 to City-wide development over a relatively long period of time. The land
3 use codes shall be consistent with and implement the comprehensive
4 plan. **Public improvements through the investment of public capital
funds, regardless of the source, are to conform to and implement the
comprehensive plan.**

5 SMC 17B.010.010(B)(emphasis added). The State 's Growth Management Act also
6 provides that : "Each county and city that is required or chooses to plan under [the
7 GMA] shall perform its activities and make capital budget decisions in conformity with
8 its comprehensive plan." RCW 36.70A120.

10 22. I believe that CSTP and its members have a clear legal and equitable right
11 to make sure that public improvement projects, including the Bernard Street Project,
12 conform to and implement the comprehensive plan.

14 23. I believe that the Bernard Street project violates the City of Spokane 's
15 Comprehensive Plan. In particular, CP policy TR 1.1 proves the following
16 "Transportation Priorities:"

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

23 24. None of the 2004 Street Bond projects completed to date nor any planned
24 projects, including Bernard, conform to this policy. Rather, these projects and plans invert
25 these priorities considering the needs of automobile users above the needs of pedestrians.
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1 25. The Bernard Street project fails to implement at least the following
2 additional comprehensive plan policies: CP Transportation 4.4, TR 2.7 at 13
3 (Transportation Options); CP Transportation 4.4, TR 2.7 at 16 (Safe Sidewalks); CP
4 Transportation 4.4, TR 2.12 at 18 (Pedestrian Access to Schools); CP Transportation 4.4,
5 TR 4.2 at 22 (Self Enforcing Street Design; CP Transportation 4.4, TR 4.3 at 22 (Narrow
6 Streets); CP Transportation 4.4, TR 4.20 at 27 (Design and Maintenance of ROW
7 Streetscape Elements); CP Transportation 4.4, TR 5.1 (Neighborhoods for Pedestrians); CP
8 Transportation 4.4, TR 5.2 at 30 (Neighborhood Transportation Options); CP
9 Transportation 4.4, TR 5.3 at 31 (Neighborhood Traffic Issues); CP Transportation 4.4,
10 TR 5.4 at 31 (Traffic Calming Measures); CP Transportation 4.4, TR 5.5 at 31 (Arterials
11 and Neighborhoods); CP Transportation 4.4, TR 7.3 at 35 (Street Trees); CP
12 Transportation 4.4, TR 7.4 at 35, 36 (Pedestrian Buffer Strips); CP Transportation 4.4, TR
13 10.2 at 38 (Innovation to meet Spirit); CP Urban Design and Historic Preservation, 8.4,
14 DP 3.5 at 13 (Urban Forestry Program); CP Urban Design and Historic Preservation, 8.4,
15 DP 7 at 21 (Local determination); CP Urban Design and Historic Preservation, 8.4, DP 7.1
16 at 21 (Design Guidelines in Neighborhood Planning); CP Natural Environment, 9.4,
17 12.1 at 19 (Street Trees); CP Neighborhood 11.4, N 4.10 at 13 (Pedestrian Design).

18 26. Because the City of Spokane has disregarded its comprehensive plan
19 requirements, residents adjacent to Bernard Street will be significantly prejudiced by the
20 City 's decision to move forward with the Bernard Street Plan.

21 27. Because the City is proposing to go forward with tree removal and
22 construction of the Bernard Street Project prior to this court 's review of the City 's
23 actions, CSTP and its members will suffer irreparable harm.
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I declare under penalty of perjury under the laws of Washington that the forgoing
is true and correct.


Dated this 19th day of June, 2006 in Spokane, Washington.

Richard Rush

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