

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BENDARE DUNDAT, INC., a Washington Corporation,

Plaintiff,

MASTER BUILDERS ASSOCIATION OF KING AND SNOHOMISH COUNTIES,

Intervenor.

v.

The CITY OF SEATTLE, a municipal corporation,

Defendant,

No. 16-2-08259-9 SEA

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING CITY'S CROSS-MOTION

THIS MATTER came before the Court on Plaintiff Bendare Dundat, Inc.'s Motion for Summary Judgment, and defendant City of Seattle's Cross-Motion for Summary Judgment. The Court has considered the record and files in this case, including the following:

1. Complaint for Declaratory Judgment;
2. Plaintiff Bendare Dundat, Inc.'s Motion for Summary Judgment;
3. Declaration of Kirk Van Landeghen dated July 19, 2016, with exhibits;
4. Declaration of Michelle Rusk dated July 19, 2016, with exhibits;
5. Defendant City of Seattle's Cross-Motion for Summary Judgment;
6. Declaration of Janet Oslund dated July 15, 2016, with exhibits;

- 1 7. Declaration of Ketil Freeman dated July 15, 2016, with exhibits;
- 2 8. Intervenor Master Builders Association's Motion for Summary Judgment and
- 3 Joinder in Plaintiff's Motion for Summary Judgment;
- 4 9. Stipulation to Strike Portion of Opening Summary Judgment Brief of Master
- 5 Builders Association;
- 6 10. Order Striking Portions of Opening Summary Judgment Brief of Master Builders
- 7 Association;
- 8 10. Plaintiff's Opposition to City's Cross-Motion for Summary Judgment;
- 9 11. Second Declaration of Kirk Van Landeghen dated August 8, 2016, with exhibits;
- 10 12. Defendant City of Seattle's Response to Plaintiffs' Cross Motions for Summary
- 11 Judgment;
- 12 13. Declaration of Kristine Castleman dated August 5, 2016, with exhibits;
- 13 14. Intervenor Master Builders Association's Response to City of Seattle's Cross
- 14 Motion for Summary Judgement;
- 15 15. Declaration of Graham Black dated August 8, 2016;
- 16 16. Declaration of Jon Coombes dated August 4, 2016;
- 17 17. Plaintiff Bendare Dundat, Inc.'s Reply to City's Response to Plaintiffs' Cross
- 18 Motions for Summary Judgment;
- 19 18. Defendant City of Seattle's Consolidated Replies Regarding Its Cross Motion for
- 20 Summary Judgment; and
- 21 19. Intervenor Master Builders Association's Reply in Motion for Summary
- 22 Judgment.

23 The Court also heard the oral argument of the parties.

24 Having considered the records and files in this case, including those listed above, it is
25 hereby **ORDERED, ADJUDGED, AND DECREED** that:

1 1. Plaintiff Bendare Dundat, Inc.'s Motion for Summary Judgment is **GRANTED**.

2 The Court finds that SMC 23.41.004.A.8 facially violates RCW 82.02.020.

3 This decision is based on the plain words of the statute, and the following applicable
4 cases: *Citizens' Alliance for Property Rights v. Sims*, 145 Wn.App 649 (2008) (holding that the
5 clearing limitations of a county ordinance were not reasonably necessary as a direct result of the
6 proposed development, fell "within the scope of an indirect 'tax, fee or charge' on development,"
7 and therefore violated RCW 82.02.020); *Isla Verde Intern. Holdings, Inc. v. City of Camas*, 146
8 Wn.2d 740 (2002) (holding that an open space set aside condition violated RCW 82.02.020,
9 noting that the statute requires strict compliance); *R/L Associates, Inc. v. City of Seattle*, 113
10 Wn.2d 402 (1989), (a city ordinance that required owners of low income rental units to provide
11 advance notice, eviction protection, and relocation assistance prior to demolishing or changing
12 the use of residential units" was an indirect charge on development and thus violated RCW
13 82.02.020).

14 SMC 23.41.004.A.8 requires design review by the second applicant approved for a
15 permit, even if the second project is smaller than the first. It imposes direct and indirect costs
16 that are neither reasonably necessary nor a direct result of the proposed development. It is hard
17 to fathom how costs and fees could be reasonable and necessary for the smaller project, but not
18 for the first, more impactful project on the adjacent property. The city appears to agree that the
19 ordinance is designed to mitigate collective impacts, not the impact of any individual project.

20 2. Plaintiff Bendare Dundat, Inc.'s Motion for Summary Judgment brought only
21 facial challenges to SMC 23.41.004.A.8 pursuant to RCW 82.02.020 and article I, sections 3 and
22 16 of the Washington State Constitution. The Court does not need to decide, and does not
23 decide, whether SMC 23.41.004.A.8, if it were not facially invalid, would violate article I,
24 sections 3 and 16 of the Washington State Constitution as applied to Plaintiff Bendare Dundat,
25 Inc.

26 3. Defendant City of Seattle's Cross-Motion for Summary Judgment is

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DENIED.

IT IS SO ORDERED.

DATED this 29 day of August, 2016.



The Honorable Barbara A. Mack