



King County

Parks and Recreation Division

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November 30, 2016

Lindsey Ozbolt
Associate Planner
Department of Community Development
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075

RE: East Lake Sammamish Trail Segment 2B, SSDP2016-00415

Dear Ms. Ozbolt:

This letter is in response to your November 15, 2016 letter regarding King County's application for a Shoreline Substantial Development Permit ("SSDP") SSDP2016-00415 for South Segment B of the East Lake Sammamish Trail ("ELST"). Your letter, apparently relying on City of Sammamish, Ordinance No. 02016-415, requests further proof of King County's ownership of the portion of the East Lake Sammamish Railroad Corridor ("Corridor") covered by our application for a SSDP. In this letter, you notified King County that the City of Sammamish ("City") had deemed the SSDP application incomplete based on "an insufficient proof of ownership or right to proceed." You stated that City staff was not clear how to interpret the property/ownership documents submitted with the SSDP permit application on October 19, 2016. Specifically, you stated that "it was not clear which documents applied to which property included in the project, and what property interests the Applicant is asserting for each property included in the project."

In addition, you stated that in order for this application to be deemed complete, King County must provide the following documents: 1) a color coded map showing individual land

ownership and control, easements, encroaching structures, and rights of way, 2) a table showing property ownership, address, parcel identification number; 3) “Appropriate ownership/control documents such as easements, deeds and rights-of-ways”; 4) Identification of and plan for encroachments.

King County objects to the City’s Determination of Incompleteness for SSDP 2016-00415. King County submitted all of the materials specified in SMC 20.04.040 and has paid the fees required for a complete application. As of October 19, 2016, the City had in its possession sufficient proof of ownership and other requirements to satisfy the legal requirements set forth in the City’s code.¹ See RCW 36.70B.060 (“a project permit application is complete...when it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently.”). The City has exceeded its authority in determining that the documents listed as “Required Information” in the November 15, 2016 letter are necessary for a determination of completeness as they are not legally required. This request for additional documents – including many documents that have nothing to do with ownership or the right to construct the permanent trail – serve no legitimate municipal purpose and interfere with King County’s right to construct a trail.

King County’s response to the City’s list of “Required Information” in the November 15, 2016 letter is as follows:

1. Proof of Ownership/Property Interests:

King County provided the City with sufficient proof of ownership of the ELST corridor on October 19, 2016 at the time of permit intake. See *attached Declaration of Robert Nunnenkamp*² at 1. We provided a copy of King County Recording No. 9809181252, which is the Quitclaim Deed that covers the Corridor (“1998 King County Deed”). *Id.* at ex. 1. The deed documents a sale of the Corridor on September 18, 1998 from The Land Conservancy to King County.

¹ In fact, the City had sufficient proof of ownership well before this date, as King County had previously provided the City a copy of the Quit Claim Deed for the Corridor, as well as the Judgment and Order in *Hornish v. King County*.

² As explained herein, King County has met the legal requirements in SMC 20.04.040 to establish proof of ownership and the City should determine that this application is complete. Nevertheless, in an effort to assist the City in understanding the property and ownership records, we have prepared the attached the Declaration of Robert Nunnenkamp. In this declaration, King County Parks Property Agent Robert Nunnenkamp summarizes the property/ownership information and provides additional copies of the 1998 King County Deed, the Summary Judgment Order and other documents previously supplied to the City. See Nunnenkamp Decl. at p.2. In addition, the Nunnenkamp Declaration provides copies of all source deeds that establish the Corridor in Segment 2B. *Id.*

Although the 1998 King County Deed was sufficient by itself to establish King County's property rights, at the time of intake King County also provided a copy of the Order on Cross-Motions for Summary Judgment ("Summary Judgment Order") and the Judgment Quieting Title to King County ("Judgment"), which were entered by Judge Pechman in *Hornish v. King County*, No. 2:15-cv-00284-MJP. *Id.* at ex. 3. In the face of a challenge by several adjacent property owners including your own councilmember, Thomas E. Hornish, the federal court upheld the validity of King County's property rights and quieted title in King County to the Corridor.

Of note, the Summary Judgment Order holds that: (1) King County holds all property rights previously held by BNSF, (2) King County owns the portion of the Corridor covered by the Hilchkanum Deed in fee, (3) Where King County does not own in fee, it holds a "railroad easement" that "entitle[s] it to the exclusive use and possession of the area on, above and below the surface of the Corridor for railroad purposes and incidental uses permitted by Washington law, including use as a recreational trail," (4) Subject to prior property transactions by BNSF, the prescriptive easement/adverse possession areas of the Corridor are 100 feet wide, and (5) Pursuant to RCW 7.28.070, King County owns the property rights described in the 1998 King County Deed. *Hornish v. King County*, No. 2:15-cv-00284-MJP. *Id.*

The related Judgment recognizes that the 1998 King County Deed establishes the boundaries of the Corridor. It holds that King County owns the portions of the Corridor covered by the Hilchkanum Deed (as described in the Judgment) in fee. *Id.* at ex. 4. Finally, it holds that King County is entitled to exercise its broad easement rights in the described prescriptive easement/adverse possession areas of the Corridor consistent with the Summary Judgment Order. *Id.*

While the City of Sammamish has authority to request some proof of ownership, it is the role of the courts, not the City of Sammamish, to determine property rights. The courts, most recently Judge Pechman, have repeatedly ruled in King County's favor and have unequivocally stated that King County has authority to construct the permanent trail. In addition, ownership records for all parcels subject to this development proposal are reflected in property records maintained by the King County Auditor and tax records maintained by the King County Assessor, which list King County as the parcel owner. *See Declaration of Robert Nunnenkamp* at ¶4. The City of Sammamish Department of Community Development permitting staff have no authority to adjudicate property rights. The relevant property rights for the project are established unequivocally based on court rulings and tax records that recognize King County as the property owner.

In sum, the City of Sammamish has been provided with all relevant ownership documents. Because the previously supplied documents establish King County's property rights and its right to construct a trail, no further documentation is necessary or appropriate.³

2. Map of the ELST

Although not legally required, as a courtesy to the City, we have prepared a map of the ELST that illustrates the ownership and control of the Corridor. The Nunnenkamp Declaration attaches a map of the entire East Lake Sammamish Trail Segment 2B with color coded illustrations of King County's property rights within the Corridor.⁴ *Id.* at ex. 25.

3. Table

Although not legally required, as a courtesy to the City, we have prepared a table that lists the King County Parcel numbers and other relevant information. *See Nunnenkamp Declaration*, ex. 8

It appears that the City may be requesting information on adjacent properties. If so, this information is outside the scope of the City's authority and unnecessary for review of King County's shoreline permit application. King County's development proposal for the ELST is limited to property located entirely within the Corridor. The status of neighboring properties outside the Corridor is irrelevant.⁵

³ Under Judge Pechman's Summary Judgment Order, there is no doubt that King County has full rights to construct the permanent trail in fee, as well as easement areas. The Corridor is railbanked under the federal Trails Act and under the exclusive jurisdiction of the Surface Transportation Board, which has authorized the trail through issuance of a NITU. *See Declaration of Nunnenkamp*. With King County's "right to develop the site" well-established in the easement and fee areas, the "consent of all owners of the affected property" serves no legitimate purpose. To the contrary, granting an effective "veto right" to landowners adjacent to the Corridor by requiring their consent would violate Congress's determination to authorize trails in railbanked Corridors and subject the city to substantial liability under RCW 64.40. *See generally Friends of the E. Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp. 2d 1260, 1273 (W.D. Wash. 2005) (finding federal preemption of City of Sammamish's efforts to "frustrate development of a trail on the railbanked right of way.") (attached to Nunnenkamp Decl. as exhibit 7).

⁴ In addition, on July 31, 2014, as part of the SSDP application for ELST South Segment A (SSDP Permit #2014-00171) King County provided the City with a map of the south segment of the ELST, including the section that is the subject of this development proposal. For your convenience, we have attached as Exhibit 27 a courtesy copy of this map. *See Nunnenkamp Decl. ex 27*. This map listed some historical information on the railroad's acquisition of the Corridor, as well as the parcel numbers and recorded property owners for parcels adjacent to the trail.

⁵ It is worth pointing out that Judge Pechman found that adjacent property owners "lack[ed] standing under the centerline presumption doctrine to challenge the County's property rights," which means that they had no identifiable property interest in the Corridor. *See Nunnenkamp Decl. ex. 3*.

4. Encroachments

In your November 15 letter, you requested “identification of and plan for encroachments” and you raised questions of “[e]ncroaching structures and how they may be impacted” by trail construction. This information is not legally required and the City has no lawful basis to request this information. The City has no role in adjudicating the status of third-party structures within King County’s Corridor, or reviewing King County’s “plan for encroachments.” This request falls outside the scope of the City’s code, including even the broad requirements of Ordinance No. 2016-415. King County will address each encroachment as necessary, consistent with the needs of the County and in compliance with the law.

5. Conclusion

The City’s code provides guidance on when and under what circumstances a permit application should be deemed complete. SMC 20.05.040(1) provides that a permit application is complete when “it meets the procedural submission requirements of the department and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently.” SMC 20.05.040(1). King County has met these requirements and has filed a timely and complete application with the City. This application should be deemed complete as of October 19, 2016 - the date of submittal of the required material, in accordance with SMC 20.05.040(1).

The City’s unfounded determination of incompleteness will result in significant delay damages to King County and will interfere with King County’s ability to construct a recreational trail. This segment of the ELST, which is 3.5 miles long, has been designed to comply with the regulations currently in effect. King County’s consultants have been at work designing this project since 2014 and King County has spent significant public funds on the design to date. Earlier this year, King County learned that the City was intending to adopt new surface water regulations in December of 2016. As a result, King County completed the design work and met the other application requirements to ensure that this project could be vested to the current surface water regulations. King County project staff contacted City staff in early September to request a pre-application date and begin the process of submitting the permit applications. After a variety of delays, the ELST project team was ultimately able to submit the permit applications for the SSDP and grading permit on October 19, 2016.

If the City continues to insist that King County’s permit application is incomplete, and thereby denies King County the ability to vest its development rights, King County will suffer significant damages. This includes the cost of redesigning the ELST, potential loss of funding sources, and the interference with the public’s use enjoyment of this important regional trail for months or even years into the future. Since King County has provided all of the documents

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required by the City code, we request the City to issue a determination of completeness for SSPD 2016-00415 as of October 19, 2016.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Brown". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke at the end.

Kevin Brown
Director

Enclosures