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JUDGE MARY E. ROBERTS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

1426 FIRST AVENUE LLC,

Plaintiff,

v.

CITY OF SEATTLE

Defendant.

No. 18-2-21872-1 SEA

ORDER GRANTING IN PART AND
DENYING IN PART CITY OF SEATTLE’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT, BIFURCATING
MONETARY CLAIMS, AND AMENDING
CASE SCHEDULE

[Clerk’s Action Required]

THIS MATTER came before the undersigned judge on Defendant City of Seattle’s (“City’s”) Motion for Partial Summary Judgment and Other Relief. The Court considered the oral arguments of counsel on October 19, 2018, and the following documents:

- 1. City’s Motion;
- 2. Declaration of Sarah Sodt;
- 3. Declaration of Lisa Rutzick;
- 4. Declaration of Lish Whitson;
- 5. Plaintiff 1426 First Avenue LLC’s Opposition;
- 6. Declaration of Eric Forbes;

ORDER ON CITY OF SEATTLE’S MOTION FOR PARTIAL SUMMARY JUDGMENT, BIFURCATING MONETARY CLAIMS, AND AMENDING CASE SCHEDULE - 1

JUDGEMARY E. ROBERTS
King County Superior Court
516 Third Avenue
Seattle, WA 98104-2381
(206) 477-1348

- 1 7. Declaration of John A. Tondini;
- 2 8. City's Reply; and
- 3 9. Land Use Petition and Complaint for Declaratory Relief and Constitutional Damages.

4 The City's motion to dismiss the plaintiff's LUPA claims is GRANTED. The ordinance
5 at issue is not a declaratory decision under RCW 36.70C.020(2)(b), in that it did not define,
6 explain, or clarify applicability of any rules to the plaintiff property. The plaintiff does not now
7 assert a claim under RCW 36.70C.020(a), nor can the plaintiff. Although a pre-application process
8 for a proposed high-rise apartment building has begun, there has been no submission of proposals
9 or applications; the plaintiff does not yet have vested rights in the project and there is therefore no
10 LUPA jurisdiction under RCW 36.70C.020(a).

11 The City's motion to issue a civil case schedule is GRANTED, given the dismissal of the
12 LUPA claims that triggered the current expedited schedule.

13 The City's motion to dismiss the plaintiff's constitutional takings claim is GRANTED.
14 Although the plaintiff asserts now that it brings a facial challenge to the ordinance, it cannot be
15 seen as other than an "as applied," challenge. As such, the claim is not justiciable where there has
16 been no final governmental decision regarding the application of the ordinance to the property at
17 issue and the permitted uses of that property.

18 The City's motion to dismiss the plaintiff's appearance of fairness claim is DENIED.
19 There are material issues of disputed fact in regard to this claim.

20 The City's motion to dismiss the plaintiff's compelled speech claim is DENIED because
21 there are material issues of disputed fact to be resolved.

22 The City's motion to bifurcate the plaintiff's monetary claim is DENIED.

1 The court ORDERS as follows:

- 2 1. The plaintiff's claims under the Land Use Protection Act are DISMISSED.
- 3 2. The plaintiff's takings claims are DISMISSED.
- 4 3. The current LUPA case schedule, including the trial date of February 4, 2019 is
5 STRICKEN.
- 6 4. The plaintiff's pending motion for discovery has become moot and is STRICKEN.
- 7 5. The clerk is directed to issue a new Civil Case Schedule based on the filing date of
8 August 31, 2018.

9 DATED this 19th day of October, 2018.

10
11
12 See digital signature
13 JUDGE MARY E. ROBERTS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-21872-1
Case Title: 1426 FIRST AVENUE VS SEATTLE CITY OF

Document Title: ORDER ON CITY'S SJ MOTION

Signed by: Mary Roberts
Date: 10/19/2018 11:21:22 AM

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Mary Roberts'.

Judge/Commissioner: Mary Roberts

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 3D64BFCEEA2C954279D2D48411270A0F20B49453
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O=KCDJA, CN="Mary Roberts:
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