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

K & S DEVELOPMENTS, LLC, a Washington limited liability company, Plaintiff, v. CITY OF SEATAC, et al, Defendants. CITY OF SEATAC, Plaintiff, v. GERALD and KATHRYN KINGEN, Defendants.	Consolidated Under Case No. 12-2-40564-6 KNT **PLAINTIFF'S SUPPLEMENTAL BRIEFING ON CONSTITUTIONAL ISSUES**

I. INTRODUCTION

On January 25, 2016, after a 7-week trial, the jury returned a verdict and awarded K&S a multi-million verdict against the City of SeaTac for takings, tortious interference with business expectancy, and fraud. Your honor retained jurisdiction to

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decide K&S's promissory estoppel, substantive due process and procedural due process claims.

We therefore intend for this Memorandum to address the two state Constitutional claims: (1) whether the City violated K&S's state procedural due process rights; and, (2) whether the City violated K&S's state substantive due process rights.[1]

K&S contends the Court should not decide these claims based upon mootness because this Court cannot provide effective relief beyond the jury's verdict. The Court should also decline to rule on these claims based upon the doctrine of constitutional avoidance.

If the Court rejects our mootness or constitutional avoidance arguments, and decides these claims on the merit, K&S contends the facts and law support the court entering verdicts in K&S's favor.

II. FACTS ESTABLISHED AT TRIAL

K&S proved the following at trial:

1. K&S owned a large commercial property (the "SeaTac Center") within the City of SeaTac, which was zoned to allow for park-and-fly garages as an outright use.

2. In March 2004, K&S began the pre-application process with the City of SeaTac to obtain a permit to construct a 1,200 stall park-and-fly on its property.[2] As part of this process, K&S had extensive discussions with members of the City's planning and engineering departments. K&S also provided various studies and analysis as requested by the City. K&S incurred development and pre-development costs in its efforts to provide the City with requested information about its development. The City

[1] K&S moved to dismiss its claim of violation of privileges and immunities with prejudice. K&S also has its promissory estoppel claim remaining; however, this memorandum does not directly address that claim.
[2] The City had developed and implemented a formal pre-application process for property owners who wanted to develop their properties.

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indicated no opposition to the proposed project or offered any concerns; the City appeared to actually support the development and wanted K&S to add a Starbucks to its development plans.[3]

3. Because of its proximity to the highway and SeaTac Airport, a park-and-fly facility on this property made practical and financial sense and was, according to the City, the highest and best use for the property.[4]

4. The City viewed park-and-flies as "gold mines" that inflated property prices, thereby discouraging other uses.

5. On February 28, 2006, the City Council enacted a moratorium to bar park-and-flies on all properties within the South 154th Street Station Area, the area in which the K&S's property was located. The City only gave 24-hour notice to the newspaper; no other notice was provided and the newspaper did not have time to publish the notice.

6. The moratorium included no declaration of emergency.

7. Planning Director Steve Butler and City Manager Craig Ward wanted the City Council to pass the moratorium primarily to stop K&S from moving forward with its park-and-fly proposal. Even though the moratorium affected all properties within the 154th Street Station, it was intended primarily to stop K&S from vesting its project, even though they knew that K&S had spent nearly two years complying with the City's pre-application process.

8. Besides other evidence, Butler specifically testified that the moratorium was intended to target K&S and to stop K&S's park and fly plans. The City was not aware of any other property owners with immediate plans to develop their property;

[3] The City badly wanted to have a Starbucks in its City outside the airport.

[4] Even the City's witnesses (i.e., MasterPark principal Roger McCracken) testified that the K&S site was ideal for a park-and-fly.

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their plans were to stop K&S's proposed development before K&S filed a formal application. While the City was simultaneously in the process of adopting plans for its two station areas—154th and 176th Street Station Areas—it only passed a moratorium for the 154th Street Station Area because it wanted to stop K&S in its tracks.

9. The City (staff) purposely did not give K&S *any* advance notice of its plans to adopt the moratorium because staff feared K&S would quickly submit an application and be vested.

10. Perhaps more astonishing, the staff did not notify the City Council of K&S's plans, or of its intent, that the moratorium stop K&S's plans to construct a park-and-fly. The City Council therefore voted for the moratorium without knowledge of its intended purpose or the effect it would have on K&S's specific project.[5]

11. The City conducted a follow-up public hearing on the moratorium on April 11, 2006. While some of the City staff claim they orally told K&S's representatives of the moratorium, there was no written notice or proof that the City gave notice of the actual hearing or the effect of the moratorium.[6] As was the case at the February 28th meeting, the staff, once again, chose not to notify Council of K&S's development plans or the effect of the moratorium on those plans.

12. The City did not want K&S to build a park-n-fly at the 154th Street Station area because it worried about competition for its own parking garage, or its own

[5] As an aside, Butler was a member of the American Institute of Certified Planners and was under a professional and ethical duty to fully disclose this information to the council members before they voted on the moratorium. He violated these professional standards when he failed to advise the City Council of K&S's project or the staff's intentions for the moratorium.

[6] The City Manager Craig Ward instructed the Planning Department to develop a strategy to ensure that all affected property owners were properly notified of the 60-day hearing. Butler admitted at trial that he did not develop any plans and could not recall what notices, if any, were mailed to the affected owners.

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plans to develop an entertainment district across from the airport. The City also wanted to protect its "public/private partner" MasterPark from competition.[7]

13. The City also viewed park-and-flies as "gold mines" and believed a moratorium, and subsequent zone change to prohibit such uses, would lower the value of K&S's property to allow others, including the City, to acquire the property at lower prices.

14. Once the Council members learned how its moratorium adversely affected K&S plans, and how its staff had mistreated K&S, it directed its Manager, Craig Ward to sign a July 11th letter agreement promising to quickly process, finalize and support a development agreement to allow K&S to move forward with its park-and-fly garage. But, in breach of the July 11th letter, the City staff intentionally delayed these negotiations and failed to "fully support" the garage. And then, after 18 months of negotiations, the City reversed its course and stated it would not support a park-and-fly.

15. The City Council flip-flopped for these four improper purposes: (1) Mayor Fisher; (2) City's desire to limit competition; (3) City's undisclosed desire to acquire K&S's property at the lowest price possible; and, (4) City's desire to hand-select the "right" developer to develop the SeaTac Center.

16. **Gene Fisher:** Mayor Gene Fisher had lived and owned real property in close proximity to the 154th Street Station Area for 40 years.[8] Mayor Fished wanted to force K&S to build condominiums to (1) drive up property values to drive out the "refugees" and (2) to increase his own property's value. And despite his initial promise

[7] Simultaneous with the City adopting a moratorium to stop K&S's project, the City was working with Master Park and others ("private/public partnerships") to develop parking garages and other buildings at the 176th Street Station Area to attract other businesses to its proposed entertainment district. Master Park's owner, Rodger McCracken testified at trial that he was always concerned how other park and fly structures could compete against his operations.

[8] Coincidently, Mayor Fisher's property bordered the 154th Street Station Area which meant his property was exempt from the moratorium.

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to support K&S's project, Mayor Fisher later said the K&S Property should "house people and not cars."

17. Recognizing his potential conflict of interest or appearance of fairness issues, Mayor Fisher occasionally (two or three times) recused himself from voting on certain matters involving the 154th Street Station Area or K&S Property. But on other occasions, Mayor Fisher not only participated in the hearings or meetings, he presided over them as the mayor.

18. **City's desire to limit competition**: The City dreamed of having an "entertainment district" across from the airport within the 176th Street Station. It even offered huge financial incentives to some of the large property owners, MasterPark and Dollar Development (the Cassans) to form public-private partnerships to develop or redevelop the properties. Key to the City's development plans was to build a parking garage to attract other businesses. The City (and the proposed partners) envisioned using revenue from operating a park and fly to fund the cost of construction and then later using the garage to support the entertainment district. Both the City and MasterPark raised concerns on how other parking garages would affect the City's sponsored garage.

19. **City's undisclosed desire to purchase SeaTac Center at rock bottom price:** K&S also proved that after the City Manager signed the July 11th letter, the City got serious about wanting to acquire the SeaTac Center. The City kept its desire a secret and made clear its desire to buy it at the lowest price possible. Permitting K&S the right to build a park and fly would have increased the property's fair market value, which was contrary to the City's undisclosed plans. The City therefore used its powers to suppress the value of K&S's property for its own pecuniary interest.

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20. **City viewed K&S as "incompetent, untrustworthy and dysfunctional" and wanted to hand select the developer:** After the City committed to allowing K&S to build its park-and-fly, the staff hired Heartland Consultants (Matt Anderson) for advice on how to implement the two Station Area Plans. Despite its July 11, 2006 promise to fully support the park-and-fly, the City staff told Heartland it did not want K&S to develop the property because they believed K&S was incompetent, untrustworthy, and dysfunctional. They wanted Heartland to assist the City on how to acquire K&S's property and locate other developers. In other words, the City wanted to get rid of K&S and handpick another company to redevelop the SeaTac Center.

21. After the City rejected the park-and-fly development agreement, K&S fell victim of the Great Recession and began to go into default on its real property loans.

22. Learning of the default—which was caused by the regulatory delays, the City anonymously hired a real estate broker, Arvin Vander Veen, to negotiate the purchase of the various promissory notes and deeds of trust.

23. With the City's consent or knowledge, Vander Veen made several material misrepresentations he (and the City) knew or should have known were false. He also, with the City's permission or knowledge, made several threats that "his guy" would go against Gerry and Kathy Kingen personally on their personal guarantees. He also tried to "divide and conquer" the owners (Kingens and Switzers) to force a deed-in-lieu. K&S reasonably relied upon these misrepresentations, and took the personal threats seriously, when it finally agreed to close on the Deed in Lieu.

24. The City also used its regulatory power to force K&S to sign the deed-in-lieu. Knowing the importance to K&S of obtaining a two-year extension on its building permits, the City refused to meet with K&S in late 2009 hoping K&S would just "throw in the towel" and walk away from the property. Because the Kingens were

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unsuspecting of the City's motives and did not know the City was "the guy," they finally caved and signed away the property, only to learn a week later of the City's true identity.

III. ANALYSIS

A. Procedural Due Process Claim is Before Court

While not specifically described in its Complaint, K&S's procedural due process violation claim under the State Constitution was tried by the express or implied consent of the parties.[9] The City has never objected to the fact that the Complaint did not specifically refer to a state due process violation and has fully engaged K&S and the court with its factual and legal arguments against this claim.

The Court has already orally ruled (in K&S's favor) on this claim without objection by the City. This therefore removes any argument that the claim was not properly pled. The Court should reject any argument that this claim was not properly pled in the Complaint and allow the complaint to be amended to conform to the proof.

B. The Due Process Claims are Moot in Light of Jury's Verdict

Once a party has obtained effective relief on a claim, the remaining unresolved claims are moot and should be left undecided.[10] Here, the jury's verdict provided substantial relief to K&S. Except for the issue of attorney's fees and costs, the jury's damage's award provide K&S the relief it sought in filing the case; resolution of the remaining claims are unnecessary.

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[9] CR 15(b) states:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

[10] *See general, Westerman v. Cary*, 125 Wn.2d 277, 286 (1994).

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"The central question of all mootness problems is whether changes in the circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief."[11] The change in circumstances here was the jury's verdict. Until the jury resolved the takings, tortious interference and fraud claims, the state substantive due process claims were in play.

Since damages are not available to K&S under the Constitutional claims, the Court can no longer provide effective relief to K&S, at least not under those claims. The Constitutional claims should therefore be dismissed as moot.

C. Constitutional Avoidance Doctrine Warrants Avoiding Ruling on Claims

In addition to mootness, the court should **not**, under the constitutional avoidance doctrine, decide the two remaining state constitutional claims.

The jury's verdict and award of damages render the resolution of the due process claims unnecessary. Washington's doctrine of avoiding constitutional issues provides that if cases can be decided on non-constitutional grounds, then courts should not decide the constitutional issues.

In *Tommy P. v. Board of County Commissioners*, the Washington Supreme Court stated "[i]t is a well established principle that this court will not decide an issue on constitutional grounds when that issue can be resolved on other grounds."[12] Further, courts "should not pass on constitutional issues unless absolutely necessary to the determination of the case."[13]

Here, it is unnecessary for this Court to decide the due process claims, especially since K&S has been granted effective relief through the award of damages. Deciding the due process claims may needlessly complicate an already complex case on appeal.

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[11] *Jumamil v. Lakeside Casino, LLC*, 179 Wn. App. 665 (2014).
[12] 97 Wn.2d 385, 391 (1982).
[13] *State v. Hall*, 95 Wn.2d 536, 539 (1981).

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Ruling the claims moot because of the jury's verdict avoids reaching constitutional claims and simplifies the case on appeal.

D. If Claims Aren't Moot, City's Moratorium Process Violated K&S'S Rights to Procedural Due Process

If the court rejects K&S's mootness and constitutional avoidance arguments, and decided to render a decision on the remaining claims, it should rule in K&S's favor.

The Court has already ruled that K&S's procedural due process rights were violated when the City passed the moratorium without providing any notice to K&S. The Court's ruling was based upon: (1) the City having targeted K&S with the moratorium; (2) the City purposely not giving K&S any notice (not even the 24 hour notice it gave to the newspaper) of the City meeting where the moratorium was passed; (3) the City not providing K&S with any written notice of the 60-day post moratorium hearing; (4) City staff purposely not advising the Council with any facts regarding K&S at either the February 27th emergency hearing or the April 11th post-moratorium hearing (not only was K&S not notified, but K&S was not afforded a fair hearing because the decision makers were not fully informed about K&S); and, (5) a ruling for K&S on the unique facts of this case would not require a change in the law related to moratoria. The court should not reverse its ruling and find that the City's total lack of notice violated K&S's rights in this case.

Washington law recognizes that the due process clause of the state Constitution requires advance notice when the target of a moratorium is a few property owners or the moratorium is directed to stop a particular project.[14] In *Berst v. Snohomish County,*

[14] *See Holbrook, Inc. v. Clark County*, 112 Wn. App. 354, 365-66 (2002) ("When one person, or relatively few people, are exceptionally affected by a decision on individual grounds, then such persons may be entitled to basic due process rights, including individual notice."). *Accord Harris v. County of Riverside*, 904 F.2d 497, 501-02 (9th Cir. 1990) (*Harris* court found a violation of procedural due process even though the County was rezoning a "vast area," the change "'exceptionally affected' Harris 'on an individual basis.'").

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Division I addressed whether a moratorium imposition against the Berst's property violated the Berst's right to procedural due process.[15] The *Berst* court analyzed the procedural due process test adopted by the Washington Supreme Court and found a violation of the Berst's procedural due process rights.[16]

The test for procedural due process as set forth by the United States Supreme Court is:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

The *Berst* court held the private interest was the property interest of the Bersts and not a vested right, and there was a risk of erroneous deprivation of that interest because of the procedures used.[17] The *Berst* court found there was "no consideration of information other than that in the county record when the decision was made. Most importantly, there was no prior notice of the 2000 action to impose the moratorium once that decision was made. The obvious substitute procedure here would be for a hearing to consider all relevant information before a decision is made."[18] In other words, the Bersts were not notified in advance of the targeted moratorium, and the decision makers lacked all the relevant information about the Berst's property and their plans. This case is strikingly similar to *Berst*.

The private interest is the property interest of K&S, including the right to develop the property.[19] The due process clause does not just protect vested rights—it

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[15] 114 Wn. App. 245, 254 (2002), *rev. den*., 150 Wn.2d 1015 (2003).
[16] *See In re Young*, 122 Wn.2d 1, 43-44 (1993).
[17] *Berst*, 114 Wn. App. at 255.
[18] *Id*.
[19] *See West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 50 (1986) ("'Although less than a fee interest, development rights are beyond question a valuable right in property.'") (*quoting Louthan v. King*

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protects a private individual's rights in developing its property. There was the risk of erroneous deprivation of K&S's property interest through the moratorium. The decision makers were not informed of K&S's interests and plans for a park-n-fly, and there was no prior notice to K&S before the moratorium was adopted. City staff had their own agenda in pushing the moratorium through: staff wanted to protect the City's interest with its own proposed park-n-fly, and it wanted to protect MasterPark's interests and "keep the big boys out of SeaTac."

As in *Berst*, K&S's procedural due process rights were violated when the City adopted the moratorium with no notice to K&S, and also when the Council was not fully informed of all facts regarding the moratorium, depriving K&S of a fair hearing.

The moratorium adopted by the City did not include a declaration of emergency, thus any cases relied upon by the City to support an argument that no notice was required are easily distinguishable and inapplicable.[20] None of the cases previously cited by the City authorize an exemption from the due process clause when the moratorium is directed at a particular property owner.

Moreover, the City cannot successfully argue that the 60-day hearing satisfied the due process requirements. The Council again was not made aware of K&S's plans, nor was it aware that the moratorium was designed to stop K&S in its tracks. The City also failed to provide written notice to K&S of the post-moratorium hearing. The 60-day post moratorium hearing did not satisfy the procedural due process rights as K&S

County, 94 Wn.2d 422, 428 (1980); *Ackerman v. Port of Seattle*, 55 Wn.2d 400, 409 (1960) ("'Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal.'" *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 962-63 (1998).

[20] *See Matson v. Clark County*, 79 Wn. App. 641, 647 (1995) and *Jablinske v. Snohomish County*, 28 Wn. App. 848, 850 (1981) (Cases did not involve a due process claim, but only claims of failure to comply with statutory notice requirements. Courts are reluctant to second guess a legislative declaration of emergency.).

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was not notified in writing of the meeting, nor was the meeting a fair hearing as the Councilmembers were not informed about K&S's plans.

The unique and egregious facts support a ruling for K&S. Further, ruling that K&S's procedural due process rights were violated would not require a change in the law related to moratoria.

E. City's Actions Violated K&S's Rights to Substantive Due Process

Citizens consent to allowing government to have certain powers. We don't consent to government abusing those powers. A government's abuse or misuse of power is a violation of our fundamental constitutional rights.

As an initial matter, the Court should give great weight to the jury's verdict in deciding whether K&S's substantive due process rights were violated. Because the claim of tortious interference with a business expectancy is similar to the elements of finding a substantive due process violation, the Court should follow the jury's verdict and rule in K&S's favor.

1. The Jury has Decided the Facts to Support a Ruling on Substantive Due Process Claim

The elements of a substantive due process claim are strikingly similar to a tortious interference claim (described below). So a ruling on one claim (tortious interference) would support a ruling on the other claim (substantive due process).

The jury was instructed that it could consider whether the City singled out K&S for arbitrary treatment.[21] In *Pleas v. Seattle*, the Washington Supreme Court recognized that the tort of tortious interference could apply to a municipality.[22]

[21] Jury Instruction No. 9.
[22] 112 Wn.2d 794 (1989).

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Similarly, in *Westmark v. Burien*, the federal court held that the tortious interference and substantive due process claims were analogous for res judicata and sufficient to enter an award of attorneys' fees under 42 USCS § 1988 for Westmark.

In *Westmark Development Corporation v. City of Burien*, Westmark obtained a $10.7 million verdict from the City of Burien on its state law claims.[23] Westmark obtained all the relief it had sought from the City except for attorney's fees. The 9th Circuit held "after that favorable state court determination, the district court should have invoked the principle of constitutional avoidance."[24] Westmark could then recover its attorney's fees under 42 USCS § 1983 provided (1) its federal Constitutional claim was substantial; and (2) its state law claims and its federal Constitutional claim arose out of a "common nucleus of operative fact."[25] The 9th Circuit held both conditions were met—its federal claim was not frivolous and the state and federal claims arose out of the same common nucleus of fact Burien's improper conduct during the permitting process for Westmark's development project.

While K&S tried its claims together, it bifurcated the state Constitutional claims from those claims sent to the jury. The jury returned a verdict for K&S on its tortious interference claim. Because the elements of the tortious interference claim and state substantive due process claims are similar, this Court should avoid ruling inconsistently with the jury's verdict and rule in favor of K&S on its state Constitutional claims.

2. The Court Should Attempt to accept the Jury's Findings

Under CR 39(c), trial judges have the authority to use juries to try claims that would not otherwise be triable as a matter of right by a jury (referred to as an "advisory jury"). The advisory jury process was not formally utilized in this case but provides the

[23] 504 Fed. Appx. 560, 561 (9th Cir. 2013).
[24] *Id*.
[25] *Id*.

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court some guidance on how to apply the jury's hard work in this case. Since the claims are similar, the court should accept the jury's verdict and rule accordingly.

3. The City's Conduct Violated K&S's Substance Due Process Rights

If the Court reaches the merits of K&S's substantive due process claim, then it must examine the City's conduct and find it was arbitrary, capricious, and outrageous.

The Washington Supreme Court explained how government action could violate substantive due process in *Presbytery of Seattle v. King County*: 114 Wn.2d 320 (1990):

> To determine whether the regulation violates due process, the court should engage in the classic 3–prong due process test and ask: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the land owner. 'In other words, 1) there must be a public problem or 'evil,' 2) the regulation must tend to solve this problem, and 3) the regulation must not be 'unduly oppressive' upon the person regulated.' The third inquiry will usually be the difficult and determinative one.[26]

Washington law does not take a narrow view on substantive due process violations. In addition to Washington's unduly oppressive standard for substantive due process violations, Washington also follows the federal rule recognizing substantive due process violations for arbitrary or capricious actions that fail to serve a legitimate public purpose and were tainted by improper motives.[27]

K&S had a property right that is protected, it need not have a vested right to use the property before its rights are constitutionally protected. As explained above, K&S had a property right despite not having a vested right. *Mission Springs* clearly provides that the "right to use and enjoy land is a property right."[28]

a. City of SeaTac improperly used its regulatory or police powers

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[26] 114 Wn.2d 320, 330-31 (1990).
[27] *Cox v. Lynnwood*, 72 Wn. App. 1, 9 (1993).
[28] *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 962-63 (1998) (internal citations omitted).

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The City of SeaTac improperly used its regulatory or police powers for these purposes:

- Protect against competition that may have adversely affected the City's own planned parking structure at the 176th Street Station Area
- Protect MasterPark's interests in the City of SeaTac from other competing parking garages, showing favoritism to a particular business
- Suppressing the value of K&S's 154th Property by eliminating the highest and best use (park-n-fly) to acquire it for less money (akin to pre-condemnation blight).

b. City flip-flopped on the park-n-fly and delayed for improper purposes

- Planning Director Steve Butler and the City Manager Craig Ward wanted the City Council to pass the moratorium primarily to stop K&S from moving forward with its park-and-fly proposal.
- Besides other evidence, Butler testified that the moratorium was intended mainly to target K&S and to stop K&S's park and fly plans. K&S was the only property within the 154th street station area with plans to develop their property.
- The Council then directed city staff to work with K&S on a development agreement for a park-n-fly, but the City eventually reversed course on that promise over 18 months later, forcing K&S to expend considerable resources in planning, designing, and negotiating a DA for a project that was rejected.
- Staff ultimately forced K&S to waste several years on planning various portions of its project that was rejected by the Council and staff.

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c. Mayor's Outrageous conduct was for improper purposes and/or improper means

- Mayor Gene Fisher's testimony showed that he wanted to drive out the immigrants that had moved into the area.
- Mayor Fisher attempted to improperly use zoning to drive up housing and rent prices to force out lower wage earners from the 154th Station Area, which was in close proximity to his property.
- Fisher's motivation was to enhance the value of his own property by regulating the K&S property.
- Fisher would sometimes vote on matters affecting the 154th Station Area and sometimes he would recuse himself based upon a conflict of interest. Fisher's recusal was not rationally based upon a certain criteria—instead, he would vote on certain 154th Station Area matters and recuse himself on other 154th Station Area matters based upon his conflict of interest.

d. City's outrageous conduct in acquiring Property at less than fair market value

- The City, through its agent, intentionally interfered with K&S's lenders to force a foreclosure of the Property to put pressure on K&S into accepting the deal offered by the phantom buyer.
- The City's agent committed fraud in making representations that the agent knew or should have known was false.
- The City interfered with Forbearance Agreement K&S had with Centrum, and by extension, Avatar
- The City used its regulatory powers to force K&S into the Deed in Lieu of Foreclosure by refusing to meet with K&S to discuss modification and extension of the DA.

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IV. CONCLUSION

Because the jury awarded K&S damages, there is no further relief that this court can provide under the two remaining State Constitutional claims. Under the mootness and constitutional avoidance doctrines, the court should therefore not render a decision on those claims.

If the court decides to reach the merits, it should rule for K&S and find the City violated K&S's substantive and procedural due process rights under the State Constitution.

DATED this 25th day of February, 2016.

LANDERHOLM, P.S.

/s/ Phillip Haberthur
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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

1. My name is HEATHER A. DUMONT. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party of this action.

2. On the 25th day of February, 2016, a true and correct copy of the foregoing **PLAINTIFF'S SUPPLEMENTAL BRIEFING ON CONSTITUTIONAL ISSUES** was delivered via email and first class United States Mail, postage prepaid, to the following person(s):

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: February 25, 2016
At: Vancouver, Washington

/s/ Heather Dumont
HEATHER A. DUMONT

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