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Survey Details: Answers Only

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1. Not answered
2. David Spellman, lawyer Peter Vitaliano
3. Vitaliano's residence
4. (o) Richmond Beach
5. dspellman@buchalter.com
6. 05/23/2022
7. 9(c)
8. In December 2021, Peter V. Vitaliano retained my firm and me regarding a November 20, 2021 email that attorney/uphill property owner (Tom McCormick) had sent regarding the beach property (Parcel 905). Vitaliano has also retained me regarding the city's May 12, 2022 offer to purchase Parcel 905) and threat to condemn the parcel. The city should postpone the motion and conduct a proper, transparent, and inclusive process consistent with the principles of equity and inclusion. The public already has some permissive access to the open space beach from the south.

With Seattle's recent plans to close Golden Gardens and Alki early due to dangerous and illegal activities (including multiple fights, shootings, and strong arm robbery), you can understand why Vitaliano had concerns and stress regarding the beach—even before he learned of the city's secret plan. See the Seattle PI article published today and King 5 report, May 17, 2022.

Independent from the public safety concern, the one-lane private road and BNSF's interests restrict access to the beach from the north. The one-lane road creates fire safety and emergency medical services issues. Vitaliano believed the city's policy shared that view—the city has posted for years two road signs—no public beach access and private road. But the purchase offer and condemnation

ordinance ignores that city's expressed policy—no access via the road—and the city has offered no analysis or plan for a change in the expressed policy. Both the neighborhood and Vitaliano have concerns about direct and indirect impacts of the city's proposed unilateral actions and change in policy.

The Landon family and a related trust owned for generations the target parcel and the adjacent parcel. The property was part of estate litigation spanning three years. There is no reason to trigger similar litigation.

After the city in March 2020 declined to purchase the interests in the four parcels that were operated as a unit for decade, Vitaliano purchased the property as part of the Landon's settlement of their family dispute—sixteen months later in July 2021. Vitaliano purchased interest in four tax parcels: 727801-0905, -0906, -0255, and -0320. A house, tideland, and road access. Vitaliano is a professor at the UW and the director of the Stress and Coping project. He hoped to soon retire and live at the property.

Six months ago, attorney/uphill property owner (Tom McCormick) sent Vitaliano the November 20, 2021 email. McCormick asserted the public owned the beach or had a prescriptive easement to it. He proposed putting the beach into a land trust funded by private money; the trust would enforce restrictions on the use of the beach.

Vitaliano promptly retained me to investigate these claims, proposal, and other options. I studied advanced local government law at Georgetown University Law Center. For over 36 years, I have practiced law. I have represented local governments and property owners in disputes including about the Public Records Act (PRA) and Open Public Meeting Act (OPMA) and about land use, road ends, public access, and condemnation. My goal is always to resolve disputes but if required I will represent my clients in litigation. And, my experience includes prevailing twice in the state supreme court in the same case.

My approach starts with understanding the context. Here, the context includes a lawsuit in 1984. On February 15, I obtained from the court's microfiche records a copy of the 1984 lawsuit seeking public ownership or rights to the beach. A member of the Landon family testified they had owned the property and tidelands since 1937. The Landons testified members of the general public had permissively used the beach from time to time for outdoor recreational purposes. The Landons asserted the recreational use immunity statute (RCW 4.24.200 and .210) applied to prevent public ownership and easement. The statute encourages landowners to make their lands available to the public for recreational uses. The court granted judgment holding the public did not own and did not have a prescriptive easement to the beach, under the presumptions imposed by the recreational use statute.

Vitaliano learned he had continuing authority to determine whether to keep the land open or close to the public, just as King County did in 2020 case involving a trail. *Schwartz v. King Cnty.*, 14 Wn. App. 2d 915, 933, 474 P.3d 1092, 1101 (2020). He was encouraged to learn the supreme court had ruled property owners like him may impose restrictions on the use. *Cregan v. Fourth Mem'l Church*, 175 Wn.2d 279, 285, 285 P.3d 860, 864 (2012).

Instead of opening a dialogue and engaging in transparent public process involving stakeholders and my client, the city has rushed forward in a stealth process. On March 24, McCormick contacted the assessor's mapping supervisor about changing the legal description for my client's property.

A month and a half later, on Thursday, May 12, the city sent my client a letter offering to purchase or condemn Parcel 905. But the offer letter does not refer to the council's plan to update its schedule on Monday, May 16 to conduct this hearing a week later on Monday, May 23.

The offer letter refers to an appraisal by CBRE, but the letter did not include the appraisal. My client has sent an email requesting a copy of the appraisal, but he has not received the appraisal.

Two days after the city updated its agenda on May 18, we contacted the Richmond Beach Preservation Association to confirm they had submitted a PRA request regarding the city's proposed actions. I understand the city's target response to those requests will be in August—long after the proposed condemnation—that's unfair. The neighborhood and my client are entitled to review the extent of the public involvement and the city department review. And, I have drafted additional requests.

Suffice to say Vitaliano cannot participate in a meaningful discussion with the city without access to those records and additional information.

The city's comprehensive plan refers to Public Open Space land and Private Open Space Land. LU 19-20. The plan's goals for parks, recreation, and open space states: "Goal PRV: Engage the community in park, recreation and cultural services decisions and activities. Policies. Policy 5.1: Encourage consistent and effective public involvement in the short and long-range park planning process." The city has failed to satisfy that goal and the quoted policy for public involvement. The involvement appears to have been driven in favor of one person—to the exclusion of the property owners and other stakeholders.

The Parks, Recreation, and Open Space (PROS) plan does not identify the space as a priority—at most it is in the great idea category along with the BNSF Agreement for Public Access.

BNSF has opposed a public access from the in the past. And, why has the city failed to disclose any discussions with BNSF?

The status quo is: Parcel 905 is private open space with permissive recreational use by the public with limited public access from 27th Avenue. The city has offered no explanation why a blizkreig acquisition and condemnation is necessary. The city has no reasonable explanation to forgo normal planning. One would expect a variety of disciplines to be involved including public safety, environmental impacts, traffic study, pedestrian study, risk management, contamination, operational plans, budgets, etc.

Absent these studies, the counsel is not protecting the public fisc. And the focus on acquiring Parcel 905 – ignores the impacts and damage to the four parcels with interests—and which were operated as a unit for decades—and the neighborhood. My client as the owner of this unit of parcel has property right to exclude others, a right to be nuisance free, address the seawall, and impose reasonable restrictions. State constitutional and statutory law requires the city to compensate the property owner for taking under eminent domain the part of the land not taken and the remaining part including the referenced bundle of rights. *State v. McDonald*, 98 Wn.2d 521, 525, 656 P.2d 1043, 1047 (1983). Wash. Const. art. I, § 16 (Eminent Domain). RCW 8.12.190(2)-(3). And, the city's offer fails to disclose any consideration of those critical factors.

The photographs referenced in the proposed ordinance are misleading. They fail to show the property at high tide, the feet of erosion, the seawall in need of repair, narrow access, etc.

The PRA's preamble is: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Preamble to the PRA. The city is failing to abide by that goal.

Very truly yours,
BUCHALTER
A Professional Corporation
By
David Spellman

9. Oppose

Thank you,
City of Shoreline

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