

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY**

THE CITY OF BELLINGHAM

Plaintiff,

v.

**PEOPLE FOR A HEALTH BAY, a
political committee; ANNA HALL- EVANS
Committee Chair; FRANCES BADGETT,
Secretary; ELIZABETH BRITT,
Treasurer; PATTY BEAN, Campaign
Manager; LISA MCSHANE, Officer;
MARISSA ROSATI, Officer; MITCH
FRIEDMAN, Officer,**

Defendants,

v.

**PORT OF BELLINGHAM, a
Washington Municipal Corporation;
STATE OF WASHINGTON Department
of Natural Resources; STATE OF
WASHINGTON, Department of Ecology;
GEORGIA-PACIFIC WEST, INC., an
Oregon Corporation; GEORGIA-PACIFIC
CORPORATION, a Georgia Corporation,**

**Potentially Interested
Party Defendants.**

No.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1 COMES NOW the City of Bellingham, by and through its undersigned
2 attorneys, and seeks a declaratory judgment pursuant to RCW 7.24 on the
3 validity of an initiative measure with corresponding injunctive relief, and in support
4 the City alleges as follows:
5

6 **I. PARTIES AND JURISDICTION**

7 **1.1** Plaintiff City of Bellingham (“City”) is a municipal corporation
8 organized and existing under the laws of the State of Washington, and doing
9 business in Bellingham, Whatcom County, Washington.
10

11 **1.2** Defendant People for a Healthy Bay, is a political committee
12 registered with the State Public Disclosure Commission. People for a Healthy
13 Bay is located in the City of Bellingham, and it is the organization responsible for
14 generating and submitting the initiative at issue (“Initiative”), a copy of which is
15 attached as Exhibit A. The remaining individual defendants are all of the officers
16 of the People for a Healthy Bay as listed with the organization’s Public Disclosure
17 Commission Political Committee Registration, and all reside in the City of
18 Bellingham.
19

20 **1.3** Potentially Interested Party Defendant Port of Bellingham (“Port”) is
21 a municipal corporation organized and existing under the laws of the State of
22 Washington, and doing business in Bellingham, Whatcom County, Washington.
23 The Port is a property owner with an interest in a portion of the property identified
24 in the Initiative and is a potentially liable party under MTCA with respect to a
25 portion of the property identified in the Initiative.
26
27

1 Bellingham Bay Demonstration Pilot. The City has taken these steps pursuant to
2 the declared policy of MTCA to protect human health and the environment, to
3 achieve regulatory compliance, and to address its potential liability under MTCA.
4

5 **2.2** As part of its ongoing effort to comply with the MTCA, on or about
6 December 14, 2005, the City Council authorized and the City subsequently
7 entered into an interlocal agreement with the Port regarding remediation at the
8 Cornwall Avenue Landfill and the Central Waterfront Site (“Remediation
9 Interlocal”). The Remediation Interlocal has the force and effect of contract under
10 Washington law. The Remediation Interlocal provides, in part, as follows:
11

12 9. Coordination for Sediment Remediation at the Whatcom
13 Waterway Site. Surface and/or subsurface sediment contamination
14 is known to exist along the shorelines of the Chevron Property and
15 the Colony Wharf Property which is included in the Department of
16 Ecology designated Whatcom Waterway Site. The remediation will
17 meet regulatory requirements including the use of the
18 Environmental Protection Standards. In this regard, the City will
19 support the proposed cleanup plan known as Alternative K, which
20 the Port submitted to the Department of Ecology in 2004 for the
21 remediation of the Whatcom Waterway Site.

22 The Remediation Interlocal is attached hereto as Exhibit B.

23 **2.3** Alternative K, which was developed using the criteria set forth in the
24 MTCA and in corresponding WAC provisions, had then been submitted to
25 Ecology for consideration. Alternative K, now known as Alternative 6, applies
26 only to the Whatcom Waterway Site, as defined by Ecology. Alternative 6 is
27 depicted schematically in Exhibit C which is attached hereto.

28 **2.4** Alternative 6, along with other alternatives, will be published by
Ecology in a supplemental remedial investigation and feasibility study (“RI/FS”) in

1 the coming months. At that time, there will be a period of public comment on the
2 RI/FS. Additional public comment periods will occur at various stages of the
3 MTCA process, including at the time of publication of the Cleanup Action Plan
4 and Consent Decree. The City's role in this process is administrative, not
5 legislative, in nature.
6

7 **2.5** In January 2005, the City Council authorized and the City
8 subsequently entered into an interlocal agreement, under Chapter 39.34 RCW,
9 with the Port to address in a comprehensive manner issues necessary for the
10 successful redevelopment of the Bellingham waterfront ("New Whatcom
11 Interlocal"). Under the New Whatcom Interlocal, the City and Port will jointly
12 develop a New Whatcom Development Plan ("NWDP") to direct the development
13 of the area that has been designated as the New Whatcom Special Development
14 Area ("SDA") which includes the area that is identified in the Initiative. The New
15 Whatcom Interlocal provides, at paragraph 7, as follows:
16
17

18 The Port and the City will cooperate and support one another's
19 efforts with regulatory agencies to accommodate the redevelopment
20 efforts consistent with the NWDP.

21 The New Whatcom Interlocal provides, at paragraph 9.h, as follows:

22 The City and the Port further agree that the NWDP shall be
23 consistent with and harmonious with the Port's remediation plans
24 approved by the Washington State Department of Ecology. Unless
25 agreed to in the NWDP, the City will not impose any additional
26 environmental mitigation or environmental remediation
27 requirements for the development in the SDA.

28 The New Whatcom Interlocal provides, at paragraph 9.j, as follows:

The Port is responsible for the environmental remediation of certain
known environmental conditions on the Port owned property and

1 the Whatcom Waterway, except for the City's compliance with the
2 environmental protection standards in the course of City projects.

3 **2.6** A State Environmental Protection Act ("SEPA") review will be
4 conducted with respect to the NWDP and the remediation projects.

5 **2.7** The City and Port will develop the NWDP which will include specific
6 land uses, building sites, public parks, open space, infrastructure and among
7 other things, environmental protection standards. The NWDP will constitute the
8 final land use and shoreline development agreement for the development of the
9 New Whatcom SDA.
10

11 **2.8** On June 5, 2006, the Bellingham City Council passed an ordinance
12 adopting a new Comprehensive Plan under the Washington State Growth
13 Management Act, RCW 36.70A. The new Comprehensive Plan constitutes the
14 broad statement of goals and policies that direct the physical development of the
15 City. The Comprehensive Plan contains goals and policies that address in a
16 general manner, waterfront development, environmental remediation, and City-
17 Port cooperation.
18

19 **2.9** On May 30, 2006 Anna Hall-Evans of the Bellingham Bay
20 Foundation submitted an initiative petition proposing the text set forth in Exhibit A.
21 The Whatcom County Auditor determined that the Initiative sponsors gathered
22 sufficient signatures to support the Whatcom County Auditor's Certificate of
23 Sufficiency dated August 8, 2006.
24

25 **2.10** On August 14, 2006 the Bellingham City Council considered the
26 Initiative Petition and rejected it. If the Court determines that the initiative is
27

1 within the scope of initiative power, the City will forward the measure to the
2 Whatcom County Auditor for placement on the November 2006 general election
3 ballot.

4
5 **2.11** The Bellingham City Charter (“Charter”), Section 10.01, provides as
6 follows:

7 The registered electors of the City may propose any ordinance, or
8 amendments to any existing ordinance, relating to matters within
9 the legislative, as distinguished from administrative, powers of the
City as a corporate entity.

10 **III. BASIS FOR DECLARATORY RELIEF**

11 **3.1** The Initiative proposes a measure which is beyond the scope of
12 initiative power under the Charter and state law. Accordingly, a pre-election
13 declaratory judgment is appropriate.
14

15 **3.2** This matter is ripe for declaratory relief because a dispute exists as
16 to the validity of the initiative. A declaratory judgment action is proper to
17 determine the validity or invalidity of the Initiative for the purpose of determining
18 whether the measure should be submitted for placement on the November 2006
19 ballot for the municipal general election. Unless the Initiative is determined to be
20 within the scope of the initiative power by the Court, it cannot be properly placed
21 on the ballot under the Charter and state law.
22

23 **3.3** First Basis for Declaratory Judgment that the Measure Lies Beyond
24 the Scope of Initiative Power: The proposed measure, in its fundamental and
25 overriding purpose, does not relate to a matter that falls within the legislative
26 power of the City, but is instead administrative in nature. The environmental
27

1 remediation, including the process of selecting the appropriate remedy is
2 governed by MTCA and applicable WAC provisions, and is not subject to the
3 legislative power of the City. The agency responsible for administration of MTCA
4 is Ecology, not the City. The City has no legislative authority over the selection of
5 the appropriate environmental remedy in the Whatcom Waterway and the former
6 Georgia-Pacific mill site. Additionally, MTCA establishes criteria to evaluate a full
7 range of potential remedies and facilitate public participation at various points in
8 the evaluation process. MTCA explicitly places responsibility for facilitating that
9 public participation processes on Ecology, not the City. The City's action in
10 participating in the MTCA process administered by Ecology is purely
11 administrative in nature and is outside the scope of initiative power. The City has
12 the ability to comment on various alternatives in the context of the policies and
13 criteria established in the MTCA and the applicable WAC provisions. The
14 Initiative attempts to circumvent this state mandated process in improperly
15 directing the City's administrative participation therein.

19 **3.4 Second Basis for Declaratory Judgment that the Measure Lies**
20 **Beyond the Scope of Initiative Power:** Assuming for the sake of argument that
21 the subject matter of the Initiative somehow lies within the legislative power of the
22 City, the measure constitutes a comprehensive plan goal or policy and/or a
23 development regulation which state law has determined lies outside of the scope
24 of initiative power. The measure constitutes a statement of a goal or policy that
25 seeks to direct the physical development of the City. The measure would control
26 development and/or land use activities because it would require a particular type
27

1 of development in the form of the remediation specified and it would establish a
2 pre-requisite to further development. The proposed measure seeks to infringe on
3 the exclusive grant of legislative power to the City Council as the body
4 responsible for adopting comprehensive plan policies, shoreline management
5 policies, development regulations, and other land use controls. The State Growth
6 Management Act (Chapter 36.70A RCW), the Planning Enabling Act (Chapter
7 36.70 RCW), and the State Environmental Policy Act (Chapter 43.21C RCW) do
8 not allow for direct legislation in this area. Further, the comprehensive,
9 collaborative, multi-disciplinary, and multi-agency nature of environmental
10 remediation combined with waterfront redevelopment is not amenable to direct
11 legislation irrespective of whether the proposed measure constitutes a
12 comprehensive plan policy or a development regulation.
13
14

15 **3.5** The Initiative infringes on the authority delegated to the City Council
16 by RCW 39.34 to approve entry by the City into interlocal agreements with other
17 governmental bodies.
18

19 **3.6** Third Basis for a Declaratory Judgment that the Measure Lies
20 Beyond the Scope of Initiative Power: Under the Charter, an initiative may only
21 propose an ordinance. An Initiative may not propose a resolution. The proposed
22 measure does not constitute an ordinance because it does not contain the
23 requisite enacting language under the City Charter. Rather, the measure uses
24 enacting language that is in the nature of a resolution. Likewise, the first
25 sentence of the body of the measure is aspirational in nature. The remainder of
26 the measure does not establish a general, uniform, permanent rule of specific
27

1 conduct. Rather, the measure seeks to advocate approval of a plan that applies
2 to an isolated portion of the Bellingham waterfront without defining the specific
3 conduct mandated.

4
5 **3.7** The proposed measure is invalid for the additional reason that it
6 unconstitutionally impairs the contracts between the City and the Port.

7 **3.8** Without court intervention, the City will be forced to expend public
8 funds to conduct an election on this invalid initiative.

9
10 **IV. PRAYER FOR RELIEF**

11 WHEREFORE, the City of Bellingham prays: for a judgment declaring that
12 Initiative No. 1-2006 entitled "Cleanup Comes First: A Healthy Bay Initiative" is
13 beyond the scope of initiative power, is otherwise invalid, and should not be
14 placed on the ballot; for injunctive relief precluding placement of Initiative No. 1-
15 2006 on the ballot; and for such other relief that the court deems appropriate.

16
17 Respectfully submitted this ____ day of August, 2006.

18
19 CITY OF BELLINGHAM

20
21
22 _____
23 Joan Hoisington, WSBA #7966
24 City Attorney
25 Amy Kraham, WSBA #19959
26 Assistant City Attorney
27 Peter M. Ruffatto, WSBA #24366
28 Assistant City Attorney