

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANE TRANSIT, a Washington non-profit corporation, and MARK BAERWALDT, for themselves and on behalf of taxpayers,

Plaintiffs,

v.

SOUND TRANSIT, officially known as the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Washington municipal corporation,

Defendant.

NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Sane Transit is a Washington non-profit corporation with its principal place of business in King County, Washington. Sane Transit pays sales taxes in Seattle, Washington, within the taxing jurisdiction of Sound Transit.

2. Plaintiff Mark Baerwaldt is a resident of King County, Washington. Mr. Baerwaldt pays sales and vehicle excise taxes in Seattle, Washington, within the taxing jurisdiction of Sound Transit.

3. Plaintiffs bring this action as a taxpayer challenge to Sound Transit's light-rail project.

4. Defendant Sound Transit, officially known as the Central Puget Sound Regional Transit Authority, is a Washington municipal corporation with its principal place of business in King County, Washington.

5. The Court has jurisdiction of this matter and venue is proper in King County.

II. FACTS.

Promises Made

6. In March 1995, voters rejected a \$6.7 billion, 16-year mass-transit plan presented by Sound Transit, then commonly known as the "RTA." In response to the rejection, Sound Transit extensively revised the transit plan, reducing its scope, and thereby reducing its cost to \$3.9 billion, and cutting its construction time to 10 years.

7. The principal purpose for the revisions was to win voter support. The revised plan was called "Sound Move, the Ten-Year Regional Transit System Plan" (the "Ten-Year Plan"). Sound Transit's publication describing the Plan is attached as Exhibit 1. Sound Transit promised voters that adoption of the Ten-Year Plan was the solution to traffic congestion. Ex. 1 at 1. Sound Transit represented that its light-rail line would have the capacity of a 12-lane freeway. Ex. 1 at 5.

8. The Ten-Year Plan was presented to voters in the fall of 1996. The ballot title read as follows:

BALLOT TITLE

PROPOSITION NO. 1
REGIONAL TRANSIT SYSTEM

To implement a regional rail and express bus system linking Tacoma, Seattle, Bellevue, Everett, other cities and SeaTac Airport, shall the Regional Transit Authority impose a sales and use tax of up to four-tenths of one percent and a motor vehicle excise tax of three-tenths of one percent to provide the local share of funding towards the \$3.9 billion estimated cost of the system, as provided in Resolution 75 and the “Ten-Year Regional Transit System Plan”?

A copy of the voters’ pamphlet describing the revised proposition is attached as Exhibit 2.

9. The explanatory statement included in the voter’s pamphlet along with the ballot measure stated:

Electric light-rail would provide all-day, frequent, two-way service to employment, retail and residential centers, including between SeaTac, SeaTac Airport, Tukwila, Southeast Seattle, downtown Seattle, First Hill, Capitol Hill, University District (and, if additional funding is secured, Roosevelt District and Northgate)

Voter’s Pamphlet, Ex. 2.

10. The ballot measure specifically referenced the publication issued by Sound Transit to explain the Ten-Year Plan. The publication gave a detailed description of the proposed rail line from the University District to SeaTac, and it gave strong assurances that the proposed Plan would stay on schedule and within budget:

Sound Move is based on extremely conservative costs and ridership assumptions and methodologies . . . In addition, the

RTA has adopted strict cost management principles to make certain Sound Move stays on schedule and within budget.

.....
The RTA is committed to the entire system being completed and operational within 10 years.

Ten-Year Plan at 31, 35, Ex. 1.

11. On November 5, 1996, based on Sound Transit's representations, voters in King, Pierce, and Snohomish Counties approved the \$3.9 billion, Ten-Year Plan.

12. The Plan approved by voters provided that Sound Transit would build a 21-mile light-rail system that would run from the University District to Capitol Hill, First Hill, through downtown Seattle and to Sea-Tac Airport. In the ballot title, the voters' pamphlet, and the Ten-Year Plan, the agency repeatedly represented that construction of the light-rail line would be completed and the line would be in operation within 10 years, by 2006. Of the \$3.9 billion approved by voters for the Plan, the agency represented that the entire light-rail line, including a 1.6 mile line in Tacoma, would cost \$1.8 billion. Ten-Year Plan at 34, Ex 1.

13. In the Ten-Year Plan, the agency promised to refrain from using taxpayer funds for construction after 2006 unless approved by the voters in a future vote. Ten-Year Plan at 33, Ex 1.

14. By approving the ballot measure, voters authorized an increase in sales and use taxes and motor vehicle excise taxes to pay for the Ten-Year Plan. The Ten-Year Plan assumed the remaining cost of construction would be paid by a grant from the federal government and from issuing bonds and repaying them over 30 years.

15. Sound Transit sold \$300 million in bonds in December 1998 to fund the Ten-Year Plan. Sound Transit plans to use portions of the proceeds of these bonds and the proceeds of additional bonds it plans to sell in the future to construct its light-rail line.

16. Sound Transit is using proceeds of taxes approved by the voters to make payments on the bonds it sold in 1998, and it plans to use the proceeds of voter approved taxes to repay bonds in the future.

Promises Broken

17. In December 2000, four years after voters approved the Ten-Year Plan, Sound Transit acknowledged its previous timetable and cost estimates were unrealistic and announced it would cost at least an additional billion dollars and an additional three years to build the 21-mile light-rail line approved by voters.

18. On April 4, 2001, the Office of the Inspector General for the U.S. Department of Transportation issued an Interim Report that raised numerous questions about Sound Transit's light-rail timetable, construction-cost estimates, and the agency's ability to pay for a light-rail system. A copy of the Interim Report ("Report") is attached as Exhibit 3. The Report noted that "the Project endorsed by the voters included completing a 20-mile system . . . and local funding was secured on that basis." *Id.* at 4. It also specifically criticized Sound Transit for pushing for a \$500 million grant agreement "despite information that the Project's cost and schedule were changing significantly." *Id.* at 8. As late as September 2000, Sound Transit estimated the light-rail system would cost \$2.5

billion. *Id.* at 6. As of April 2001, the estimate for the original 21-mile system, including financing costs and the project reserve, was \$4.164 billion. *Id.* In addition, the Report stated: “Changes to the Project, including its cost estimates and schedule, have resulted in mounting opposition to, and confusion about, the proposed system.” *Id.* at 12. As a consequence of the federal government’s findings, federal funding was put on hold.

19. On November 29, 2001, the Sound Transit Board abandoned the Ten-Year Plan approved by the voters and, instead, adopted a proposal to use the voter-approved funds to build a 14-mile light-rail line from downtown Seattle to Tukwila. Unlike the line approved by the voters, this line would not serve the University District, Capitol Hill, First Hill or any other neighborhood north of downtown, nor would it go as far south as Sea-Tac Airport. Sound Transit estimates the cost of its revised plan, including financing costs during construction, at \$2.86 billion, significantly more than the \$1.8 billion figure given to the voters as the cost of the entire 21-mile light-rail line from the University District to a station south of the airport, plus the 1.6 mile Tacoma line.

20. Sound Transit does not plan on completing construction of the 14-mile light-rail line until 2009 at the earliest, more than three years after the voter-approved deadline of 2006.

21. Sound Transit estimates that the 14-mile light-rail line it now plans to build will transport only 42,500 people daily by 2020, less than one-third of the 127,600 people that it said the 21-mile voter-approved light-rail line would transport daily by 2020. See Sound Transit’s 11/17/01 SEPA Addendum at 5, a copy of which is attached as

Exhibit 4. Contrary to being the solution to traffic congestion as it told the voters in 1996, Sound Transit now admits that building the 14-mile light rail line will have no material effect on traffic congestion. *Id.* at 13.

22. On February 4, 2002, plaintiffs demanded that Sound Transit refrain from spending taxpayer funds on the 14-mile light-rail project unless and until the voters approved expending tax funds for that project. A copy of plaintiffs' demand letter, without exhibits that are duplicated as Exhibits 1 and 2 hereto, is attached as Exhibit 5. Sound Transit never responded to Sane Transit's demand.

23. Sound Transit plans to begin construction of its 14-mile light-rail project without any further vote of the people.

24. Absent a new vote of the people, or a court declaration that it may use taxpayer funds approved in 1996 to finance its 14-mile light-rail project, there is substantial uncertainty regarding whether Sound Transit is legally authorized to use taxpayer funds to repay the bonds that it will use to finance the project. On information and belief, this uncertainty will prevent Sound Transit from obtaining an opinion of bond counsel in the form customarily required to sell municipal bonds at favorable interest rates. This will prevent Sound Transit from selling additional bonds, absent a vote of approval by the people or a judgment declaring that Sound Transit has the legal authority to use taxpayer funds on this project.

25. Sound Transit has over \$700 million in taxpayer funds and in proceeds from its first bond sale available to pay its construction expenses. Before completion of

its 14-mile light-rail project, Sound Transit will exhaust those funds as well as the hundreds of millions of dollars in taxes it collects during construction, and it will be forced to sell additional bonds if it is ever to complete construction of its 14-mile light-rail project. If Sound Transit is unable to sell additional bonds, it will be unable to complete its 14-mile light-rail project.

26. Sound Transit has decided to commence construction of its 14-mile light-rail project despite the uncertainty regarding its ability to sell the bonds needed to complete construction.

27. On February 4, 2002, plaintiffs requested that the Washington Attorney General take whatever steps were necessary to stop Sound Transit from spending taxpayer funds on its 14-mile light-rail project. A copy of plaintiffs' letter to the Attorney General is attached as Exhibit 6.

28. In a letter dated April 3, 2002, the Attorney General stated that there was substantial uncertainty regarding whether Sound Transit had authority to spend taxpayer funds on the 14-mile light-rail line. She concluded, however, that this case did not present the sort of clear violation of law that would warrant her interference in a matter of primarily local concern, and declined to bring suit to enjoin Sound Transit's expenditure of taxpayer funds to construct the 14-mile light-rail line. A copy of the Attorney General's letter declining to act is attached as Exhibit 7.

29. Sound Transit continues to push forward with its light-rail project, ignoring the substantial differences between the current plan and the Ten-Year Plan

approved by voters. The agency has not officially broken ground on the 14-mile light-rail system. However, Sound Transit plans to begin spending taxpayer funds on construction of the line late this summer or early in the fall, unless restrained by this Court.

30. Sound Transit hopes to extend its 14-mile line north to the University District and south to the airport some day. However, as of today, six years into the Ten-Year Plan, it has no funds for expansion, no timetable for expansion, and can give no assurance that expansion will ever occur.

III. CAUSES OF ACTION

Government Agency's Duty

31. When, as here, the law requires a vote of the people before an agency may spend taxpayer funds on a public project, the agency must build the project in substantially the same form as approved by the voters. An agency may not use taxpayer funds to build a project that differs substantially from the project approved by the voters.

32. Sound Transit is asking the voters to accept a light-rail system that is substantially different from and markedly inferior to the one that they were promised they would receive when they voted to spend their tax money for light-rail. Sound Transit is not authorized to use tax receipts to construct this substantially different and markedly inferior line without another vote of the people.

Declaratory Relief

33. There is an actual, present and existing dispute between the parties as to (1) the legality of Sound Transit's use of taxpayer funds for the construction and operation

of a light-rail line that the voters did not approve and (2) the legality of Sound Transit's use of taxpayer funds to make payments on bonds issued to fund the construction and operation of a light-rail line that the voters did not approve.

34. Plaintiffs are entitled to a judgment declaring that (1) Sound Transit's use of taxpayer funds for the construction and operation of its 14-mile light-rail line is unlawful, barring voter approval, and (2) Sound Transit's use of taxpayer funds to make payments on bonds whose proceeds are used to construct and operate its 14-mile a light-rail line is unlawful, barring voter approval.

Injunctive Relief

35. If Sound Transit expends taxpayer funds to construct and operate its 14-mile light-rail project, the harm to the taxpayers will be irreparable. The taxpayers will not be able to recover funds illegally expended.

36. Plaintiffs do not have an adequate remedy at law for Sound Transit's illegal expenditure of taxpayer funds.

37. Plaintiffs are entitled to equitable relief enjoining Sound Transit from spending taxpayer funds to construct and operate its 14-mile light-rail line, or to pay off bonds whose proceeds were used for those purposes, barring voter approval.

Attorney Fees and Costs

38. Through this action, plaintiffs will prevent Sound Transit from spending, and in all likelihood wasting, billions of dollars of the taxpayers' money without authorization. Plaintiffs are preserving a fund for the benefit of the taxpayers.

39. Plaintiffs are entitled to an award of attorney fees and costs for pursuing this action from the fund preserved, so that the costs of this action will be equitably born by all those who benefit from it.

WHEREFORE, plaintiffs pray for:

1. A declaratory judgment that (1) Sound Transit's use of taxpayer funds for the construction and operation of its 14-mile light-rail line is unlawful, barring voter approval, and that (2) Sound Transit's use of taxpayer funds to make payments on bonds whose proceeds are used to construct and operate its 14-mile a light-rail line is unlawful, barring voter approval;

2. A permanent injunction prohibiting Sound Transit from spending taxpayer funds to construct and operate its 14-mile light-rail line, or to pay off bonds whose proceeds were used for those purposes, until such time as the voters approve the expenditure;

3. Attorney fees and costs pursuant to the common fund doctrine; and

4. Such other relief as this Court deems just and equitable.

DATED this _____ day of May, 2002.

HELSELL FETTERMAN LLP

By _____
Bradley H. Bagshaw, WSBA #11729
David F. Jurca, WSBA #2015
Connie K. Haslam, WSBA #18053
Attorneys for Plaintiffs

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