

Hearing Date: September 9, 2024
Hearing Time: 9:00 a.m.
Judge/Calendar: Hon. Anne Egeler

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

SAVE THE DAVIS-MEEKER GARRY
OAK,

No. 24-2-01895-34

Plaintiff,

**PLAINTIFF’S MOTION TO SET
AMOUNT OF SUPERSEDEAS
BOND**

v.

DEBBIE SULLIVAN, in her capacity of
Mayor of Tumwater

Defendant.

I. INTRODUCTION

Pursuant to Rule 8.1 of the Washington Rules of Appellate Procedure (“RAP”), Plaintiff Save the Davis-Meeker Garry Oak hereby moves this Court for an order setting the amount of a supersedeas bond to stay the effectiveness of this Court’s Order Granting Motion to Dissolve TRO (May 31, 2024) pending review by Division II of the Washington Court of Appeals.

II. EVIDENCE RELIED UPON

This motion relies on the accompanying declaration of Bryan Telegin (August 12, 2024; herein, “Telegin Decl.”) and on the pleadings and filings herein.

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1 **III. OVERVIEW OF THE CASE**

2 On May 24, 2024, Plaintiff Save the Davis-Meeker Garry Oak filed the complaint in this
3 matter seeking to enjoin Debbie Sullivan, the Mayor of the City of Tumwater, from directing a
4 400-year-old oak tree known as the Davis Meeker oak to be cut down. (See Complaint for
5 Declaratory and Injunctive Relief, Including Temporary Restraining Order (May 24, 2024).)
6 Plaintiff’s primary claim was that because the tree is listed as an historic property on the City’s
7 Register of Historic Places, it may not be cut down under the City’s Historic Preservation
8 Ordinance without prior review and approval by the Tumwater Historic Preservation Commission.
9 (Id. at 6, ¶ 32.)

11 The same day Plaintiff filed the complaint, the Honorable Sharonda D. Amamilo granted
12 Plaintiff’s request for a temporary restraining order (“TRO”), providing that “Defendant shall
13 immediately cease and desist from all efforts to remove the Davis Meeker Garry Oak until further
14 court order.” (Order Granting Temporary Restraining Order (May 24, 2024).) Counsel for the
15 Mayor also filed a motion to dissolve the TRO. (See Defendant’s Emergency Motion to Dissolve
16 Temporary Restraining Order) (May 24, 2024).)

18 On May 28, 2024, Plaintiff filed a response to the Mayor’s motion to dissolve the TRO,
19 together with a cross-motion seeking to extend the TRO. (See Response to Motion to Dissolve
20 Temporary Restraining Order and Cross-Motion to Extend Temporary Restraining Order to July
21 30, 2024 (May 28, 2024).) Plaintiff later requested that its cross-motion be treated as one for a
22 preliminary injunction. (See Telegin Decl., Ex. A at 10 (requesting that this Court “construe
23 plaintiff’s motion as one to impose temporary injunction as opposed to extend the TRO”).
24

25 The cross-motions went to hearing on Friday, May 31, 2024. At the conclusion of that
26 hearing, this Court granted the Mayor’s motion to dissolve the TRO, denying Plaintiff’s cross-

1 motion for a preliminary injunction, and ruling that the Mayor may lawfully cut down the Davis
2 Meeker oak without the approval of the Tumwater Historic Preservation Commission. (*See* Order
3 Granting Motion to Dissolve TRO (May 31, 2024).) Specifically, this Court ruled that “[t]he
4 Mayor’s decision to proceed is compliant with the code” and that “[t]here was not an obligation to
5 obtain a permit before removing a historic tree as opposed to a historic structure[.]” (*Id.* (transcript
6 of Court’s oral ruling at 3:17–20).) On this point, the Court appears to have accepted at face value
7 the argument put forward by the Mayor’s attorney during his oral rebuttal argument, without any
8 citation to the code, that the City’s Historic Preservation Ordinance “does not apply because a tree
9 is not a structure” and that “the definition of structure applies to man-made constructs, not trees.”
10 (Telegin Decl., Ex. A at 13.)
11

12 Following the Mayor’s attorney’s statement that the tree could be cut down as early as
13 Monday, June 3, 2024, this Court did, however, extend the TRO until Wednesday, June 5, 2024,
14 to give Plaintiff “a meaningful right of appeal.” (Order Granting Motion to Dissolve TRO at 1.)
15

16 Following this Court’s ruling, Plaintiff filed an emergency appeal to Division II of the Court
17 of Appeals, and later filed a motion for an injunction on appeal to prevent the Mayor from cutting
18 down the tree. On July 23, 2024, Division II Commissioner Aurora R. Bearse issued a ruling on
19 that motion, holding that the proper procedure for seeking a stay of this Court’s Order allowing the
20 tree to be cut down is to file a motion with this Court to set the amount of a supersedeas bond under
21 RAP 8.1. A copy of Commissioner Bearse’s ruling may be found at Exhibit B to the accompanying
22 Declaration of Bryan Telegin. Pages 2 to 5 of her ruling directed Plaintiff to file a motion with this
23 Court to set the amount of a supersedeas bond under RAP 8.1.
24

25 Under RAP 8.1(b), “Any party to a review proceeding [before the Court of Appeals] has
26 the right to stay enforcement of a money judgment or a decision affecting real, personal or

1 intellectual property, pending review.” In turn, RAP 8.1(b)(2)—titled “Decision Affecting
2 Property”—provides, in relevant part:

3 Except where prohibited by statute, a party may obtain a stay of
4 enforcement of a decision affecting rights to . . . use of real property
5 . . . by filing in the trial court a supersedeas bond or cash, or alternate
6 security approved by the trial court pursuant to subsection (b)(4).

7 In turn, RAP 8.1(c)(2) sets forth the factors that this Court must use to set the amount of a
8 supersedeas bond:

9 The supersedeas amount shall be the amount of any money
10 judgment, plus interest likely to accrue during the pendency of
11 appeal and attorney fees, costs, and expenses likely to be awarded on
12 appeal entered by the trial court plus the amount of the loss which
13 the prevailing party in the trial court would incur as a result of the
14 party’s inability to enforce the judgment during review. Ordinarily,
15 the amount of loss will be equal to the reasonable value of the use of
16 the property during review.

17 RAP 8.1(c)(2).

18 Pursuant to RAP 8.1, Plaintiff Save the Davis-Meeker Garry Oak now requests that this
19 Court set the amount of a supersedeas bond to stay this Court’s May 31, 2024 Order Granting
20 Motion to Dissolve, in which this Court (a) dissolved the TRO previously put in place to prevent
21 the Mayor of Tumwater from unlawfully cutting down the tree, (b) denied Plaintiff’s cross-motion
22 for a preliminary injunction, and (c) held that the Mayor may lawfully proceed to cut the tree down
23 without first obtaining the approval of the Tumwater Historic Preservation Commission. For the
24 reasons below, Plaintiff requests that the supersedeas bond be set at the nominal amount of \$200.00.

25 **IV. ARGUMENT**

26 As quoted above, RAP 8.1(c)(2) requires this Court to set the amount of a supersedeas bond
as the sum of three values: (1) any money judgment awarded, plus interest likely to accrue on appeal;
(2) attorney’s fees, costs, and expenses likely to be awarded; and (3) the amount of loss the prevailing

1 party is likely to incur as a result of not being able to use the property as he or she desires during the
2 course of appellate review. We address each of these values below.

3 **1. There was no money judgment.**

4 Under RAP 8.1(c)(2), the amount of a supersedeas bond must include any money judgment
5 awarded, plus interest. No money judgment was awarded in this case. Thus, this value is zero. .
6

7 **2. At most, the Mayor would be entitled to recoup \$200.00 in attorney’s fees on
8 appeal, if she prevails.**

9 Next, under RAP 8.1(c)(2), the amount of a supersedeas bond must include the value of any
10 attorney fees, costs, and expenses likely to be awarded on appeal. Here, the only statute that would
11 allow the Mayor to recoup fees or costs is RCW 4.84.080, which authorizes a total of \$200.00 in
12 attorney’s fees following a successful appeal. Thus, at most, this value is \$200.00.

13 **3. A stay would cause the Mayor no loss because she is already legally barred under
14 RCW 27.53.060 from cutting the tree down.**

15 Last, under RAP 8.1(c)(2), the amount of a supersedeas bond includes “the loss which the
16 prevailing party in the trial court would incur as a result of the party’s inability to enforce the judgment
17 during review.” In this case, the Mayor would not incur any loss because she cannot cut the tree down
18 anyhow. The Washington Department of Archaeology and Historic Preservation (“DAHP”) has
19 independently determined that under RCW 27.53.060, the Davis Meeker oak may not be cut down.
20 Accordingly, a stay pending appeal would not change the status quo.
21

22 The Mayor’s attorney made clear during the May 31, 2024 hearing that the Mayor desires to
23 cut the tree down, which the Mayor claims is necessary for safety reasons. Plaintiff has put forward
24 expert testimony that the arborist report that the Mayor relied on to reach that conclusion is riddled
25 with errors, omissions, and misrepresentations. (*See* Declaration of Beowulf Brower, ¶¶ 4–8 (May 28,
26 2024).) Regardless, even if the Mayor could enforce this Court’s ruling on appeal, the DAHP has

1 independently concluded that the tree may not be cut down without first obtaining a permit under
2 Washington’s Archeological Sites and Resources Law at Chapter 27.53 RCW.

3 Under Washington’s Archeological Sites and Resources Law, a written permit is required from
4 DAHP prior to undertaking any action that might damage a “historic archeological resource.” This
5 requirement is at RCW 27.53.060(1), which provides:
6

7 On the private and public lands of this state it shall be unlawful for
8 any person . . . to knowingly remove, alter, dig into, or excavate by
9 use of any mechanical, hydraulic, or other means, or to damage,
10 deface, or destroy any historic or prehistoric archaeological resource
11 or site . . . without having obtained a written permit from the director
12 [of the Department of Archeology & Historic Preservation] for such
13 activities.

14 RCW 27.53.060(1).

15 In turn, RCW 27.53.030 defines “historic archeological resource” to mean “those properties
16 which are listed in or eligible for listing in . . . the national register of historic places as defined in
17 the national historic preservation act of 1966.” RCW 27.53.030(9). Thus, when a property is
18 eligible for listing on the national register of historic places, it qualifies as a “historic archeological
19 resource” and may not be harmed without a permit from DAHP pursuant to RCW 27.53.060(1)
20 (quoted above). Failure to comply with this permit requirement is a misdemeanor. RCW 27.53.090.
21 Civil penalties may be assessed up to \$5,000.00 per day for each violation, plus investigative and
22 site-restoration costs. RCW 27.53.095.

23 In this case, independently of this Court’s ruling that the Mayor may lawfully cut the tree
24 down, DAHP has concluded that the Davis Meeker oak likely qualifies for listing on the national
25 register of historic places and therefore may not be cut down without a written permit issued
26 pursuant to RCW 27.53.060(1). In DAHP’s words:

The Davis Meeker Garry Oak Tree is a registered historic property
on the City of Tumwater Historical Register, that based on published
accounts is a historic feature associated with the Cowlitz Trail and

1 subsequent Oregon Trail. Based on this association it is likely that
2 this resource is eligible for the National Register of Historic Places.
3 The address of the Davis Meeker oak is 7525 Old Hwy 99,
4 Tumwater, WA 98501.

5 Therefore, there are archaeological requirements, necessary prior to
6 the removal or alteration of the Davis-Meeker Garry Oak Tree.

7 Specific information about Washington State Archaeological
8 Excavation and Removal Permits can be found in RCW 27.53 and
9 WAC 25-48. Knowing and willful failure to obtain this permit or
10 comply with its requirement is a misdemeanor and may result in civil
11 penalties of not more than five thousand dollars per violation,
12 reasonable investigative costs, and site restoration costs.

13 (Declaration of Ronda Larson Kramer re: Supplemental Response to Motion to Dissolve TRO
14 (May 30, 2024), Ex. A at 1 (emphasis in original; also attached as Exhibit C to the accompanying
15 declaration of Bryan Telegin).)

16 To our knowledge, the Mayor has not sought, let alone obtained, a permit from DAHP to
17 cut down the historic Davis Meeker oak under Washington's Archeological Sites and Resources
18 Law. Thus, the City has no lawful authority to cut the tree down or otherwise destroy it. If the
19 Mayor were to do so now, she would be committing a crime and would be subject to a civil penalty
20 of up to \$5,000.00 per day plus investigative and site-restoration costs.

21 As discussed above, RAP 8.1(c)(2) requires the amount of a supersedeas bond include the
22 loss that the City of Tumwater would incur during the appeal period by being unable to enforce
23 this Court's order that Davis Meeker Garry oak may be cut down. But regardless of whether this
24 Court's order can be enforced or not, the DAHP has independent authority to prohibit the tree from
25 being cut down or otherwise destroyed. The DAHP has stated clearly that the tree cannot, in fact,
26 be cut down without a permit issued pursuant to Washington's Archeological Sites and Resources
Law; a permit which, to our knowledge, the Mayor has not obtained. Thus, the Mayor will suffer
no monetary loss by being unable to enforce this Court's specific order during the pendency of

1 Plaintiff’s appeal. “The supersedeas bond . . . is only intended to indemnify the judgment creditor
2 from losses caused by delay of appeal.” *Muniz v. Vasquez*, 797 S.W.2d 147, 150 (Tex. Ct. App.
3 1990). For purposes of setting an amount for a supersedeas bond, this value, too, is zero.

4 **4. The City of Tumwater’s Historic Preservation Ordinance protects trees as well**
5 **as buildings.**

6 Finally, although not listed as a factor for determining the amount of a supersedeas bond under
7 RAP 8.1, we believe it is highly relevant that during the May 31, 2024 hearing before this Court,
8 counsel for the Mayor misrepresented the scope of the City of Tumwater’s Historic Preservation
9 Ordinance, a true and correct copy of which may be found at Exhibit D to the Declaration of Bryan
10 Telegin.
11

12 As discussed above, during that hearing counsel for the Mayor stated, without qualification
13 (or citation to authority), that the City of Tumwater’s Historic Preservation Ordinance “does not apply
14 because a tree is not a ‘structure.’” (Telegin Decl., Ex. A at 13.) This statement was then repeated in
15 this Court’s oral ruling.¹ But it is demonstrably false. The City’s Historic Preservation Ordinance is
16 decidedly *not* limited to protecting “structures.” Rather, that ordinance protects all “properties” listed
17 on the City’s Register of Historic Places, such as the Davis- eeker oak.
18

19 This can be seen clearly at Section 2.62.060.A of the Tumwater Municipal Code (“TMC”),
20 which provides:

21 No person shall . . . alter, restore, remodel, repair, move, or demolish ***any existing***
22 ***property on the Tumwater register of historic places*** . . . without review by the
23 commission and without receipt of a certificate of appropriateness, or in the case of
24 demolition, a waiver, as a result of the review.
25

26 _____
¹ (*See* Order Granting Motion to Dissolve TRO (transcript of Court’s oral ruling at 3:17–20, concluding that “[t]here was not an obligation to obtain a permit before removing a historic tree as opposed to a historic structure”).

1 TMC 2.62.060.A (emphasis added). This section of the City’s Historic Preservation Code prohibits
2 the destruction of any “property” listed on the City’s historic register without first obtaining the
3 approval of the Tumwater Historic Preservation Commission (the local body charged with issuing
4 certificates of appropriateness and waivers thereto). This protection is not limited to historic
5 “structures,” but applies by its terms to all listed historic “properties.”
6

7 In turn, TMC 2.62.030.L defines “historic property” to mean “*real property* together with
8 improvements thereon, except property listed in a register primarily for objects buried below
9 ground[.]” TMC 2.62.030.L (emphasis added). Here again, the City’s Historic Preservation Ordinance
10 is not limited to protecting “structures.” Rather, the ordinance protects any listed historic “real
11 property.”
12

13 Applied here, even assuming that the Davis Meeker oak is not a “structure,”² it is
14 unquestionably a “property” listed on the City’s Register of Historic Places. Indeed, it is the City’s
15 property, which is why the Mayor claims authority to cut it down.

16 In turn, the Davis Meeker oak is unquestionably “real property,” the classic definition of which
17 is “*Land and anything growing on, attached to, or erected on it, excluding anything that may be*
18 *severed without injury to the land.*” *Property*, Black’s Law Dictionary (12th ed. 2024).³
19

20 In short, the Davis Meeker oak is “property.” The tree is “real property.” And it is an historic
21 property listed on the City’s Register of Historic Places. It is, therefore, protected by the City’s Historic
22 Preservation Code and may not be destroyed without prior approval by the Tumwater Historic
23 Preservation Commission under the plain language of TMC 2.62.060.A. Because counsel for the
24

25 ² Contrary to the assertion of the Mayor’s attorney, the City’s definition of a “structure” does not
26 “appl[y] only to man-made constructs.” (Telegin Decl., Ex. A at 13.) Rather, the definition—found at TMC
2.62.030.W—provides only that structures are “[g]enerally constructed by man,” not that they always are
constructed by man.

³ This entry of Black’s Law Dictionary may be found at Exhibit E to the Declaration of Bryan Telegin.
The sub-entry for “real property” may be found at page 3 of that exhibit.

1 mayor misrepresented the scope of the City's Historic Preservation Ordinance, the supersedeas bond
2 should be set at a nominal amount.

3
4 **V. CONCLUSION**

5 For all of the reasons above, pursuant to RAP 8.1, Plaintiff Save the Davis-Meeker Garry
6 Oak respectfully requests that this Court set the amount of a supersedeas bond for the Court's May
7 31, 2024 Order Granting Motion to Dissolve TRO pending review by Division II of the Washington
8 Court of Appeals. The bond should be set at \$200.00.

9
10 A proposed order is submitted herewith.

11 Dated this 12th day of August, 2024.

12 Respectfully submitted,

13 TELEGIN LAW PLLC

14
15 By: 

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*Attorneys for Plaintiff Save the Davis-Meeker
Garry Oak*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 12, 2024, I caused to be served a true and correct copy of
3 the foregoing Plaintiff’s Motion to Set Amount of Supersedeas Bond on each of the persons and
4 in the manners listed below.

5
6 Jeffrey Scott Myers
7 Law Lyman Daniel Kamerrer et al
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12 Attorney for Defendant Debbie Sullivan
13 *Via U.S. Mail*

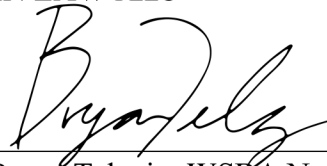
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22 *Via Hand Delivery & U.S. Mail*

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24 Ronda Larson Kramer
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26 Of Attorneys for Plaintiff Save the Davis-Meeker Garry Oak
Via email to ronda@larsonlawpllc.com

Dated: August 12, 2024

TELEGIN LAW PLLC

By:



Bryan Telegin, WSBA No. 46686
*Counsel for Plaintiff Save the Davis-Meeker
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