

December 6, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SAVE THE DAVIS-MEEKER GARRY
OAK,

Petitioner,

v.

DEBBIE SULLIVAN, in her capacity of
Mayor of Tumwater,

Respondent.

No. 58881-1-II

RULING DENYING MOTION
TO DISMISS APPEAL

Tumwater Mayor Debbie Sullivan moves to dismiss this appeal of a temporary restraining order denial, contending that the Appellant, Save the Davis Meeker Garry Oak (SDMGO), no longer has a well-grounded fear of an immediate invasion of their alleged rights, so the appeal should be dismissed. *See Tyler Pipe Indus., Inc. v Department of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (listing requirements for restraining order). SDMGO objects, arguing that the mayor's voluntary suspension of the act it sought to restrain (the destruction of the oak tree)

pending the results of a second arborist report does not moot this appeal. *State v. City of Sunnyside*, 3 Wn.3d 279, 313, 550 P.3d 31 (2024).

This court denies the motion. Sullivan’s reply makes clear that the City still believes the oak presents a hazard and the City still has confidence in the original arborist’s report that recommended removal of the tree. Reply to Resp. to Mot. to Dismiss at 5, 7-8. Moreover, Sullivan states that although she will wait for a second arborist report, she “is not bound by its results.” Reply to Resp. to Mot. to Dismiss at 4. Under these circumstances, it is not “absolutely clear” to this court that the threatened destruction will not reoccur during the pendency of this appeal. *Sunnyside*, 3 Wn.3d at 314 (quoting *Braam v. State*, 150 Wn.2d 689, 709, 81 P.3d 851 (2003)). Put differently, absent the appeal bond, the only thing keeping the oak standing is Sullivan’s voluntary delay. For this reason, this court concludes that the reasoning in *Sunnyside* applies. Accordingly, it is hereby

ORDERED that Debbie Sullivan’s motion to dismiss this appeal is denied.



Aurora R. Bearse
Court Commissioner

cc: Ronda L. Kramer
Bryan J. Telegin
Jeffrey S. Myers
Jakub L. Kocztorz
Christopher P. Wright