



CITY MANAGER'S OFFICE
CITY OF MERCER ISLAND, WASHINGTON

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October 2, 2020

Peter Rogoff, Chief Executive Officer
Sound Transit
401 S. Jackson Street
Seattle, Washington 98104

Dear Mr. Rogoff,

I write in response to your letter dated August 10, 2020. Like Sound Transit, the City of Mercer Island desires a solution that reflects the intent of the parties when they drafted and executed the 2017 Settlement Agreement. The City has spent countless hours in an attempt to work with Sound Transit and Metro to advance the Project towards completion as contemplated under the Settlement Agreement.

Your description of the disagreement—that the City has created insuperable barriers to a compromise that will satisfy all parties—is not accurate. The City only seeks to uphold the bargain it struck with Sound Transit. If Sound Transit has now concluded that it cannot satisfy the conditions of the Settlement Agreement, that conclusion cannot be laid at the feet of the City. The City's position has been consistent since the Settlement Agreement was executed. The City has abided, and will continue to abide by, the Settlement Agreement's terms and expects Sound Transit to do the same.

You claim that Metro is entitled to reject the 77th Ave SE Configuration (as described in the Settlement Agreement) based on three "imperatives": (1) operational feasibility; (2) safety; or (3) restrictions imposed by Metro's collective bargaining agreement with its bus drivers. This claim does not accurately reflect what the parties bargained for in the Settlement Agreement.

The Settlement Agreement is explicit in this regard. It expressly limits the areas on which Metro may provide input and further limits that input to those based only on operational concerns. Even in these express areas, it makes clear that the City may reasonably withhold approval to requested changes to the pick-up and drop-off locations on North Mercer Way and the length of bus layovers.

What has happened here does not comport with those limitations. Metro's current demands under Section 4.3 of the Settlement Agreement render the bargained for provisions a nullity, changing the 15 minute layover time limit to an unlimited one and providing for pick up and drop off on not only the south side (as previously agreed), but the north side of North Mercer Way as well. Metro's take it or leave it approach, apparently with Sound Transit's approval, does not comport with the

collaborative processes set forth in the Settlement Agreement. Metro's demands represent an about face from the position on which the City relied in agreeing to settle. The City has yet to receive a satisfactory explanation for this fundamental change. Indeed, neither Sound Transit nor Metro has moved from their initial position after almost a year of negotiations. It is neither fair nor appropriate to demand that the City acquiesce to demands to change the very nature of the bargain that was struck.

Second, the City has not threatened to delay issuance of any permits in violation of the Settlement Agreement. You are well aware that, as required by the Settlement Agreement, the City has invested considerable staff time to expeditiously review 60% plans and 90% plans submitted by Sound Transit. The City has devoted significant resources to the review process. We have provided detailed and expansive comments on these plans to Sound Transit in an effort to move the project forward and always with the goal of achieving a collaborative resolution of any outstanding issues prior to Sound Transit submitting the permit. We have offered (and Sound Transit has accepted) a special early pre-submittal meeting that would not have been available to other permit applicants.

Your claim that the City has done anything other than follow the Settlement Agreement regarding the permitting process reflects a fundamental misunderstanding of the Settlement Agreement. The Settlement Agreement controls the terms of the Project permits, including the review process for them as the Project is defined in the Settlement Agreement. The Settlement Agreement has no applicability to permit applications, or portions thereof, that do not comport with the Project as agreed. To be clear, however, the City is treating all Sound Transit permits as it would any other permit, and within the constraints of the Settlement Agreement where applicable. That is the approach the City has taken and will continue to take regarding the permitting process. The Settlement Agreement provides that the review of Sound Transit's permits will be expedited. It does not provide that appropriate review of the permits will not occur. The City looks forward to continued collaboration regarding Sound Transit's recent 90% submittal. Once the City completes its review consistent with the Settlement Agreement and in accordance with its normal review standards, Sound Transit will be free to raise any issues it may have.

It is notable that the only concern you raised with our proposal for a mediation is your desire to involve Metro in any discussions. To be clear, the City is willing to mediate in good faith with Sound Transit and Metro and that was communicated in our previous meeting. If Metro and Sound Transit are actually interested in finding an acceptable solution to these issues, I presume both would be willing to participate in a mediation and I am, therefore, making this offer yet again. Please let me know if you are willing to mediate.

Finally, as a representative of the City, I cannot in good faith accept your proposal to "host a meeting" with the new conditions you have imposed. I was disappointed by the tone of our last in-person meeting, but I believe that these issues can be amicably resolved so long as the parties follow the Settlement Agreement. Again, the Settlement Agreement is clear regarding the issues on which Metro may weigh in on and also that the City may reasonably withhold its approval to changes to North Mercer Way and the duration of bus layovers. These proposed changes must also be based upon Metro operational concerns. Those are the only conditions that can be imposed on

any meeting in the future. If you still refuse to participate in mediation but are willing to host a meeting that reflects the actual language of the Settlement Agreement, please let me know.

As always, the City remains open to collaborative solutions that are workable and that follow the Settlement Agreement. We believe a meeting involving Metro and Sound Transit could be productive if both Metro and Sound Transit are open to good faith discussions based on the bargain struck in the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "JBon".

Jessi Bon
City Manager
City of Mercer Island

CC Eric Beckman