

## **Sound Transit v. Mercer island Questions for Closing Statements**

1. How does a regional EPF relate to individual municipal EPF procedural ordinances?
2. RCW 81.112.080(2) provides that a regional transit authority has authority:

To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity transportation facilities and properties within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such high capacity transportation systems. When developing specifications for high capacity transportation system operating equipment, an authority shall take into account efforts to establish or sustain a domestic manufacturing capacity for such equipment. The right of eminent domain shall be exercised by an authority in the same manner and by the same procedure as or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. Public transportation facilities and properties which are owned by any city, county, county transportation authority, public transportation benefit area, or metropolitan municipal corporation may be acquired or used by an authority only with the consent of the agency owning such facilities. Such agencies are hereby authorized to convey or lease such facilities to an authority or to contract for their joint use on such terms as may be fixed by agreement between the agency and the authority.

[Emphasis added] The word “right-of-way” is not in the list of items that may be “acquired.” Is that significant? Does this section apply to bus travel on and use of city street rights-of-way? Does the requirement for city “consent” apply to bus use of an existing street right-of-way? If King County Metro (“Metro”) were the authority constructing the bus layover (that will be used by its busses) would the analysis be different? Please provide case law citations, if any are available.

3. Who has authority to give “consent” for the City? By what process is it exercised? How is “consent” documented? Where is the process spelled out?
4. Can a municipal corporation which acquired an entire, conforming parcel for public use, dispose of a surplus portion of that parcel which does not conform with applicable zoning? In other

words, may a municipal corporation create an illegal lot by disposing of a surplus portion of a legal lot?

5. If the Right-of-way Use Permit is not the proper permit to authorize use of a portion of an existing street right-of-way as a bus layover area, what municipal permit process would be required? If there isn't one, is the City saying that bus layover areas are prohibited uses in the City?
6. Is a bus layover area a "structure" as defined in MICC 19.16.010?
7. Is dedicated right-of-way (as opposed to deeded right-of-way) owned by the municipality, or does the municipality only have usage rights?