



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

For the Plaintiff:

DAVID R. GOODNIGHT  
MICHAEL P. RUBIN  
GABRIELLE K. LINDQUIST  
SCOTT PRITCHARD  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, Washington 98101  
(206) 386-7586  
david.goodnight@stoel.com  
michael.rubin@stoel.com  
gabrielle.lindquist@stoel.com

For the Defendant:

ROGER D. WYNNE  
MAXWELL C. BURKE  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, Washington 98104  
(206) 233-2177  
roger.wynne@seattle.gov

Also present:

GEORGE PETRIE  
AUDREY RIDDLE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Court recess 10:29 a.m. to 10:47 a.m.)

THE COURT: Bear with me just a moment.

Thank you for your patience. So it's clear

1 to me that this case is of significant importance to  
2 both sides; counsel, especially as well as the parties.  
3 This case has significant impact, and I want to thank  
4 counsel for both sides for your written submissions and  
5 your oral presentations here today. It's not lost on  
6 the Court the complexity and the subtlety of the issues  
7 involved here, and I appreciate counsels' efforts to  
8 guide the Court through this analysis.

9           So regardless of -- of the agreement or  
10 disagreement with my ruling today, and the underlying  
11 analysis, I want to sincerely let counsel know that I  
12 appreciate your efforts on -- on all sides, and all  
13 those that contributed in this process. And  
14 acknowledging for the parties the importance of this  
15 decision.

16           I suspect no matter what I do today, this  
17 will not be the last decision made in this case. But  
18 nonetheless, I've done my best to consider all that was  
19 presented in accordance with the law, and issued the  
20 following ruling.

21           As a threshold issue in this case, the City  
22 asserts that GRE's claims are untimely. GRE asserts  
23 that its claims are not facial challenges on -- to the  
24 ordinances at issue, and that it's the accumulative  
25 effect of the ordinances as applied that has resulted

1 in a partial regulatory taking, unless their client --  
2 their claims are timely. Because the earliest they  
3 perceive the accumulative effects was in 2022.

4 While GRE is, as cited, the master of its  
5 complaint as the plaintiff in this case, the Court is  
6 also persuaded by case law cited by the City, such as  
7 Campbell vs. The United States for instance, which  
8 supports the finding and conclusion that as applied, a  
9 regulatory taking began to run when the government  
10 actor is alleged to have made their final decision and  
11 that is what triggers the takings claim.

12 Thus in this case, the statute of limitations  
13 for GRE's claims, as it relates to the applied claims,  
14 would have began running sometime in 2022, or arguably  
15 potentially -- in 2021. So excuse me, 2021 when the  
16 most recent of the ordinances at issue was enacted.

17 I've considered the argument by GRE based on  
18 Petersen vs. The Port of Seattle, which held that the  
19 Washington State Constitution and Washington case law  
20 require just compensation to be paid to a landlord in  
21 the event of a government taking or damaging of  
22 property. And that except for cases where there's a  
23 prescriptive taking at issue, the passage of time does  
24 not alone bar a property owner's right to pursue a  
25 takings claim.

1 I've also considered, however, the City's  
2 arguments that the facts in Petersen are  
3 distinguishable from this case. The City cites Valley  
4 View Industry Park vs. The City of Redmond and Orion  
5 Corp. vs. The State, which both were abrogated on other  
6 rounds -- other grounds, excuse me, by the Yim vs.  
7 Seattle case.

8 But as it relates to the statute of  
9 limitations issue, the court in Valley View  
10 acknowledged concerns that exist in applying the  
11 Petersen rule in cases that involve regulatory takings,  
12 as opposed to cases involving actual appropriation of  
13 property, such as eminent domain cases and inverse  
14 condemnation cases, because there's an incentive that  
15 -- that could exist for property owners willing to wait  
16 to bring challenges regarding zoning ordinances until  
17 the claims become large.

18 Despite these concerns, as counsel for both  
19 sides know, the court in Valley View ultimately did not  
20 reach a conclusion on the statute of limitations for  
21 regulatory takings, if any, because the case was  
22 resolved on other grounds.

23 Similarly in Orion Corp. vs. The State, the  
24 court again distinguished takings which occur by  
25 eminent domain or inverse condemnation from regulatory

1 takings. The court again acknowledged concerns  
2 pertaining to the accrual of potential damages in the  
3 absence of statutory limits for property owners  
4 bringing regulatory takings claims.

5 The court further considered the argument and  
6 the other case -- other cases and statutory authority  
7 for the possibility of implementing a statute of  
8 limitations for regulatory takings claims. The court  
9 considered potential statutory limitations of three  
10 years, six years, or ten years. However, like the  
11 parties are aware in Valley View, the court in Orion  
12 ultimately did not reach a decision as to what the  
13 statute of limitations should be because the case was  
14 decided on other grounds.

15 Although Valley View Industry Park and Orion  
16 Corp. have been abrogated by the Yim case, the Yim  
17 case, as the parties are aware, did not resolve the  
18 question of whether a statute of limitations for  
19 regulatory takings claims exist, nor did it directly  
20 speak to the analysis surrounding potential statutes of  
21 limitations as addressed in Valley View and Orion Corp.

22 While neither Valley View or -- or Orion  
23 Corp. established a statute of limitations for  
24 regulatory takings claims to be brought, both cases  
25 provide guidance to this Court in at least three ways.

1 First, they clearly distinguish regulatory takings from  
2 eminent domain and inverse condemnation cases. Second,  
3 they raise concerns regarding the absence of a statute  
4 of limitations for regulatory takings claims as  
5 contrasted with the court's rulings regarding eminent  
6 domain or inverse condemnation cases as held in  
7 Petersen.

8 Third, the most recent of the two cases,  
9 Orion Corp., supports the finding and conclusion that  
10 some statute of limitations is appropriate for  
11 regulatory takings claims. And the Court is persuaded  
12 by the Supreme Court's analysis in Orion Corp., and  
13 accordingly I find and conclude that a statute of  
14 limitations applies for regulatory takings claims, such  
15 as GRE's claims in this case.

16 The City presents argument and cites to  
17 federal court authority for the proposition that  
18 regulatory takings claims should be brought under  
19 Section 1983 of the Federal Civil Rights Act, which  
20 limits claims to relevant state, personal injury  
21 limitations to three years.

22 The City alternatively asserts that the  
23 three-year statute of limitations outlined in RCW  
24 4.16.080 Subsection 2 should apply. GRE contends, and  
25 the record does not support the conclusion, that this

1 is a Section 1983 case. However, returning to the  
2 Court's analysis in Orion Corp. and the Court's  
3 consideration of RCW 4.16.083 -- 080, excuse me, and a  
4 three-year statute of limitations and the six-year  
5 statute of limitations outlined in RCW 4.16.040  
6 Subsection 3, there's insufficient argument and  
7 evidence in the record for the Court to make  
8 conclusions as to whether a three-year or six-year  
9 statute of limitations applies in this case. In the  
10 written submissions, there was argument as it pertains  
11 to 4.16.040 Subsection 3, but not additional argument  
12 as it pertained to that six-year alternative.

13           Accordingly, upon considering the parties'  
14 written submissions and oral argument in this case  
15 presented here today, there's insufficient information  
16 contained in the record to support the finding or  
17 conclusion that GRE is unable to prove a set of facts  
18 consistent with the complaint that would establish that  
19 their claims are time barred.

20           Next, my analysis will move to a discussion  
21 of regulatory takings. In Count 2, GRE alleges that  
22 the City has affected a per se regulatory taking  
23 through its implementation of the Fair Chance Housing  
24 Ordinance, the roommate the ordinance, the COVID-19  
25 Eviction Moratorium, and the winter eviction ban.

1           GRE asserts that these ordinances have  
2 resulted in a regulatory taking because they've forced  
3 on GRE to lease apartments to people it asserts are  
4 dangerous criminals -- that GRE would never have rented  
5 to in the past -- under the Fair Housing Ordinance,  
6 under the roommate ordinance. That it has prevented  
7 GRE from excluding individuals residing at the Addison.

8           Short of initiating eviction proceedings as  
9 it relates to the winter eviction ban, it's prevented  
10 GRE from evicting non-paying tenants. And as it  
11 relates to the COVID-19 Eviction Moratorium, it's  
12 similarly prevented GRE from evicting non-paying  
13 tenants in winter months.

14           GRE has asserted that the ordinances its  
15 identified, exclude -- in excluding individuals short  
16 of eviction feeding -- proceeding, excuse me, is a per  
17 se regulatory taking. The case law cited by the City,  
18 such as the Rental Housing Association vs. Seattle case  
19 and the Gonzales vs. Inslee case, for example, support  
20 the finding and conclusion that the ordinances at issue  
21 do not affect per se physical takings.

22           I further find and conclude that the record  
23 does not support the finding or conclusion that the  
24 combined effect of the ordinances resulted in a per se  
25 physical taking. This case is distinguishable from

1 Cedar Point and the decision cited by CRE because -- or  
2 GRE, excuse me, because the rights, including but not  
3 limited to the right to exclude the public from the  
4 Addison, was already modified when GRE opened up the  
5 Addison to the public by establishing landlord-tenant  
6 relationships.

7           The record does not support the finding or  
8 conclusion that in doing so the City physically took  
9 GRE's property for itself or for someone else, or has  
10 restricted GRE's ability to own or use its property.  
11 The City has lawful authority to enact citywide  
12 landlord-tenant ordinances. And upon opening the  
13 Addison up to landlord-tenant contractual  
14 relationships, the ordinances enacted broadly by the  
15 City to regulate landlord-tenant relationships apply to  
16 the Addison.

17           Consequently, upon considering the parties'  
18 written submissions and oral argument presented here  
19 today, along with the plaintiff's allegations and all  
20 reasonable inferences from the plaintiff's allegations  
21 and the complaint as true, there is insufficient  
22 information contained in the record to support GRE's  
23 claim that the ordinances named in the complaint have  
24 affected a per se physical taking of the Addison. And  
25 accordingly, I will grant the City's motion to dismiss

1 Count 2, pursuant to CR 12(b)(6).

2 Turning my attention next to Count 1, GRE has  
3 also asserted that the City has affected a partial  
4 regulatory taking through its implementation of the  
5 Fair Chance Housing ordinance, the roommate ordinance,  
6 the winter eviction ban, the COVID-19 Eviction  
7 Moratorium, the 180-day notice requirement and Economic  
8 Displacement Relocation Assistance ordinance.

9 GRE asserts that the City has affected a  
10 partial regulatory taking by destroying the value of  
11 the Addison property, costing GRE millions of dollars  
12 per year, devastating GRE's reasonable investment-based  
13 expectations for the property, and posing numerous  
14 physical invasions by dangerous tenants and destroying  
15 the value of the property.

16 When considering a regulatory taking claim,  
17 the Court is required, as the parties are aware, to  
18 consider the three-factor test outlined by the United  
19 States Supreme Court in Penn Central vs. New York. In  
20 consideration of the per se physical takings analysis  
21 in this case, I will turn first to the third factor of  
22 the Penn Central factors.

23 On the character of the City's ordinances at  
24 issue, I find and conclude do not amount to a physical  
25 evasion. The ordinance at -- at issue, for example,

1 are the results of the City's efforts to reduce the  
2 number of individuals unhoused in winter months and  
3 reducing housing barriers to persons with criminal  
4 records. The ordinances at issue, to the extent that  
5 they impact GRE Downtowner's property interest in the  
6 Addison, do so in the wake of the City's broader  
7 efforts to regulate landlord-tenant relationships by  
8 adjusting the benefits and burdens of economic life to  
9 promote the common good.

10 In consideration of the case law cited by the  
11 City as well, I do not find, despite the experts  
12 working with GRE and -- and acknowledging, for purposes  
13 of this motion, the truth of GRE's assertions that  
14 landlord-tenant regulations were relatively stable in  
15 Seattle and Washington. However, there is significant  
16 case law that was presented to support or challenge the  
17 assertion as to whether it was, in fact, objectively  
18 reasonable for GRE not to expect landlord-tenant  
19 regulations.

20 However, even for the sake of argument, if  
21 the first and second factors of the Penn Central test  
22 were found in GRE's favor, analysis of the third factor  
23 outweighs the harm to GRE as maybe -- as may have been  
24 experienced under the first two factors. And the  
25 record does not support the finding or conclusion that

1 a regulatory taking resulted from the ordinances at  
2 issue in this case.

3           Accordingly, upon considering the parties'  
4 written submissions and oral argument again, presented  
5 today, along with the plaintiff's allegations and all  
6 reasonable inferences from those allegations and the  
7 complaint as true, there's insufficient information  
8 contained in the record to support GRE's claim that the  
9 cumulative effect of the ordinances named in the  
10 complaint have affected a partial regulatory taking of  
11 the Addison. Accordingly, I am granting the City's  
12 motion to dismiss Count 1, pursuant to CR 12(b)(6).

13           That is the Court's ruling at this time. As  
14 I stated, I suspect there will be additional review of  
15 that. But at the moment, are there any questions or  
16 anything additional that either party wishes to  
17 address?

18           MR. GOODNIGHT: Not from us, Your Honor.  
19 Thank you.

20           THE COURT: Thank you.

21           MR. WYNNE: Your Honor, should we be  
22 expecting a written ruling from you summarizing what  
23 you've said today?

24           THE COURT: So I was hoping that counsel  
25 would be preparing -- preparing one based on the

1 Court's oral ruling. I did receive the proposed orders  
2 by both sides. Nonetheless, there's some more detail,  
3 obviously, in the Court's oral ruling. To the extent  
4 counsel is able to include some -- some of that in the  
5 proposed order, it's -- I would ask the City to do so  
6 as the prevailing party.

7           The Court also would not have issue with  
8 there being a clause in the proposed order indicating  
9 that the Court's oral ruling is incorporated by  
10 reference as if -- set forth fully in the written  
11 order. But I will ask you to then circulate that to  
12 GRE, to Mr. Goodnight and team, so that they can review  
13 and submit that for my review and issuance.

14           MR. GOODNIGHT: Your Honor, I do have one  
15 question. Are you granting, is the Court granting the  
16 motion with prejudice or without prejudice and leave to  
17 amend?

18           THE COURT: So I'll hear from Mr. Wynne, to  
19 the extent you wish to be heard on that.

20           MR. WYNNE: Your Honor, I think this should  
21 be dismissed with prejudice because there is no set of  
22 facts that they can allege, even by amendment, that  
23 would allow them to sustain a claim.

24           THE COURT: Any brief response?

25           MR. GOODNIGHT: Just that in your oral

1 ruling, you made reference to various quote "findings"  
2 the Court was making on a motion for 12(b)(6), which  
3 suggests you were relying heavily on -- on facts. And  
4 if more facts are needed, then we would request leave  
5 to amend.

6 THE COURT: Thank you.

7 So to the extent that my oral ruling was  
8 inarticulate, apologies there. But in an effort to --  
9 attempt to, I think, understand the -- the question and  
10 also to provide, hopefully, the certainty that the  
11 parties are likely looking for from this ruling, I will  
12 rule that the motion, or the motion to dismiss is  
13 granted with prejudice.

14 It's not my intention, and to the extent I  
15 conveyed that, my apologies -- was not to suggest that  
16 there are other additional facts or amendments that the  
17 Court was unnecessarily looking for in this analysis.

18 I think based on the substantial information  
19 contained in the complaint by GRE, the complaint had  
20 sufficient information for the Court to consider in --  
21 even in viewing all of the assertions in the complaint  
22 as true, and all reasonable inferences and potential  
23 hypotheticals related to that in light or in the favor  
24 of GRE, I don't find that there would be any additional  
25 amendments that would change the Court's ruling.

1 MR. GOODNIGHT: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Anything additional from either side?

4 MR. WYNNE: Nothing from the City, Your  
5 Honor. Thank you.

6 THE COURT: All right. How long do you  
7 expect you'll need before you're able to complete the  
8 proposed order and get that to Mr. Goodnight and team?

9 MR. WYNNE: We could probably get that to Mr.  
10 Goodnight sometime middle of next week.

11 THE COURT: Okay.

12 And assuming you and your team will be  
13 available, I'll ask the parties just to get that to me  
14 by Thursday. Does that sound reasonable?

15 MR. WYNNE: Yes.

16 MR. GOODNIGHT: Yes.

17 THE COURT: Okay.

18 Anything else?

19 MR. GOODNIGHT: No, thank you very much.

20 THE COURT: All right.

21 MR. WYNNE: Thank you.

22 THE COURT: Thank you, as well.

23 That will conclude this matter. Have a good  
24 -- have a good day.

25 (Proceedings adjourned 11:13 a.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

STATE OF WASHINGTON )  
COUNTY OF KING )

I, the undersigned, under my commission as a Certified Transcriptionist in and for the State of Washington, do hereby certify that the foregoing audiotape, videotape, and/or hearing was transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; and that I am not a relative or employee or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of February, 2025.

/s/Lauren Berenstein

Lauren Berenstein, AAERT, CET-1474

In and for the State of Washington,  
Residing at Seattle.

Certification expires May 1, 2025.