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Honorable Steven Scott

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF BOTHELL, a municipal  
corporation,  
  
Plaintiff,

NO. 04-2-11578-7 SEA

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

v.

CORPORATION OF THE CATHOLIC  
ARCHBISHOP OF SEATTLE, a  
Corporation Sole, acting through St.  
Brendan Parish; and SEATTLE HOUSING  
AND RESOURCE EFFORT AND THE  
WOMEN’S HOUSING, EQUALITY AND  
ENHANCEMENT LEAGUE, a Washington  
nonprofit corporation,  
  
Defendants.

This action came on for hearing on June 10, 2004 on a motion for a preliminary injunction brought by the Plaintiff City of Bothell. Michael Weight and Stephen R. King appeared on behalf of the City of Bothell. Rodney T. Harmon appeared on behalf of the Corporation of the Catholic Archbishop of Seattle, a corporation sole, acting through St. Brendan Parish. Theodore Paul Hunter appeared on behalf of Seattle Housing and

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Legal Department  
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1 Resource Effort and the Women’s Housing, Equality and Enhancement League, a  
2 Washington nonprofit corporation (SHARE/WHEEL). The Court received evidence in  
3 the form of the declarations of William Wiselogle, Forrest Conover, Drew Lewis,  
4 Michael DeLack, Michael Weight, Sarah O'Shea, Thomas Kevin Blumberg, Susan  
5 Bailes, Renee DeWolf, Father Lawrence Minder, John E. Meyer, Jeffrey L. Fong, and  
6 Merrelle Stubbs. The parties, through counsel, have orally stipulated certain facts into  
7 the record. The parties have submitted written argument in the form of the City’s Motion  
8 for Preliminary Injunction, SHARE/WHEEL’s Response to Motion for Injunction, the  
9 Memorandum of St. Brendan Parish in Opposition to City of Bothell’s Motion for  
10 Preliminary Injunction, and Plaintiff’s Reply to Defendant’s Response to Motion for  
11 Preliminary Injunction. The parties waived the presentation of further testimony and oral  
12 argument on the issue of whether the Court should order the defendants to cease and  
13 desist from using or allowing the property of St. Brendan Parish to be used for Tent City  
14 4, which the City characterizes as a campground and the defendants characterize as a  
15 shelter for the homeless. The parties have not waived their right to seek review of the  
16 Court’s ruling on this issue. Now therefore, the Court hereby enters the following:

17  
18 **FINDINGS OF FACT**

19 1. The City of Bothell is a municipal corporation, a political subdivision of  
20 the State of Washington.

21 2. The Corporation of the Catholic Archbishop of Seattle is a corporation  
22 sole. St. Brendan Parish is a parish of the Catholic Archdiocese of Seattle. Its borders  
23 enclose Bothell, Woodinville, and parts of Kenmore and Kirkland.

24 The church, school, office and associated grounds of St. Brendan Parish are  
25

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1 located in Bothell, Washington in a residential area just north of downtown Bothell. The  
2 parish property is owned by the Corporation of the Catholic Archbishop of Seattle, a  
3 corporation sole. The grounds of St. Brendan Parish are located on a 10 acre site on the  
4 south side of NE 195<sup>th</sup> Street, and a 1.8 acre site located on the north side of NE 195<sup>th</sup>  
5 Street. The parish is allowing Tent City 4 to use this 1.8 acre site for 90 days,  
6 specifically from May 17, 2004 until August 15, 2004.

7 3. Seattle Housing and Resource Effort and the Women's Housing, Equality  
8 and Enhancement League, a Washington nonprofit corporation (SHARE/WHEEL) is a  
9 nonprofit Washington corporation. SHARE/WHEEL operates shelters for the homeless.  
10 SHARE/WHEEL is the organizer and operator of Tent City 4.

11 4. On May 14, 2004, the City of Bothell was informed that SHARE/WHEEL  
12 would be locating Tent City 4, a temporary tent encampment for up to one hundred (100)  
13 homeless persons, on the Subject Property.

14 5. On May 17, 2004, SHARE/WHEEL began erecting Tent City 4 on the  
15 Subject Property without obtaining a permit from the City of Bothell.

16 6. St. Brendan Parish has granted Tent City 4 a temporary use of the  
17 undeveloped portion of its property for the purpose of granting shelter to the homeless in  
18 furtherance of the religious mission of the parish, without going through the City's permit  
19 process. St. Brendan's sheltering of the homeless residents of Tent City is a sincere  
20 exercise of the Church's religious beliefs.

21 7. Since Tent City 4 opened on May 17, 2004, the Bothell Police Department  
22 has investigated a number of incidents and circumstances in and around Tent City 4.

23 8. The status of being "homeless" has not been shown to present a higher risk of  
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1 harm to the safety, health and welfare of the public.

2  
3 **CONCLUSIONS OF LAW**

4 1. This Court has jurisdiction over the parties and the subject matter of this  
5 lawsuit.

6 2. King County is the proper venue for this lawsuit.

7 3. All proper and necessary parties are named and joined in this lawsuit.

8 4. The City of Bothell has the right to require St. Brendan Parish to comply  
9 with the permit process. St. Brendan's has not complied with that process to this point.  
10 The City has the right to require compliance with its zoning ordinances and have them  
11 enforced.

12 5. St. Brendan's use of its property for the purpose of sheltering the homeless  
13 constitutes the exercise of religion and is protected by the First Amendment of the United  
14 States Constitution and Article I, Section 11 of the Washington State Constitution.

15  
16 6. In order to justify an order that St. Brendan Parish cease and desist the use  
17 of its property for Tent City 4, the City must establish a compelling governmental interest  
18 that would suffice to overcome the Church's right to the free exercise of religion and that  
19 a cease and desist order would be the least restrictive means of protecting the compelling  
20 interests of the City.

21 7. The interest of the City of Bothell in the health, welfare and safety of the  
22 public is a compelling interest; however, the City has not demonstrated that requiring the  
23 defendants to stop using the property on a temporary basis as they are now using it is the  
24 least restrictive means of protecting the City's compelling interests.  
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8. The City of Bothell has demonstrated that placing reasonable conditions on the operation of Tent City 4 are appropriate and should be ordered to adequately protect the legitimate and compelling governmental interests of the City of Bothell in the health, safety and welfare of the public, as well as its interests in requiring that its zoning code be enforced and complied with.

9. The City's request to require that Tent City residents to provide legal identification to the City of Bothell police in order for them to conduct a warrant and sex offender status check should be denied. When balancing the religious and privacy interests of defendants against the City's interests in utilizing the permit process to protect the health, safety and welfare of its citizens, the Court concludes that a requirement to provide legal identification is not the least restrictive means to protect the City's interests.

10. The Defendants have a duty to exercise reasonable care toward others in the City of Bothell. It is not appropriate for the court to determine preliminarily how best to do this. Thus, the City's request for conditions that would require a bond, liability insurance and paid security officers should be denied. Similarly, the request to require the Church to pay for overtime of police officers should be denied. The City has a duty to provide police protection within the City of Bothell, as determined to be appropriate by the City.

1 11. This Court should retain jurisdiction to hear any further motions or other matters  
2 related to this matter.

3 DONE IN OPEN COURT this \_\_\_\_\_ day of June 2004.

4  
5 \_\_\_\_\_  
6 Honorable Steven Scott

7 Presented by:

8 CITY OF BOTHELL

9 By: \_\_\_\_\_

10 Michael Weight  
11 WSBA No. 11643  
12 City Attorney

13 KENYON DISEND, PLLC

14 By: \_\_\_\_\_

15 Stephen R. King  
16 WSBA No. 29790  
17 Attorneys for Plaintiff

18 Notice of Presentation Waived;  
19 Copy Received, Approved for Entry:

20 Rodney T. Harmon, P.S.

21 By: \_\_\_\_\_

22 Rodney T. Harmon  
23 WSBA No. 11059  
24 Attorney for Defendant

25 Driscoll & Hunter

By: \_\_\_\_\_

Theodore Paul Hunter  
WSBA No. 8453  
Attorney for Defendant

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