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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36161

CITY OF SAMMAMISH, WASH.—PETITION FOR DECLARATORY ORDER

Digest:[1] This decision denies the request of the City of Sammamish, Wash., that the Board issue a declaratory order.

Decided: March 28, 2018

On December 7, 2017, the City of Sammamish, Wash. (City), filed a petition, requesting that the Board declare that the construction and use of a railbanked corridor for interim trail use by King County, Wash. (County), "is not exempt from the City's local land use and development regulations," and that neither 49 U.S.C. § 10501(b), nor the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), authorizes the County to override these local public health and safety regulations in order to operate the trail. (Pet. 1.) For the reasons discussed below, the Board will deny the City's petition.

BACKGROUND

The County owns and operates the 11-mile East Lake Sammamish Trail (ELST), 7.2 miles of which lie in the City, pursuant to an interim trail use/railbanking agreement reached in 1998 with BNSF Railway Company (BNSF). The agreement was entered into under the Trails Act, making the ELST a railbanked corridor subject to the future restoration of rail service. See Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cty., Wash., AB 6 (Sub-No. 380X) (STB served Sept. 18, 1998); Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cty., Wash., AB 6 (Sub-No. 380X), slip op. at 1, nn.2-3 (STB served Apr. 5, 2000). The portion of the ELST at issue here is South Segment A, which is located in the City.

The parties' dispute arises from a disagreement over the placement of stop signs where South Segment A intersects with two streets, 206th Avenue SE and SE 33rd Street (collectively, the Intersections). The County proposed to put stop signs at the Intersections that would face auto vehicle traffic, effectively giving trail users the right of way. The City concluded, however, that the stop signs should be directed toward bicyclists on the trail as they approach the Intersections, as they had been for years.

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Questions then arose as to the City's regulatory authority over the Intersections under Washington law. When the County decided to apply for a right-of-way (ROW) permit for work at the Intersections, it included a disclaimer that the application was not a waiver of its ownership or control of the railbanked corridor, and it did not concede that any permit was required from the City to undertake work or modify traffic control in the area. Upon determining that the City's rights under the crossing easements at issue were not sufficient to give the City authority over the Intersections, the County withdrew its ROW permit application. The City then warned the County that it would issue a stop-work order if the County intended to perform the proposed work without a ROW permit. On June 16, 2017, the City issued a stop-work order after observing the County doing work at the 206th Avenue SE intersection.

On June 14, 2017, the County filed an action in the United States District Court for the Western District of Washington seeking declaratory and injunctive relief.[2] Specifically, the County sought findings that: (1) issuance of a stop-work order would be preempted by 49 U.S.C. § 10501(b); (2) the City had no authority to regulate the ELST's Intersections under state law; and (3) the City's preferred intersection designs were unsafe and would violate state law.

On August 8, 2017, the District Court granted the County's motion for preliminary injunction on grounds unrelated to preemption. King Cty. v. City of Sammamish, No. C17-0921-JCC, slip op. at 5 (W.D. Wash. Aug. 8, 2017) (order granting preliminary injunction). Although the District Court summarized the County's preemption arguments and preemption law, it ultimately relied on state law and the language of the crossing easements in finding that the County had shown a likelihood of success on the merits that the City lacked authority to impose its zoning and safety regulations over the Intersections. Id., slip op. at 5-6. The District Court expressly declined to reach the County's arguments involving federal preemption under 49 U.S.C. § 10501(b) and crossing design. Id., slip op. at 6-7.

The City has appealed the District Court's preliminary injunction decision to the United States Court of Appeals for the Ninth Circuit. See King Cty. v. City of Sammamish, No. 17-35642 (9th Cir. filed June 14, 2017). In its opening brief to the Ninth Circuit, the City has acknowledged that the District Court relied on state law, not federal preemption, in its preliminary injunction decision. (County Reply, Ex. 10 at 21, 36.)

On December 7, 2017, the City filed its petition seeking a declaratory order from the Board. The City claims that the District Court made overly broad findings about federal preemption for the ELST and the Intersections that are inconsistent with precedent and that a declaratory order from the Board is necessary to clarify the scope of § 10501(b) preemption.

[2] The County filed an amended complaint on July 17, 2017.

On January 26, 2018,[3] Rails to Trails Conservancy, Cascade Bicycle Club, Friends of the East Lake Sammamish Trail, and Friends of the Burke Gilman Trail (collectively, Trail Users), filed a reply, asserting that the City's petition should be denied or dismissed because the District Court's decision rested on state law grounds, not federal preemption. Trail Users further note that the courts have concurrent jurisdiction over issues involving federal preemption and can address any preemption issues that might arise after the state property law issues involved here are resolved.

On January 29, 2018,[4] the County also filed a reply, arguing that there is no basis for the Board to open a declaratory order proceeding to resolve a state law dispute. The County contends that the City misrepresents the District Court's decision because the court held, as a matter of state law, that the City lacks the authority to regulate the Intersections and never reached the preemption issue.

The City filed a reply to the County's and Trail Users' replies on February 2, 2018.[5] The City contends that the preemption discussion in the District Court's decision is more than mere dicta and is at odds with the Board's preemption precedent.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate controversy or remove uncertainty. See Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989). For the reasons explained below, the Board will decline to exercise its discretionary authority to issue a declaratory order here.

The City bases its petition on claims that the District Court misconstrued the scope of preemption under § 10501(b) for railbanked corridors in certain statements in its preliminary injunction decision. However, while the District Court included some discussion of the County's preemption arguments and preemption law, it ultimately granted the preliminary injunction on

[3] On December 21, 2017, the Board granted an unopposed request to extend the deadline for replies to the City's petition to January 26, 2018.

[4] The County simultaneously filed a motion asking that the Board accept the late-filed reply. Because there is no indication that the County's late-filed request will prejudice any party, it will be accepted.

[5] The City seeks leave to file a reply to the County's and Trail Users' replies. On February 22, 2018, Trail Users filed in opposition to the City's request. Under 49 C.F.R. § 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will accept the City's February 2, 2018 filing into the record.

grounds that the City lacked a sufficient property interest under state law to impose any regulation on the Intersections, and expressly declined to reach the federal preemption issue.[6] Accordingly, the City's petition essentially amounts to an appeal of a court-issued preliminary injunction decision that is not based on federal preemption and is already on appeal in the Ninth Circuit. Indeed, as noted, the City has itself acknowledged in its Ninth Circuit brief that the District Court did not rely on preemption, but rather reached its decision based on state property law.

Given that the dispute between the parties rests on a matter of state property law and may ultimately be resolved by the courts on state law grounds, the request for a declaratory order will be denied. See Ingredion Inc.—Pet. for Declaratory Order, FD 36014 (STB served Sept. 30, 2016) (denying a request for a declaratory order where issues stemmed from a dispute concerning state property law). Should there ultimately be a need to address issues involving federal preemption under 49 U.S.C. § 10501(b), such issues can be decided either by the Board or the courts in the first instance, as both the Board and courts have concurrent jurisdiction to determine preemption. See, e.g., Adrian & Blissfield R.R.—Pet. for Declaratory Order, FD 36148, slip op. at 4 (STB served Jan. 31, 2018); 14500 Ltd.—Pet. for Declaratory Order, FD 35788, slip op. at 2 (STB served June 5, 2014); CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 8 (STB served May 3, 2005). Neither the District Court nor the Ninth Circuit have referred any issues to the Board, and the courts can address any preemption issues that might need to be reached regarding this dispute based on applicable Board and court precedent.

It is ordered:

1. The City's petition is denied.

2. The County's January 29, 2018 motion is granted, and its reply is accepted into the record.

3. The City's February 2, 2018 filing is accepted into the record.

[6] King Cty. v. City of Sammamish, No. C17-0921-JCC, slip op. at 5, 6-7 ("[T]he touchstone of this dispute is whether the City has the right to impose zoning and safety regulations at all. If the City does not have this authority, then preemption is not an issue. . . . Because the City likely does not have that authority, the Court need not address [the County's] other arguments. The other arguments—federal preemption and competing designs—are based on the premise that the City has limited authority to regulate activities at the intersections.")

4. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.