UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-MOBILE WEST, LLC and INDEPENDENT TOWERS HOLDINGS, LLC., Plaintiffs, v. CITY OF MEDINA, WASHINGTON, Defendant.	No. C14-1455RSL ORDER GRANTING MEDINA RESIDENTS' MOTION TO INTERVENE

I. INTRODUCTION

This matter comes before the Court on Medina Residents' motion to intervene. Dkt. #15. Medina Residents ("Intervenors") move to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2). In the alternative, they move for permission to intervene pursuant to Fed. R. Civ. P. 24(b). Plaintiffs oppose the motion, contending that Intervenors do not satisfy the requirements for intervention. Dkt. #24. Defendant City of Medina (the "City") takes no position on Intervenors' motion. Dkt. #23 at 1.

The Court has reviewed the parties' submissions. For the reasons discussed below, the Court GRANTS Intervenors' motion to intervene.

II. BACKGROUND

Plaintiff Independent Towers Holdings ("Independent Towers") and the City agreed to a lease allowing Independent Towers to construct and operate a wireless communications facility in the City's Fairweather Park and Nature Preserve in exchange for annual rent payments. Morrison Declaration (Dkt. #18) Ex. A. Independent Towers planned to lease the facility to plaintiff T-Mobile. Plaintiffs' First Amended Complaint (Dkt. #13) at 2. A hearing examiner employed by the City subsequently denied an application to proceed with the construction of the facility. Motion (Dkt. #15) at 1-2. Plaintiffs' request for reconsideration was denied. Plaintiffs' First Amended Complaint (Dkt. #13) at 13-14. Plaintiffs now challenge the denial of the application under 47 U.S.C. § 332. Plaintiffs' Response (Dkt. #24) at 2-3.

Intervenors are groups and individuals who oppose the construction of the wireless communications facility. They own property near the proposed facility site. See Adkins Declaration (Dkt. # 16) at ¶ 2; Lathia Declaration (Dkt. #17) at ¶ 2. They also use the proposed site for recreation. See Adkins Declaration (Dkt. # 16) at ¶ 6; Lathia Declaration (Dkt. #17) at ¶ 6. Additionally, Intervenors have shown an interest in preserving the parks and natural spaces in the City of Medina. See Adkins Declaration (Dkt. # 16) at ¶ 3.

Intervenors advocated against approval of the proposed facility during the hearing examiner's review of the permit application. See Adkins Declaration (Dkt. # 16) at ¶ 8; Lathia Declaration (Dkt. #17) at ¶ 7. They also opposed plaintiffs' request for reconsideration. See Adkins Declaration (Dkt. # 16) at ¶ 8. Intervenors would like to defend the City's denial of the application to construct and operate the facility. They move to intervene as one group and are represented by the same counsel. Motion (Dkt. #15) at 1.

III. ANALYSIS

Fed. R. Civ. P. 24(a)(2) provides that "[o]n timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of

the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." An application to intervene as of right must satisfy four conditions: "(1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest." Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006) (internal quotation marks and citations omitted).

Certain general considerations guide a court's interpretation of an application to intervene as of right. First, "[w]hile an applicant seeking to intervene has the burden to show that these four elements are met, the requirements are broadly interpreted in favor of intervention." Citizens for Balanced Use v. Montana Wilderness Ass'n, 647 F.3d 893, 897 (9th Cir. 2011). Additionally, a court's evaluation "is guided primarily by practical considerations, not technical distinctions." Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 818 (9th Cir. 2001) (internal quotation marks and citations omitted).

The Court considers each of the four conditions in turn.

A. Intervenors' Motion is Timely

The Ninth Circuit found timely a motion to intervene "less than three months after the complaint was filed" and "less than two weeks" after an answer to the complaint was filed. Citizens for Balanced Use, 647 F.3d at 897. The motion was "made at an early stage of the proceedings, the parties would not have suffered prejudice from the grant of intervention at that early stage, and intervention would not cause disruption or delay in the proceedings." Id. Therefore, the motion was timely, as it demonstrated these "traditional features of a timely motion." Id.

In this matter, plaintiffs filed their Complaint (Dkt. #1) on September 22, 2014. Plaintiffs

filed their First Amended Complaint (Dkt. #13) on November 12, 2014. Intervenors filed this motion (Dkt. #15) on November 24, 2014. The City filed an Answer (Dkt. #25) on December 11, 2014. Accordingly, Intervenors' motion, filed before the City's Answer, is even more prompt than the timely motion in Citizens for Balanced Use. In addition, plaintiffs do not contest the timeliness of the motion and do not assert that it will cause them to suffer prejudice or cause disruption or delay in the proceedings. Therefore, the motion to intervene is timely.

B. Intervenors Have a Significant Protectable Interest in the Subject of this Action

"[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Wilderness Soc'y v. United States Forest Serv., 630 F.3d 1173, 1179 (9th Cir. 2011) (internal quotation marks and citations omitted). "Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a 'practical, threshold inquiry,' and '[n]o specific legal or equitable interest need be established.'" Nw. Forest Res. Council v. Glickman, 82 F.3d 825, 837 (9th Cir. 1996) (quoting Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993)). Instead, "[t]o demonstrate a significant protectable interest, an applicant must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." Citizens for Balanced Use, 647 F.3d at 897.

Plaintiffs argue that Intervenors' interests exist solely as property owners in the vicinity of the proposed wireless facility site. Plaintiffs' Response (Dkt. #24) at 5. The Court finds, however, that Intervenors' interests extend beyond concerns about their individual properties. For example, RespectMedina, one of the groups involved, is "a Washington nonprofit organization dedicated to the preservation and enhancement of the City's neighborhood parks and natural areas[.]" Adkins Declaration (Dkt. # 16) at ¶ 3. Intervenors also use the proposed site for recreation. See Adkins Declaration (Dkt. # 16) at ¶ 6; Lathia Declaration (Dkt. #17) at ¶ 6. Further, Intervenors participated in the proceedings that culminated in a finding, pursuant to

the Medina Municipal Code, that the proposed project could not move forward. See Adkins Declaration (Dkt. # 16) at ¶ 8; Lathia Declaration (Dkt. #17) at ¶ 7.

These interests are sufficient to satisfy the interest test. In Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983), the Ninth Circuit held that the National Audubon Society, as well as other related groups and individuals, had a protectable interest in defending the legality of a conservation area for birds in Idaho. The applicants were interested in the preservation of birds and their habitats, and had "participated actively in the administrative process" that led to the creation of the conservation area under federal law. Id. at 526-527. The Ninth Circuit held that the applicants had a protectable interest in wildlife and habitat protection. Id. at 528. They also had a protectable interest in defending the creation of the conservation area that they had helped to bring into being. Id. at 527-528. The court based its reasoning on two prior cases holding that public interest groups had sufficiently protectable interests in "the legality of a measure which it had supported," and "a cause which that organization had championed." Id. at 527 (discussing Washington State Building & Construction Trades v. Spellman, 684 F.2d 627 (9th Cir. 1982), and Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980), respectively).

In 2006, The Ninth Circuit applied the rule in Sagebrush to an individual who was the chief petitioner of a ballot initiative. Prete, 438 F.3d at 954-955. The rule was also applied to a group (the Oregon AFL-CIO) that supported the initiative. Id. After the ballot initiative was approved by voters, it was challenged. The applicants moved to intervene to defend the initiative. Id. at 951-952. The individual, as "chief petitioner for the measure," and the group, as "a main supporter of the measure," had interests sufficient to satisfy this prong of the Rule 24(a)(2). Id. at 955.

Intervenors in this matter resemble the parties in Sagebrush and Prete. First, the Court acknowledges as a protectable interest their interest in the City's parks and natural spaces, as well as their more specific interests in Fairweather Park, because the Ninth Circuit has previously acknowledged interests in nature and wildlife. Sagebrush, 713 F.2d at 528. Second,

as in Sagebrush, Intervenors have been advocating for their interests throughout the review process undertaken by the City's hearing examiner. In this case, the review process evaluated the application to construct the facility under the Medina Municipal Code. Reply (Dkt. #26) at 4 n.3. The result of the hearing examiner's review is now at issue. As in both Prete and Sagebrush, Intervenors would like to continue to support their position. Under the aforementioned cases, Intervenors have a significant protectable interest in defending the result reached by the hearing examiner.

C. The Disposition of the Action May, as a Practical Matter, Impair or Impede Intervenors' Ability to Protect Their Interest

A prospective intervenor must show that "the disposition of [the] case may, as a practical matter, affect" its significant protectable interest. California ex rel. Lockyer v. United States, 450 F.3d 436, 442 (9th Cir. 2006). As discussed above, the Court finds Intervenors to be similarly situated to the applicants in Sagebrush and Prete. In both cases, the Ninth Circuit held that an adverse judgment had the potential to impair or impede the interests of those applying to defend the laws and decisions for which they advocated. Sagebrush, 713 F.2d at 527-8; Prete, 438 F.3d at 955. Intervenors' interests are in the City's Parks, including Fairweather Park, and in defending the result that they helped bring about in the hearing examiner's review. See supra, Section III.B. A central issue in this case is the propriety of the result that Intervenors supported. It follows that their ability to protect this interest could be impaired or impeded by an adverse ruling in this case. Thus, Intervenors satisfy this third requirement.

D. Defendant City of Medina May Not Adequately Represent the Interest of Intervenors

An applicant seeking to intervene must demonstrate that "the existing parties may not adequately represent the applicant's interest." Prete, 438 F.3d at 954 (internal quotations marks and citations omitted). The Ninth Circuit has "stress[ed] that intervention of right does not require an absolute certainty that a party's interests will be impaired or that existing parties will

not adequately represent its interests." Citizens for Balanced Use, 647 F.3d at 900. Three factors are considered in determining the adequacy of representation: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003), as amended (May 13, 2003). There is "an assumption of adequacy when the government is acting on behalf of a constituency that it represents." Id. "In the absence of a 'very compelling showing to the contrary,' it will be presumed that a state adequately represents its citizens when the applicant shares the same interest." Id. (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure 2d § 1909, at 322 (1986)).

Intervenors argue that the lease agreement between the City and Independent Towers, Morrison Declaration (Dkt. #18) Ex. A, is sufficient to demonstrate the potential for inadequate representation. Under the terms of the lease, Independent Towers would operate the proposed facility for up to 20 years in exchange for the payment of annual rent to the City. Id. Intervenors assert that the lease creates a "potential conflict between [the City's] regulatory and proprietary interests. A vigorous defense of [the ruling below denying the permit] will result in lost revenue to the City." Motion (Dkt. #15) at 7-8.

Plaintiffs argue that the lease is insufficient to show that the City will not act on behalf of Intervenors, relying on a number of distinguishable cases. United States v. City of Arcata, 2009 WL 1292961 (N.D. Cal. 2009) involved the defense of a ballot initiative. It did not involve an affiliation, like a lease, between the named parties. The other cases cited by plaintiffs, New Par v. Lake Twp., 2007 WL 128944 (W.D. Mich. 2007), and Nextel West Corp. v. Twp. of Scio, 2007 WL 2331871 (E.D. Mich. 2007), involved municipalities denying applications to build wireless telecommunications facilities. However, these cases did not involve leases between the parties or any indication of prior affiliation or cooperation between the parties.

Instead, this case is analogous to Sagebrush, which is still good law on this issue even though it was decided before the Ninth Circuit adopted the "very compelling" standard from Wright, Miller and Kane. Arakaki, 324 F.3d at 1086. In fact, Sagebrush is one of the cases cited by Wright, Miller, and Kane as satisfying this standard. 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure 3d § 1909, at 429-430, 432 n.35 (2007) (listing Sagebrush as an example of one of the "rare cases in which a member of the public is allowed to intervene in an action in which the United States, or some other governmental agency, represents the public interest" due to the demonstration of "a very strong showing of inadequate representation[.]").

In Sagebrush, the plaintiffs challenged the legality of the actions of former Secretary of the Interior Cecil D. Andrus in creating the conservation area discussed above in Section III.B. Sagebrush, 713 F.2d at 526. The primary defendant in the action was Andrus's successor, who had previously headed the legal foundation representing the plaintiff in the suit. Id. at 527-528. The court could not "ignore the fact that ... a principal defendant" was connected to the legal foundation representing the plaintiff. Id. at 529. Even though "there is no indication in this record of collusion or of any other conduct detrimental to the applicant's interest," this prior association prompted a finding of potential inadequacy. Id. at 528.

Sagebrush controls here, which compels the Court to find that the lease demonstrates the potential for inadequate representation under Rule 24(a)(2). The lease demonstrates that the City previously supported and agreed to the construction of the facility at the disputed site, something that Intervenors strongly oppose. In addition, a specific section of the lease, "Article 2, Section e," provides, in part, that "[t]he City shall reasonably cooperate with Independent Towers ... in Independent Towers's attempt to obtain approvals." Morrison Declaration (Dkt. #18) Ex. A at 5. Sagebrush held that a prior association with the opposing party justified a finding of potential inadequate representation. In this case, the lease shows a prior association, as well as an agreement to cooperate regarding the subject of this litigation.

Due to the contractual relationship between the City and Independent Towers, the three Arakaki factors also support a finding of inadequacy for the purposes of Rule 24(a)(2). The City's prior cooperation with Independent Towers creates some doubt regarding the City's capability and willingness to make all of Intervenors' arguments. Arakaki, 324 F.2d at 1086. Additionally, Intervenors are poised to offer "necessary elements of the proceeding," Id., that may not be advanced by the City, including specific arguments regarding plaintiff's "effective prohibition" claim. Motion (Dkt. # 15) at 8; Adkins Declaration (Dkt. # 16) at ¶¶ 12, 13.

IV. CONCLUSION

For the reasons discussed above, Intervenors may intervene as of right under Rule 24(a)(2). Their satisfaction of the conditions for intervention as of right makes it unnecessary to evaluate their request for permissive intervention. As in Sagebrush, Intervenors "have asserted a unitary interest and spoken with one voice." Sagebrush, 713 F.2d at 526 n.2. This means the Court is not faced with, "and need not address, any issue of multiple applications for intervention by applicants with differing interests." Id. at 526. Thus, "[n]othing in this opinion should be interpreted as approving participation by the intervenors on any other basis." Id. at 526 n.2.

ACCORDINGLY, Medina Residents' motion to intervene (Dkt. # 15) is GRANTED.

Dated this 21st day of January, 2015.

Robert S. Lasnik
United States District Judge