City – Conlin Scrambles to Stop Tunnel Vote, Sidestep Judge

Posted by Dominic Holden on Mon, May 16, 2011 at 2:14 PM

Seattle City Council president Richard Conlin has scheduled a "special meeting" tomorrow to consider one bill: A resolution intended to dissuade a judge from forwarding the deep-bore tunnel to the August ballot.

The **resolution** says the council intends to declare its final choice for replacing the Alaskan Way Viaduct later this year by passing an *ordinance*.

Why does that matter?

Last Friday, Judge Laura Gene Middaugh announced that a key provision of a tunnel law passed February was referable to voters. That key provision said the council would select the tunnel at a public meeting and provide a public *notice* (after the required impact studies are completed). Because that future *notice* may not be an ordinance subject to a vote, Middaugh told the courtroom, the February law was the final policy decision. And thus, it was eligible for a referendum.

To answer the question—why does it matter?—that I asked above: The latest resolution would say that the February law **wasn't the final choice** for a tunnel because the council intends to pass another law later this year (not just issue a notice). In other words, Conlin is apparently trying to change the playing field in order to circumvent the judge's final decision this Friday.

To make this work, Conlin needs to hold a meeting ASAP. But not today, because he doesn't have the five votes needed to pass it (only five council members are in town, and tunnel opponent Mike O'Brien is a dissenter). Tom Rasmussen needs to make it to Seattle! But Rasmussen just Tweeted that **he's in Chicago at Rahm Emanuel's mayoral inauguration**. So Rasmussen must hop on a plane and fly to City Hall by 9:00 a.m. tomorrow.

This sort of contortion from Conlin was probably inevitable. But the lengths he's taking are pretty impressive—if you're impressed by trying to stop a citizen-run ballot measure. If he succeeds, then tunnel critics will be sent back to gather **another 29,000 signatures** for another referendum on the final ordinance.

There's also a potential drawback for *tunnel supporters*: By starting the referendum process anew—again, on an issue that Judge Middaugh says is referable to the ballot—the council could be delaying the city's final decision until people do vote on the referendum. That may not happen until 2012. And if Conlin is to believed, such a setback would **cause the intentional delays that Conlin warns create cost overruns**.

Holden, Dominic. “Conlin Scrambles to Stop Tunnel Vote, Sidestep Judge”. *Stranger*. Index Newspapers, LLC.
http://slog.thestranger.com/slog/archives/2011/05/16/conlin-bends-over-backwards-to-stop-tunnel-vote

EXHIBIT S

Updated Tuesday, May 17, 2011 at 02:16 PM

Another City Council pro-tunnel resolution? Never mind....

Mike Lindblom

In yet another sign of legal confusion over the Highway 99 tunnel, the pro-tunnel Seattle City Council suddenly canceled a Tuesday morning meeting scheduled for the purpose of voting on a tunnel resolution.

Council President Richard Conlin said Monday the resolution was an attempt to clarify the council's intent -- to approve an ordinance this summer that would finalize its agreements with the state Department of Transportation for street use, utilities, insurance and design details. The $2 billion, 58-foot wide tunnel, is the most controversial part of a $3.1 billion replacement for the 1950s vintage Alaskan Way Viaduct.

The idea for a council resolution came up because last week, King County Superior Court Judge Laura Gene Middaugh asked how the council planned to "give notice" to the state DOT that the agreements would proceed. Groundbreaking is scheduled for September.

Middaugh ruled last Friday that the city-DOT agreements are subject to referendum because the City Council is still making policy decisions instead of making purely administrative moves to execute the agreements.

Protect Seattle Now's referendum calls for repeal of those agreements.

But Middaugh won't deliver a precise ruling about what language voters would see on the August ballot, until a hearing this Friday. Also, it is likely the state or pro-tunnel campaign lawyers will rush to state courts -- seeking to halt the referendum.

Conlin said Monday that a resolution was suggested by city attorneys to answer Middaugh's questions about how the council would give final notice to the state.

But the hasty timing of Tuesday's meeting signaled to reporters, as well as anti-tunnel Councilmember Mike O'Brien, that somehow the pro-tunnel camp was trying to muster more arguments for this week's hearings.

"I'm guessing it's a legal strategy," said O'Brien. He also said the episode "doesn't make the council look good."

In any event, Conlin canceled the meeting just seven minutes before the 9 a.m. start. He explained that his colleagues were ambivalent about taking another step. "We were unsure if it would pass," he said. And upon further thinking, a resolution may not make any difference in ongoing legal struggles, he said.

Councilmember Tom Rasmussen, chairman of the Transportation Committee, said there didn't seem to be much point in passing a statement about what the council would do later: "It just seemed gratuitous," he said.

A final ordinance by the council would come only after the federal government approves the environmental impact statement, due in August, for the tunnel. An international construction team has already signed a $1.4 billion contract with state DOT and is now being paid for engineering work. Critics argue that governments are circumventing environmental laws by proceeding prematurely.

State lawmakers in spring 2009 directed state DOT to design a tunnel. That fall, the City Council voted to support the tunnel and cooperate with the state.

Lindblom, Mike. "Another City Council pro-tunnel resolution? Never mind....". Seattle Times. May 17, 2011.
http://community.seattletimes.nwsource.com/mobile/?type=story&id=2015076010&st_app=and_news_lite&st_ver=1.0.1