

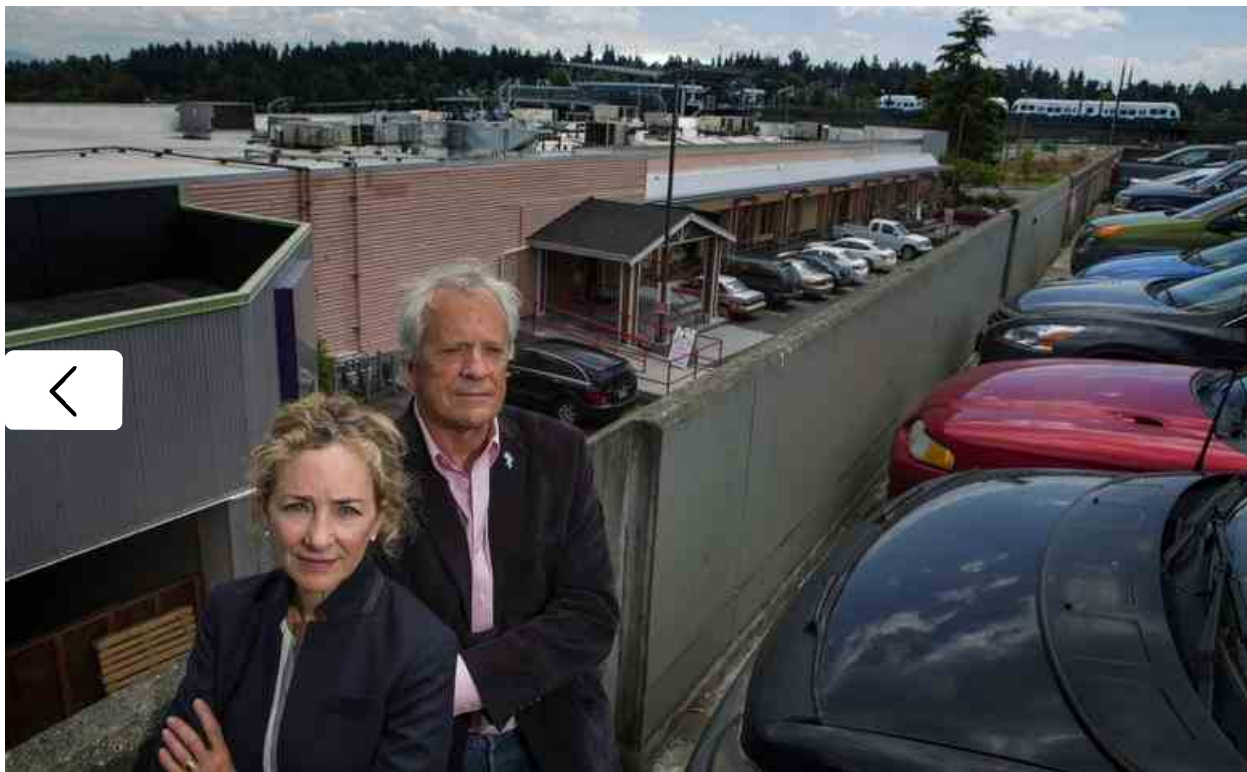


Local News

SeaTac ordered to pay \$18 million to couple it cheated in secret land grab



Originally published July 26, 2016 at 8:54 pm Updated July 27, 2016 at 9:18 pm



1 of 4 Gerry and Kathy Kingen at the SeaTac parcel they once owned and had planned to turn into a park-and-fly garage. (Ellen M. Banner / The Seattle Times)



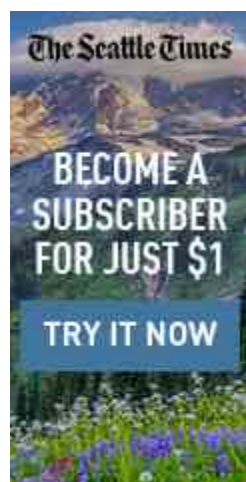
A West Seattle couple sued the city of SeaTac and have been awarded \$18 million after proving city officials sabotaged their development plans, strong-armed them into giving up their property and illegally withheld city emails and documents that demonstrated the deception.

By [Sara Jean Green](#) 

Seattle Times staff reporter

A three-month-long civil trial revealed the shadowy subterfuge behind a secret land grab that was orchestrated by the city of SeaTac, replete with backroom deals, baldfaced deceptions, and a mayor intent on driving Somali refugees from the neighborhood.

The aim of it all: to wrestle 4.23 acres of prime real estate from entrepreneurs Gerry and Kathy Kingen, according to the judge and jury who heard the case.



The West Seattle couple sued the city and won, proving in court that SeaTac officials intentionally sabotaged their development plans, strong-armed them into giving up their property and then violated the state's Public Records Act by withholding city emails and documents proving the deception.

The trial judge also concluded the former SeaTac mayor wanted condos built on the site, believing they would price out Somalis who had moved into "his neighborhood."

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In January, a King County Superior Court jury awarded the Kingens more than \$9.3 million in damages for their claims of misrepresentation, inverse condemnation and interference with business expectancy. Earlier this month, Judge Richard McDermott also found the Kingens had proved promissory estoppel — basically, they had relied on the city’s promises, to their detriment. The judge also awarded the Kingens \$1.2 million in attorneys’ fees and ruled the couple was entitled to interest on the damages, totaling \$7.5 million.

All told, the Kingens were awarded just over \$18 million.

McDermott also issued a blistering summary of the case, criticizing the city for its dealings with the couple and saying there’s evidence the SeaTac City Attorney’s Office “participated in this profound and unacceptable pattern of deception.” The judge also suggested a bar complaint may be warranted.

In his written findings of fact and conclusions of law, McDermott wrote:

“Quite frankly the actions of the city of SeaTac in this case are unexplainable and totally unacceptable.”

The Kingens — owners of Salty’s restaurants and founders of the Red Robin Gourmet Burgers chain — say they feel vindicated.



“We stood up not just for ourselves. We knew all along if Gerry and I didn’t stand up, who would? Who could?” Kathy Kingen said. “If somebody like us doesn’t do this, the government is allowed to run roughshod over property rights.”

The city of SeaTac has already filed notice it intends to appeal to the state Court of Appeals. But the Kingens say they are undaunted in their fight to be made whole.

“We’re prepared to go the distance. If it takes (another) two or three years, we’re good,” Gerry Kingen said.

For him, the reason is simple: “I always take on the bullies.”

Joseph Scorcio, SeaTac’s acting city manager, confirmed by email the city and its insurance carriers are appealing the lawsuit filed by the Kingens and their company, K&S Developments.

“Now that the written judgment has been provided by the court and can be fully reviewed, the next steps in the legal process can proceed,” Scorcio wrote.

“Because the matter is under appeal, we cannot comment further on the substance of the pending litigation,” Scorcio’s email said.

He also declined to respond to comments McDermott made about the SeaTac City Attorney’s Office, writing that the judge’s remarks are “also a matter of the pending litigation.”

City's secret sabotage

The Kingens filed their lawsuit in December 2012, but their story actually began a decade earlier.

In 2003, the Kingens purchased a 4.23-acre parcel on International Boulevard and South 154th Street for \$5.3 million from their landlord. It was the former site of a failed business venture, Funsters Grand Casino, that the couple had co-owned.



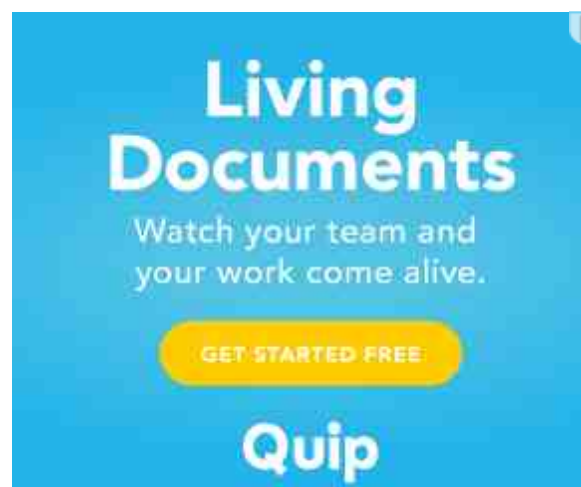
The property was just off Highway 518 near Seattle-Tacoma International Airport and was kitty-corner to the then-planned Link Light Rail station on 35th Avenue South.



“It was a large property by any definition. It had unlimited potential,” Gerry Kingen said

Soon after the purchase, the Kingens began pursuing a plan to build a 1,200-stall, multistory, park-and-fly garage on the property.

But they were unaware at the time that the city of SeaTac had long coveted that property and had strategically bought up parcels around it, the couple said.



Judge McDermott detailed the city’s deception in his written findings:

In March 2004, K&S Developments began working with SeaTac’s planning

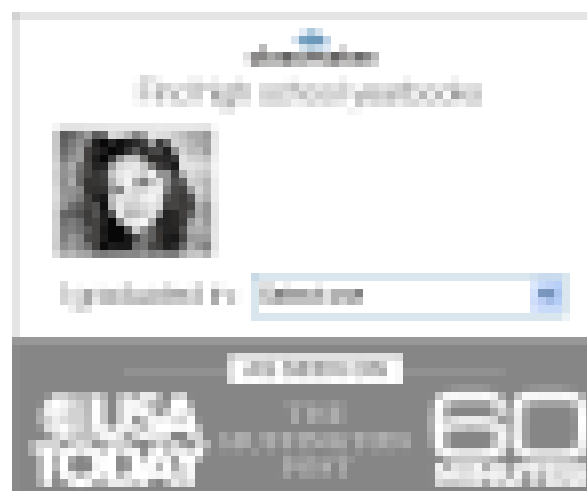
department to get approval for the park-and-fly, and city officials “voiced support and encouragement” for the proposal. The judge noted there “was never any public opposition” to the plan.

But unbeknown to the Kingens, SeaTac’s planning director, city manager and other staff decided in late 2005 they didn’t want K&S to build the park-and-fly because it would create competition for a park-and-fly the city wanted to build about a mile south at South 176th Street.

So in February 2006, city staff “devised a secret plan” to get the City Council to pass a moratorium designed to kill the Kingens’ park-and-fly project, the judge wrote. After learning of the permanent ban, Gerry Kingen met with members of the City Council and then-Mayor Gene Fisher, who “promised to make things right.”

Five months later, K&S entered into a development agreement with the city that would allow K&S to move forward with a park-and-fly, with the city promising that the project would be protected from the ban on future park-and-fly projects.

Despite the development agreement, city staff “worked behind the scenes” to undermine the Kingens’ ability to get council approval, McDermott wrote.



In October 2007, a majority of council members — who had previously supported the Kingens’ plans — said they would no longer support a park-and-fly but did so without “revealing their true reasons for the apparent reversal in position,” the judge wrote. Instead, council members encouraged K&S “to work with staff on a different proposal.”

Over the next two years, the Kingens — who had already paid for environmental and

traffic studies, architectural plans and artists' renderings — did so, first working with the city on a condominium project and then a proposal for affordable housing, Gerry Kingen said.

Default, threats, deceit

When the recession hit, K&S defaulted on its loans at the end of 2008. But the Kingens, who had offered personal guarantees, worked with their lender and negotiated a two-year forbearance, buying themselves time to repay their loans, he said.

However, when the city learned of the default, “it secretly retained a commercial real estate broker ... to exploit K&S’s financial circumstances,” according to McDermott’s findings.

The broker, representing a phantom buyer who was only referred to as “his guy,” threatened to go after the Kingens personally if they refused to sign over the deed to their property in lieu of foreclosure. They signed the papers on Dec. 24, 2009.

“We realized the risk to us and our businesses was too high — we had no choice. It was so frightening,” Kathy Kingen said. “He’s not coming to take our property, he’s coming to take everything we own.”



The couple said they didn’t receive any money for their land and were left with \$1.5 million in residual debt.

Exhausted and defeated, they left for a ski trip to Sun Valley, Idaho, the day after Christmas.

A few days later, Gerry Kingen got a phone call from Earl Gipson, a SeaTac resident and blogger who closely follows city politics. Gipson had received notice of an emergency City Council meeting:

“I called him up and said, ‘Why are you selling your property to the city?’ and he said, ‘I’m not.’ And I said, ‘Well, they’re buying it — tonight,’ ” recalled Gipson.

The SeaTac City Council unanimously voted to purchase the Kingens’ property on Dec. 30, 2009, revealing itself as the “phantom buyer.” Gerry Kingen said the city purchased the property for \$11 million.

On Jan. 4, 2010, the city [issued a news release](#) — which later became evidence in the civil trial — bragging that it was buying “a critical piece of property” for \$6.4 million below the assessed tax value and \$4 million less than its appraised price. The city did not disclose the purchase price but said it would pay no more than \$12.7 million.

“We were in a state of shock,” Gerry Kingen said. “It’s breathtaking and it’s not how government is supposed to work.”

That February, the Kingens hired an attorney who filed public-disclosure requests for emails, documents and other records to help explain “the city’s conduct that led up to the acquisition,” says the judge’s findings.

It took the city well over a year to respond, but as “it turned out, the city also failed to produce many of the more important, relevant and responsive public records” required by state law, McDermott wrote in his findings.

Mayor’s hidden agenda

The Kingens’ attorneys ultimately obtained some of the most incriminating records “from other sources,” enabling them to prove the city had “specific plans to acquire the property” as early as spring 2007, say the findings.

Also revealed was the fact that Fisher, the former mayor, wanted condos built on the Kingens’ property in order to raise property values and drive out Somali refugees who had moved into the neighborhood, according to the judge’s findings.

Fisher, who lived three blocks away from the Kingens’ property, wanted to sell his property to a town-house developer and thought a park-and-fly would undermine his

ability to sell, say the findings.

Fisher has since moved to Nevada and according to the Kingens' attorneys, he refused to return to King County to testify at trial.

Reached at his home in Pahrump, Nev., Fisher said: "There's a lot of things said about me that's not true." He declined to elaborate, saying he couldn't comment further because the city is appealing the judgment.

In a small victory, the jury found in the city's favor on counter counterclaims related to rent checks and a land appraisal, awarding SeaTac just over \$257,000, which was deducted from the Kingens' award.

Parcel still untouched

In his oral comments, McDermott opined that a government entity "owes a duty of honesty and transparency" to the people it deals with.

"The city violated that duty so many times I've lost count," the judge said, according to a transcript of the July 8 proceedings.

McDermott noted the city's "period of deception" lasted through their response to the Kingens' public-disclosure request. The city, he said, "obviously had something to hide."

The 4.23-acre parcel has remained untouched and undeveloped since the city took it from the Kingens 6½ years ago, Gerry Kingen said.

"You don't often hear judges go as far as this judge did: He let the city have it with both barrels," Brad Anderson, one of the Kingens' attorneys, said of McDermott. "There are so many aspects of this case that just make your jaw drop."

He praised jurors who "put their lives on hold for three months to hear this case" and the Kingens for dedicating their time and money to expose "the shenanigans that were going on" in the city of SeaTac:

"There are very few people with the resources to take on the government," Anderson said. "They're heroes for taking this on."

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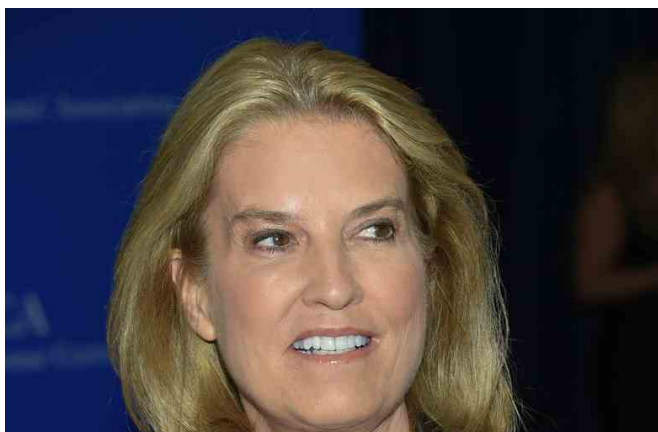
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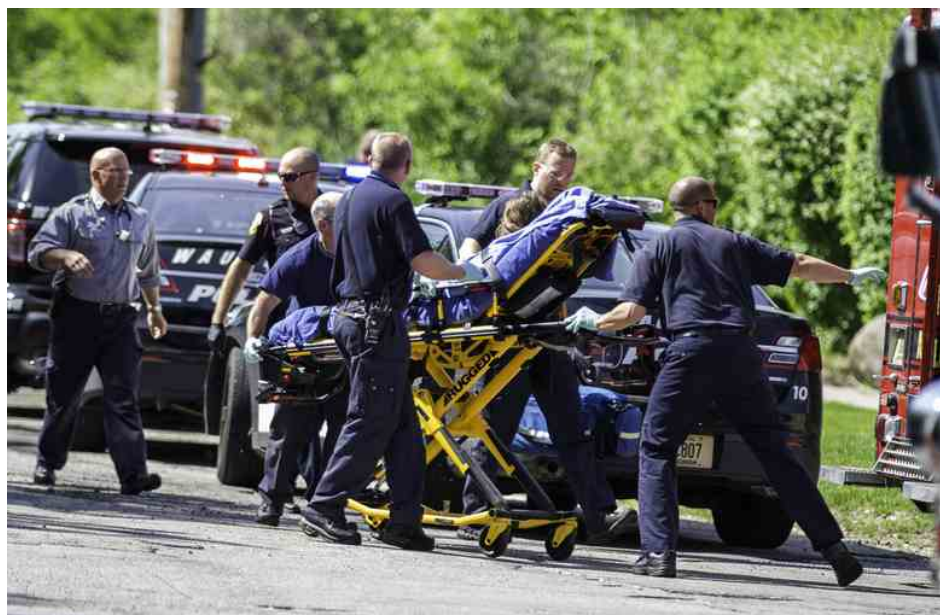
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