

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
)
) W-18-002
DISCOVERY PARK COMMUNITY)
ALLIANCE, et al.,) MOTION TO STRIKE NOTICE OF
) APPEAL AS "OPENING BRIEF"
)
from a decision of the City of Seattle, Final)
Environmental Impact Statement for the Fort)
Lawton Army Reserve Center Redevelopment)
Project.)
_____)

14
15
16
17
18
19
20
21
22
23

I. INTRODUCTION

After Ms. Campbell failed to appear at the second prehearing conference, the Examiner ordered that "[t]he parties will address any remaining issues in this matter in the form of legal briefing." Instead of filing legal briefing, Ms. Campbell through her newly-retained counsel refiled Ms. Campbell's notice of appeal. Ms. Campbell's attempt to refile her notice of appeal as opening legal briefing should be rejected and this matter dismissed.

II. FACTS

On October 24, 2018, the Examiner issued a Second Prehearing Order setting these deadlines:

- November 2, 2018, the Appellant was required to file her opening brief;

- November 9, 2018, the City’s response was to be filed; and
- November 14, 2018, the Appellants reply was to be filed.

The Examiner’s order required that any remaining issues be in the form of “legal briefing.” The order also provided that if the Appellants did not file an opening brief within the required timeframe, the City was not required to submit briefing and the Examiner would dismiss the case.

Ms. Campbell did not file opening briefing, instead she refiled her notice of appeal.

III. ISSUES

Ms. Campbell was required to file an opening brief in the form of legal briefing by November 2, 2018. What Ms. Campbell did was refile her notice of appeal. No opening legal briefing was filed by Ms. Campbell. Should Ms. Campbell’s refiled notice of appeal be struck because it is not opening legal briefing as required by the Examiner’s Second Prehearing Order?

IV. ARGUMENT

A. *Ms. Campbell’s notice of appeal is not legal briefing*

On October 31, 2018, Ms. Campbell sent out her *Fall Update Fort Lawton, Discovery Park and Beyond* newsletter.¹ The Examiner can take judicial notice of publicly-available documents.² In this newsletter, Ms. Campbell said “[t]his last week the Discovery Park Community Alliance engaged attorney Nathan “Nate” Arnold to represent its legal interests. . . .” Instead of preparing legal briefing, Ms. Campbell and her counsel are attempting to cast Ms. Campbell’s notice of appeal as legal briefing. Ms. Campbell’s attempt to cast her notice of appeal as an opening legal briefing would force the City to guess what her legal arguments are.

¹ <https://drive.google.com/file/d/1xpzYk1edadLI4JdJm23TbCCH36C53wGx/view>

² HER 2.18.(a).

1 The City should not be placed in that disadvantaged position when the Second Prehearing Order
2 was clear: file an opening brief “in the form of legal briefing.”

3 **B. *This appeal should be dismissed***

4 The Examiner advised Ms. Campbell in the Second Prehearing Order that if she did not
5 file an opening brief, the Examiner will consider this matter abandoned and dismiss the case. Ms.
6 Campbell had since October 24 to prepare an opening brief. Instead of doing that she prepared a
7 24-page fall newsletter that among other things solicits funds to contest this case before the
8 Examiner and on appeal. Ms. Campbell has had months to raise funds and hire an attorney to
9 prosecute her case, which would have included timely filing an opening brief.

10 **C. *The request to reopen discovery should be rejected***

11 Ms. Campbell previously requested a hearing delay to conduct discovery. In response, the
12 Examiner ruled in a September 12, 2018 order that the hearing would not be delayed due to Ms.
13 Campbell’s request. Ms. Campbell in her latest request to reopen discovery offers one
14 rationale—to examine City witnesses and evidence in a hearing setting.³ Ms. Campbell had an
15 opportunity to participate in a hearing setting but instead chose to not attend the second
16 prehearing conference. Opening discovery and conducting a hearing should be rejected.

17 **V. CONCLUSION**

18 Ms. Campbell’s refusal to comply with the Examiner’s Second Prehearing Order to file
19 an opening brief in “the form of legal briefing” should not be excused. As the Second Prehearing
20 Order provided, Ms. Campbell’s appeal should be dismissed for her failure to file an opening
21 brief. Finally, Ms. Campbell’s latest attempt to open the proceedings for discovery should be
22 rejected.

23 _____
³ Notice of Appearance, Request to Reopen Discovery and Opening Brief at 2:1-21.

1 Dated this 5th day of November 2018.

2 PETER S. HOLMES
3 Seattle City Attorney

4 By: s/Patrick Downs, WSBA #25276
5 Assistant City Attorney
6 Seattle City Attorney's Office
7 701 Fifth Ave., Suite 2050
8 Seattle, WA 98104-7097
9 Ph: (206) 684-8200
10 Fax: (206) 684-8284
11 Email: patrick.downs@seattle.gov
12 *Attorneys for Respondent*
13 *Seattle Office of Housing*
14
15
16
17
18
19
20
21
22
23

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of Respondent's MOTION TO
3 STRIKE NOTICE OF APPEAL AS "OPENING BRIEF" with the Seattle Hearing Examiner
4 using its e-filing system.

5 I also certify that on this date, a copy of the same document was sent by email to the
6 counsel for the appellant:

7 Nathan J. Arnold,
8 Johnson Jacobowitz & Arnold, PC
9 2701 First Avenue, Suite 200
10 Seattle, WA 98121
11 Nathan@JJALaw.com
12 Counsel for Appellant

13 the foregoing being the last known address of the above-named parties.

14 Dated this 5th day of November 2018, at Seattle, Washington.

15 *s/Alicia Reise*
16 ALICIA REISE, Legal Assistant
17
18
19
20
21
22
23