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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of

MBAKS, LEGACY GROUP,
BLUEPRINT CAPITAL

from a Determination of Non-Significance
issued by the Director, Seattle Department
of Construction and Inspections.

NO. W-22-003

Department Reference: 000268-22PN

TREPAC’S MOTION TO
INTERVENE

I. RELIEF REQUESTED

TreePAC has been actively engaged in the Tree Protection update process with the main goal of ensuring that tree canopy is preserved as much as possible in the City of Seattle. Because TreePAC has a substantial interest in this matter and represents the public interest perspective on the issues presented in this appeal, TreePAC requests that the Hearing Examiner allow it to intervene in this matter pursuant to HER 3.09. TreePAC’s intervention is unopposed by the Seattle Department of Construction and Inspections (SDCI). Declaration of Claudia M. Newman in Support of Motion to Intervene (Apr. 14, 2022). At the time of filing this motion, we have not heard back from Appellants regarding their position on intervention. *Id.*

1 **II. STATEMENT OF FACTS**

2 The Seattle Department of Construction and Inspections (SDCI) in consultation with the
3 Office of Sustainability and Environment (OSE) is proposing updates to the Tree Protection Code with
4 the stated purpose of increasing tree protection. MBAK Notice of Appeal, Ex. A. The Tree Protection
5 Code regulates the number, size, and types of trees that may be removed from property; sets forth tree
6 replacement requirements; and requires tracking of tree preservation, removal, and replacement
7 efforts. *Id.*

8
9 Master Builders Association of King and Snohomish County and several other developer-
10 interest groups appealed the State Environmental Policy Act (SEPA) Threshold Determination of
11 Non-Significance (DNS) for the Tree Protection Code updates on March 10, 2022. After holding a
12 prehearing conference, the Hearing Examiner issued a Prehearing Order that scheduled prehearing
13 deadlines and set the hearing on the merits to be held on June 14, 2022, with additional dates June 15
14 and 22, 2022 reserved if needed.

15 **III. ARGUMENT**

16 **A. Legal standard for intervention**

17 An organization who has not filed an appeal with the City of Seattle Hearing Examiner may
18 request by motion to participate in the appeal per HER 3.09. The request must state “how the person
19 or entity making it is affected by or interested in the matter appealed, and must demonstrate a
20 substantial interest that is not otherwise adequately represented.” HER 3.09(b). In determining the
21 merits of a request for intervention, the Hearing Examiner will consider whether intervention will
22 unduly delay the hearing process, expand the issues beyond those stated in the appeal, or prejudice the
23 rights of the parties. HER 3.09(c). If intervention is granted, the Examiner may limit its nature and
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1 scope. *Id.* The Examiner may allow a substantially interested person to intervene for the sole purpose
2 of preserving the right to appeal. HER 3.09.

3 **B. TreePAC has a substantial interest in this matter that is not otherwise adequately**
4 **represented by SDCI or the appellants**

5 TreePAC has a substantial interest in this matter that is not otherwise adequately represented
6 by SDCI or the Appellants. TreePAC is a public interest and community-based organization in Seattle
7 whose mission is assuring that tree canopy is preserved and saved to the greatest degree possible in
8 Seattle’s regulatory scheme and permit approvals. Declaration of Steve Zemke in Support of
9 TreePAC’s Motion to Intervene (Apr. 13, 2022) (hereinafter “Zemke Dec.”) at ¶ 2. In addition,
10 TreePAC’s mission is to ensure that legislation adopted by the City of Seattle accomplishes the goals
11 of tree retention, tree protection, and tree replacement so that we have livable communities, wildlife
12 habitat, and adequate urban forests to mitigate peak stormwater loads and urban heat island effects.
13 *Id.* TreePAC’s top priority goal has been to work with the Mayor and Seattle City Council to enact a
14 stronger ordinance. *Id.* at 3.

15
16 TreePAC has been very involved in the Tree Protection Code update process. *Id.* at 4.
17 TreePAC has engaged in an extensive grassroots effort to alert the public about the current update, to
18 inform the public about the issues presented, and to inform the public about the opportunities to
19 comment on the update. *Id.* TreePAC is spearheading several campaigns with the goal of preserving
20 Seattle’s tree canopy through the update. *Id.* at 5. The group has an active website and member
21 newsletter and also has a presence on social media Facebook and Twitter accounts. *Id.* TreePAC
22 continues to work with and help coordinate coalition efforts by neighborhood, environmental, civic,
23 political and other groups and organizations to provide input into the process of passing an updated
24 Tree Protection Code.
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1 TreePAC members and representatives have observed and attended Seattle Urban Forestry
2 Commission meetings, City Council meetings, and other meetings regarding the update. *Id.* at 6.
3 TreePAC submitted comments on the State Environmental Policy Act Determination of Non-
4 Significance, which is the subject of this appeal, on March 3, 2022. *Id.* at 7. In those comments,
5 TreePAC Vice President, Richard Ellison, outlined concerns about the draft Tree Code’s lack of
6 adequate protection of trees and tree canopy. *Id.*

8 TreePAC’s interests are not adequately represented by the existing parties. The direct conflict
9 between the interests of TreePAC and the appellants, who represent the interests of developers, is
10 clear. And given SDCI’s broader interest of acting in the governmental role, SDCI does not share
11 TreePAC’s unique non-profit, community focused public interests.

12
13 **C. TreePAC’s involvement will not unduly delay the hearing process, expand the
14 issues beyond those stated in the appeal, or prejudice the rights of the parties.**

15 TreePAC’s involvement will not unduly delay the hearing process, expand the issues beyond
16 those stated in the appeal, or prejudice the rights of the parties. Intervention would not work a hardship
17 on either of the existing parties. This motion is timely. The Hearing Examiner rules allow motions for
18 intervention to be filed as late as 10 business days prior to the hearing date and this motion is being
19 filed two months before the hearing.

20 If allowed to intervene, TreePAC would not seek to expand the issues presented. *Id.* at 8.
21 TreePAC would address the issues that are presented by the MBAK appeal. The hearing date and pre-
22 hearing deadlines have all been set already and TreePAC will comply with the deadlines that have
23 been set and its involvement would not affect the existing schedule. *Id.*

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25 Meanwhile, barring TreePAC from being involved would silence the unique public interest
26 perspective, which is not represented by SDCI or the developers.

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IV. CONCLUSION

For the reasons stated above, we respectfully request that the Hearing Examiner grant TreePAC’s motion to intervene in this matter.

Dated this 14th day of April, 2022.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP



By: _____
Claudia M. Newman, WSBA No. 24928
Attorneys for TreePAC