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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In Re: Appeal by

MASTER BUILDERS ASSOCIATION OF
KING AND SNOHOMISH COUNTIES,
LEGACY GROUP CAPITAL, LLC,
BLUEPRINT CAPITAL SERVICES, LLC, AA
ASHWORTH DEVELOPMENT LLC,
BLACKWOOD BUILDERS GROUP LLC,
AND BUILD SOUND, LLC,

of the SEPA Threshold Determination of Non-
Significance for the Tree Protections Update.

Hearing Examiner File: W-22-003

APPELLANTS' RESPONSE IN
OPPOSITION TO TREEPAC'S
MOTION TO INTERVENE WITH
SUBJOINED DECLARATION OF
BRANDON S. GRIBBEN

I. RELIEF REQUESTED

This appeal concerns SDCI's SEPA Determination of Non-Significance ("DNS") for the proposed updates to the Tree Protection Ordinance. TreePAC previously appealed the SEPA DNS and subsequently withdrew its appeal. TreePAC's motion should be denied because intervention is only permitted for a person or entity that has not filed an appeal. And, in any event, TreePAC fails to demonstrate that it has a substantial interest in the

1 appeal that is not otherwise adequately represented by SDCI and the City Attorney. Thus,
2 the Hearing Examiner should deny TreePAC’s request to intervene in this appeal.

3 II. STATEMENT OF FACTS

4 SDCI is proposing to amend Title 23 (Land Use Code) and Title 25 (Tree Protection)
5 and adopt two related Director’s Rules to increase tree protection in the City. As part of
6 updating the tree protection ordinance, SDCI performed an environmental review under
7 SEPA to determine the potential environmental impacts from the updates the tree protection
8 ordinance.
9

10 On February 17, 2022, SDCI issued a SEPA Threshold Determination of Non-
11 Significance for the proposed tree protection update finding that the “proposal has been
12 determined to not have a significant adverse impact upon the environment” and that an “EIS
13 is not required under RCW 43.21C.030(2)(c).” Appeal, Ex. A. On March 10, 2022,
14 TreePAC filed an appeal of the SEPA DNS, alleging, among other things, that SDCI’s
15 environmental analysis was not adequate. See Hearing Examiner File No. W-22-002,
16 TreePAC Appeal. On March 14, 2022, TreePAC emailed the Examiner’s Office and
17 requested that its appeal be withdrawn. *Id.*, Appellant's Withdraw of Appeal. On March 15,
18 2022, Examiner Vancil issued an Order of Dismissal dismissing TreePAC’s appeal. *Id.*,
19 Order of Dismissal.
20
21

22 On March 10, 2022, the Appellants filed their Appeal in this case. A prehearing
23 conference was conducted on March 21, 2022, and a case schedule was set for this land use
24 appeal. On April 14, 2022, TreePAC filed its motion to intervene.
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III. ARGUMENT

A. TreePAC is not entitled to intervene in this appeal because it previously filed, and subsequently withdrew, an appeal concerning the same land use decision.

Intervention is governed by HER 3.09. Subsection (b) permits intervention only for a party or organization who has *not* filed an appeal.

3.09 INTERVENTION

(b) A person, organization or other entity **who has not filed an appeal** may request by motion to participate in the appeal... (emphasis added)

The Hearing Examiner Rules of Practice and Procedure concerning intervention are crystal clear. If a party has appealed, it is not entitled to later seek intervention in a separate appeal of the same land use decision. Because TreePAC previously appealed the SEPA DNS, and then withdrew its appeal, it is barred from seeking intervention in this appeal of the same land use decision that it previously appealed.

B. Even if TreePAC did not previously appeal the SEPA DNS, its interests are adequately represented by the City.

Under HER 3.09(b), TreePAC’s Motion to Intervene should be denied because it has not demonstrated a substantial interest in the matter that is not otherwise adequately represented by the City. Under HER 3.09(b), TreePAC “must demonstrate a substantial interest that is not otherwise adequately represented.” TreePAC argues that its interests will not be adequately represented by the City because “SDCI does not share TreePAC’s unique non-profit, community focused public interests.” TreePAC’s Motion at p. 4. This statement is not sufficient to grant intervention because it fails to demonstrate that TreePAC’s interests will not be adequately represented by the City.

1 This appeal concerns, among other things, whether SDCI adequately evaluated the
2 potential environmental impacts of the proposed updates to the tree protection ordinance.
3 SDCI, the agency charged with proposing the tree protection updates and analyzing the
4 potential environmental impacts, has an absolute interest in defending the SEPA DNS.
5 Assuming TreePAC now agrees with SDCI that the SEPA DNS was appropriate and should
6 be affirmed, its interests are wholly aligned with SDCI's.

8 SDCI is not a neutral party in this appeal. It issued the SEPA DNS and the City
9 Attorney is defending it in this land use appeal. It is also telling that TreePAC appealed the
10 SEPA DNS a little over a month ago yet is now arguing that SDCI will not adequately
11 represent its interests in defending the SEPA DNS. Putting this flip-flop aside, TreePAC
12 fails to demonstrate that its interests will not be adequately represented by the City.

13
14 **C. If the Hearing Examiner permits TreePAC to intervene in this appeal, it should**
limit the nature and scope of the intervention under HER 3.09(c).

15 HER 3.09(c) permits the Examiner to deny a motion to intervene if it will delay the
16 proceedings or expand the issues beyond those raised in the appeal:
17

18 In determining the merits of a request for intervention, the
19 Hearing Examiner shall consider whether intervention will
20 unduly delay the hearing process, expand the issues beyond
21 those stated in the appeal, or prejudice the rights of the parties.
22 If intervention is granted, the Hearing Examiner may limit its
23 nature and scope

24 HER 3.09(c) gives the Examiner discretion to limit the nature and scope of the
25 appeal. If the Examiner is inclined to grant TreePAC's motion, he should condition and limit
that intervention to preclude TreePAC from raising any issues, including presenting any
evidence or testimony at the hearing, that were not raised in Appellants' Appeal.

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IV. CONCLUSION

TreePAC’s Motion to Intervene should be denied for several reasons. First and foremost, TreePAC previously appealed the SEPA DNS that is the subject of this appeal. And under HER 3.09(b), TreePAC is precluded from seeking intervention in appeal of the same land use decision that it previously appealed.

Second, TreePAC’s interests are already being represented by SDCI and the City Attorney. SDCI is the agency charged with performing the SEPA analysis and will vigorously defend this appeal. TreePAC’s argument that barring it from “being involved would silence the unique public interest perspective” has no bearing on whether SDCI properly analyzed the environmental impacts or if the SEPA DNS is adequate.

Thus, TreePAC has failed to establish grounds for intervening under HER 3.09 and the Examiner should deny its motion. If the Examiner decides to grant the motion, he should limit the intervention to the issues raised in the appeal and preclude any evidence or testimony related to issues that were not raised in the appeal.

DATED this 21st day of April, 2022.

HELSELL FETTERMAN LLP

By: s/ Brandon S. Gribben
Brandon S. Gribben, WSBA No. 47638
Attorneys for Appellants

DECLARATION

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I, Brandon S. Gribben, declare and state as follows:

I am an attorney at Helsell Fetterman LLP, attorneys for the Appellants. I am over the age of eighteen years, have personal knowledge of the facts set forth herein and am competent to testify. The facts set forth in the foregoing response are true and correct.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 21st day of April, 2022 at Seattle, Washington.

s/ Brandon S. Gribben
Brandon S. Gribben