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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

TREEPAC’S REPLY IN SUPPORT OF
MOTION TO INTERVENE

In their response to TreePAC’s Motion to Intervene, Appellants MBAKS et. al provide no tenable grounds or reasons to deny TreePAC intervention in this proceeding. As explained below, their arguments against intervention should be rejected.

I. ARGUMENT

A. Appellants’ interpretation of HER 3.09 as prohibiting intervention outright when a person files, but then withdraws, an appeal should be rejected.

Appellants argue that TreePAC should be denied intervention because TreePAC filed an appeal in this case. But Appellants conveniently fail to mention that TreePAC withdrew its appeal on that same day immediately after it was filed. Second Declaration of Steve Zemke in Support of TreePAC’s Motion to Intervene (Apr. 28, 2022). The appeal fee was fully refunded on that same day.

1 *Id.* The Hearing Examiner dismissed the appeal pursuant to HER 3.06, which states that an appellant's
2 request to withdraw shall be granted as a matter of right and the appeal dismissed. *Id.*, Ex. A.

3 Because TreePAC withdrew its appeal, TreePAC has, in fact, not filed an appeal in this matter.

4 *Id.* In the same vein, if a party files a complaint in court and then immediately withdraws the Complaint
5 – that party has not filed a complaint in court. Withdrawing an appeal literally means that no appeal
6 has been filed. Appellants' attempt to bar TreePAC from intervention on this basis should be rejected.

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8 There is also no reason to believe that the authors of HER 3.09 intended that this rule be
9 interpreted as suggested by Appellants. There is no public policy basis whatsoever for adopting their
10 interpretation. Why would the Hearing Examiner's office penalize a person who voluntarily withdrew
11 an appeal by barring that entity from intervening in the matter? What purpose does that serve? There's
12 no greater benefit to being an intervenor instead of an appellant. As an intervenor, TreePAC is in a
13 totally different position than it would have been as an appellant – it is defending the DNS instead of
14 challenging the DNS. As an intervenor, TreePAC is limited to addressing only those issues that are
15 presented in the Appellants' appeal. As an intervenor, TreePAC cannot raise issues that it could have
16 presented in its own appeal. There is no basis for concluding that the authors of HER 3.09 intended to
17 exclude interested people from participating in matters of public importance based on a quirky reading
18 that penalizes a narrow group of pro-se participants who happened to have filed an appeal that they
19 ultimately withdrew and did not pursue. Placing a meaningless obstacle in front of interested parties
20 based on this strange interpretation of HER 3.06 would be patently unfair and without any rational
21 basis. Regardless, because no appeal has been filed by TreePAC, Appellants' argument in this regard
22 should be rejected.
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1 **B. TreePAC’s interests are not adequately represented by SDCI.**

2 Appellants argue that TreePAC failed to demonstrate that TreePAC’s interests will not be
3 adequately represented by SDCI. The entirety of Appellants argument is that TreePAC’s interests will
4 be adequately represented by SDCI because TreePAC and SDCI share an interest in defending the
5 DNS. That is not a sound or valid basis for concluding that SDCI will adequately represent TreePAC’s
6 interests.
7

8 An intervenor need make only a minimal showing that its interests may not be adequately
9 represented in order to be granted intervention. *Columbia Gorge Audubon Society v. Klickitat County*,
10 98 Wn. App 618, 629-30 (1999). The relevant questions are: Whether SDCI will “*undoubtedly* make
11 *all of*” TreePAC’s arguments. *Id.* at 630 (emphasis in original). Is SDCI able and willing to make
12 those arguments? *Id.* Will TreePAC more effectively articulate any aspect of its interests? *Id.* To
13 meet this requirement, it’s not necessary that TreePAC’s interests be in direct conflict with SDCI. *Id.*
14 It is only necessary that TreePAC’s interest may not be adequately articulated and addressed. *Id.*
15

16 Also, when a local government must consider the interests of all of the residents of a city or
17 county, it does not adequately represent the interests of affected property owners who have more
18 sharply focused and sometimes antagonistic viewpoints to that of the local government as a whole.
19 *Loveless v. Yantis*, 82 Wn.2d 754, 759 (1973) (en banc).
20

21 “When in doubt, intervention should be granted.” *Columbia Gorge Audubon Society v.*
22 *Klickitat County*, 98 Wn. App at 630. It’s also noted in case law that intervention is usually allowed
23 to groups that have participated in the proceedings leading to the order at issue. *Id.*

24 Here, TreePAC participated in prior proceedings and has a substantial interest that will not be
25 adequately represented by SDCI. *See* TreePAC Motion at 1, 3-4. TreePAC has been actively engaged
26 in pushing the City of Seattle to go further than the city has wanted to go to ensure protection of trees.

1 *Id.* TreePAC’s interests are rooted entirely in community and public interest of preserving as many
2 trees as possible. *Id.* The formal position on trees and housing that was adopted by TreePAC is quoted
3 in Mr. Zemke’s second declaration. Zemke Second Dec., ¶ 5. TreePAC’s interest is also to try to
4 prevent SDCI’s draft being made weaker with respect to tree protection by MBAKS’s appeal. Zemke
5 Second Dec., ¶ 4.
6

7 In contrast, SDCI balances the developers’ interests, the public interests, and other interests –
8 sitting in the middle. SDCI does not purport to represent the interests of TreePAC as expressed in Mr.
9 Zemke’s two declarations. Because SDCI is a government agency that represents a wide variety of
10 interests, including those of the developers, there is very strong reason to believe that SDCI will not
11 “*undoubtedly*” make “*all*” of TreePAC’s arguments. TreePAC’s interests, which are more sharply
12 focused and sometimes present an antagonistic viewpoint from SDCI, may not be adequately
13 articulated and addressed by SDCI at the hearing. Appellants’ arguments otherwise should be rejected.
14

15 **C. TreePAC does not intend to raise new issues beyond those that are presented in**
16 **the MBAK Appeal.**

17 As we stated in our motion, if allowed to intervene, TreePAC would not seek to expand the
18 issues presented beyond those presented in MBAKS et. al.’s Notice of Appeal. TreePAC Motion at 4.

19 **II. CONCLUSION**

20 For the reasons stated above, we respectfully request that the Hearing Examiner grant
21 TreePAC’s motion to intervene in this matter.
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Dated this 28th day of April, 2022.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 

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