

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:

W-22-003

**MASTER BUILDERS ASSOCIATION OF
KING AND SNOHOMISH COUNTIES, et. al.**

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

**ORDER ON
MOTION TO
INTERVENE**

This matter concerns the appeal of the Determination of Non-Significance (“DNS”) issued by the City of Seattle Director of the Seattle Department of Construction and Inspections (“City”) concerning updates to the Tree Protection Code with the stated purpose of increasing tree protection. The DNS has been appealed by the Master Builders Association of King and Snohomish Counties; Legacy Group Capital, LLC; Blueprint Capital, LLC; AA Ashworth Development LLC; Blackwood Builders Group LLC; and Build Sound, LLC (“Appellants”). TreePAC has moved independently to participate in this appeal as an intervenor. The City did not oppose the motion to intervene.¹ The Appellants have filed a response in opposition to the motion. The Hearing Examiner has reviewed the file in this matter including the motion documents.²

Hearing Examiner Rule (HER) 3.09 addresses intervention and provides as follows:

- (b) A person, organization or other entity who has not filed an appeal may request by motion to participate in the appeal. The request must state how the person or entity making it is affected by or interested in the matter appealed, and must demonstrate a substantial interest that is not otherwise adequately represented.
- (c) In determining the merits of a request for intervention, the Hearing Examiner shall consider whether intervention will unduly delay the hearing process, expand the issues beyond those stated in the appeal, or prejudice the rights of the parties. If intervention is granted, the Hearing Examiner may limit its nature and scope.
- (d) The Hearing Examiner may allow a substantially interested person, organization, or other entity who has not filed an appeal to intervene for the sole purpose of preserving the right to appeal....

¹ HER 2.16.b: Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

² Due to a communication confusion with the new Office of Hearing Examiner Legal Assistant the movant did not clearly receive the directive from the Examiner that no reply brief was required to support the motion. The Examiner has proceeded with this order without considering the reply brief filed by the movant shortly before this order was issued.

TreePAC asserts that it is interested in the matter under appeal, because it “is a public interest and community-based organization in Seattle whose mission is assuring that tree canopy is preserved and saved to the greatest degree possible in Seattle’s regulatory scheme and permit approvals,” and that its “mission is to ensure that legislation adopted by the City of Seattle accomplishes the goals of tree retention, tree protection, and tree replacement so that we have livable communities, wildlife habitat, and adequate urban forests to mitigate peak stormwater loads and urban heat island effects.” Motion to Intervene at 3. TreePAC further indicates that its members have participated extensively in the development of the proposed legislation.

Appellants assert that the motion should be denied, because 1) TreePAC is prohibited under Hearing Examiner Rules of Practice and Procedure (“HER”) 3.09.b from intervening because TreePAC earlier filed an appeal that was withdrawn, and 2) TreePAC’s interests are adequately represented by the City.

Appellants’ response argues:

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.

It is unreasonable to believe that HER 3.09.b was drafted with the intent to preclude intervention by a party that had filed an appeal and then withdrew it – no practical purpose could be achieved as a result of such a rule. The HERs are relied upon by pro se users of the hearing system (as well as parties represented by attorneys), and the purpose of the language is to clarify for such users the unique nature of intervention, *e.g.*, it is not required for parties that have already filed an appeal, but is available for those seeking to intervene who do not have any appellant role within the case at hand.

While the City shares many of TreePAC’s interests, it does so in the context of a general duty to the public, which encompasses broader concerns and constituencies than the narrower interests of TreePAC. TreePAC has identified substantial interests that will not be adequately represented by any other party. There is no indication that allowing TreePAC to intervene will unduly delay the hearing process, expand the issues beyond those stated in the appeal, or prejudice the rights of any of the parties.

TreePAC’s motion to intervene is **GRANTED**.

TreePAC should coordinate with the City to ensure efficient time management at the hearing for opening statements, cross examination, witness presentation, and closing arguments. At hearing the Hearing Examiner may limit presentation of witnesses and exhibits presented by the intervenor to ensure that the hearing remains focused only on those issues raised by the Appellants.

Entered April 28, 2022.

/s/Ryan Vancil
Ryan Vancil, Hearing Examiner
Office of Hearing Examiner

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion to Intervene** to each person listed below, or on the attached mailing list, in the matter of **MBAKS, LEGACY GROUP, BLUEPRINT CAPITAL** Hearing Examiner File: **W-22-003** in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Helsell Fetterman, LLP Brandon Gribben bgribben@helsell.com Chance Laboda claboda@helsell.com Samuel Jacobs sjacobs@helsell.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Legal Counsel City Attorney's Office Daniel Mitchell Daniel.Mitchell@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department SDCI Gordon Clowers Gordon.Clowers@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Intervenor/The Movement Legal Counsel Bricklin & Newman, LLP Claudia M. Newman newman@bnd-law.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

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Dated: April 28, 2022

/s/Angela Oberhansly
Angela Oberhansly,
Administrative Specialist