

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

W-13-009

WESTLAKE STAKEHOLDERS GROUP

From a decision by the Director, Department
of Transportation, regarding a SEPA determination of
Non-significance

**ORDER ON MOTION TO
INTERVENE**

On January 15, 2014, Cascade Bicycle Club (CBC) moved to intervene in this matter. Westlake Stakeholders Group filed a response opposing intervention on January 17, 2014. CBC filed a reply on January 22, 2014.

HER 3.09 sets out the criteria for granting intervention. With regard to timeliness, a motion to intervene is timely if it is filed in writing and served on all parties to the appeal no later than 10 business days prior to the scheduled hearing. CBC's motion was timely, since the hearing is currently scheduled for March 5, 2014. The questions remaining are whether CBC has made the requisite showing of a substantial interest that is not adequately represented by the City, and whether intervention would unduly delay the hearing process, expand the issues, or prejudice the rights of the parties.

CBC and the Appellants cite *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023 (1973). In *Loveless*, the Court allowed two private organizations to intervene in an appeal of a county's denial of a preliminary plat. One organization had a direct interest as property owners who could have shown a diminution in value of their property interests as a result of the appeal of the county's decision. But the other organization consisted of area "*owners and residents who seek to insure the orderly development of the point so that the area's unique amenities will not suffer;*" 82 Wn.2d at 756. The second organization's interest, while not consisting of a direct ownership interest in property subject to the outcome of appeal, was viewed as sufficient for purposes of intervention.

CBC's reply includes a declaration that the majority of its 15,000 members reside in Seattle, and that its members include bicyclists who will be directly affected by the appeal of SDOT's Determination of Nonsignificance (DNS) for the proposed Bicycle Master Plan. CBC asserts that it will be harmed if implementation of the BMP is delayed, because proposed improvements will be delayed, thereby affecting its members' interest in the use of the planned bicycle corridors and improvements. CBC's declaration shows that it has an interest that will be affected if the plan's implementation is halted or if the plan is altered on account of the outcome of the SEPA appeal.

The next question is whether CBC has a substantial interest that is not otherwise adequately represented by SDOT. In *Loveless*, the court generally indicated that the organizations represented a “more sharply focused” interest in the appealed plat decision, whereas the county needed to consider the interests of all residents of the county; *id* at 759. Other courts have noted that only a minimal showing is required regarding whether its interests are adequately represented; *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wash. App. 618, 629, 989 P.2d 1260, 1266 (1999) (citations omitted). In this case, CBC asserts that it is interested in implementing the proposed plan as soon as possible, and with maximum benefit to bicyclists, while the City would need to consider potentially competing interests of other stakeholders going forward in this litigation. CBC has made the requisite showing that it has a substantial interest not otherwise adequately represented by the City.

Under HER 3.09(c), consideration is to be given to whether intervention will delay the process, expand the issues on appeal, or prejudice the rights of the parties. CBC does not seek to add issues to the appeal. CBC’s presentation of witnesses and exhibit could presumably lengthen the time needed for hearing, but the hearing process itself would not be delayed by CBC’s participation; CBC asserts that it will coordinate with SDOT to avoid duplicative presentations. The Appellants presented an email from a former policy director for CBC as evidence of CBC’s hostility, which Appellants assert will cause prejudice to the Appellants. CBC’s reply/declaration states that the author of the email is no longer employed by CBC and the email does not express CBC’s views. CBC apparently regards the email as humorous, but on its face, it is not. Nevertheless, that a former CBC employee sent the Appellants’ counsel this email does not show that Appellants’ rights would be prejudiced by CBC’s intervention, given that Mr. Mauro is not associated with the organization and his email does not speak for the organization or represent how it will comport itself during this appeal. No prejudice to the Appellants’ rights would be caused by intervention.

Because CBC has made the requisite showings under HER 3.09, its request for intervention is granted.

Entered this 23rd day of January, 2014.

/s/ _____
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