

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of Seattle Parks and
Recreation from a denial of a Certificate of Approval
by the Pike Place Market Historical Commission

Hearing Examiner File R-24-001

MOTION TO DISMISS

I. RELIEF REQUESTED

Pursuant to Hearing Examiner Rule 3.17(j)(4) Friends of the Market (“Friends”) asks that the Hearing Examiner dismiss this appeal.

II. STATEMENT OF FACTS

This appeal is from a decision by the Pike Place Market Historical Commission denying the request of the Seattle Department of Parks and Recreation (SPR) for a Certificate of Approval to permanently remove two works of public art – totem poles designed by renowned Quinault/Isleta Pueblo artist and University of Washington Professor Marvin Oliver – from Victor Steinbrueck Park in the Pike Place Market Historical District. Reflecting more than a century of economic and cultural ties between Seattle and Alaska and the people of the Inland Passage, the totem poles were commissioned to honor Pacific Northwest native culture and Market farmers.

Victor Steinbrueck Park was not only named in honor of Victor Steinbrueck, the Seattle architect and UW professor who led the citizen initiative that stopped the City’s intended destruction of much of the Pike Place Market, but was also designed by Victor Steinbrueck, working with award-winning landscape architect Rich Haag, who also designed Seattle’s Gasworks Park. Victor Steinbrueck commissioned Professor Oliver to design the two art works in question. They were carved on Bainbridge Island at the home of Professor Oliver, primarily by non-native wood carver James Bender, but in collaboration with Professor Oliver, his friend Mike Watanabe, and others influenced by renowned UW art professor Bill Holm.

The Pike Place Market Historical Commission Revised Guidelines, Section 2.12 provides in part:

Victor Steinbrueck Park (Park), named for Victor Steinbrueck, who led the effort to save the Market, incorporated into the Pike Place Market Historical District (District) in 1986 (Ordinance 113199), contributes significantly to the character and history of the District. Designed by Richard Haag, landscape architect, and Victor Steinbrueck, architect, the Park's design is significant, and reflects the character of the Market. The Park retains a high degree of integrity through intact character-defining features. These features include utilitarian design elements, as well as the deliberate and harmonious integration of style, form, colors, proportions, textures, and materials within the context of the District. The purpose of the Park is to provide a respite for Market shoppers and residents, a gathering place for all, and a space for children to play. A Certificate of Approval is required for: (1) any use of, or event in, Victor Steinbrueck Park that differs in kind from the regular use and enjoyment of the park by the general public; or (2) any physical design change within the park. In considering applications for a Certificate of Approval for events, uses, or physical design changes within the park, the Commission shall apply the principles of these Guidelines subject to the following:

2.12.5 Public views of, to, and through the Park shall not be changed, diminished or obstructed. Visual connections between the Park, Elliott Bay shoreline, and within the Park and the District shall not be changed, diminished or obstructed.

2.12.6 The Park's character-defining features should be retained and should not be altered, disguised or concealed. Character-defining features stem from the Park's original design and contribute significantly to the Park's physical character. Character-defining features include the berms and their concrete walls, decorative railing, **totem poles**, shelter, children's council circle/pentagon, benches and seats, original planting and landscape plan, original lighting fixtures, plazas and walkways.

2.12.7 The addition of new features not part of the original design (such as but not limited to art work, memorials, landscaping, site furnishings, buildings, structures and objects) is strongly discouraged. Exceptions for new features associated with temporary events of no more than three days in duration may be allowed by the Commission for the duration of the event, provided that the new feature's installation and use does not damage or change the Park's character-defining features.

(emphasis added).

The intent of the guidelines was clearly to provide long-term protection of the design vision of the Park's two extraordinary designers, including the vision of the man who more than any other was responsible for the preservation of the Pike Place Market, now an iconic element of the City of Seattle.

SPR seeks to permanently remove the totem poles designed by Professor Oliver, under a commission from Mr. Steinbrueck and Mr. Haag, and instead replace them with as yet apparently un-designed “Coast Salish art and culture that is representative of the local Tribes and reminds us of those that were here before the area was ‘discovered.’” Certificate of Approval Amendment Request, p. 1.

In 2018 SPR sought a Certificate of Approval for renovation work to be conducted at Victor Steinbrueck Park. The Pike Place Market Historical Commission granted that Certificate of Approval on September 9, 2019, with the following proviso:

This application does not authorize any change to the totem poles in Victor Steinbrueck Park. If the totem poles must be removed for their safety or restoration, they shall be installed before Victor Steinbrueck Park is reopened.¹

In 2023 SPR sought to amend that Certificate of Approval, asking to be allowed to permanently remove the two totem poles, to reopen the Park without any replacement, and to ultimately replace them with new works of art by “members of the local indigenous community that are representative of the local Tribes and local Tribal culture.”

After a full hearing, including submission of 26 written public comments, 25 of which expressed opposition to the proposal, and 19 oral public comments, all but one of which was opposed to the proposal, the Market Historical Commission denied the request to permanently remove the two totem poles from the Park.

III. ARGUMENT

SMC Ch. 25.24, implementing the citizens’ initiative that saved the Market, created the Pike Place Market Historical District and created the Market Historical Commission, which it charged with the obligation to insure that changes to the Pike Place Market Historical District preserves, restores and improves such buildings and uses in the Historical District as the Commission “shall be deemed to have architectural, cultural, economic and historical value,” and which “should be preserved for the benefit of the people of Seattle.” It is charged with adopting guidelines “for the guidance of property owners within the Historical District.” See also SMC 25.24.040, for the criteria the Commission is to consider in making its decisions.

¹ SPR has apparently left the totem poles outside, laying on their side, since construction of the renovation of Victor Steinbrueck Park began, as a result of which they are in further need of restoration. That irresponsible treatment of these works of art should not become an independent reason why they cannot be reinstalled, or why they cannot be reinstalled before the park reopens. Given SPR’s hostility to the totem poles, if the Park is allowed to reopen before they are reinstalled, the Market Historical Commission and the public, as represented by Friends, will be powerless to insure that they are ever reinstalled. The Market Historical Commission tabled that portion of the request to allow the Park to reopen before the poles are reinstalled, citing a lack of information on which to make a decision. As a result, that issue is not before the Examiner.

SMC 25.24.080 provides for an appeal to the Hearing Examiner of a decision by the Commission to grant, grant with conditions, or deny a Certificate of Approval. SMC 25.24.080 provides that the Hearing Examiner:

[M]ay reverse or modify an action of the commission **only if** the Hearing Examiner finds that:

1. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or

2. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

(emphasis added).

Here SPR's appeal makes no argument that it meets either criteria. It acknowledges that the Commission relied on the adopted guidelines for Victor Steinbrueck Park in making its decision, but argues that "The commission has broad discretion in implementing the guidelines and should have exercised that discretion when they issued the Decision." It goes on to argue that "if we were designing the park today, we would ask the local Tribes to include their art and culture as a way to make the park welcoming to Native peoples. The Commission should have exercised their discretionary power and allowed the permanent removal of the existing poles so SPR could work with the local Tribes and the Commission to install in their place art that is representative of the local Tribes and their culture."

Friends does not agree that the Commission had discretion to ignore the plain words of the adopted guidelines for Victor Steinbrueck Park, which identify the totem poles as "character defining features" of the Park and clearly state that "The Park's character-defining features should be retained and should not be altered, disguised or concealed." If the Commission could so glibly disregard the plain words of its adopted guidelines here, it is difficult to see how any applicant for any Certificate of Approval could not argue that the Commission can simply ignore the adopted guidelines. Unmoored from any adopted criteria for approval or rejection of a Certificate of Approval, the Commission's actions would quickly threaten basic principles of due process.

But – that issue does not need to be decided. Because assuming for sake of argument that the Commission might have had discretion to approve SPR's request, given the plain words of the adopted guidelines, it clearly had discretion to deny the request. There is no argument that the Commission violated the terms of the code, its rules, regulations or guidelines, and there is no argument that the decision is based on a procedural violation. Thus, there is no basis under which the Hearing Examiner could reverse the Commission's decision.

IV. CONCLUSION

Eighteen members of the public came before the Commission to oppose SPR's request to permanently remove the two totem poles that are a character-defining feature of Victor Steinbrueck Park. If this matter must have a full hearing, Intervenor Friends will attempt to have those witnesses return so that the Examiner can hear their testimony, as the Commission heard their testimony. But that should not be necessary. The Examiner should rule now that the appeal presents no basis under which the Examiner has authority to reverse the decision of the Commission and should now dismiss this appeal.

Respectfully submitted,

Friends of the Market

Margaret Pihl, President