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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of
SEATTLE PARKS AND RECREATION
From a denial of a Certificate of Approval by
the Director, Seattle Department of
Neighborhoods.

Hearing Examiner File:
R-24-001
Department Reference:
MHC 1/24
**PIKE PLACE MARKET HISTORICAL
COMMISSION’S RESPONSE TO
FRIENDS OF THE MARKET’S MOTION
TO DISMISS**

I. INTRODUCTION

The Pike Place Market Historical Commission (“Commission”) in response to the Friends of the Market (“Friends”) Motion to Dismiss (“Motion”), agrees that Hearing Examiner Rule 3.17(j)(4) authorizes the Seattle Hearing Examiner to dismiss Seattle Parks and Recreation’s (“SPR”) petition (“Appeal”).

The Commission agrees with the following relevant facts provided by Friends and concurs that dismissal of the Appeal is appropriate based on the following facts and law. The Commission does not have enough information at this time to determine that it agrees with the other facts and arguments that were presented by the Friends.

1
2 **II. RELEVANT FACTS**

3 In 2018, SPR sought approval from the Commission for renovation work at Victor Steinbrueck
4 Park (“Park”). The Commission granted SPR approval to renovate the Park on the condition that if the
5 totem poles in the Park must be removed during renovation, they must be reinstalled before the Park is
6 reopened.

7 In 2023, SPR submitted to the Commission a Certificate of Approval (“COA”) application
8 (“Application”) to, among other things, amend the condition above and permanently remove the two
9 totem poles.

10 On December 14, 2023, the Commission considered the Application at its regularly scheduled
11 meeting. As part of the regular review process, Commission staff presented a verbal and written
12 summary of the proposal. The Commission reviewed written public comment provided in advance of the
13 meeting, heard public comment during the meeting, and SPR was provided the opportunity to present its
14 application. The Commission deliberated and denied SPRs request to permanently remove the totem
15 poles from the Park.

16 On January 9, 2024, the Commission issued its written decision (“Decision”). The Commission
17 applied the following guidelines in order to render its Decision:

18 **Guideline 2.12 “Victor Steinbrueck Park”**

19 Section 2.12.6 states “The Park’s character-defining features should be retained and
20 should not be altered, disguised or concealed.” The guideline specifically identifies
21 the totem poles as being among the park’s character-defining features. The
22 commission determined that removal of the poles would be inconsistent with the
23 guideline.

Guideline 3.6 “Signs”

Section 3.6.4 states “Significant historic signs, symbols or icons of the Market must
be preserved. . . If a significant historic sign, symbol, or icon of the Market is moved
from its site, it should be displayed in a public place within the District.” The

1 Commission determined the totem poles to be an iconic element of the Market and
2 that the proposal to remove them, and not replace them within the park or another
location in the District, would be inconsistent with this guideline.

3 On January 23, 2024, SPR appealed the Decision. In the Appeal, SPR did not assert that the
4 Commission's Decision violated the terms of chapter 25.24 SMC, or the rules, regulations or guidelines
5 adopted pursuant to the authority of this chapter; or that the action of the Commission to deny the
6 Application was a violation of the procedures and that such procedural violation operated unfairly
7 against SPR. Instead, SPR alleged only that the Commission erred because it had the discretion to, but
8 did not, grant SPRs request to permanently remove the totem poles.

9 III. RESPONSE

10 The Hearing Examiner's Rules and Procedures ("HER") allow for dismissal of an appeal if it is
11 "without merit on its face." HER 3.17(j)(4) is akin to Civil Rule ("CR") 12(b)(6) under which dismissal
12 is appropriate for cases where the plaintiff cannot prove any set of facts consistent with the complaint
13 that would entitle the plaintiff to relief. *Jackson v. Quality Loan Service Corp.*, 186 Wn. App. 838, 843,
14 347 P.3d 487 (2015). Taking the facts SPR presented in its Appeal as true, SPRs Appeal fails to assert
15 any facts or errors on the part of the Commission's Decision or the procedure of the Commission that
16 would entitle SPR to relief under SMC 25.24.080. In other words, it fails to state a claim upon which
17 relief can be granted and is therefore without merit on its face.

18 SMC 25.24.080 provides that the Hearing Examiner may reverse or modify an action of the
19 Commission only if the Hearing Examiner finds that:

- 20 1. Such action of the Commission violates the terms of this chapter or rules, regulations or
21 guidelines adopted pursuant to the authority of this chapter; or
- 22 2. Such action of the Commission is based upon a recommendation made in violation of the
23 procedures set forth in this chapter or procedures established by rules, regulations or

1 guidelines adopted pursuant to the authority of this chapter and such procedural violation
2 operates unfairly against the applicant.

3 SPR's appeal does not allege any facts or argument that would support the Hearing Examiner
4 reversing or modifying the action of the Commission based either on SMC 25.24.080.1 or
5 SMC 25.24.080.2. SPR recognized in its Appeal that "the existing totem poles are specifically identified
6 as "character defining features" of the park as outlined in Guideline 2.12.6 and their removal is
7 prohibited . . ." SPR alleges only that the Commission "has broad discretion" in implementing the
8 guidelines and asserts that the Commission should have reached a different conclusion.

9 SPRs Appeal acknowledges that the Commission made its Decision, and that the Decision was
10 supported by the guidelines, but asserts that they should have utilized their discretion and reached a
11 different conclusion. Even if SPR can make a showing of proof that the Commission could have issued a
12 different decision under its discretionary authority, SPR has not asserted any facts that would allow the
13 Hearing Examiner to find that the Commission's Decision violates the terms of this chapter or rules,
14 regulations or guidelines adopted pursuant to the authority of this chapter. SPR did not allege or argue
15 any procedural error on the part of the Commission that operated unfairly against SPR.

16 Proceeding to a hearing in this matter would not be judicially efficient, considering SPR has not
17 raised any issues or alleged any facts that would allow it to meet its burden under SMC 25.24.080. For
18 these reasons, the Commission concurs with Friends' request that this Appeal be dismissed.

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1 Respectfully submitted this 4 March 2024.

2 ANN DAVISON
3 Seattle City Attorney

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14 **CERTIFICATE OF SERVICE**

15 I certify that on this day I caused a true and correct copy of foregoing document to be served
16 on the following in the manner indicated below:

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Dated this March 4, 2024, at Seattle, Washington.

s/Eric Nygren
Eric Nygren, Legal Assistant