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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
)
) **R-24-001**
SEATTLE PARKS AND RECREATION)
)
From a denial of a Certificate of Approval by the) RESPONSE TO INTERVENOR’S
Director, Seattle Department of Neighborhoods) MOTION TO DISMISS
_____)

Appellant Seattle Parks and Recreation (“**SPR**”) respectfully requests that the Examiner deny Intervenor Friends of the Market’s Motion to Dismiss. Intervenor asks for dismissal pursuant to Hearing Examiner Rule 3.17(j)(4), which allows dismissal in whole or in part if the “appeal is frivolous or without merit on its face.” Intervenor’s reliance on that Rule is misplaced. As explained below, the original notice of appeal has merit on its face. Moreover, in conjunction with this Response, SPR brings a Motion to Amend the Notice of Appeal to clarify arguments and add new ones; the Amended Notice of Appeal would render the Motion to Dismiss moot. Thus, the Examiner should deny Intervenor’s invitation to prematurely rule on this case before a hearing on the merits.

1 **A. The original notice of appeal makes “claims” upon which relief may be granted.**

2 The notice of appeal in this matter is akin to a civil complaint. Regarding civil
3 complaints, the Washington Supreme Court has stated:

4 It is well established that pleadings are to be liberally construed; their purpose is
5 to facilitate proper decision on the merits, not to erect formal and burdensome
6 impediments to the litigation process. If a complaint states facts entitling the
7 plaintiff to some relief, it is immaterial by what name the action is called.
8 Furthermore, initial pleadings which may be unclear may be clarified during the
9 course of summary judgment proceedings.

10 *State v. Adams*, 107 Wn.2d 611, 620 (1987) (citations omitted).

11 As explained in SPR’s January 22, 2024 notice of appeal (“**Original Notice**”), SPR
12 received a certificate of approval from Respondent Pike Place Market Historic Commission
13 (“**Commission**”) in 2019 for a renovation project for Victor Steinbrueck Park. As part of that
14 certificate of approval, the Commission required that, if the two totem poles had to be removed
15 from the park for the renovation project, SPR must reinstall the poles before the renovated park
16 is reopened. The poles were removed, and the park reopening is pending. In November 2023,
17 SPR requested an amendment to the 2019 certificate of approval “to allow the permanent
18 removal of the poles. SPR is proposing to install in their places two pieces fabricated/carved by
19 members of the local Indigenous community that are representative of the local Tribes and local
20 Tribal culture.” Original Notice at 2. The Original Notice went on to state:

21 Rather than showcasing work by a non-Native carver who replicates historic
22 Native art, SPR is seeking to promote and display authentic art and culture that
23 represents the local Tribes and is created by local Tribal artists. We want to let the
local Tribes tell their own story, not perpetuate a false narrative that totem poles
are ubiquitous to all Native peoples.

The Commission denied SPR’s amendment request, issuing a written decision on January 9,
2024 (“**Decision**”).

The Original Notice sets forth facts and arguments that have legal merit. The Original

1 Notice argues that the Commission should have exercised its discretionary power to allow the
2 permanent removal of the existing poles. In particular, the Original Notice quoted Commission
3 Guideline 1.4, which states in relevant part: “While all changes will be considered in light of
4 both these Guidelines and historical precedent, the Commission has discretionary powers to
5 interpret these Guidelines as they may apply to individual applications. The Guidelines should
6 stimulate harmonious and orderly development, while allowing gradual adjustment to varying
7 and changing Market activities.” Given the racial inequities discussed in Original Notice, the
8 Commission failed to properly exercise its “discretionary powers” to address those inequities and
9 allow “gradual adjustment” of the park. The Original Notice acknowledged that Guideline 2.12.6
10 discourages removal to the totem poles. But that Guideline does not expressly prohibit removal
11 of the poles. Rather, it expresses a preference for keeping them: “The Park’s character-defining
12 features should be retained and should not be altered, disguised or concealed.”¹ Guideline 2.12.6
13 (emphasis added).

14 Additionally, the Original Notice put the Commission on notice that the Decision might
15 violate SMC 25.24.030.D, which requires the Commission to “develop, use, and be accountable
16 to a Racial Equity Lens, a set of questions that considers actual and perceived racial inequities
17 and steps to achieve racial equity, for all decisions involving Commission matters.” The Original
18 Notice explains that the totem poles misrepresent local Native peoples, and the Decision (which
19 was attached to the Original Notice) shows that the Commission failed to consider racial
20 inequities. Admittedly, the Original Notice did not quote or cite SMC 25.24.030.D, but a
21 complaint or notice of appeal need not flesh out every single legal argument. *See Adams*, 107
22 Wn.2d at 620. In fact, the Original Notice—which was filed without the assistance of counsel—

23 ¹ The Original Notice mistakenly states that removal of the totem poles is “prohibited” by Guideline 2.12.6.

1 stated that “it is not intended to be an exhaustive or complete list of all errors committed.
2 Appellant reserves its right to raise any additional legal and factual issues at the appeal hearing
3 as appropriate.” Original Notice at 2.

4 **B. SPR moves to amend the notice of appeal to clarify arguments and add new
5 arguments, rendering the Motion to Dismiss moot.**

6 Although the Original Notice sets forth sufficient facts and arguments to survive the
7 Motion to Dismiss, SPR also proposes to amend its notice of appeal to clarify existing arguments
8 and add new ones. In conjunction with this Response, SPR files a Motion to Amend Notice of
9 Appeal. Courts accept amended complaints filed in response to motions to dismiss. *See, e.g.,*
10 *Robinson v. Spirit Airlines, Inc.*, No. 84875-5-I, 2023 WL 8018734, at *2 (Wash. Ct. App. Nov.
11 20, 2023). The Hearing Examiner Rules and the Civil Rules do not prevent a party from
12 amending a notice of appeal (or complaint) in response to a motion to dismiss. Rather, Rule 5.07
13 requires a showing of “good cause” to allow an amendment. The Motion to Amend and the
14 supporting declaration show good cause. The proposed Amended Notice of Appeal clarifies
15 existing arguments and adds new ones that would render Intervenor’s Motion to Dismiss moot.

16 DATED this 12th day of March 2024.

17
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19 Seattle City Attorney

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date, I caused to be served a true and correct copy of the foregoing document, **Response to Friends of Market’s Motion to Intervene**, on the parties listed below and in the manner indicated:

- | | |
|--|---|
| Daniel Mitchell
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the foregoing being the last known addresses of the above-named parties.

DATED this 12th day of March 2024.

/s/ Ianne T. Santos
IANNE T. SANTOS