

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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) DECLARATION OF MAXWELL BURKE
Director, Seattle Department of Neighborhoods) IN SUPPORT OF TO APPELLANT’S
) MOTION TO AMEND NOTICE OF
) APPEAL

I, Maxwell Burke, declare under penalty of perjury under the laws of the State of Washington the following:

1. This declaration is based on my personal knowledge of the facts set forth below. I am over eighteen years old and am otherwise competent to testify regarding these matters.
2. I am an Assistant City Attorney representing Seattle Parks and Recreation (“SPR”) in the above-captioned matter. I joined the Seattle City Attorney’s Office on January 3, 2024.
3. On January 22, 2024, SPR drafted and filed a notice of appeal in this matter (titled “Land Use Decision Appeal”) without assistance of counsel. I learned of SPR’s appeal on January 26. I had no knowledge of the facts and legal issues of the appeal prior to that date.

1 4. Because the City Attorney’s Office represents opposing parties in this matter
2 (SPR and Respondent Pike Place Market Historical Commission), the Office had to establish an
3 ethical screen between the attorneys who were proposed to represent the parties. On January 28,
4 once the ethical screen was established, the Office appointed me as counsel for SPR.

5 5. Shortly thereafter, I reviewed the initial notice of appeal in detail and concluded
6 that I would likely move to amend the notice of appeal to clarify existing arguments and add new
7 ones. *Id.*

8 6. On February 6, I emailed counsel for the Commission, Dan Mitchell, regarding
9 various procedural issues. Among other things, I noted that SPR might amend its notice of
10 appeal. Mitchell replied that same day via email, thanking me for “letting the Commission know
11 that you might be raising additional arguments/issues.” Mitchell did not raise any objection to a
12 potential amended notice of appeal. Attached hereto as Exhibit A is a true and correct copy of
13 that email exchange.

14 7. From February 10 through March 3, I was on parental leave for my firstborn
15 child. Given my discussions with Mitchell and communications with my client, I did not
16 anticipate any significant activity would occur in the case during my absence. *Id.* I intended to
17 move to amend the notice of appeal after he returned from leave, likely during the prehearing
18 conference.

19 8. Meanwhile, on February 4, Friends of the Market moved to intervene. SPR filed a
20 response on February 7, objecting to intervention. On February 13, the Examiner granted Friends
21 of the Market’s motion to intervene.

22 9. On February 27, Intervenor filed a Motion to Dismiss. I did not learn of the
23 motion until I returned to work on March 4. That same day, I emailed the parties and the

1 Examiner, stating in relevant part, “because our client filed the Notice of Appeal before
2 appointment of counsel, we intend to amend the Notice. The amended Notice will add new legal
3 claims, which may negate the Motion’s arguments.” Attached hereto as Exhibit B is a true and
4 correct copy of my March 4 email.

5 DATED this 12th day of March 2024.

6
7 By: /S/ MAXWELL BURKE
8 MAXWELL BURKE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

EXHIBIT A

Santos, Ianne T

From: Mitchell, Daniel B
Sent: Tuesday, February 6, 2024 11:18 AM
To: Burke, Maxwell
Cc: Anderson, Liza
Subject: RE: Parks v. PPMHC

Hi Max,

Thanks for reaching out. On behalf of the Commission, I have provided answers to your questions below:

First, the Commission is glad to provide you with informal discovery. There are not currently final adopted meeting minutes for the relevant Commission meetings (there is currently a draft), I will try to find out and get back to you as to when those meeting minutes will be adopted and will provide them to you at that time. In the meantime, I will be providing you a copy of the recording of the Commission meeting at which the Commission heard and decided on Parks' Certificate of Approval application.

Second, thank you for letting the Commission know that you might be raising additional arguments/issues.

Third, the Commission is tentatively fine with the timeframe you pose for the hearing on the merits. We tentatively have availability from April 15 through June 21, but if that window does not work, then we would not be available for the hearing until July 8 or later. However, the caveat is that depending on the additional arguments/issues you might raise, it might interfere with the Commission's early availability.

Fourth, the Commission does not intend to bring any motions, but reserves the right to bring motions based on any additional arguments/issues that might be raised in the future.

Finally, I will need to confirm with the Commission and get back to you whether there is interest in participating in a mediation. At this time, I can only confirm that if you proposed a settlement offer, I would be glad to present a settlement proposal to the Commission. I will get back to you with more information after I have an opportunity to discuss with my clients.

Thanks,

Dan



Daniel Mitchell
Assistant City Attorney
Land Use Section

Seattle City Attorney's Office
Civil Division
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7095
Phone: 206-684-8232
FAX: 206-684-8284

daniel.mitchell@seattle.gov

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege, the attorney work product doctrine, or by other confidentiality provisions. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

From: Burke, Maxwell <Maxwell.Burke@seattle.gov>
Sent: Tuesday, February 6, 2024 10:08 AM
To: Mitchell, Daniel B <Daniel.Mitchell@seattle.gov>
Cc: Anderson, Liza <Liza.Anderson@seattle.gov>
Subject: Parks v. PPMHC

Hi Dan –

As you know, I'm going on parental leave for three weeks after this week. I return March 4, the day before the prehearing conference in this matter (regarding Victor Steinbrueck Park). Liza will be covering for me during those three weeks. In light of my impending leave, I'm sending an early email to address some procedural issues.

First, is the Commission willing to conduct informal discovery? We've been able to find a lot of relevant information online and through our client, but there are some documents that we have not found and would like to review. As of now, we mainly want to obtain the minutes from the Commission's relevant December 2023 meeting (I've seen December 6, 13, and 14 referenced—I'm not sure which is the correct date). Presumably, those minutes would include a list of the Commissioners who participated in the meeting and their votes.

Second, we may amend our Notice of Appeal to raise additional arguments/issues. As you know, the initial Notice was written without our involvement.

Third, what is the Commission's preferred timeframe for the hearing on the merits? We were thinking of requesting a hearing date sometime between April and June, depending on various circumstances.

Fourth, does the Commission intend to bring any motions?

Finally, would the Commission be open to mediation and/or possible settlement?

Thanks!



Maxwell Burke
(he/him)
Assistant City Attorney
Land Use Section

Seattle City Attorney's Office
Civil Division

701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7095
Phone: 206-684-7943
FAX: 206-684-8284
maxwell.burke@seattle.gov

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege, the attorney work product doctrine, or by other confidentiality provisions. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

EXHIBIT B

From: [Burke, Maxwell](#)
To: [Oberhansly, Angela](#); [Examiner, Hearing](#)
Cc: [Graves, David](#); [Le, Minh Chau](#); [Sodt, Sarah](#); [Margaret Pihl](#); [Mitchell, Daniel B](#); [Anderson, Liza](#)
Subject: RE: Oral Arg. on MTD RE R-24-001 (SP&R)
Date: Monday, March 4, 2024 3:24:00 PM
Attachments: [image002.png](#)
[image003.png](#)

Thank you, Ms. Oberhansly.

Forgive me, I was on parental leave the last three weeks, and my colleague, Liza Anderson, was on vacation last week. Thus, we are both just now digesting the Motion and the Commission's Response (filed today). I intend to present oral argument on the Motion tomorrow, per the Examiner's instructions. Oral argument will show why the Motion should be denied. In particular, the Motion is disguised as a summary judgment motion, which is disfavored by the Examiner's rules, and there are genuine issues of material fact that preclude summary judgment. Also, because our client filed the Notice of Appeal before appointment of counsel, we intend to amend the Notice. The amended Notice will add new legal claims, which may negate the Motion's arguments. After oral argument, if the Examiner would like a more formal written response from Appellant, we can do so.



Maxwell Burke

(he/him)

Assistant City Attorney

Land Use Section

Seattle City Attorney's Office

Civil Division

701 Fifth Avenue, Suite 2050

Seattle, WA 98104-7095

Phone: 206-684-7943

FAX: 206-684-8284

maxwell.burke@seattle.gov

From: Oberhansly, Angela <Angela.Oberhansly@seattle.gov>

Sent: Wednesday, February 28, 2024 1:03 PM

To: Anderson, Liza <Liza.Anderson@seattle.gov>; Burke, Maxwell <Maxwell.Burke@seattle.gov>; Mitchell, Daniel B <Daniel.Mitchell@seattle.gov>; Margaret Pihl <margaretpihl1@gmail.com>

Cc: Graves, David <David.Graves@seattle.gov>; Le, Minh Chau <MinhChau.Le@seattle.gov>; Sodt, Sarah <Sarah.Sodt@seattle.gov>

Subject: Oral Arg. on MTD RE R-24-001 (SP&R)

Good afternoon, Parties

At the upcoming prehearing conference, the Examiner will allow a short oral argument on the filed Motion to Dismiss (about 5 minutes per party).

Please reach out to me should you have any questions.

Kind regards,

[Angela Oberhansly \(she/her\)](#)

Legal Assistant

<http://www.seattle.gov/hearing-examiner>



City of Seattle [Office of Hearing Examiner](#)

700 Fifth Avenue, Suite 4000, Seattle, WA 98104

Direct: 206.615.0585 | Fax: 206.684.0536 | Angela.Oberhansly@seattle.gov