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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) PROPOSED AMENDED NOTICE OF
Director, Seattle Department of Neighborhoods) APPEAL
)

I. APPELLANT INFORMATION

Appellant	Appellant Counsel
Seattle Parks and Recreation (“ SPR ”) 300 Elliott Avenue West, Suite 100 Seattle, WA 98119 david.graves@seattle.gov (206) 684-7048	Maxwell Burke Assistant City Attorney 701 Fifth Avenue, Suite 2050 Seattle, Washington 98104-7097 maxwell.burke@seattle.gov (206) 684-7943

II. APPEALED DECISION

Pike Place Market Historical Commission (“**Commission**”) decision MHC 1/24 (“**Decision**”), issued on January 9, 2024, regarding SPR’s application (DONH-COA-01146) to modify Certificate of Approval MHC 93/19. The Decision is attached hereto.

1 **III. STATEMENT OF FACTS**

2 **A. Market and park history**

3 Pike Place Market has operated as a public market since 1907. The Market thrived
4 through the 1930s, but by the 1960s, it had deteriorated and was threatened by demolition and
5 redevelopment. Members of the public, led by architect Victor Steinbrueck, opposed
6 redevelopment and sought to protect the historic Market. In 1971, Seattle voters approved an
7 initiative that established the Pike Place Market Historical District and created the Commission.
8 The original District boundaries encompassed the Market structures and adjacent historic
9 buildings.

10 The park at issue in this appeal, Victor Steinbrueck Park, did not exist in 1971. In fact, it
11 was built about a decade later, northwest of the Market and on top of a then-new parking garage.

12 In approximately 1985, the two totem poles at issue in this appeal were added to the park.
13 Steinbrueck commissioned and designed the poles with input from artist Marvin Oliver, a
14 member of the Quinault Indian Nation. James Bender carved the poles and helped design them.
15 One pole primarily depicts farmers of European ancestry, while the other is inspired by totem
16 poles of coastal indigenous tribes of Canada and Alaska. Puget Sound Native Americans did not
17 traditionally carve such poles.

18 In 1986, the City adopted Ordinance 113199, which expanded the Historic District
19 boundaries to include the new park. (Though the Market is currently listed on the National
20 Register of Historic Places, the park is not.) Ordinance 113199 did not contain any recitals or
21 terms that attach historic significance to the *new* park, nor did it call for the park to be preserved
22 in perpetuity as originally designed. Rather, legislative history shows that the purpose of
23 including the park in the District was to maintain the park as a “major community asset” for the

1 “enjoyment” of patrons and shoppers of the Market. The City Council did not update—and still
2 has not updated—the Code to attach historic significance or otherwise provide specific
3 protection to the park and its elements, including the totem poles. On its face, the Code is
4 primarily concerned with the Market itself.

5 In 2010, the Hearing Examiner considered a similar case to the present one. The
6 Commission had denied an application to replace the park’s playground (which was included in
7 the original park design) with a new art sculpture (the Tree of Life). The Hearing Examiner
8 reversed the Commission’s decision, thereby allowing removal of the playground and installation
9 of the Tree of Life (case R-10-001). After the 2010 decision, the Commission adopted new
10 guidelines that specifically concern the park, but the Code was not similarly updated.

11 **B. The current dispute**

12 SPR manages the park. In 2018, SPR applied to the Commission for a Certificate of
13 Approval to renovate the park. The Commission granted the Certificate of Approval in 2019
14 (decision MHC 93/19). The approved project called for alterations to numerous “character-
15 defining” park features including benches, tables, walls, lighting, and railing. The project would
16 also add entirely new features to the park, including many that are intended to honor the local
17 Native community.

18 The 2019 decision had the following requirement: “This application does not authorize
19 any change to the totem poles in Victor Steinbrueck Park. If the totem poles must be removed for
20 their safety or restoration, they shall be reinstalled before Victor Steinbrueck Park is reopened.”
21 Initially, SPR was amenable to this requirement because it had no plans to permanently replace
22 the totem poles.

1 However, after the 2019 decision, SPR became aware that local tribal members,
2 including members of the Puyallup, Muckleshoot, and Suquamish Tribes, object to the totem
3 poles because the poles: do not reflect local tribal culture; were designed in part by non-Native
4 people (Steinbrueck and Bender); and were carved by a non-Native person (Bender). Indeed,
5 Oliver, the Native artist who assisted with designing the poles, once described them as “Victor’s
6 poles.” In a news article, one tribal member was quoted as saying that the totem poles “don’t tell
7 a story about me or my people, and it really makes me feel less-than because we are being
8 represented by totem poles and teepees and that’s just not who we are as Coast Salish people.”¹

9 In spring 2023, SPR removed the poles from the park as part of the renovation project.

10 In November 2023, SPR requested an amendment to the 2019 Certificate of Approval to
11 allow permanent removal of the totem poles. In their place, SPR proposed installing two art
12 pieces created by local tribal members to reflect local tribal culture.

13 On December 13, 2023, the Commission held a public meeting on SPR’s amendment
14 request. During the meeting, one Commission member (Mark Childs) quoted SMC 25.24.030.D.
15 Adopted in 2015, that provision requires the Commission to “adopt a Statement of Commitment
16 to Advancing Racial Equity in the Guidelines of the Commission” and to “develop, use, and be
17 accountable to a Racial Equity Lens, a set of questions that considers actual and perceived racial
18 inequities and steps to achieve racial equity, for all decisions involving Commission matters.”
19 Childs then said, “we haven’t completed that task.” *See* Video of Dec. 13 meeting at ~2:11:45–
20 2:13:10. Nevertheless, at the December 13 meeting, six Commission members voted to deny
21 SPR’s request to remove the poles, while three members abstained (including Childs).

22
23 ¹ *Crosscut*, “Renewed effort to remove the misleading totem poles at Pike Place park,” July 1, 2022,
<https://crosscut.com/news/2022/07/renewed-effort-remove-misleading-totem-poles-pike-place-park> (last accessed
3/8/2024).

1 On January 9, 2024, the Commission issued the written Decision on SPR’s amendment
2 request. The Decision states in particular: “In its judgment the element of the proposal to
3 permanently remove the totem poles does not conform to the intent of Seattle Municipal Code
4 25.24 and the commission's guidelines.” The Decision does not cite any specific Code provision,
5 nor does it discuss issues of racial inequity, as required by SMC 25.24.030.D. The Decision went
6 on to discuss certain guidelines:

7 The following guidelines were applied in order to render this decision:

8 2.12 “Victor Steinbrueck Park”

9 Section 2.12.6 states “The Park’s character-defining
10 features should be retained and should not be altered,
11 disguised or concealed.” The guideline specifically
12 identifies the totem poles as being among the park’s
13 character-defining features. The commission determined
14 that removal of the poles would be inconsistent with this
15 guideline.

16 3.6 “Signs”

17 Section 3.6.4 states “Significant historic signs, symbols or
18 icons of the Market must be preserved...If a significant
19 historic sign, symbol, or icon of the Market is moved from
20 its site, it should be displayed in a public place within the
21 District.” The commission determined the totem poles to be
22 an iconic element of the Market and that the proposal to
23 remove them, and not replace them within the park or
another location in the District, would be inconsistent with
this guideline.

IV. OBJECTIONS TO DECISION

20 The Hearing Examiner may reverse or modify an action upon finding one of the
21 following:

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

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

5 SMC 25.24.080.D.

6 The Decision implicates both Code provisions.

7 **A. The Commission violated SMC 25.24.030.D by failing to consider actual and
8 perceived racial inequities.**

9 Since 2015, SMC 25.24.030.D has required that the Commission adopt a “Statement of
10 Commitment to Advancing Racial Equity” in the Commission guidelines. And the Commission
11 must “develop, use, and be accountable to a Racial Equity Lens, a set of questions that considers
12 actual and perceived racial inequities and steps to achieve racial equity, for all decisions
13 involving Commission matters.” SMC 25.24.030.D (emphasis added).

14 The Commission’s current guidelines do not include a statement of commitment to
15 advancing racial equity. More importantly, in reaching the Decision, the Commission failed to
16 develop, use, or be accountable to a set of questions that considers actual and perceived racial
17 inequities associated with the totem poles at Victor Steinbrueck Park. As Commissioner Childs
18 said, “we haven’t completed that task.” Thus, the Commission violated the procedures of SMC
19 25.24.030.D. This procedural violation—failing to properly consider racial inequities caused by
20 display of the totem poles—operated unfairly against SPR because the entire point of SPR’s
21 amendment application was to remedy racial inequities.

22 **B. Replacing the totem poles with new local tribal art is consistent with the Code
23 criteria for evaluating Certificates of Approval.**

The Code states that the Commission “shall review and make recommendations
regarding appropriateness of each proposed change or addition[,] and a certificate of approval
shall be issued by the Commission as provided in this chapter.” SMC 25.24.060.D. That same

1 provision provides that the Commission “shall refer to the purpose of the chapter” and shall
2 “make no recommendations or requirements except for the purpose of preventing developments
3 inconsistent with the criteria of this chapter.” SMC 25.24.060.D. The criteria for certificates of
4 approval are listed in SMC 25.24.040.

5 Here, the Decision does not cite any Code provisions or otherwise explain how SPR’s
6 application is “inconsistent with the criteria” of Chapter 25.24 SMC. In this appeal, SPR will
7 prove that SPR’s proposal is *consistent* with the Code.

8 **C. The Commission may not deny a Certificate of Approval application based on the
9 Commission guidelines.**

10 As explained, in evaluating an application, the Commission must refer to the Code
11 purpose and criteria. *See* SMC 25.24.060.D. The Code does not allow the Commission to deny
12 an application based on noncompliance with Commission guidelines. Rather, the Code merely
13 states that the Commission shall make “guidelines according to the criteria as contained in this
14 Chapter 25.24 for the guidance of property owners within the Historical District.” SMC
15 25.24.030.C. In contrast, the Code expressly allows the use of guidelines when approving,
16 denying, or conditioning certificates of approval in other historical districts. *See, e.g.*, SMC
17 25.16.090, .100 (expressly authorizing application decisions based on guidelines for Ballard
18 Avenue Landmark District); SMC 25.20.090 (Columbia City); SMC 25.21.110 (Fort Lawton);
19 SMC 25.22.110 (Harvard-Belmont).

20 Thus, the Commission acted without authority by denying SPR’s application based on
21 alleged noncompliance with the guidelines.
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1 **D. SPR’s request is consistent with the Commission guidelines.**

2 Even if the Commission were authorized to use the guidelines to deny a certificate of
3 approval amendment, the Commission should have found that SPR’s proposal is consistent with
4 the guidelines. The guidelines that follow are relevant.

5 Guideline 1.4 states: “While all changes will be considered in light of both these
6 Guidelines and historical precedent, the Commission has discretionary powers to interpret these
7 Guidelines as they may apply to individual applications. The Guidelines should stimulate
8 harmonious and orderly development, while allowing gradual adjustment to varying and
9 changing Market activities.” Here, the Commission failed to properly exercise its “discretionary
10 powers” to allow “gradual adjustment” of the park.

11 Guideline 2.12 states in part: “The purpose of the Park is to provide a respite for Market
12 shoppers and residents, a gathering place for all, and a space for children to play.” (Emphasis
13 added.) Here, the Commission failed to properly consider the fact that many local tribal members
14 find the totem poles offensive, not symbols of a gathering place for all.

15 Guideline 2.12.6 states:

16 The Park’s character-defining features should be retained and should not be
17 altered, disguised or concealed. Character-defining features stem from the Park’s
18 original design and contribute significantly to the Park’s physical character.
19 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.

20 (Emphasis added.) The Decision cites Guidelines 2.12.6 as a basis for denial of SPR’s
21 amendment application. But Guideline 2.12.6 does not prohibit alterations to “character-defining
22 features.” In fact, in 2019, the Commission approved many of SPR’s proposed alterations to
23 “character-defining features.” Here, in light of SMC 25.24.030.D, the Commission should have

1 exercised its discretion under Guideline 1.4 *and* Guideline 2.12.6 and approved SPR's
2 amendment request.

3 **V. RELIEF SOUGHT**

4 SPR respectfully requests that the Examiner enter an order for one or more of the
5 following forms of relief:

- 6 1. Reversing the Decision for the reasons set forth above;
- 7 2. Approving SPR's application because the application is consistent with the Code;
- 8 3. Remanding SPR's application to the Commission for further consideration in light
9 of SMC 25.24.030.D and other Examiner instructions;
- 10 4. Any other relief allowed by law.

1 DATED this 12th day of March 2024.

2 ANN DAVISON
3 Seattle City Attorney

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12 **CERTIFICATE OF SERVICE**

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

16 Daniel Mitchell (X) Email: Daniel.mitchell@seattle.gov
17 City of Seattle City Attorney's
18 Office

19 Minh Chau Le (X) Email: minhchau.le@seattle.gov
20 Sarah Sodt Email: sarah.sodt@seattle.gov
21 Department of Neighborhoods

22 Margaret Pihl (X) Email: margaretpihl1@gmail.com
23 Friends of the Market

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