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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) APPELLANT’S REPLY IN SUPPORT OF
Director, Seattle Department of Neighborhoods) MOTION TO AMEND NOTICE OF
) APPEAL
)
_____)

Hearing Examiner Rule 5.07 allows an appeal to be amended on “good cause” and does not set a timeline upon which such amendment must be brought. Appellant, having drafted and filed the original notice of appeal without assistance of counsel, wants to amend the notice of appeal with the assistance of counsel. That fact alone establishes “good cause” to amend. *See* Rule 5.14(b) (“Parties have the right to attorney representation”); *cf. Choquette v. Hammond*, 315CV05838BHSJRC, 2016 WL 11622971, at *2 (W.D. Wash. Oct. 6, 2016) (allowing initially *pro se* plaintiff to, “in the interests of justice,” amend complaint with assistance of counsel after motion to dismiss was filed and many months after case began). Notably, Intervenor and Respondent do not expressly refute the argument that amending a notice of appeal with the

1 assistance of counsel constitutes “good cause.” Rather, both opponents primarily argue that the
2 Motion to Amend is untimely, which is untrue.

3 Opponents overstate the issue of timeliness. Less than two weeks after the original notice
4 of appeal was filed, Appellant’s counsel notified Respondent’s counsel of Appellant’s desire to
5 amend the notice of appeal. As explained in the Motion, Appellant had good reason to wait until
6 the prehearing conference to move for amendment. Before the prehearing conference, Appellant
7 notified all parties and the Examiner that Appellant intended to amend the notice of appeal. During
8 the conference, the Examiner, with input from all parties, set the schedule knowing that Appellant
9 intended to move to amend. Then, less than two months after this case began and just one week
10 after the prehearing conference, Appellant filed its Response to the Motion to Dismiss and the
11 corresponding Motion to Amend in compliance with the March 12 deadline set by the Examiner.
12 Importantly, Appellant’s Motion does not propose moving any deadlines set by the Examiner and
13 agreed to by the parties, and the amended notice of appeal should not cause any delay in this case.

14 Respondent’s reliance on *Toward Responsible Development* is misplaced. In that case, the
15 Growth Management Hearings Board denied a petitioner’s motion to add a new legal issue to the
16 prehearing order after the petitioner had already filed—and the GMHB had already accepted—
17 two prior amendments to the petition for review. *See Toward Responsible Development v. City of*
18 *Black Diamond*, GMHB No. 10-3-0014, Order on Motion to Amend Prehearing Order (January
19 18, 2011). Moreover, that case did not involve a petition/notice of appeal filed without the
20 assistance of counsel.

21 The real reason for Intervenor’s and Respondent’s opposition to the Motion to Amend is
22 that they want this case dismissed without a hearing on the merits. But doing so would unfairly
23 prejudice Appellant and go against the Examiner’s Rules. Rule 5.00 states in relevant part:

1 Appeal Hearings are conducted for the purpose of eliciting a complete factual
2 account involved in a disputed issue. ... [T]o ensure fulfillment of fact-finding
3 obligations, the Rules are not intended as vehicles for technical dismissal of
4 appeals. All proceedings will be conducted with the primary goal of resolving cases
5 on their merits. The Examiner will strive to decide cases on their merits and will
6 not dismiss claims or issues due to non-material procedural mistakes made by an
7 appellant.

8 (Emphasis added.) *See also State v. Adams*, 107 Wn.2d 611, 620 (1987) (“It is well established
9 that pleadings are to be liberally construed; their purpose is to facilitate proper decision on the
10 merits, not to erect formal and burdensome impediments to the litigation process. If a complaint
11 states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.”)
12 (emphasis added). As explained in Appellant’s Response to Intervenor’s Motion to Dismiss (at 2–
13 3), the original notice of appeal sets forth facts entitling Appellant to relief. But a notice of appeal
14 is not required to contain all facts and arguments that will be presented in the appeal. Consistent
15 with Rule 5.00, appeal hearings are conducted for the purpose of eliciting a complete factual
16 account involved in a disputed issue.

17 Intervenor’s Response/Reply particularly underscores the need for a hearing on the merits
18 rather than premature dismissal. Intervenor’s brief includes lengthy argument on the merits and—
19 just like the Motion to Dismiss did—introduces newly alleged facts, including attachment of
20 selective exhibits. Intervenor’s attachment of exhibits converts its Motion to Dismiss into one for
21 summary judgment, which are disfavored. *See* Rule 3.17(k). Appellant disputes many of
22 Intervenor’s alleged facts. Indeed, some alleged facts, such as the number of people who testified
23 in favor of SPR’s proposal, are flat wrong. In any event, the Examiner should not be deciding the
24 facts now based on an incomplete factual picture. Rather, Appellant’s Motion to Amend should be
25 granted, the Motion to Dismiss denied, and a hearing on the merits held. Appellant established
26 good cause to amend its appeal, and opponents’ claims regarding timeliness lack merit.

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DATED this 26th day of March 2024.

ANN DAVISON
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, **Reply in Support of Motion to Amend Notice of Appeal**, on the parties listed below and in the manner indicated:

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

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Department of Neighborhoods

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Friends of the Market

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

DATED this 26th day of March 2024.

/s/ Ianne T. Santos
IANNE T. SANTOS