

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**EPIC, ET AL.**

from a decision by the Director,  
Department of Construction and  
Inspections

Hearing Examiner File:  
**MUP-17-001**  
**(W, MOD.STDS.)**

Department Reference  
3020845

**ORDER ON APPELLANTS'  
MOTION TO DISMISS  
AND STRIKE**

The Appellants, EPIC, et al., filed a motion to dismiss Patrick Donnelly as a party to this case and to strike any document filed by Mr. Donnelly in the case. Mr. Donnelly and King County filed a response to the motion, and the Appellants filed a reply to the response. The Hearing Examiner has considered the files in the appeal, including all briefing on the motion.

King County owns the existing Youth Services Center facility located at 1211 East Alder Street in Seattle. The County desires to demolish the existing facility and replace it with the Children and Family Justice Center (“Center”). Patrick Donnelly, on behalf of King County, filed an application for a Master Use Permit (“MUP”) for the project. Mr. Donnelly is an architect employed by Integrus Architecture, which is under contract with the design-build developer and contractor for the Center project, Howard S. Wright Companies. The Director of the Department of Construction and Inspections issued a decision approving the MUP application, and the Appellants timely appealed the decision.

The Appellants assert that Mr. Donnelly is neither a “party” nor an “applicant” as those terms are defined in the Hearing Examiner Rules of Practice and Procedure (“HER”). HER 1.01 reads as follows:

These Hearing Examiner Rules ... supplement Seattle Municipal Code and ordinances and other applicable law for matters within the Hearing Examiner’s jurisdiction, and govern administrative practice and procedure before the Hearing Examiner. In case of conflict between a Hearing Examiner Rule ... and the Seattle Municipal Code or other applicable law, the Seattle Municipal Code or other applicable law controls.

HER 2.02(t) provides that a “Party” includes

the person, organization, or other entity that has filed an appeal ... the Director who made the decision or took the action that is the subject of the hearing or appeal; *the person, organization, or other entity who filed the application, request, or petition for a permit ... that is the subject of the hearing or appeal ... [and] the owner of the property subject to the City decision or other action{.}*

“Applicant” is defined as “the person, organization, or other entity who files an application or otherwise formally requests a permit or other type of City action that is the subject of an appeal or other review by the Hearing Examiner.” HER 2.02 (e).

Mr. Donnelly filed the MUP application for the Center project and therefore meets the definition of “applicant” in HER 2.02(e). Under HER 2.02(t), both the person who filed the application (the applicant) and the property owner may be parties to an appeal of the Director’s decision on the application. In practice, this is a common occurrence. Thus, under the HERs, both Mr. Donnelly and King County are proper parties to this appeal.

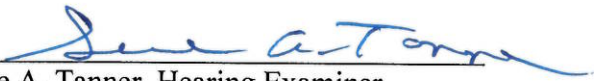
The Appellants cite a rule issued by the Director of the Department of Planning and Development (now the Seattle Department of Construction and Inspections) (“DR”) addressing statements of financial interest, which are part of the application process. They also point to SMC 23.76.010, which provides that MUP applications must be made by a “property owner, lessee, contract purchaser ... or an authorized agent thereof.” Neither the DR nor the Code section purports to address who may be a party to a Hearing Examiner appeal. Consequently, they do not conflict with the HERs and are not controlling here.

The Appellants also cite Superior Court Rule 17, which requires every action in superior court to be “prosecuted in the name of the real party in interest.” They note that HER 1.03(c) allows the Examiner to look to the Superior Court Civil Rules for guidance “when questions of practice or procedure arise that are not addressed by these Rules”. But the issue of whether an applicant, as defined in HER 2.02(e), is a proper party to a Hearing Examiner appeal is addressed by the HERs, so there is no need here to look to CR 17 and case law interpreting and applying it. For the same reason, there is no need to review the law of agency cited by the Appellants.

In short, the HERs govern this administrative review proceeding, and Mr. Donnelly qualifies as both an applicant and a party under them. Therefore, contrary to the Appellants’ argument, Mr. Donnelly’s “standing” is not an issue. Further, there is no evidence to support the Appellants’ contention that Mr. Donnelly’s participation in this appeal will present any unusual burden to either the Examiner or the Appellants, set a precedent, or obfuscate the County’s role in this case. As noted above, it is common for both property owners and applicants to appear as parties in Hearing Examiner cases in defense of a Director’s decision and sometimes as co-appellants. In all such cases, in accordance with HER 2.06, parties with similar interests are required to coordinate presentation of their cases to avoid duplication and delay.

The Appellants’ motion to dismiss Patrick Donnelly as a party and strike related filings is **DENIED**.

Entered this 27<sup>th</sup> day of February, 2017.

  
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**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Appellant's Motion to Dismiss and Strike** to each person listed below, or on the attached mailing list, in the matter of **EPIC et al.** Hearing Examiner File: **MUP-17-001 (W)** in the manner indicated.

Party	Method of Service
Epic et al. c/o Knoll Lowney, Claire Tonry, Meredith Crafton, Katherine Brennan Smith & Lowney PLLC  knoll@igc.org clairet@igc.org meredithc@igc.org katherineb@igc.org	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Patrick Donnelly c/o Courtney Kaylor and Jack McCullough McCullough Hill Leary, P.S.  courtney@mhseattle.com jack@mhseattle.com  Laura Counley lcounley@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
SDCI c/o Liza Anderson Assistant City Attorney Liza.Anderson@seattle.gov  Alicia Reise Alicia.Reise@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
King County c/o Cristy Craig King County Prosecutor Cristy.Craig@kingcounty.gov  Monica Erickson Monica.Erickson@kingcounty.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: February 27, 2017

*TK*  
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Tiffany Ku  
Legal Assistant