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BEFORE THE HEARING EXAMINER
OF THE CITY OF SEATTLE

In the Matter of the Appeal of
PROTECT VOLUNTEER PARK.,
of a Determination of Non-Significance
Certificate of Approval issued by the
Department of Construction and
Inspections for Construction in Volunteer
Park

Hearing Examiner File: MUP 17-015
Department Reference: 3024753

APPELLANT'S RESPONSE TO
REQUEST FOR DISCOVERY

Respondent Seattle Art Museum's attorneys have requested information about the membership and internal affairs of appellant Protect Volunteer Park. A copy of the request is attached hereto as Exhibit A. At the prehearing conference, the Examiner stated that we should consider the request as a motion to conduct discovery and provided Protect Volunteer Park with the opportunity to file a response to the request by today, April 18, 2017. This memorandum is filed in response to that request.

The request from SAM's lawyers is far beyond the legitimate purposes of discovery in this administrative appeal proceeding. It appears the request is intended to harass and intimidate, not acquire information related to any issue pertinent to resolution of the appeal.

1 Our firm and our clients have great respect for the Seattle Art Museum, their mission and much
2 of their work. Our clients have engaged with SAM most respectfully throughout the process that has
3 preceded this appeal. We would be surprised if SAM supports the intrusive requests for information
4 about our client's internal affairs that its lawyers have propounded.

5
6 Standing to file an appeal is extremely broad. Whereas many standing provisions, though
7 quite liberal, require an appellant to show that they may be significantly affected by the challenged
8 action, the Seattle Municipal Code provides a far greater scope for standing than that. Per the Seattle
9 Municipal Code, an appellant has standing if the party would be significantly affected or if they merely
10 are "interested" in the permit:

11 Standing. Appeals may be initiated by any person significantly
12 affected by or interested in the permit.

13 SMC 23.76.022.C.2.

14 The Examiner's rules (Section 3.01 (d)(2) echo this standard, requiring a notice of appeal to
15 include "a brief statement as to how the appellant is significantly affected by or interested in the matter
16 appealed."

17
18 Consistent with these requirements, the notice of appeal here includes a brief description of
19 the organization ("business owners, property owners and residents in the vicinity of Volunteer Park
20 and users of the park from throughout the city") and their interest in the matter ("maintaining the
21 landmark character of Volunteer Park").

22 An organization has standing based on its interest in advancing or protecting its organizational
23 interests or simply as a representative of the interests of its individual members. This principal has
24 been enshrined in Washington law at least since *Save a Valuable Environment (SAVE) v. City of*
25 *Bothell*, 89 Wn.2d 862 (1981) – 35 years ago! Perhaps not coincidentally, the law firm on the losing
26

1 side of that case was the same one representing SAM in this proceeding. The firm is nothing if not
2 persistent in trying to deprive citizens of access to justice.

3 Given the extremely broad standing provision in the Seattle Municipal Code, Protect
4 Volunteer Park has standing if the organization is “interested” in the permit or if any of its members
5 are “interested” in the permit. Notably, none of the discovery requests propounded by SAM’s lawyers
6 inquire as to the appellant’s interest in the permit or the interest of any of its members. Instead, SAM’s
7 lawyers engage in a fishing expedition, seeking information about the appellant’s internal affairs (*e.g.*,
8 “all documents related to and authoring Protect Volunteer Park to seek this appeal on behalf of its
9 members;” copies of the appellant’s bylaws; and copies of documents that identify the appellant’s
10 “governing structure and rules”).

11 We have no objection to providing a copy of documents identifying the appellant’s “purpose
12 [and] mission”), but the remainder of the request goes far beyond any conceivable legitimate discovery
13 request. (The appellant is not incorporated, so there are no articles of incorporation.)

14 The request for a list of all of the appellant’s members (and their addresses) is particularly
15 odious. The right to protect membership lists has been recognized repeatedly by the United States
16 Supreme Court and by the courts of Washington. *See, e.g., Young Americans for Freedom, Inc. v.*
17 *Gorton*, 83 Wn.2d 728, 731–32, 522 P.2d 189 (1974) (“We can agree with the contention of YAF that
18 a required disclosure of its membership would be an impermissible and unconstitutional intrusion
19 upon its members’ associational freedoms and the right to privacy”) (citing *NAACP v. Alabama*, 357
20 U.S. 449, 78 S.Ct. 1163 (1958)); *Price-Right Recreation, LLC v. Connells Prairie Community*
21 *Council*, 105 Wn. App. 813, 825, 21 P.3d 1157 (2001) (“When advocacy groups are required to
22 disclose the identity of their members and the details of all of their activities, the freedom to promote
23 their views suffers. Privacy and anonymity are often essential to the free exercise of First Amendment
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1 rights”) (citing *Talley v. California*, 362 U.S. 60, 64–65, 80 S.Ct. 536 (1960)). The request for
2 membership lists propounded by SAM’s lawyer is an embarrassment to that fine organization.

3 If SAM’s lawyers really think they can mount, **in good faith**, a standing challenge on the basis
4 that none of the appellant’s members are “interested” in the permit, all they need do is request us to
5 provide a declaration from one or more members attesting that they are “interested” in the permit. We
6 will gladly oblige (and, for good measure, provide member declarations attesting that the members
7 would be “significantly affected” by the permit). That would be the end of that. Instead, we are
8 confronted with a discovery request which goes far beyond permissible or relevant bounds. We should
9 not be compelled to waste more time responding to the request.
10

11 Dated this 18th day of April, 2017.

12 Respectfully submitted,

13 BRICKLIN & NEWMAN, LLP

14
15
16 By: 

17 David A. Bricklin, WSBA No. 7583
18 Attorney for Protect Volunteer Park

19 WSBA
20 24928

April 10, 2017

Via Email and First Class Mail

David Bricklin
Bricklin & Newman LLP
1424 Fourth Avenue, Suite 500
Seattle, WA 98101

Re: *Discovery Request Regarding Appeal of Master Use Permit Decision No. 3024753*

Mr. Bricklin:

This law firm represents the Seattle Art Museum (“SAM”). I write with regard to the appeal you filed on behalf of the group “Protect Volunteer Park,” which objects to the City of Seattle’s Mitigated Determination of Non-Significance for SAM’s proposed renovation and expansion of the Asian Art Museum building at Volunteer Park. With this letter, we are seeking documents and other information relevant to the appeal.

Please provide us copies of the following documents for the Protect Volunteer Park group, or identify why these documents cannot be provided:

- 1) The operative Articles of Incorporation, including any Articles of Amendment;
- 2) The bylaws currently in effect, including any amendments to the bylaws;
- 3) All other governing documents that identify Protect Volunteer Park’s purpose, mission, governing structure and rules;
- 4) A list of all current members of Protect Volunteer Park and their residential addresses; and
- 5) All documents related to and authorizing Protect Volunteer Park to seek this appeal on behalf of its members.

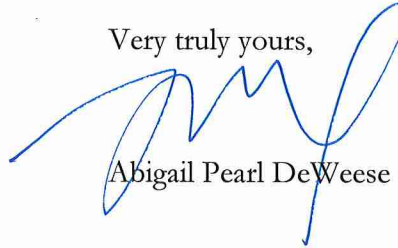
The documents and information requested in this letter should be readily accessible, and they are essential for SAM to defend itself in the forthcoming appeal. You may deliver the documents and responses to me by email or by sending hard copies of the documents to my attention at the address listed below.

EXHIBIT A

David Bricklin
April 10, 2017
Page 2 of 2

Given the timing of the appeal and the limited scope of this request, we ask you to deliver the documents by April 24, 2017, which is two weeks from today. At the upcoming pre-hearing conference we will ask the Hearing Examiner to confirm you should provide the requested documents and information by that date.

Very truly yours,



Abigail Pearl DeWeese

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