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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File: **MUP-17-015**
)
PROTECT VOLUNTEER PARK,)
) Department Reference: 3024753
)
of a Determination of Non-Significance)
) SDCI'S MOTION FOR SUMMARY
Certificate of Approval issued by the)
Department of Construction and Inspections) JUDGMENT
For Construction in Volunteer Park)
_____)

I. INTRODUCTION

For nearly thirty years, the following environmental policy for historic preservation has been in effect in Seattle ("City"): For projects involving structures or sites which have been designated as historic landmarks, compliance with the Landmark Preservation Ordinance ("LPO") shall constitute compliance with the City's policy to maintain and preserve significant historic sites and structures.¹ The Landmarks Preservation Board ("Board") is the City's specialized decision-making body comprised of architects, historians, planners, and other experts in relevant fields, as well as members sympathetic with the purposes of the LPO.² The City's longstanding environmental review policy requires the Board, rather than SDCI or any other department, to review a project's impacts to a historic landmark and determine what specific mitigating conditions would be adequate to mitigate the historic and cultural impacts.

¹ 1988 Seattle Ordinance No. 114057; See SMC 25.05.675.H.2.
² See chapter 25.12 SMC.

1 Here, the City properly issued its Mitigated Determination of Non-Significance (“MDNS”)
2 for Project No. 3024753 (“Project”) involving a 3-story addition to the Seattle Asian Art Museum
3 (“SAAM”). The City’s Decision³ required that the Project obtain a Certificate of Approval from the
4 Landmark Preservation Board (“Board”) prior to the issuance of a Master Use Permit (“MUP”). The
5 City’s Decision requires compliance with the LPO and therefore complies with the City’s
6 longstanding environmental policies on historic preservation as well as with the State Environmental
7 Policy Act (“SEPA”). The City respectfully requests that the hearing examiner uphold the MDNS
8 Decision and grant the City summary judgment as a matter of law.
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10 As to the other issues raised in Paragraph 7 of the Notice of Appeal, the City joins with the
11 Applicant in their request for summary judgment and incorporates by reference the Applicant’s
12 Motion for Summary Judgment as it pertains to those other issues
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14 II. STATEMENT OF FACTS

15 The City adopted the 1977 Landmarks Preservation Ordinance (“LPO”), chapter 25.12
16 SMC, that created the Board and established a procedure for the designation of landmarks and the
17 requirement that the Board must first approve a Certificate of Approval prior to any alterations of
18 landmarks.⁴
19

20 In 1988, the City codified a specific environmental policy [SMC 25.05.675.H.2.b] that for
21 projects involving structures or sites designated as historic landmarks, compliance with the LPO
22 shall constitute compliance with the policy to maintain and preserve significant historic sites and
23 structures.⁵

³ Analysis and Decision of the Director of SDCI dated March 16, 2017 for Project No. 3024753 (“Decision”).

⁴ City of Seattle Ordinance No. 106348. The City’s 1972 Landmark Ordinance No. 102229 was repealed upon the adoption of Ordinance No. 106348.

⁵ City of Seattle Ordinance No. 114057.

1 On October 3, 2016, the Seattle Art Museum (“Applicant”) submitted a MUP application
2 (“Application”) for the review of the Project, including SEPA.

3 On October 10, 2016, a SEPA Checklist was submitted by EA Engineering, Science &
4 Tech., Inc. PBC. The SEPA Checklist reviewed sixteen specific environmental elements,
5 including historic and cultural preservation.
6

7 The SEPA Checklist was revised on January 13, 2017 and on January 31, 2017 and the
8 most recent version of the SEPA Checklist was annotated by SDCI. The annotations by SDCI
9 regarding historic and cultural preservation includes the following:
10

11 The site, Volunteer Park, is a landmark and the Asian Art Museum is a landmark.
12 They are both being altered with this application and the Department of
13 Neighborhoods Landmark Preservation Board will determine specific mitigation of
14 significant impacts through the Certificate of Approval process. In addition, the
15 City’s Geotechnical Engineer is requiring a vibration monitoring plan to protect the
16 landmark building during construction.

17 After review of the draft Certificate of Approval application, public comments, and
18 consultation with Department of Neighborhoods, potential significant adverse
19 impacts have been identified with regard to the proposed alterations to the
20 designated features of the landmark. These impacts will be considered by the
21 Landmark Board when it acts upon SAAM’s application for a Certificate of
22 Approval, and the Board may impose conditions to avoid or mitigate impacts if it
23 decides to approve a Certificate of Approval. The Board’s action on the Certificate
of Approval constitutes compliance with SEPA for historic preservation purposes.

On March 16, 2017, SDCI issued its Decision approving the MUP, which also included a
SEPA MDNS. With the exception of historic and cultural preservation, the SEPA MDNS
determined that no adverse environmental impacts would result from the Project and no further
mitigation was required. SDCI identified that there was a potential for significant environmental
impacts to designated landmarks and conditioned the MDNS to require that a Certificate of
Approval must first be issued from the Board, in compliance with the LPO, prior to the issuance
of the MUP.

1 On March 29, 2017, appellant Protect Volunteer Park filed a Notice of Appeal with the
2 Office of the Hearing Examiner.
3

4 III. ISSUES

5 Ecology's SEPA rules allow the City to issue an MDNS by conditioning a project to
6 comply with the City's specific environmental policy on historic preservation as adequate
7 mitigation. The City has codified a specific environmental policy on historic preservation that
8 provides that for projects involving structures or sites which have been designated as historic
9 landmarks, compliance with the Landmarks Preservation Ordinance shall constitute compliance
10 with the City's policy to maintain and preserve significant historic sites and structures. Did the
11 City comply with its environmental policies and SEPA by issuing an MDNS on condition that a
12 Certificate of Approval first be obtained from the Landmark Preservation Board prior to the
13 issuance of the MUP?
14
15

16 IV. ANALYSIS

17 A. Standard of Review

18 The City's decision to issue an MDNS pursuant to SEPA must be accorded substantial
19 deference on review. *Anderson v. Pierce County*, 86 Wn. App. 290, 936 P.2d 432 (1997). The
20 City's SEPA threshold determination is reviewed under the clearly erroneous standard. *Moss v.*
21 *City of Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001). Only if the hearing examiner is left
22 with the definite and firm conviction that the City committed a mistake in issuing a MDNS with
23 the mitigating condition that a Certificate of Approval be issued by the Board prior to the issuance
of a MUP may the hearing examiner overturn the City's MDNS. *Id.*

1
2 **B. The MDNS complies with Ecology’s SEPA rules and the City’s environmental**
3 **policies.**

4 Ecology’s SEPA rules provide that if the City identifies historic preservation mitigation
5 measures on an applicant’s proposal that would allow it to issue a DNS, and the proposal is
6 conditioned to include those specific measures, the City shall issue a DNS.⁶ The City’s code
7 provides that any governmental action on public or private proposals may be conditioned to
8 mitigate the environmental impact based on policies, plans, rules, or regulations formally
9 designated in Sections 25.05.665, 25.05.670, and 25.05.675 as a basis for the exercise of
10 substantive authority.⁷

11
12 Since 1988, the City code has provided as a specific environmental policy on historic
13 preservation that compliance with the Landmarks Preservation Ordinance shall constitute
14 compliance with the City’s policy to maintain and preserve significant historic sites and
15 structures.⁸

16
17 The City complied with its SEPA requirements pursuant to SMC 25.05.675.H when it
18 issued an MDNS for the Project. The City identified during the SEPA threshold determination
19 process that there was a potential for adverse environmental impacts to designated landmarks.
20 Following the longstanding City policy, provided in SMC 25.05.675.H.2, the City issued the
21 MDNS on the condition that a Certificate of Approval be issued by the Board prior to the issuance
22 of the MUP permit.
23

⁶ WAC 197-11-350(C); SMC 25.05.350(C).

⁷ SMC 25.05.660; WAC 197-11-158(1).

⁸ SMC 25.05.675.H.

1 The established Certificate of Approval process in the LPO is the most appropriate venue
2 for providing adequate analyses of and mitigation for the historic preservation impacts of the
3 project.⁹

4 **C. The MDNS is consistent with the City's past practice.**

5 Under very similar circumstances, the City has developed a past practice of issuing SEPA
6 determinations on the condition that the applicable historic preservation ordinance be complied
7 with, similar to the policy of SMC 25.05.675.H.2.b.

8 For example, SDCI issued a SEPA decision in Project No. 3017008 ("Save our Square"),
9 a project to demolish the Terminal Garage, a 3-story concrete structure in Pioneer Square, and
10 construct an 11-story structure with 200 residential units above ground floor retail. The SEPA
11 decision in Save our Square relied on the Pioneer Square Special Review Board's ("SRB") review
12 and issuance of a Certificate of Approval as a condition of SEPA approval, pursuant to chapter
13 25.28 SMC. On appeal, the Findings and Decision of the Hearing Examiner provided that "the
14 SEPA decision, which relied on the [SRB's] review and the issuance of the Certificate of Approval,
15 and made those a condition of approval, was not shown to be in error for relying on the Special
16 District Review process to identify and address impacts to historic buildings."¹⁰ The MUP and
17 threshold determination in Save our Square was issued on June 11, 2015, more than a month before
18 the Certificate of Approval was granted in Save our Square on July 30, 2015.

19 **V. CONCLUSION**

20 The City complied with its longstanding environmental policy on historic preservation as well
21 as Ecology's SEPA rules when it issued an MDNS that conditioned the issuance of the MUP on the
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⁹ See chapter 25.12 SMC

¹⁰ Save our Square Conclusion of Law #4, p. 8 of 12, MUP-15-019(W).

1 project first obtaining a Certificate of Approval from the Board. The MDNS was properly
2 conditioned so that a MUP would not issue until compliance with the LPO was achieved. As to the
3 other issues raised in Paragraph 7 of the Notice of Appeal, the City joins with the Applicant in their
4 request for summary judgment and incorporates by reference the Applicant's Motion for Summary
5 Judgment as it pertains to those other issues. As a matter of law, the hearing examiner should uphold
6 the City's MDNS and MUP Decision.
7

8
9 DATED this First day of May 2017.

10
11 PETER S. HOLMES
Seattle City Attorney

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14 Assistant City Attorney
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16 *Construction and Inspections*
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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, **City's Motion for Summary Judgment**, on the parties listed below and in the manner indicated:

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DATED this 1st day of May, 2017, at Seattle, Washington



ALICIA REISE, Legal Assistant