

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

DAVID MOEHRING

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

Hearing Examiner File:
MUP-18-0022

Department Reference:
3029611-LU

APPLICANT AND OWNER'S
REPLY TO APPELLANT'S
RESPONSE TO MOTION TO
DISMISS LAND USE APPEAL

I. REPLY

In his response to the motion to dismiss, Moehring fails to identify one single environmental impact that was either not disclosed by the Applicant, or that SDCI was not aware of when it issued the DNS. This alone warrants dismissal of the Appeal. Another fatal flaw in Moehring's response is that he does not rebut the fact that even assuming each of his allegations in the Appeal are correct, they are insufficient demonstrate that the City's regulations are inadequate to sufficiently mitigate the impacts, much less that an environmental impact statement for the Project should be required. Thus, the Applicant and Owner's motion to dismiss the Appeal should be granted.

Moehring sets forth 11 specific reasons for why the motion to dismiss should be denied, which will be discussed in turn below.

APPLICANT AND OWNER'S REPLY TO
APPELLANT'S RESPONSE TO MOTION
TO DISMISS LAND USE APPEAL - 1

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1 First, Moehring alleges in his response that SDCI's Decision was based upon
2 "erroneous and incomplete information,"¹ yet he fails to identify any specific environmental
3 impact that was not part of the record, or known to SDCI when it issued the Decision. The
4 failure to identify any specific environmental impact that was not considered by SDCI
5 renders his Appeal defective and requires its dismissal.

6 Second, Moehring argues that the motion to dismiss should be denied because the
7 Project will have a probable significant adverse impact on the environment. In support of
8 this argument, Moehring alludes to testimony that will be offered at the hearing for a
9 development located at 3827 23rd Avenue West. The development at 3827 23rd Avenue
10 West has absolutely no bearing on whether the environmental impacts of this Project were
11 disclosed to SDCI and whether an environmental impact statement should be required.

12 Third, Moehring claims that the Project is not categorically exempt from SEPA
13 review. That statement is correct and the motion to dismiss did not allege that the Project
14 was exempt from SEPA or that it was a basis for dismissing the Appeal. So, it is not a valid
15 objection to the motion.

16 Fourth, Moehring argues that the motion to dismiss should be denied because the
17 "application indicates existing significant trees and rockery within the right-of-way that will
18 be compromised as a result of the proposed development."² Moehring's allegation, even
19 assuming it's true, does not allege that SDCI was unaware of any potential environmental
20 impacts when it issued the Decision. It alleges the opposite – that the impacts were
21 disclosed to SDCI. Again, Moehring fails to allege that City's environmental regulations are
22 insufficient to mitigate the Project's environmental impacts, including those to the right-of-
23 way and street trees.

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25 ¹ See Response, 1:22.

² See Response, 6:14.

1 Fifth, Moehring goes on to allege that the motion to dismiss “inaccurately claims that
2 there is no history of landslides in the area.”³ Moehring claims that his response is
3 supported by the public records and then provides a link to the City of Seattle Landslide
4 Prone Areas. This document demonstrates that this information was known to SDCI (since
5 they created the document) when it issued the Decision.

6 Sixth, Moehring contends that SDOT did not review the plans set submitted by the
7 Applicant. This, too, is not a valid reason for denying the motion to dismiss. The question
8 before the Examiner is whether the potential environmental impacts were adequately
9 disclosed to or known by SDCI when it issued the Decision. SDOT’s review of the Project
10 takes place during the construction permit review phase, not during a SEPA Environmental
11 Determination. Likewise, the retention of street trees under Title 15 of the SMC is not part
12 of the SEPA review process.

13 Seventh, Moehring claims that potential impacts of the Project with respect to the
14 abutting SF 5000 zone need to be considered or mitigated. There is no dispute that SDCI
15 was aware of the abutting SF 5000 zone when it issued the Decision – the first page of the
16 Decision specifically identifies the vicinity zoning as follows: North: LR1; East LR1; South:
17 SF 5000; West: SF 5000. Because SDCI was aware of the vicinity zoning when it issued the
18 Decision, it is not a valid basis for denying the motion.

19 Eighth, Moehring purports that there was an error in disclosing whether or not there
20 was a steep slope on the Premises. While the Applicant initially disclosed that there was a
21 steep slope on the Premises, the topographic survey prepared by a licensed surveyor with
22 Chadwick & Winters, unequivocally established that the Premises did not contain a steep
23 slope. Moehring has failed to present any evidence that the topographic survey is incorrect
24 or that there is a steep slope on the Premises.

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³ See Response, 6:23.

1 Ninth, Moehring argues that the arborist report is inadequate. This argument is
2 unavailing and insufficient to defeat the motion to dismiss. The arborist report adequately
3 discloses the location and type of trees on the Premises and the abutting right-of-way. The
4 adequacy of tree protection measures under Chapter 25.11 and Title 15 of the SMC will be
5 addressed during the construction permit review. Those issues are not before the Examiner
6 on Moehring's appeal of the Decision.

7 Tenth, Moehring claims that the geotechnical report is inadequate because it is of
8 insufficient length. Yet, Moehring does not identify a single aspect of the report that he
9 believes is insufficient or a potential environmental impact that was not disclosed. There
10 will be additional geotechnical reports provided during the review of the construction
11 permit.

12 Finally, Moehring alleges that the case law provided in the motion-in-chief,
13 including an Examiner's decision, is not applicable to this matter because it concerned a
14 different case with different facts. Regardless, the legal principles and holdings in those
15 cases are applicable to this land use appeal for the reasons stated in the initial motion. And
16 Moehring's claim that he will provide "expert testimony and exhibits"⁴ does not imbue the
17 Appeal with merit.

18 Moehring has failed to set forth any facts or legal authority to defeat the Applicant
19 and Owner's motion to dismiss. For the reasons stated in the motion and this reply, the
20 motion to dismiss should be granted and the Appeal should be dismissed in its entirety.

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⁴ See Response, 9:11.

1 Respectfully submitted this 7th day of November, 2018.

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3 HELSELL FETTERMAN LLP

4 By: s/ Brandon S. Gribben

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7 Attorneys for the Applicant and Owner
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CERTIFICATE OF SERVICE

I, Gennifer Holland, certify under penalty of perjury under the laws of the State of Washington that the above pleading was served on the parties listed below via the indicated method:

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- ☐ Via first class U. S. Mail
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DATED this 7th day of November, 2018.

s/Gennifer Holland
Gennifer Holland, Legal Assistant