

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by

David Moehring and adjacent neighbors  
to 2300 W Emerson Street, Seattle  
WA 98199

of the September 13, 2018  
Determination of Non-Significance by  
Lindsay King, Land Use Planner,  
Seattle Department of Construction and  
Inspections.

NOTICE OF APPEAL

Appeal to the Determination of Non-  
Significance for development at  
2300 W Emerson Street and  
discretionary decision that an EIS is  
not required under RCW  
43.21.030(2) (c).

**MUP-18-022**

**I. INTRODUCTION**

The primary appellant, David Moehring, resides approximately one block south of the proposed 9-dwelling rowhouse development of 2300 W Emerson Street (Hereafter the "Subject Property" which is located at the northwest corner of the intersection of W. Emerson St. and 23<sup>rd</sup> Avenue West. The appellant lives within a potential landslide zone that borders this development and is concerned for the retention of large trees that are along the public right-of-way. Aesthetic and soil stability issues as identified in the SEPA checklist will affect the adjacent neighbors on the block of the development.

Each appellant will be adversely impacted by enactment of the proposed development notwithstanding the determination by the responsible party's discretionary decision that an EIS is not required under RCW 43.21.030(2) (c). The appellant with adjacent neighbors (hereafter "Appellant") asks that the Hearing Examiner require the Applicant's development be considered for its environmental impact pursuant to SEPA substantive authority provided in SMC 25.05.660 that may lead this proposal to be conditioned to mitigate the environmental impacts.

This appeal is related to the Subject Property as follows:

1. Decision Elements: SEPA determination and the Adjacent Environmentally Critical Areas
2. Interest: See Section II
3. Objections: See Section III
4. Desired Relief: See Section IV

## II. APPEAL INTERESTS

### 1. What is your interest in this decision?

The Appellant are within the neighboring blocks and have standing in the decision being appealed. David Moehring is an architect with 30 years of experience and resides approximately one block south of the proposed 9-dwelling rowhouse development of the Subject Property. His property falls within a designated Seattle potential landslide zone. This zone continues to the north-northwest and runs approximately within 250-feet of the Subject Property multifamily development. Such development, without a thorough assessment of the environmental impacts, could trigger impacts to the area including the Appellant's properties.

The protection of existing trees along the right-of-way of the Subject Property is of interest for soil retention, storm water runoff, neighborhood aesthetics, natural habitats, and thermal local heat island affects. The Appellant will be adversely impacted by enactment of the proposed development notwithstanding the determination by the responsible party's discretionary decision that an EIS is not required under RCW 43.21.030(2).

Given typical properties within this area are either single-family or lowrise multi-family residential with a maximum density of one dwelling/household for every 1,600 square foot of property lot area, having this development which proposes 225-percent more dwellings/households<sup>1</sup> must be evaluated for its impact to utility services provided to the area should the area be developed to its zoned density potential, and similar corner lots go beyond typical zoning density limits. Members of Appellants live, own property, and drive through the area will be directly, indirectly, and cumulatively impacted by permanently damaged trees or unstable soil conditions.

## III. APPEAL DECISION OBJECTIONS

### 2. What are your objections to the decision?

#### A. Reference Documents

1. All SDCI documents recorded for the development proposed at 2300 W Emerson Street.
2. SDCI Public Notice of Decision

<sup>1</sup> Lot of 7,000 square feet divided by 9 dwellings is equivalent to 1 dwelling per every 775 square feet of lot area. This exceeds the typical number of households per LR1-zoned lot by 225%.

3. ANALYSIS AND DECISION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS
4. Arborist Report and including all amendments from discovery.
5. Site Plan and including all amendments from discovery.
6. Annotated Sheet A1.0
7. Other supporting documents presented subsequent to discovery.

## **B. Inadequate Evaluation of the SEPA Checklist**

The DNS must consider short- and long-term effects of the development. The definition of “significant” is not limited to just “long-term” per WAC 1978-11-794 and SMC 25.05.794. This development is not just limited to the area within the property line, but also the right-of-way and adjacent properties. Significant trees within the right-of-way, if damaged due to the proximity of the new construction to the critical elements of the trees, may take many years to replace even assuming they can be replaced with similar quality resources and in the same geographical location.

The decision states that the “lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.”

Excluding further requested discovery, the completed SEPA checklist (with limited SDCI comments) appears to be available on the SDCI website for this project. However, this checklist includes numerous inaccurate or vague responses that would prohibit the lead agency from properly discerning the impacts of the development. This is problematic as the stated purpose of checklist is for “Governmental agencies [to] use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.” Hence, if the checklist includes inaccurate and vague responses as this proposal does, the lead agency will not be able to accurately discern if the environmental impacts of the proposal are significant.

Within part A.8. of the Checklist, only two documents are listed that define the environmental information directly related to the Subject Property proposal. Those documents listed include (a) the Arborist report provided by Shoffner Consulting; and (b) the Geotechnical Information Summary, provided by Geotech Consultants, Inc. As elaborated within the subsequent sections of this appeal, these two documents are woefully substandard and incomplete from what is typically provided for projects of this size and geographical characteristics.

1 Included in the checklist are the following inadequacies in the checklist responses by part  
2 within the checklist (Q. = question; A.= response):

3 Inadequacy Item 1:

Q: B. 1. b. What is the steepest slope on the site (approximate percent slope)?

4 A: Barring areas retained by rockery, and excluding existing site stairs, 22%.

Appellant Concern: The rockery – most of which is within the street right-of-way – has not  
5 been addressed. The northeast corner of the site is a pre-designated steep slope ECA as  
6 noted within Item 6 below. The slopes of the rockery exceed 40-percent. In addition, the  
7 existing contour lines within the designated steep slope areas are equivalent to the spacing  
8 of contour lines outside the steep slope areas. This means a consistent steep slope rather  
than only a portion. See architectural drawings including section A4.1 and a visit to the site  
is recommended to confirm this document inconsistency.

9 Inadequacy Item 2:

Q: B. 1. d. Are there surface indications or history of unstable soils in the immediate  
10 vicinity? If so, describe.

11 A: None.

Appellant Concern: reference Seattle's official landslide information<sup>2</sup> maps along with  
12 subsequent updates by the SDCI Director. There was at least one recorded landslide at  
13 most one block from the Subject Property and another three landslides within three blocks  
south of the Subject Property. Other checklists prepared for the Department include  
14 incidences within such proximities. The applicant's response may be an attempt to avoid  
15 further questioning or investigation from the Department or from triggering a need for an  
EIS.

16 Inadequacy Item 3:

Q: B. 1. g. About what percent of the site will be covered with impervious surfaces after  
17 project construction (for example, asphalt or buildings)?

18 A: Roughly 55%, but we are working with a civil engineering firm to help confirm pavement  
permeability, infiltration rate, etc.

Appellant Concern: With a lot of 7,000 square feet, the designated yard areas is only 925  
19 sq. ft. (sheet A1.1) which could suggest as high as 85% impervious surfaces. The building  
20 structures account for at least 2,600 square feet of the impervious area (sheet A2.0). The  
21 nine parking spaces (sheet A1.0) account for another 1,100 square feet of the impervious  
22 area as well as the paved drive areas between the spaces. There is no record of civil  
23 engineering documents identifying permeable pavement or the pavement attributes. This is  
open-ended and could result in significant storm water issues at a busy arterial intersection  
with low visibility due to the street slope of Emerson to the east. A visit to the site would  
confirm these concerns.

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<sup>2</sup> See link to city information at

[https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web\\_informational/dpdd017622.pdf](https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd017622.pdf)

1 Inadequacy Item 4:

2 Q: B. 4.b. Plants - What kind and amount of vegetation will be removed or altered?

3 A: One (1) tree will be removed, plus shrubs and grass to be disturbed or removed during construction. Planting replacement will be coordinated with the landscape architect.

4 Appellant Concern: Referencing the inadequate arborist report and the conflicts between the architectural drawings and the landscape drawings, there is more than one significant tree that will be lost. As many as four significant trees have buildings being constructed within the code-defined root feeder zone. Excavations for building foundations also extend another 3 to 5 feet beyond the edge of the proposed building that even further carve into the root feeder zones. This conflict has not been addressed or identified within the Checklist. Reference the appeal inadequacies of the drawings below, Part C.

8 Inadequacy Item 5:

9 Q: B. 8. A. Land and shoreline use - What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

10 A: Current use is a multi-family residence, adjacent properties are multi-family residential.

11 Appellant Concern: per architectural drawings, the property also is adjacent to Single Family SF-5000 zones. The height, bulk and scale of this development must be considered within an EIS accordingly.

13 Inadequacy Item 6:

14 Q: B. 8. h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

15 A: Yes, there is a tiny portion of Steep Slope in the Northeast corner of the site.

16 SDCI comment: "Site is not mapped as an environmentally critical area." LMK 8/29/18

17 Appellant Concern: SDCI comment undermines the requirements and the site survey information indicates steep slopes along the entire lot along West Emerson Street.

18 Inadequacy Item 7:

19 Q: B. 10. b. Aesthetics - What views in the immediate vicinity would be altered or obstructed?

20 A: None

21 Appellant Concern: According to the drawings and checklist, the properties to the north of the Subject Property will have their views of the Elliott Bay and Downtown Seattle obstructed by a long wall of nine rowhouses as tall as 39 feet – 11 inches. The DNS was based on no impacts to views being altered or obstructed. A visit to the property will demonstrate this fact.

23 Inadequacy Item 8:

24 Q: B. 10.c. Aesthetics - Proposed measures to reduce or control aesthetic impacts, if any:

25 A: None

26 Appellant Concern: Given the above, no mediation of the obstructed views are being considered.

1 Inadequacy Item 9:

2 Q: B.15. Public Services

3 a. Would the project result in an increased need for public services (for example: fire  
4 protection, police protection, public transit, health care, schools, other)? If so, generally  
5 describe.

6 A: A potential 12 person increase to all public services, but unlikely any increase in actual  
7 demand.

8 Appellant Concern: As the existing three dwelling property is increased to a nine dwelling  
9 property, the Applicant suggests that each additional dwelling will have just two occupants.  
10 This miscalculation is off by a magnitude of two. Whether it is 12 persons or 24 persons  
11 being added to the site, the Department has failed to recognize that this response is  
12 inadequate. The significant increase in the number of occupant planned for this lot will also  
13 have an impact to the locally provided public services and actual demand.

14 Inadequacy Item 10:

15 Q: B.15. b. Proposed measures to reduce or control direct impacts on public services, if  
16 any.

17 A: None

18 Appellant Concern: Given the above, no mediation of the obstructed views are being  
19 considered.

20 Inadequacy Item 11:

21 Missing from the checklist are pages 32-36.

22 Appellant Concern: Given all of the above, the remaining portions of the SEPA Checklist  
23 should not be excluded.

24 **C. Inaccurate, incomplete and uncoordinated drawings to define limits of areas  
25 affected**

26 The proposal compresses nine dwellings into this property within a LR1-zoned lot that  
typically only accommodate four dwellings per the SMC. As a result, there is no room for  
the new building foundations to clear the existing right-of-way (ROW) designated tree root  
protection areas. Although the developer's landscape drawings shows a detail of the  
protection of existing trees being at the extent of the tree's dripline, the architect's drawings  
show the new building significantly encroaches into the trees' drip lines. Again, this overlap  
only worsens when excavations carve out more in this sloping property and cut deeper and  
further into the existing trees' critical root feeder zones. Thus, the existing trees will very  
likely not survive. Case studies have shown tall trees with excavations into root areas tend  
to tip and displace ultimately resulting in removal without mitigation. Reference the  
annotated sheet A1.0 attached with the appeal.

The drawings (sheet L1) identify the phone number of Seattle staff Ben Roberts as the  
person who will inspect tree protection at the time of construction. The two problems with  
that is (a) the SEPA evaluation has not been conducted to determine if the protection is even

possible given the location of the proposed buildings to the tree; and (b) as of September 21, 2018, Mr. Roberts had no information or knowledge of this project or DNS.

In addition, the geotechnical evaluation of this site is woefully inadequate to discern the impacts to trees and slopes caused during construction. Historically speaking, property in West Seattle, Queen Anne, Magnolia and Madrona faces the highest risk of landslides, though every incident depends on a number of different factors. This Subject Property is no exception. Adding to the presence of steep slopes and soil, human influence also impacts the chance of a landslide. A major concern for landslide experts remains the construction projects that occur throughout the rainy season. Taring up the ground and changing the land's natural layout tends to mobilize sediment. In some parts of the state, construction starts shutting down in the middle of October. Removing trees intentionally or by oversight may loosen soil within the property, especially when located on an at-risk a slope with an incline greater than 40 degrees. Severe storms can cause the loose soil to saturate, and subsequently slide away. This has not been considered by any reports leading to the DNS.

#### **D. Incomplete and uncoordinated arborist evaluation**

The arborist report (included for reference in the appeal attachment) has been prepared by Shoffner Consulting [ISA Certified Arborist #PN-0909A CTRA #1759]. The developer's arborist is from Bothell, and apparently does not appear to fully identify the requirements for street trees in Seattle. This arborist does not appear to be qualified to evaluate trees on the ROW on behalf of SDOT, providing unreliable information for the Department to provide a DNS for the Subject Property.

The arborist report includes no photographs of the site to verify that they have examined all significant trees on the property, the adjacent right-of-way, and numerous trees along the property line on the adjacent lot to the north. Instead, the arborist states within the report, "None of the trees are exceptional, therefore, *no retention is required and if any trees are retained, no protection is required.*" (Emphasis added). The arborist lumps the SDOT ROW trees along with the trees on the private site; and looks only at the size of the trees per the SDCI Director's Rule and not the requirements of SDOT. Nor does the arborist recognize that the DBH of the tree has reduced thresholds when on a designated steep slope area of the right-of-way. As a result, the two spruce and one fir all must follow higher levels of protection than identified.

Per the arborist report, these trees are in the Right of Way include:

1. Blue Colorado spruce (*Picea pungens* 'glauca'), 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
2. Blue Colorado spruce, 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
3. Noble fir (*Abies procera*), 5", 8' crown spread. Fair condition and health. Not exceptional.
4. Noble fir, 14" dbh, 12' crown spread. Poor condition, multiple tops. Not exceptional.

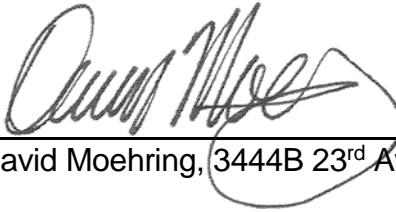
1 The DNS fails to evaluate the impacts of removing protections for significant trees on the  
2 steeply sloped right-of-way (SMC 25.11). The DNS does not evaluate the increase in  
3 impermeable surfaces that will increase stormwater runoff as a result of trees being removed.  
4 The DNS does not mention or assess increased health impacts as a result of increased  
removal of trees under the proposed action.

5 **IV. RELIEF REQUESTED**

6 Appellant requests that the Hearing Examiner vacate the Determination of Non-Significance  
7 with instructions to the SDCI to prepare an Environmental Impact Statement EIS to  
8 adequately address the environmental impacts and mitigation to meet the objective of  
providing adequate protections to Seattle's right-of-ways and the nearby residents.

9 Filed on behalf of the Appellants this 26<sup>th</sup> day of September, 2018.

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11  
12 By:



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14 With and for:

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