

SDCI Project Number: 3032887-LU
Applicant Name: Andy McAndrews (for MGT4 LLC)
Address of Proposal: 3411 23rd Ave W

Type: Land Use Appeal
Decision Elements: Short Plat; Subdivision;
Interest: See Appeal Section I within this document dated June 13, 2019
Objections: See Appeal Section II within this document dated June 13, 2019
and attachments for reference from the SDCI EDMS public records.

- The SDCI Director has made a discretionary Type II decision on the Short Plat Subdivision of lot without adequate consideration of the criteria.
- Note that the online record indicates rowhouses identified in the east portion of the parent lot.
- The west portion of the lot is subdivided will no longer be develop-able per SMC 23.84A.032.R.20.f (verify) Rowhouse Development Rules.
- Criteria on emergency access and retaining existing trees (including Exceptional neighbor trees) has not been adequately considered in the decision.

Desired Relief: See Appeal Section III within this document dated June 13, 2019
Contacts:

1. Appellant

Name: Neighbors to MGT4 development
Email: UrbanMagnolia@pacificwest.com
Phone: (312) 965-0634
Fax: none
Address: 3444 23rd Ave W Unit B, Seattle, WA, 98199

2. Authorized Representative

Name: David Moehring
Email: dmoehring@consultant.com
Phone: (312) 965-0634
Fax: none
Address: 3444B 23rd Ave W , SEATTLE, WA, 98199-2313

Decision being appealed: As written in the May 30, 2019 'CITY OF SEATTLE ANALYSIS AND DECISION OF THE DIRECTOR of the SEATTLE DEPARTMENT OF CONSTRUCTION & INSPECTIONS:
"SUMMARY OF PROPOSED ACTION
Land Use Application to subdivide one parcel into two parcels of land.
The following approval is required: Short Subdivision - to create two parcels of land. (Chapter 23.24, Seattle Municipal Code)."
DECISION –SHORT SUBDIVISION
The proposed Short Subdivision is **GRANTED**.
CONDITIONS – SHORT SUBDIVISION
None.

Introduction:

A Type II discretionary land use decision notice has been issued as the "CITY OF SEATTLE ANALYSIS AND DECISION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS" on SDCI Project Number 3032887-LU. The Owner of this property at 3411 23rd Ave W is MGT4 LLC per the April 17, 2019 refiling correction found in the King County parcel records (gismaps.kingcounty.gov/parcelviewer2/ for parcel 277060-0515). The Owner has engaged as the Applicant Terrane, Inc. as the land surveyor, expediter and Applicant.

The SUMMARY OF PROPOSED ACTION is noted for the property at 3411 23rd Avenue West in Seattle (herein the 'Subject Property') as a "Land Use Application to subdivide one parcel into two parcels of land. Existing building to be demolished". The lot is 7,000 square feet within a LR1 zone. The application pre-dates Seattle's revised zoning to LR1(M) resulting from a recently passed land-use ordinance for the MHA. Further approvals are still required yet no conditions have been placed on the short plats.¹

I. What is your interest in this decision? (State how you are affected by it)

The Appellant Representative resides at 3444 23rd Avenue West which is seven properties to the north and across the street (see Figure 4 on the following pages). The appellant lives within a townhouse plats with no more than three dwellings on the original parent lot of 6,000 square feet² – which is the normal density for developments within this LR1 lowrise multifamily zone. Prior to the 2019 lowrise multifamily code requirements being changed with the MHA ordinance, LR1 was limited to one (1) multi-family dwelling for every 1,600 square feet of lot area. This proposal submitted an application for the front portion of the lot in order to circumvent the in-lieu-of-fees associated with market-rate multifamily development. The development drawings indicate that there will be three rowhouse dwellings on the street-facing side of the 7,002 square feet lot. The number of dwellings on the to-be-proposed-encumbered western portion of the parent lot is trusted to be identified by a public record request made by the Appellant on June 12, 2019. Except for a corner lot where rowhouses are allowed to face the long direction of a rectangular lot, nowhere within this LR1 zoned block has the possible number of dwellings exceeded 4 units. The Appellant is therefore concerned that this owner is being granted special privileges to build more than the allowed number of dwellings for an LR1-zoned lot of this size.

The Appellant's Unit Lot and the Subject Property share the same ECA2 potential land slide area per the City of Seattle GIS maps (See Figure 4 on the following pages):

<http://seattlecitygis.maps.arcgis.com/apps/webappviewer/index.html?id=f822b2c6498c4163b0cf908e2241e9c2>

As such, we are very interested in the overdevelopment of the three adjacent sites all owned by the same entity and being developed simultaneously. We have attached site surveys, geotechnical report images, plans, and site cross-sections in Appeal Attachments E, F, G and H to document the concerns.

The rear portion of the development lots would not have access to a street or private dedicated access easement as every other Lot or Subdivided Lot has. There exists no improved alley to this parent lot. Therefore, the Appellant and neighbors are concerned how will fire trucks, ambulances, delivery vehicles, and resident automobiles that need various degrees of turn-around space be possible with a dead-end unimproved alley condition.

We have also concerned that the Director has not applied any special conditions with the proposed short plat to this development being unresolved. Therefore, the short plat will be approved and allow multiple land-use code deviations that otherwise would not be acceptable within the Seattle Municipal Code for multifamily zoned properties.

¹ Zoning history: The new LR1(M) zoning took effect in April 2019. It was established in Ordinance 125791. This is a change in current zoning from LR1. LR1(M) is a Multifamily Residential zone where residential development such as townhouses, rowhouses, and apartments are allowed. For more information about applicable development standards in this zone, review Chapter 23.45 of the Land Use Code.

² "Parent lot" is defined in SMC 24.84A.024-"L"

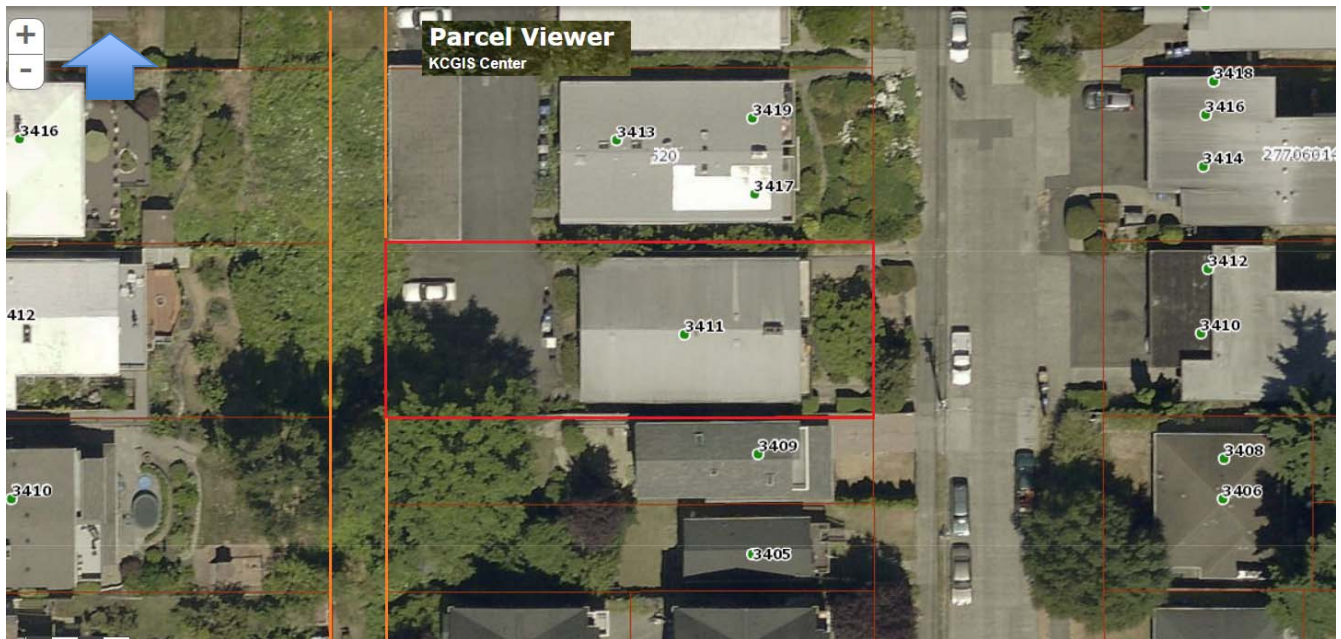


Figure 1- King County Parcel Viewer Interactive map. 3411 Parcel area of development outlined in red (emphasis added). Unimproved alley right-of-way outlined in orange (emphasis added). North is facing up and 23rd Avenue West is to the east (or right in the image) of the Subject Property.

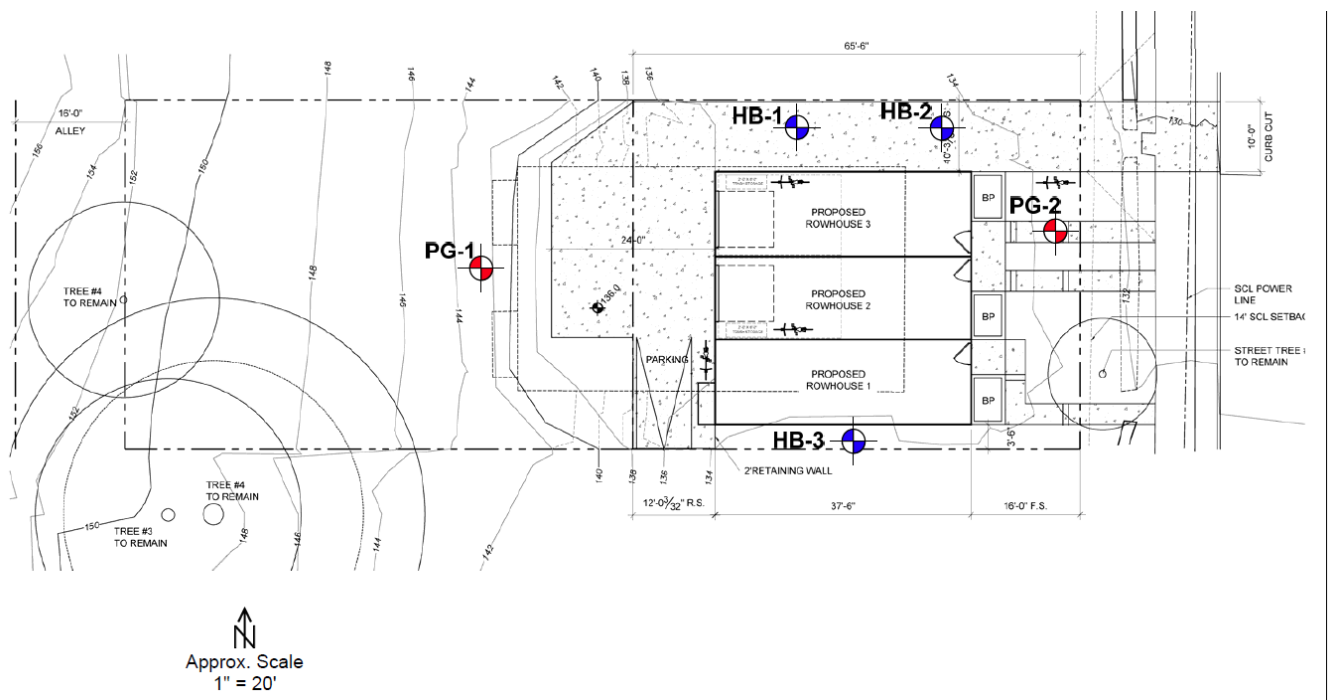


Figure 2- East portion of lot development as indicated within the geotechnical report available online at the SDCI EDMS website <http://web6.seattle.gov/dpd/edms/> ; Proposal includes three rowhouses on the east street side of the Subject Property.

In summary, we believe the proposed short plat is a result of submitted development plans that will adversely impact the block's integrity and health safety due to restricted access of emergency vehicles. The western portion of the subdivided parent lot cannot be legally developed. Although the Department has allowed policy to approve many of these type of developments in the interest of providing more appeal for developers to undergo multifamily construction, such policies are not acknowledged by the landuse code, and thereby the essential nature of this administrative appeal to the office of the Hearing Examiner. The over-development will impact the neighboring properties availability to light and air and privacy. As the existing parking for the development is accessed off the driveway easements through multiple private lots rather than the street, we are concerned about the maneuverability and safety of those using the narrow "single-lane" street after being surcharged with dwellings exceeding the count as limited by LR1 zoning.

II. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

See attachments and appeal documentation herein. In summary, applications fail to demonstrate compliance with Short Subdivision - to create two parcels of land. (Chapter 23.24, Seattle Municipal Code) and associated landuse Title 23 codes. "Grandfathered LR1" zoned lots as this are limited to maximum number of 1 dwelling for every 2,200 square feet or 1 dwelling for every 1,600 square feet if meeting all exceptions for green performance, parking locations, and alley improvements. Yet, this development is proposing at least three marketrate 3-story townhouses on 3,276 square feet of land, and perhaps two to three more dwellings of comparable size on the remaining western portion of the 7,002 square foot parent lot. As such, the density average of 1,200 sq ft of land area for each primary residence exceeds the allowable Floor Area Ratio between 33 and 50 percent. Accordingly, these applications fail to achieve stated general short subdivision standards per SMC 23.24.040, and the SDCI Director has failed to follow the necessary criteria to determine whether to grant, condition, or deny a short plat:

- Criteria 1: The Director has failed to demonstrate full conformance and apply conditions to the applicable Land Use Code provisions, as modified by SMC 23.24;
- Criteria 2: The Director has failed to demonstrate full conformance and apply conditions for adequate access for pedestrians, vehicles, utilities and fire protection as provided in Section 23.53.005 Access to lots;
- Criteria 5: The Director has failed to demonstrate full conformance and apply conditions to the applicable provisions of Section 25.09.240, Short subdivisions and subdivisions, in environmentally critical areas³; and
- Criteria 6: The Director has failed to demonstrate whether the proposed division of land is designed to maximize the retention of existing trees.

A. The Analysis and Decision is based on an erroneous application of the short plat subdivision approval criteria SMC 23.24.040.A including:

- a. Failure to demonstrate full conformance and apply conditions to the applicable Land Use Code provisions, as modified by SMC 23.24 as identified herein.
- b. Failure to provide adequacy of adequate access for pedestrians, vehicles, utilities and fire protection as provided in Section 23.53.005 Access to lots;
- c. Failure to provide an access easement meeting minimum width and height clearance requirements.
- d. Failure to achieve conformance and apply conditions to the applicable provisions of Section 25.09.240, Short subdivisions and subdivisions, in environmentally critical areas; and
- e. Failure of the proposed division of land to be designed to maximize the retention of existing trees.

B. Attachment C is the proposed subdivision plan prepared by the Applicant of the Subject Property, Sean Roulette-Miller of Terrane, land surveyor, for MTG4, LLC and dated 3/29/19.

- a. Page 3 of this Plan Set shows the 36" DBH Black Locust Exceptional tree on the Subject Property as is protected by the Director's Rule and SMC 25.11 (reference Figure 6 herein). The Short Plat criteria includes the maximum retention of all existing trees critical root feeder zones (dripline) including those where the trunk may fall in a neighboring lot. The Director's decision and analysis is inadequate in evaluating the criteria relative to existing tree retention.
- b. Page 4 of this Plan Set shows all of the easements proposed with the subdivision. Erroneously, emergency vehicle access easements has not been provided as required for lots without access to a street as required by SMC 23.53.025.

³ The Department cannot make this determination without a SEPA review on the functionally-related sites. This Short Plat decision is out-of-sequence should the SEPA analysis indicate conditions that are not able to be mitigated.

- i. Erroneously, there is no emergency access easement for the proposed subdivision's rear lot.
- ii. The easement for the rear lot (serving one or more dwellings) must be at least 10 feet wide – or 12 feet wide if required by the fire code - and 16.5 feet high (reference SMC Exhibit 23.53.025 A).
- iii. Vehicle access easements serving at least three family units must be at least 20 feet wide. If subdivided, the west lot of 3,776 could accommodate 1 dwelling for every 1,300 square feet of lot area per the revised land-use code⁴. That would equate to three (3) dwellings. There has been no conditions made on the development limits of the rear lot, even if the street facing lots was developed with townhouses rather than the non-complying townhouses.
- iv. There is no legal description of the emergency access easement as provided on other submissions of this sort to the Department.
- v. On October 31, 2017, the Department issued a declaration (appeal Attachment i) that stipulated the above requirements must be met despite previous lack of the Department's enforcement.
- vi. The existing alley easement that cuts through all of the private properties to the north does not comply in terms of emergency vehicle turn-around space or physical width and clearances (reference SMC 23.53.030.)
- vii. Given all of the above, the Director's decision did not consider all of the criteria for access, and the decision is flawed.

C. Attachment B is the Geotechnical Report for the Subject Property. It is included here as it identifies the intended development of the east side of the subject property. Page 24 of the report shows the Subject Property being subdivided with the east side measuring 50 feet along the street (assumed from survey) to a depth of 65 feet and 6 inches (65'-6"). The calculated area of 3,276 square feet would leave 3,776 square feet on the west side (from a total Subject Property area of 7,002 square feet.) These areas would match that identified in the Plan Set of Attachment C of the appeal. A public records request of the Department has been filed on June 12, 2019 in order to clarify the intended use of the western side of the subject property and the purpose of the short plat subdivision. Without any development being shown of the west portion of the Subject Property, this proposal appears to be seeking to circumvent multiple Seattle Municipal Code requirements:

- a. Requirement that subdivided lots must be able to be developed.
- b. Requirement that row-houses may not be constructed between other dwellings (other than accessory dwelling units) and the street [SMC 23.84A.032.R.20 rowhouse development rules].
- c. Requirement of King County Title 19 (which has not been superseded by contrary requirements of the Seattle Municipal Code) that lot segregation may not be used as a means to circumvent the allowable density limits for a property which is established by its zoned use.

D. Per SMC 23.22.052, D. "Vehicular access to *every lot* shall be from a dedicated street, unless the Director determines that the following conditions exist, and permits access by a *permanent private easement*:

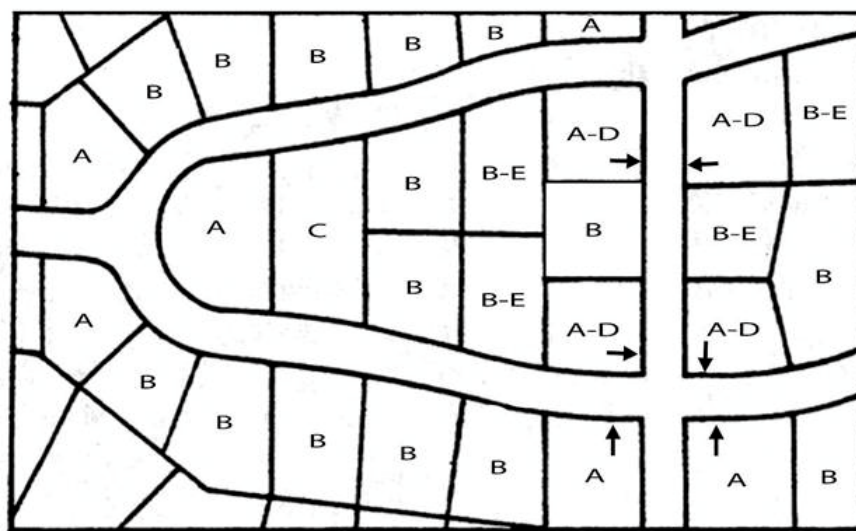
- 1. Access by *private easement* would not compromise the goals of the Land Use Code to provide for adequate pedestrian access and safety, light, air and usable open space between structures; and
- 2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and
- 3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking; and
- 4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and
- 5. There is *identifiable access for the public and for emergency vehicles*; and
- 6. There is no potential for extending the street system." (Emphasis added)

Since the documents submitted with the short plat application indicate that the east portion of the lot must access parking via the 10-foot wide shared access easement, the proposed subdivision does not

⁴ A. Per SMC 23.45.512, Density limits A.2. "Development described in subsection 23.45.512.A.1 shall not exceed a density of one dwelling unit per 1,300 square feet of lot area, except that apartments in LR3 zones that do not have a mandatory housing affordability suffix shall not exceed a density limit of one dwelling unit per 800 square feet. When density calculations result in a fraction of a unit, any fraction up to and including 0.85 constitutes zero additional units, and any fraction over 0.85 constitutes one additional unit."

allow a dedicated access by private easement to the proposed west portion of the Subject Property.⁵ The existing driveway easement through multiple private properties to Ruffner was deemed not to comply. As such, the Director's decision has not followed the criteria to have the subdivision apply with all applicable codes.

- E. Per Section 23.53.005 "Access to Lots, a street or private easement abutment required 1. For residential uses, at least 10 feet of a lot line shall abut a street or a *private permanent vehicle access easement* meeting the standards of Section 23.53.025, or the provisions of subsection 23.53.025.F for pedestrian access easements shall be met." Again, the proposed subdivision does not provide private permanent access for the proposed rear lot. There is a distinct difference between a Short Plat and a Unit Lot. There are many encumbered unit lots within multifamily zones of the city of Seattle. To the contrary, there are no encumbered stand-alone lots as diagramed in Exhibit A for SMC 23.84A.024 Lot Types (below Figure 3 for convenience). The SMC allows five lot types: Corner, Interior, Through, Reverse Corner, and Key Lots. In no case is there an encumbered lot surrounded on all four sides by other private properties. If there is such an arrangement, the SMC requires private dedicated access for those lots. Those lots, in turn, are often divided into Unit Lots which do not need private dedicated access within the lot. As such, the Director's decision has not followed the criteria to have the subdivision apply with all applicable codes.



A = Corner lot
 B = Interior lot
 C = Through (or double frontage) lot
 D = Reversed corner lot
 E = Key lot
 → = Indicates front lot line

Figure 3 – Not included are the Subject Property's proposed encumbered short plat lots within the definitions of the SMC Exhibit A for 23.84A.024

- F. Note, according to the neighbor letter to the Seattle Public Resource Center, in December 2018 the Vine Maple tree in the front of the 3411 23rd Ave W property was cut down and removed.⁶ It is apparent that the application had started before the time of the significant tree being removed.
- Documented in the site record "Site Photos" posted on 09/05/18 (#012839-18PA) is the existing tree before its removal.

⁵ Per SMC 23.84A.024-L. "A lot is the unit that the development standards of each zone are typically applied to. A lot shall abut upon and be accessible from a *private or public street* sufficiently improved for vehicle travel or abut upon and be accessible from an *exclusive, unobstructed permanent access easement*. A lot may not be divided by a street or alley (Exhibit A for 23.84A.024)." (emphasis added)

⁶ Hannah Fix email to PRC with subject "ATTN: Public Resource Center: comments for project 3032887-LU", dated February 17, 2019.

- b. The corresponding Preliminary Assessment Report was completed on 9/17/2018 (Attachment J), which is three months before the tree was removed.
 - c. SDCI deemed the application completed on 01/29/2019 after the tree was removed.
 - d. The Department neglected to notice that the original assessment photos included a tree in front of the existing residence.
- G. Not only did the Department allow the removal of a significant tree during the development process (contrary to code), they also allowed the application without the deeded owners' consent⁷. One of the members of MGT4, Alexander Mason, closed on the purchase of the property on April 1, 2019, which was two months after SDCI deemed that the application was complete. There is no record that Alexander Mason had any written authorization from the Lee Properties LLC estate to act on their behalf as the legal owners.
- a. Per SMC 23.22 Subdivisions, "Applications shall be processed according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions, and the additional procedures established in this subchapter. In event of a conflict, the procedures contained in this subchapter control."
 - b. Requested with the public records request are key documents excluded from the SDCI EDMS public record:
 - i. Plan Set - Land Use.pdf SDCI_INT_LAND USE/Plan Set - Land Use dated 12/31/2018
 - ii. Statement of Financial Responsibility/Agent Authorization.pdf dated 12/31/2018
 - iii. Land use notice map.pdf dated 01/03/2019
 - iv. Other documents to be identified in the Public record request process.

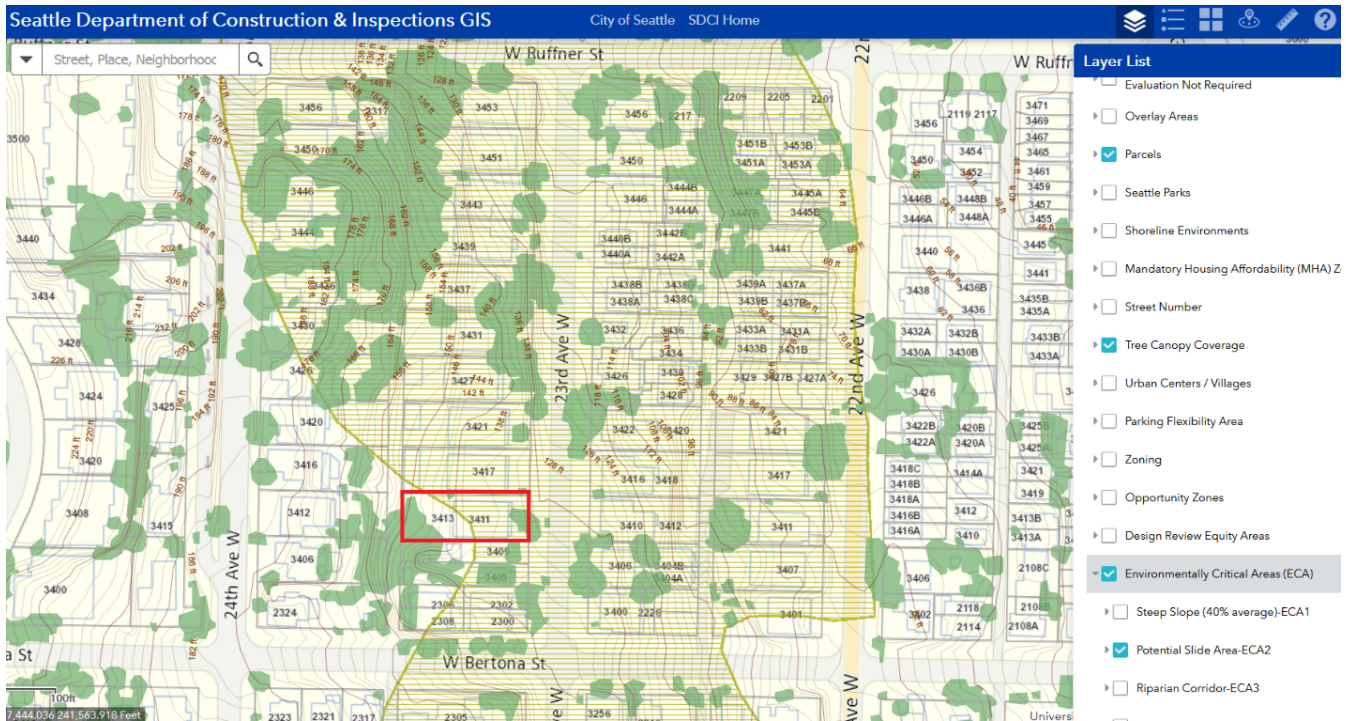


Figure 4- Seattle GIS interactive map showing contours of grade elevations, tree canopy coverage, and potential landslide zone. Subject Property outlined in red.

⁷ SMC 23.22.020 – "Every preliminary plat application shall consist of one or more maps together with written data including the following: 4. The names and addresses of all persons, firms and corporations holding interest in the lands, including easement rights and interest. 14. Property information including, but not limited to, address, legal description, and Assessor's Parcel number; 15. Evidence of ownership or authorization from the property owner to make the application; and 20. Specific location and description of all trees at least 6 inches in diameter measured 4½ feet above the ground, with species indicated."

III. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

The relief requested shall include:

- A. Vacation of the Analysis and Decision for short plat approval;
- B. The imposition of conditions requiring an access easement to provide exclusive private access to western lot subdivisions given there exist no improved alleyway with the capacity to accommodate emergency vehicles.
- C. The imposition of conditions requiring compliance with an adequately sized emergency access easement or, if consensus obtained by the Department by every property owner within that block, requiring an improved alley with adequate turnaround access which does not further impose on neighboring properties.
- D. The imposition of conditions to assure compliance with the Land Use code relative to other parking and access requirements for multifamily developments per SMC 23.84A and conformance with 23.24.045 given the subdivision is for the purposes of creating separate lots of record.
- E. The imposition of conditions to assure compliance with the Land Use code relative to multifamily residential standards and Rowhouse Development Rules which prohibit primary dwellings behind row-houses.
- F. For such other relief as may be warranted by the appeal.

Hearing Examiner to return this erroneous decision to the SDCI Director in order to meet the criteria and apply all necessary conditions. Hearing Examiner to request a decision to be made on the Short Plat following a review of the Environmental conditions with a fully completed SEPA-checklists for functionally-related sites. Hearing Examiner to return this erroneous decision to the SDCI Director requiring all associated landuse codes be followed to avoid this proposal seeking to circumvent allowable number of dwellings relying solely on unwritten Department policy that contradicts landuse code SMC 23.84A. This appeal is of great significance given that forthcoming Decisions made or permits issued with this Short Plat will be applied to subsequent Department "approvals" as a basis to proceed.


Appellant Representative
David Moehring, AIA NCARB

Appellants:

DAVID and BURCIN MOEHRING
3444 B 23RD AVE W
Seattle WA 98199

COPY to Appeal-exempt and affected neighbors:

Hannah Fix and Steven Fuerst
John Curtin
David Zitelli and Scott Linn
Benjamin and Kerry Chew

3409 23RD AVE W, Seattle 98199
3405 23RD AVE W, Seattle 98199
3417 23RD AVE W, Seattle 98199
2255 78th Ave Southeast, Mercer Island, WA 98040

APPROVAL:

CITY OF SEATTLE
SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS (SDCI)
NATHAN TORGELSON, DIRECTOR

EXAMINED AND APPROVED THIS _____ DAY OF _____ 20__

BY: _____ DIRECTOR, SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS

NOTE: APPROVAL OF THIS SHORT SUBDIVISION BY THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS UNDER CHAPTER 23.24 OF THE SEATTLE MUNICIPAL CODE, AS AMENDED, IS NOT TO BE CONSTRUED AS SATISFACTION OF ANY OTHER APPLICABLE LEGISLATION OR REGULATIONS.

KING COUNTY DEPT. OF ASSESSMENTS:

EXAMINED AND APPROVED THIS _____ DAY OF _____ 20__

ASSESSOR: _____

Figure 5 – (Above) From Sheet 1 of the Plan set, the Approval of the Seattle Department of Construction and Inspections does not construe this application to meeting the requirements of other applicable legislation, such as King County Title 19.

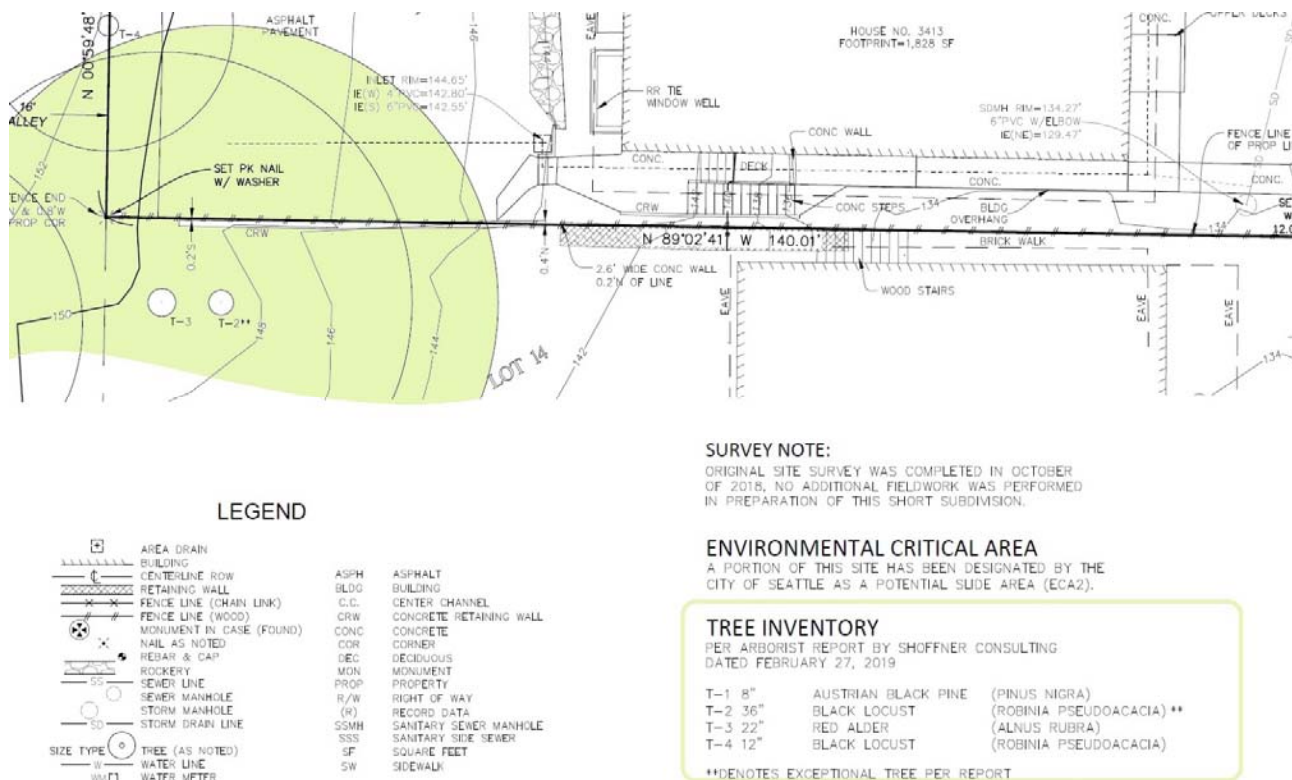


Figure 6- Portion of Page 3 of the Plan Set showing the Exceptional tree on the Subject Property as is protected by the Director's Rule 16-2008 and SMC 25.11. The Short Plat criteria includes the maximum retention of all existing trees critical root feeder zones (dripline) including those where the trunk may fall in a neighboring lot.

Excise Number	Recording Number	Document Date	Sale Price	Seller Name	Buyer Name	Instrument	Sale Reason
2986431	20190507000894	4/17/2019	\$0.00	MASON ALEX+TIMPANI JAY+MASON WARREN+KRISTIN	MGT4 LLC	Quit Claim Deed	Other
2980675	20190403001141	4/1/2019	\$0.00	TIMPANI LACEY	TIMPANI JAY	Quit Claim Deed	Property Settlement
2980674	20190403001140	4/1/2019	\$0.00	MASON KAITLYN	MASON ALEXANDER	Quit Claim Deed	Property Settlement
2980673	20190403001139	3/24/2019	\$1,250,000.00	LEE PROPERTIES LLC	TIMPANI JAY+MASON ALEXANDER+WARREN+KRISTIN	Statutory Warranty Deed	None

