

1 order to provide necessary evidence from the Department (a Party to this appeal) is
2 insulting.

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4 b) In response, the Hearing Examiner requested at the pre-hearing that the Department
5 look into a timely responses to the public records requests; and the Department
6 affirmed. The affirmation, however, did not result in the public records being
7 received in a timely manner.
- 8
9 c) Contrary to the reply in opposition, the April 30 public records request were not
10 broad and were specific to the two Subject Properties.¹ There is nothing new about
11 public record requests for project-specific developments from City Departments. This
12 public records request was not any more extensive in scope of requested information
13 than any other project-specific request as limited by RCW42.56.
- 14
15 d) SDOT has determined there was a need for two installments. There is every reason to
16 believe that both installments may yield relative evidence as it may pertain to the
17 short-plat decision criteria of retaining maximum amount of the existing street trees
18 and as it may pertain to the existing unimproved alley within the SDOT right-of-way.
- 19
20 e) Given two of the appealed criteria involve SDOT as indicated in the prior argument,
21 any records of street improvement permits are very relevant to this land use appeal.
22 The decision clearly states that the Director has consulted with all relevant parties, for
23 which SDOT is relevant.

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26 ¹ Reference the content of the Public Records requests for digital (no paper copies) of architectural and
27 consultant documents and correspondence involving parties of the appeal and this collective development. Given this
28 same applicant and owner has also submitted an application to the same SDCI Planner for the adjacent property to the
north (3422 23rd Avenue West) – with all three properties included within the same geotechnical report – and with all
three properties seeking the same short plat subdivision – the additional amount of files to be searched will be largely
redundant and not be a cause for a significant amount of time beyond 30 days as required by code.

- 1 f) As stated in the motion, a response for records on or about June 21 with evidence
2 being submitted within one business day by the current deadline of June 24 is not
3 reasonable by any standard. The Applicant's reply statement has no merit.
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- 5 g) Similarly, as later noted in the Applicant's reply (page 5, line 21), a response for
6 records on or about June 18 with evidence being submitted within four business days
7 by the current deadline of June 24 is not reasonable and, again, the Applicant's reply
8 statement has no merit.
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- 10 h) The reply to the motion is similarly flawed by the Applicant suggesting that the Fire
11 Department is not involved with short subdivisions. A criteria of the Short Plat states
12 that "Pursuant to SMC 23.24.040, the Director shall, *after conferring with*
13 *appropriate officials*, use the following criteria to determine whether to grant,
14 condition, or deny a short plat." (Emphasis Added). Given one of the appealed criteria
15 was to consider that all newly created lots have access for emergency vehicles,
16 conferring with the Seattle Fire Department for new lots with the only access via an
17 unimproved dead-end alley was a must. The Applicant is confusing the non-
18 appealable Type I decisions of the building with the Type II appealable decisions
19 relative to the application of the criteria. Again, this Applicant's reply statement has
20 no merit.
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- 22 i) Similarly, the Declarations of the Owner Representative is without merit. First, the
23 Owner is simply making a non-expert declaration for which they are not qualified to
24 represent. Second, the document they attached to their Declarations indeed indicates
25 that a "Fire" review was "Due on 06/24/2019" (or next week), but the Department has
26 "Marked as Not Required on 06/04/2019". So in fact, a review was required and, by
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1 the criteria of the short plat for emergency access to lots proposed for a subdivision,
2 the Department erroneously did not follow that criteria as this declaration document
3 so conveys as evidence in favor of the Appellants. Other reviews by other officials
4 are shown to have been erroneously marked as “Not Required” following a similar
5 due date of 06/18/2019 and 06/24/19”. This is further evidence Director did not
6 confer with “appropriate officials” to use the “criteria to determine whether to grant,
7 condition, or deny a short plat.” Perhaps the Records Request process has been
8 difficult for the City in that there are no records in existence, thereby confirming the
9 anticipated neglect identified in the appeal.
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12 j) In contrast to the above described Declarations of the Owner Representative, we find
13 that the declaration of the Applicant land surveyor Andy McAndrews is contradicting
14 itself indicating that a review was not required, but indeed the Attachment A proves
15 that is was required and that the review comment was recorded on November 1, 2019.
16 The fire department’s recorded concern contradicts the above statements in the
17 Owner’s Declaration, thereby confirming the Appellant’s significance in the public
18 records request between SDCI and the Fire Department. The Attachment item 4 even
19 states “if the approved fire apparatus access road does not meet the distance
20 requirements set forth in SFC Section 503.1.1.” The ‘access road’ pertains to the
21 criteria of the short plat as indicated in the appeal. So in fact, a review was provided
22 in part and, by the criteria of the short plat for emergency access to lots proposed for a
23 subdivision, the Department erroneously did not follow that criteria as this declaration
24 document so conveys as evidence in favor of the Appellants. To even further
25 complicate the matter, the Appellant has received a few days ago from the Public
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1 Records of the Fire Department in response to the records request that they are unable
2 to respond because the Fire Department has no records for the 3 adjacent properties.
3 Some city entity is evidently not being truthful or are making erroneous comments,
4 perhaps in attempt to protect the City's interests.
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6 k) Contrary to the Applicant's statement (Page 5, line 6), the Fire Marshall's Office does
7 indeed have at least one document that is relevant to the criteria issues raised in the
8 Appeal.
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10 l) Finally, the Applicant's reply to the Motion is misleading or erroneous stating that the
11 Appellants have "already been granted twice the standard time allowed under the
12 HER to respond to the *motion to dismiss*." (Emphasis added). As indicated in the pre-
13 hearing recordings, the two weeks was not required for a Motion to Dismiss. To the
14 contrary, Mr. Moehring clearly stated that more than one week would be required if a
15 Motion for Summary Judgement was filed due to the need to collect and present
16 evidence, unlike that in a simple Motion to Dismiss. Since the evidence has not been
17 made available, failure you extending the reply to a Summary Judgment motion
18 would be unfair proceedings.
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20 m) The Applicant has raised no specific or unique objections to the Appellant requests
21 that the due date for the Preliminary Lists of Exhibits and Witnesses also be
22 postponed accordingly by one week. Hence, the merits for the motion for an
23 extension of time by one week stand as demonstrated by the arguments presented
24 above.
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1 Dated this 19th day of June 2019.

2 Respectfully submitted,

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6 David Moehring,

7 Neighbors to Mirra Homes Developments,
8 3444B 23rd Avenue West
9 Seattle, Washington 98199
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Certificate of Service

I, David Moehring, certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies, via e-mail, of the attached Neighbors to Mirra Homes Developments **Appellant Reply to the Opposition of the Motion for an Extension of Time to Reply to Summary Judgement Motion** to every person listed below, in the matter of the **Short Plat Subdivisions**, Hearing Examiner File No. MUP-19-019 and MUP-19-020.

Department:

David Landry
Seattle Department of Construction & Inspections
PO Box 34109
Email: david.landry@seattle.gov

Applicant:

Brooke Friedlander
Mirra Homes
11624 SE 5th St Suite 210
Bellevue, WA 98005
Email: brooke.friedlander@mirrahomes.com


Applicant Legal Counsel:

Brandon S. Gribben
Samuel M. Jacobs
Hellsell Fetterman LLP
1001 Fourth Avenue, Ste 4200
Seattle, WA 98154
Phone: (206) 292-1144
Email: bgribben@hellsell.com

Office of the Hearing Examiner:

City of Seattle
Seattle, WA 98124
hearing.examiner@Seattle.gov

Dated June 19, 2019

David Moehring 
Appellant Representative, Neighbors to Mirra Homes Developments
3444B 23rd Ave West
Seattle WA 98199