

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of:

NEIGHBORS TO MIRRA HOMES
DEVELOPMENTS,

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

Hearing Examiner Files:

MUP-19-019 (P), MUP 19-020 (P) &
MUP 19-021 (P)

Department References:

3032834-LU, 3032833-LU &
3032857-LU

SUPPLEMENT TO APPLICANTS'
AND OWNER'S MOTION TO
DISMISS LAND USE APPEAL AND
FOR SUMMARY JUDGMENT

I. INTRODUCTION AND RELIEF REQUESTED

This matter concerns three consolidated land use appeals of SDCI's approval of three short subdivisions under permit numbers 3032834-LU, 3032833-LU & 3032857-LU¹ (the "Short Subdivision") for the properties located at 3410 23rd Avenue West, 3416 23rd Avenue West and 3422 23rd Avenue West (the "Property"). The Short Subdivisions sought to subdivide the three parcels into two lots each. Mirra previously filed a motion to dismiss and for summary judgment for permit numbers 3032834-LU and 3032833-LU. Thereafter, SDCI issued a Decision² for permit number 3032857-LU that David M. Moehring

¹ The third Short Subdivision is attached as Exhibit A.

² The third Decision is attached as Exhibit B.

1 subsequently appealed.³ Moehring's third appeal is a near carbon copy of the first two and
2 has been consolidated by Examiner Ehrlichman.

3 The purpose of this supplement is to address the additional issues raised in
4 Moehring's third appeal that were not raised in the first two. The additional issues raised by
5 Moehring in his third appeal are without merit on their face, brought merely to secure delay,
6 and are woefully insufficient to refute the Decision. In addition, there are no issues of
7 material fact that would preclude an award of summary judgment in favor of Mirra. For
8 these reasons, the third appeal, along with the first two, must be dismissed in their entirety.

9 II. SUPPLEMENT TO MOTION

10 Mirra's Motion to Dismiss and for Summary Judgment dated June 10, 2019 is
11 incorporated by this reference and addresses the issues raised by Moehring in his third
12 appeal through page 5, Section A. This supplement addresses the additional issues raised by
13 Moehring that begin on page 5, Section B.

14 In section B(a), (b), and (c), Moehring argues that the Short Subdivision should not
15 have been approved because it does not contain an emergency vehicle access easement on
16 the face of the plat. There is no requirement under the Land Use Code that a short
17 subdivision provide an emergency vehicle access easement on the face of the plat. SMC
18 23.24.040.A.2 only requires that the Short Subdivision provide adequate access for "fire
19 protection as provided in Section 23.53.005 and Section 23.53.006." SMC 23.53.005 and
20 23.53.006 contains no mention, much less a requirement, that the Short Subdivision provide
21 an express emergency vehicle easement. As discussed in the motion-in-chief, the Short
22 Subdivisions comply with SMC 23.24.040.A.2, including SMC 23.53.005 and 23.53.006.

23 In Section B(b), Moehring refers to a Fire Department review comment issued on
24 November 1, 2019 regarding compliance with Seattle Fire Code Section 503.1.1. This is a

25 _____
³ Moehring's third appeal is attached as Exhibit C.

1 future date and there does not appear to be any correction notice from the Fire Department.
2 Even if there was, compliance with the Seattle Fire Code would be addressed during the
3 building permit review process, not the Short Subdivision.

4 In Section B(c), Moehring raises many issues that were addressed in the motion-in-
5 chief. He raises additional issues regarding turnaround space. Access for parking and
6 adequate turning radiuses are reviewed during the building permit, not the Short
7 Subdivision. Because the Short Subdivision does not authorize the construction of any
8 buildings or parking, turnaround radiuses are not relevant.

9 In Section C, Moehring raises issues related to easement width requirements and
10 easement clearance issues. These issues are without merit for the reasons discussed in
11 Mirra's motion-in-chief.

12 In Section D, Moehring argues that SEPA review is required before the Short
13 Subdivision is approved. There is no requirement in the Land Use Code, and Moehring cites
14 to none, that requires SEPA review prior to the approval of the Short Subdivision.

15 In Sections E, Moehring identifies and briefly discusses Attachment B to his appeal,
16 but does not raise any specific objections to the Decision.

17 In Section F, Moehring identifies and discusses Attachment C to his appeal, but does
18 not raise any specific objections to the Decision. He insinuates that the three projects are
19 functionally related and should be subject to design and environmental review. These are not
20 valid objections to the Decision that approved the subdivision of the Property into two
21 separate lots.

22 In Section G, Moehring identifies and discusses Attachment D to his appeal, but does
23 not raise any specific objections to the Decision. He discusses correction notices for the
24 associated building permits that are wholly irrelevant to the Decision approving the Short
25 Subdivision.

1 In Section H, Moehring refers to a correction notice regarding street trees for project
2 number 3032940-LU, which is the permit application to allow a 3-story, 3-unit rowhouse
3 building with parking for three vehicles. The correction notice does not concern the Short
4 Subdivision and is not a valid objection.

5 In Section I, Moehring discusses a correction notice for project number 3032876-LU,
6 which is a permit application to allow a 3-story, 3-unit rowhouse building with parking for
7 two vehicles. Again, it does not concern the Short Subdivision and is not a valid objection.

8 In Section J, Moehring argues that SDCI should not permit more units to be
9 developed than are allowed under the Land Use Code. This issue was addressed in Mirra's
10 initial motion and is without merit.

11 In Section K, Moehring states that his property and Mirra's property are in the same
12 ECA2 potential land slide area. This is not an objection to the Decision.

13 Finally, in Section L, Moehring makes a general statement of concern about
14 overdevelopment. This, too, is not a valid objection to the Decision.

15 III. CONCLUSION

16 For Moehring to survive this motion to dismiss, the Hearing Examiner must
17 conclude that (a) Moehring has raised a valid issue on appeal, and (b) he has requested relief
18 that (i) the Hearing Examiner has jurisdiction to grant, and (ii) directly relates to that valid
19 issue raised on appeal. In other words, even if Moehring raises a valid issue on appeal, but
20 has not requested relief directly related to that issue that the Hearing Examiner has authority
21 to award, or vice versa, then the motion to dismiss must be granted, and the Appeal
22 dismissed.

23 HER 3.02(a) allows the Hearing Examiner to dismiss an appeal prior to the hearing if
24 the appeal fails to state a claim for which the Hearing Examiner has jurisdiction to grant
25 relief, is without merit on its face, is frivolous or is brought merely to secure delay. The

1 Appeal fails to raise a valid objection to the Decisions, and is without merit on its face.
2 Accordingly, it is respectfully requested that the Hearing Examiner dismiss the entire
3 Appeal with prejudice.

4 Finally, HER 2.16 allows the Hearing Examiner to award summary judgment to the
5 moving party. Mirra is entitled to summary judgment because there are no issues of
6 material fact. Thus, it is respectfully requested that the Hearing Examiner affirm the
7 Decisions and dismiss the Appeals with prejudice.

8 Respectfully submitted this 15th day of July, 2019.

9
10 HELSELL FETTERMAN LLP

11 By: s/ Brandon S. Gribben

12 Brandon S. Gribben, WSBA No. 47638

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14 Attorneys for Applicants Brooke Friedlander and Andy
15 McAndrews and Property Owner Mirra 111 LLC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 15, 2019, the foregoing document was sent for delivery on the following party in the manner indicated:

Appellant:

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- ☐ Via first class U. S. Mail
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DATED this 15th day of July, 2019

s/Gennifer Holland

Gennifer Holland, Legal Assistant