

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

**NEIGHBORS TO MIRRA HOMES
DEVELOPMENTS**

Hearing Examiner Files:
**MUP 19-019 (P) ,
MUP 19-020 (P), &
MUP 19-021 (P)**

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

Department References:
3032834-LU, 3032833-LU, &
3032857-LU

**DECISION AND ORDER ON
REVISED REQUEST FOR
SUBPOENAS**

Appellant Neighbors to Mirra Homes Developments (“Appellant”) filed “Appellant’s Revised Request for Subpoenas” on June 28, 2019. The Seattle Department of Construction and Inspections (“Department”) responded to Appellant’s request, objecting to four of Appellant’s six requested subpoenas. **As the Appellant’s subpoenas for documents have not been challenged, they shall be issued by the Deputy Hearing Examiner (“Examiner”).**

Hearing Examiner Rule of Procedure (“HER”) 3.12(b) states:

A motion for a subpoena for a person shall include the person’s name and address, show the relevance of that person’s testimony, and demonstrate the reasonableness of the scope of the subpoena sought.

To determine the relevance of the person’s testimony and the reasonableness of the scope of the subpoena, the Examiner looks to the appeal statement itself and the issues raised. According to the Appeal Statement Supplement, the appeals challenge compliance of the project criteria for short subdivision approval contained with SMC 23.24.040. Appeal Statement Supplement at 1 (May 13, 2019).

The subpoena for Katie Luedeman, Julian Weber, or other architect in charge from JW Architects Ltd., and Tony Shoffner, Arborist, were not challenged by the Department; therefore, those subpoenas shall be issued by the Examiner.

The subpoena requests for Harold Scroggins, Fire Chief (or responsible Emergency Access and Suppression Reviewer(s)), Hiro Ikeda, P.E. of the Department, and H. Michael Xue, P.E. (or if qualified, John Manke) of Pan Geo are all challenged on the following basis:

None of the above referenced people . . . can opine on the application of these [short subdivision] criteria. The responsibility for that application falls to SDCI planner, David Landry AICP, who will be presenting on

behalf of the department at the hearing. The appellants will have opportunity to question any relevant facts in the record and how they bear on the Department's analysis at that time. All other relevant correspondence from these internal reviewers is either available in the record or subject to pending public records requests by the applicant. If those requests are not fulfilled in time for the hearing, the Department has no objection to a short postponement of the hearing date.

SDCI Response to Revised Request for Subpoena, and Motion in Limine at 1-2 (July 3, 2019).

In addition, the Department objected to the subpoena request on other grounds for Nathan Torgelson, Director of the Department.

Each subpoena request will be considered below:

Harold Scroggins, Fire Chief (or responsible Emergency Access and Suppression Reviewer(s))

The Applicant has challenged the short plat's conformance with SMC 23.24.040 and 23.53.005 and 23.53.025 concerning access to lots by pedestrians, vehicles, utilities, and fire protection. Because the Fire Chief (or his designee) maintains discretion over these matters pursuant to SMC 23.53.025, the Examiner concludes that the request is reasonable and relevant to the matters raised on the appeal. **Therefore, the request for a subpoena of the testimony of the Fire Chief or his designated reviewer shall be GRANTED, and the subpoena shall be issued.**

Hiro Ikeda, P.E., Structural Plans Engineer of the Department

The Appellant requests the subpoena on the following basis:

Hiro Ikeda . . . shall be asked about the January 2019 reviews that led to the conditional approval of the Short Plat and the frequency of such requests without a completed SEPA approval. This is a reasonable request because the appeal questions the decision to approve the Short Plat based on incomplete assumptions of the SEPA review.

Appellant's Revised Request for Subpoenas at 4. The short plat review under SMC 23.24.040 was carried out by the Land Use Planner who signed the decision, David Landry. In this instance, Appellant has not demonstrated the relevance of Mr. Ikeda's testimony to this matter. The Appellant may more effectively question Mr. Landry regarding the sequence of approval and SEPA review. **Therefore, the request for a subpoena of the testimony of Mr. Ikeda shall be DENIED.**

H. Michael Xue, P.E. (or if qualified, John Manke) of Pan Geo

The Appellant appealed compliance of the short plat with SMC 23.24.040.A.5 regarding conformance to the applicable provisions of SMC 25.09.240 (environmentally critical areas review). The Appellant requests the subpoena on the following basis:

Mr. Manke or Mr. Xue shall be asked to explain the geotechnical reports submitted for this functionally-related development of three lots. This is a reasonable request because of the Short Plat conditional approval that limits the development of the uphill portion of the subdivisions on the stabilization work of the downhill portion of the proposed subdivisions.

Although the Examiner is not familiar with the facts of this case, if a geotechnical report was required under SMC Chapter 25.09, the Appellant should be afforded the opportunity to examine the author of the report at hearing, since it has appealed compliance with SMC 25.09.240. **Therefore, the request for a subpoena of the testimony of the Mr. Xue or at his designation, Mr. Manke, shall be GRANTED, and the subpoena shall be issued.**

Mr. Nathan Torgelson, Director of the Department

Appellant requests a subpoena to issue to Director Torgelson on the following grounds:

Director Torgelson will be asked to clarify his July 2018 written response to Seattle resident Henry McGuire about the Department policy of issuing Short Plats for developments seeking to avoid conflicts with SMC 23.84A.032 (R). This is a reasonable request because the first criteria for the Director's short plat decision is conformance to the applicable Land Use Code provision (i.e., Title 23).

The Department objects to the subpoena on the following grounds:

Particularly inappropriate is the appellant's request to question SDCI Director Torgelson regarding a letter sent to Harry McGuire in July 2018. That informational letter does not constitute a "final land use decision" and is not the subject of this appeal. To the degree that the letter touched upon application of the Seattle Land Use code, the appellant would have needed to file a code interpretation under SMC Section 23.88.020 to challenge that reading of the code. The Appellants have not filed such a request and the line of inquiry is wholly disconnected from the application of the Short Subdivision Criteria, which is the subject to this appeal.

A copy of the letter referred to in the request was submitted as an attachment to another pleading submitted in this case. See Appellant's "Reply in Opposition to Applicants' and

Owner's Motions to Dismiss Land Use Appeal and for Summary Judgment," "Harry McGuire Attachments" (July 1, 2019). Having read the attachment, the Examiner is not convinced the testimony of Director Torgelson is relevant to this proceeding, albeit not for the reasons stated by the Department. A matter of Department policy or application of the Land Use Code to a particular development is best explained by the land use planner assigned to the project. The Examiner notes that the correspondence referred to is concerning a different application, which may or may not have the same factual setting. Any testimony from Director Torgelson would be duplicative and unnecessary, and the Director would not likely be as familiar with the facts of the case, since he does not personally shepherd projects through the review process. . **Therefore, the request for a subpoena of the testimony of Director Torgelson shall be DENIED.**

ORDER

The Examiner **ORDERS** issuance of the following **subpoenas for testimony and subpoenas for documents**:

- **Kate Luedeman**, or designee at JW Architects Ltd., 1257 S. King Street, Seattle, WA 98144, (206) 953-1305
 - Documents: digital copy of all alternative layouts considered for the maximum retention of existing trees and compliance with vehicular and pedestrian access requirements.
- **Tony Shoffner**, Arborist, 21529 4th Ave. W #C31, Bothell, WA, 98021, (206) 755-2871
 - Documents: a digital copy of all photographs and field notes used for the creation of the arborist report, as well as a copy of the signed agreement of services between Mr. Shoffner and the entity engaging his services.
- **Harold Scroggins**, Fire Chief, or designee, Seattle Fire Department, 220 3rd Avenue South, 2nd floor, Seattle, WA 98104, (206) 386-1333
 - Documents: digital copy of all documents that the Fire Department had in their possession at the time the review was completed in late 2018, or any supporting documents that the Department may have shared subsequent to the Director rendering a decision on the Short Plat.
- **H. Michael Xue**, P.E., or his designee, John Manke, PanGEO, 3213 Eastlake Avenue East, Suite B, Seattle, WA 98102
 - Documents: No documents requested.

The Examiner **ORDERS** issuance of the following **subpoenas for documents only**:

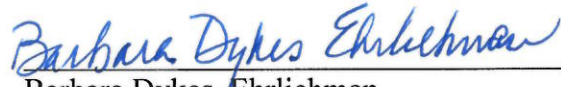
- **Nathan Torgelson**, Director of the Seattle Department of Construction and Inspections, Seattle Municipal Tower, 700 Fifth Avenue, 19th Floor, Seattle, WA 98104, (206) 233-7883

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- Documents: digital copies of all interpretations previously issued (since 2006) by the Department regarding departures, exceptions or variances from the Short Plat Subdivision requirements of Chapters 23.09, 23.24, 23.53, and 23.84.
- **Hiro Ikeda**, P.E., Structural Plans Engineer, Seattle Department of Construction and Inspections, Seattle Municipal Tower, 700 Fifth Avenue, 19th Floor, Seattle, WA 98104, (206) 727-8513
 - Documents: copies of previously-issued recommendations by the Department (since 2006) regarding engineering conditions applied to Short Plat Subdivisions.

Entered this 15th day of July, 2019


Barbara Dykes Ehrlichman
Deputy Hearing Examiner
Office of Hearing Examiner


**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Amended Order Consolidating Hearing & Decision and Order on Revised Request for Subpoenas** to each person listed below, or on the attached mailing list, in the matters of **Neighbors to Mirra Homes Developments**, Hearing Examiner Files: **MUP-19-019 (P), MUP-19-020 (P), & MUP-19-021 (P)** in the manner indicated.

Party	Method of Service
Appellant Representative David Moehring dmoehring@consultant.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel Brandon Gribben bgribben@helsell.com Sam Jacobs sjacobs@helsell.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department David Landry SDCI david.landry@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: July 15, 2019



Alayna Johnson
Legal Assistant