

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, MUP 19-020, MUP 19-021

Department References:

3032834-LU, 3032833-LU, 3032857-LU

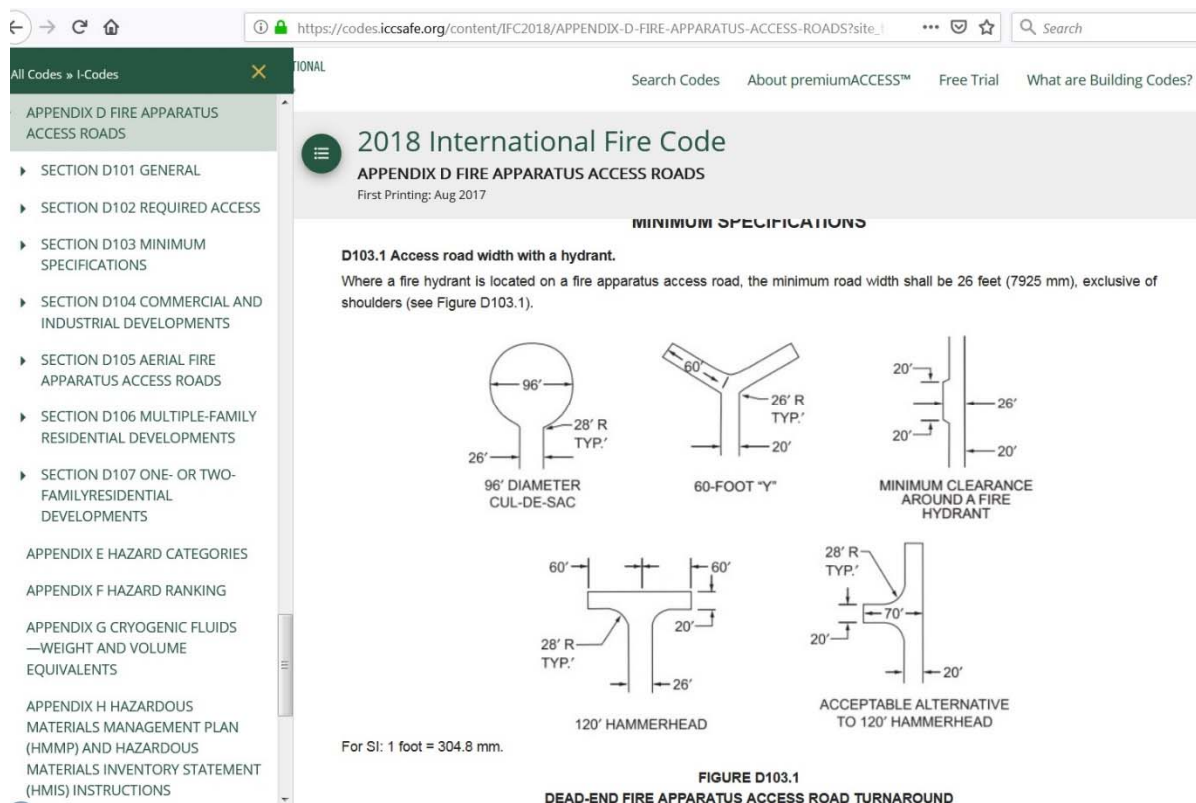
REPLY in OPPOSITION to
APPLICANTS' AND OWNER'S
SUPPLEMENT MOTION TO DISMISS
LAND USE APPEAL and for SUMMARY
JUDGEMENT

PRIOR 31 PAGES AND ATTACHMENTS APPLY TO THIS SUPPLEMENT.

VIII. INTRODUCTION TO SUPPLEMENTAL MOTION

This reply is a continuation of and shall be considered with the prior reply dated July 1, 2019. The Applicant and Owner submitted a "Supplement to Applicants' and Owner's Motion to Dismiss Land Use Appeal and for Summary Judgement" on July 15, 2019. The Appellant will avoid further comment on items within the Applicant and Owners' Supplement that pertain to the cases MUP-19-019 and MUP-19-020. Instead, the Appellant will only reply within this supplement reply as permitted on the recently combined case of MUP-19-021 for the Subject Property of 3422 23rd Avenue West (and associated addresses 3420 and 3424). With the

Figure 11- (below) Seattle Fire Code Appendix D Figure D103.1 which indicates the possible emergency access options when there is a dead-end alley being considered as a means of emergency vehicle access. The short plat submission does not include any emergency vehicle access as required in the criteria for a legal lot. (Repeated from the last page of the appeal.)



newly combined case, the negative consequence of this decision expands to a total of fifteen (15) townhouse-rowhouse dwellings whereas the Seattle Municipal Code allows just nine (9) such dwellings¹⁶; as the intent of the three short plats is to circumvent criteria 1 of the short subdivision criteria by including six (6) noncompliant townhouses being located behind nine (9) rowhouses¹⁷. The consequences now include three (3) noncompliant lots that will be created without emergency access from a street or legal alley.

¹⁶ Refer to code summary on Page 5 of the Appellant's Reply in Opposition.

¹⁷ Applicable code being circumvented with the short plat despite Criteria 1 requirements included SMC 23.84A.032.R.20.f (before the 2019 MHA code changes) – row-house development rules.

1 **IX. INADEQUACY OF THE SUPPLEMENTAL DEPOSITORY MOTIONS**

2 The inadequacies of the supplemental depository motions include the
3 following:

- 4 A. Attachment 'A' of the Applicants' and Owner's supplemental motion
5 includes the Terrane site survey and short plat application drawings
6 for the 3422 23rd Ave West Subject Property of MUP-19-021.
- 7 B. Attachment 'B' of the Applicants' and Owner's supplemental motion
8 includes the analysis and decision for the Subject Property.
- 9 C. Attachment 'C' of the Applicants' and Owner's supplemental motion
10 includes the appeal for the Subject Property.
- 11 D. The Owner and Applicant has provided no new evidence with the
12 Supplement to counter the evidence provided within the Appellant's
13 original motion, declaration, and exhibits. The Hearing Examiner
14 thereby must consider with prejudice the non-moving party, which is
15 Neighbors to Mirra Homes Developments, the Appellant.
- 16 E. The Applicants' and Owner's argument on pages 2 and 3 remains
17 erroneous relative to the requirement of creating a legal lot and the
18 general short subdivision standards that the "Director shall, after
19 conferring with appropriate officials, use the following criteria to
20 determine whether to grant, condition, or deny a short plat.
- 21 F. Since the Department's decision (Applicant and Owner Attachment B)
22 specifically states "2. Adequacy of access for pedestrians, vehicles,
23 utilities and fire protection as provided in Section 23.53.005, Access to
24 lots, and Section 23.53.006, Pedestrian access and circulation"
25 (emphasis added), the Department is obligated to assure that the
Applicant's proposal includes an easement for a code-acceptable
means for emergency access, which the proposal has not provided.

- 1 G. Interestingly, but no coincidence, the PanGEO drawing within their
2 report attempt to show an alternative to a hammerhead fire apparatus
3 access turnaround (reference Figure 11 on prior page), but fail to meet
4 the 20-foot width within a 16-foot unimproved alley right-of-way or a
5 10-foot space between structures conditioned for the short plat. Not
6 only does the Department's decision fail to call for improvements to
7 the alley of an adequate width relative to this or future subdivisions
8 within this block, the decision fails to note a lack of emergency access
9 easement within the submission of the Subject Property. As such, the
10 short subdivisions of encumbered lots are not legal lots and violate
11 criteria 1 of the decision requiring compliance with the relative Seattle
Municipal Code.
- 12 H. Referencing the Supplemental Motion on page 3, line 12 relative to
13 SEPA directly corresponded to the conditional approval of the Short
14 Plat are repetitive to MUP-19-019 and -020 and are not repeated in
15 this reply for the sake of brevity.
- 16 I. Referencing the Supplemental Motion on page 3, line 15, the appeal
17 Attachment B is noted relative to criteria 1 of short subdivisions where
18 the Department is obligated to comply with applicable land use codes
19 which is contrary to the intent of this application as described above in
20 circumventing SMC 23.84A.
- 21 J. Referencing the Supplemental Motion on page 3, line 17 relative to
22 Attachment C about these three functionally-related applications are
23 relative both to SEPA which directly corresponded to the conditional
24 approval of the Short Plat and to emergency access.
- 25 1. All three of the proposals for short plats have been conditioned
for SEPA-related soil-stabilization correctional work.

1 2. Only the north of the three related developments suggest an
2 attempt for a alley dead-end turnaround, although inadequate
3 as shown on the PanGEO report and absent from the short plat
4 applications.

5 K. Referencing the Supplemental Motion on page 3, line 22 relative to
6 Attachment D are Department comments that pertain to the criteria of
7 the short plat including utility easements, intended scope confirming
8 the intent of the short plat, the decision's condition of soil-stabilization
9 being requested with this application, and tree retention criteria. This
10 appeal does not challenge building permits as suggested by the
11 Motion but the criteria being adequate for the short subdivision
12 decision.

13 L. Likewise, referencing the Supplemental Motion on page 4, lines 5 to
14 10 pertain to the criteria 1 of the short plat to criteria 1 of short
15 subdivisions where the Department is obligated to comply with
16 applicable land use codes which is contrary to the intent of this
17 application as described above in circumventing SMC 23.84A .

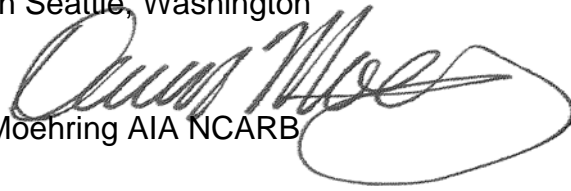
18 M. Referencing the Supplemental Motion on page 4, line 11 relative to
19 ECA2 directly corresponded to the conditional approval of the Short
20 Plat for soil stabilization. As previously provided by the Appellant, the
21 waiver of the steep slope criteria does not exempt the proposal from
22 the SEPA review and determination process.

23 The exhibits of evidence and conclusions of the original response to the
24 motions prevail. All previously issued exhibits and the Declaration of David
25 Moehring in Support of the Appellant's argument against the dispositive motions
 apply to this supplement.

1
2 I declare under penalty of perjury under the laws of the State of
3 Washington that the foregoing is true and correct.

4 Signed this 18th day of July, 2019 in Seattle, Washington

5
6 David Moehring AIA NCARB



7 Appellants:

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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 **REPLY in OPPOSITION to APPLICANTS' AND OWNER'S SUPPLEMENT MOTION TO DISMISS LAND USE APPEAL and for SUMMARY JUDGEMENT** to every person listed below, in the matter of the **Short Plat Subdivisions**, Hearing Examiner combined case files MUP-19-019, MUP-19-020 and MUP-19-021.

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Dated July 18, 2019



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