

REC'D HEARING EXAMINER
2019 AUG 26 AM 10:25

In the Matter of the Appeals by) Hearing Examiner Files:
) MUP-19-019, MUP-19-020, MUP-19-021
)
Neighbors to Mirra Homes Developments) SDCI 3032834-LU / 3032833-LU / 3032857-LU
from Short Plat Decisions Issued by the)
the Director of the Seattle Department of) REPLY TO APPLICANTS & OWNERS'
Construction and Inspections) RESPONSE MOTION FOR RECONSIDERATION
) AND COUNTER SUMMARY JUDGEMENT

On August 23, 2019, the Applicant and Owner issued their response in opposition to the Appellants' Motion for Reconsideration. This followed the Deputy Hearing Examiner issuing an Order and Decision on August 7th, 2019 granting the Applicants' Motion for Summary Judgement, and the Appellants issued on August 19, 2019 timely closing motions on clerical clarification, reconsideration, and counter-motion for summary judgement pending the prior motion. In order to assure the breadth and intent of the motions are clear, the Appellants offer herein a reply to the Applicants and Owners' response in Opposition.

Per HER 2.16(e), “Motions to dismiss all or part of an appeal, other dispositive motions, and motions to exclude evidence (testimony or exhibits) shall be filed at the earliest possible time in

¹ Appellants of Neighbors to Mirra Homes Developments, representative being David Moehring.

1 the proceedings in order to allow time for the other party to respond, as provided in subsection
2 2.16 (b) above, and to ensure that the Examiner will consider the motions on the merits.”
3
4

5 Per H.E.R 3.20 RECONSIDERATION, (a) The Hearing Examiner may grant a party’s motion for
6 reconsideration of a Hearing Examiner decision if one or more of the following is shown:

7 (1) Irregularity in the proceedings by which the moving party was prevented from having a fair
8 hearing; (2) Newly discovered evidence of a material nature which could not, with reasonable
9 diligence, have been produced at hearing; (3) Error in the computation of the amount of damages
10 or other monetary element of the decision; (4) Clear mistake as to a material fact.
11

12 **I. Affirmation for the Motion for Clerical Clarification**

13 Per H.E.R. 2.25. “clerical mistakes in *decisions*, recommendations, *orders*, or other parts of the
14 record, and errors arising from oversight or omission, may be corrected by order on the Hearing
15 Examiner's initiative, or in response to the motion of a party.” [Emphasis added.] The Examiner
16 has an authority to address both decisions and orders. The Motion for Clerical clarification
17 clearly identifies where there appear to be omitted information within the decision and order for
18 which the Examiner may reply. The Applicant and Owner’s response is therefore moot.
19

20 **II. Affirmations for the Motion for Reconsideration of Decision on Summary Judgement** 21 **and Order**

22 By the requirements HER 3.20 (a), the motion for reconsideration was made for three reasons:

23 (1) Irregularity in the proceedings by which the moving party was prevented from having a fair
24 hearing; (2) newly discovered evidence of a material nature which could not, with reasonable
25 diligence, have been produced at [or, in this case, *before* the] hearing; and (3) a clear mistake
26 was made as to material fact[s].
27

28 (1) Irregularity in the Proceedings preventing the Appellant from a Fair Hearing.

1 A. There were responses by the Applicant to several of the noted irregularities, although
2 a key issue was not addressed in their response. Per Civil Rule 56(c) for cases
3 considering a summary judgement, *the motion² should be granted only if reasonable*
4 *persons could reach only one conclusion.* The short plat appeal filed by Dr. Gerard
5 Bashein denied the Motion for Summary Judgment relative to similar matters of law
6 addressed in this case.³ As moved, the Examiner must also consider a Summary
7 Judgement decision on a Short Plat in a way that no other reasonable minds 'could
8 reach only one conclusion.

9 B. The Applicant failed to address the concern of the consolidated appeals relative to
10 the analysis addressing the uniqueness of each of the three lot being subdivided. The
11 fact that the three were consolidated is unusual but not a concern to the Appellants.

12 C. There is no denying due dates making irregular proceedings as recording in the
13 endnotes of the Motion to Reconsider.

14 (2) Newly discovered evidence of a material nature which could not, with reasonable diligence,
15 have been produced before the hearing.

16 D. The Applicants and Owner's response has not considered the Appellants' July 18th
17 reply to the Motion for Summary Judgement immediately followed the July 15th
18 issuance of subpoenas to selected witnesses means it was clearly impossible to gather
19 and collect the evidence that was in hand only in time for the final exhibits due date
20 of 31st of July.

21 (3) Clear mistake was made as to material facts

22 E. The Applicants and Owner's response relative to evidence fails to the Offer of Proof
23 includes up to 107 documents listed within the endnotes of the Motion for
24
25
26

27 ² This references the Motion for Summary Judgment by the Applicants and Owner.

28 ³ Short Plat appeal MUP-17-036, the ProTem Examiner ruled on February 16, 2018 in an 'Order Denying
Motion to Dismiss' that there is sufficient material fact of difference that ruled out a Summary Judgement.

1 Reconsideration. Yes, the Applicant had access to this evidence at the time of the
2 final exhibits, but the Hearing Examiner did not.⁴

3 F. Per H.E.R. 3.11, “appropriate prehearing discovery, including written interrogatories,
4 and deposition upon oral and written examination, is permitted.” As stands, the
5 discovery process evidence has not been considered.

6 G. The Applicants and Owner’s response fails to address case law presented and where
7 the Examiner should reconsider their decision relative to the Land Use Petition Act,
8 RCW 36.70C, which provides for review of land use decisions.

9 H. The Applicants and Owner’s response fails to address that motion highlighting SMC
10 23.53.015,C, 2, c and d for ‘Fire Access’ requires access to be provided that meets the
11 fire access road in Chapter 10 on the Seattle Fire Code, and that a vehicle turnaround
12 must be provided for dead-end streets or alleys. This evidence is critical to
13 demonstrate that the order provided by the Hearing Examiner may have been
14 acceptable with an alley running from street to street, but is not acceptable in dead-
15 end configurations exceeding 150-feet in length and less than 20-feet in width.⁵

16 I. Contrary to the response by the Applicants and Owner, the Appellant does not require
17 that access must be from the street.⁶ The alley right-of-way may be used if it is
18 configured by conditions of the Short Plat subdivision in order to provide a legal lot.⁷

19
20 **III. Affirmation for Countermotion for Summary Judgement on the Failed Application of
the Criteria relative to Emergency Vehicle Access**

21 Per HER 3.02, any party may request dismissal of all or part of an appeal by motion pursuant to
22 HER 2.16. Accordingly, paragraph (e) states that “Motions to dismiss all or part of an appeal,
23 other dispositive motions, and motions to exclude evidence shall be filed at the earliest possible

24
25 ⁴ As noted by the motion to reconsider, the Applicants and Owner’s response fails to justify that those exhibits
of evidence submitted with the original appeal and MSJ responses that were not referenced within the Hearing
Examiner’s order.

26 ⁵ Appellant’s exhibits I, II and others identify code requirements that have been excluded from the short plat.

27 ⁶ Applicant and Owner’s response in opposition, page 7, lines 8 to 9.

28 ⁷ Note that the legal lot requirements relative to emergency access are independent of what development may
take place subsequent to the subdivision.

1 time in the proceedings in order to allow time for the other party to respond, as provided in
2 subsection 2.16 (b) [], and to ensure that the Examiner will consider the motions on the merits.”
3 Given the Appellant has requested the motion for partial summary judgement only if the record
4 is re-opened with the Motion for Reconsideration, there is no Hearing Examiner Rule or Civil
5 Code that sets an expiry date for a timely dispositive motion based on new evidence.
6 . Hardcopies of offers of proof (already available to the parties) have been delivered to the Office
7 of Hearing Examiner as requested. Without being repetitive to the motion of last week, the
8 original Closing Motions submitted last week should prevail given substantive reasons provided
9 therein.

10
11 Dated this 26th day of August 2019.

12 Respectfully submitted,

13 
14
15 David Moehring,

16 Neighbors to Mirra Homes Developments
17 3444B 23rd Avenue West
18 Seattle, Washington 98199

19 CC:
20 DAVID and BURCIN MOEHRING
21 3444 B 23RD AVE W
22 Seattle WA 98199

23 Neighbors copied to this appeal:
24 DANIEL+KAZUYO MONAHAN
25 3436 23RD AVE W 98199
26 and

27 MEGAN+TIMOTHY WHALIN
28 3434 23RD AVE W 98199

LONGHUA and WANG YAYUN
3404 B 23RD AVE W
Seattle WA 98199

WENQIAN MA and QIN XIAO
3404 A 23RD AVE W
Seattle WA 98199

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 the Neighbors to Mirra Homes Developments **Appellants' Reply to Applicants and Owner's Response to Motion for Reconsideration** to every person listed below, in the matter of the **Short Plat Subdivision decisions issued for 3410 to 3422 23rd Ave West**, Hearing Examiner File No.s MUP-19-019 and MUP-19-020 and MUP-19-021.

Department:

David Landry
Seattle Department of Construction & Inspections
Phone: (206) 684-5318
Email: david.landry@seattle.gov

Owner Applicant:

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

Applicant Legal Counsel:

Brandon Gribben
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 August 26, 2019



David Moehring
Appellants' representative, Neighbors to Mirra Homes Developments
3444B 23rd Ave West
Seattle WA 98199