

21 January 2020

SDCI Project Numbers: 3032878-LU and 3032941-LU
Applicant Name: Brooke Friedlander, Mirra Homes, Mirra 111 LLC
Addresses of Proposal: 3422 and 3420 23rd Avenue West

Reference #:	3032878-LU and 3032941-LU
Create Date:	Jan 13, 2020 8:56 AM
Submit Date:	Jan 13, 2020 9:03 AM
Status:	Accepted
Type:	Land Use Appeal
Contact Method:	Email Attachment
<hr/>	
Appeal Details	
Address:	
Decision Elements:	Conditional Use; SEPA; DNS;
Interest:	See appeal document issued prior to Jan 24 deadline - Part I
Objections:	See appeal document issued prior to deadline - Part II
Desired Relief:	See appeal document issued prior to deadline - Part III
<hr/>	
Contacts	
1.	<u>Appellant</u>
	Name: Neighbors to Mirra Homes Developments
	Email: urbanmagnolia@pacificwest.com
	Phone: (312) 965-0634
	Fax:
	Address: 3444B 23rd Ave W , Seattle, WA, 98199
2.	<u>Authorized Representative</u>
	Name: David Moehring
	Email: dmoehring@consultant.com
	Phone: (312) 965-0634
	Fax:
	Address: 3444B 23rd Ave W , Seattle, WA, 98199

Figure 1- <https://web6.seattle.gov/Examiner/case/MUP-20-002>

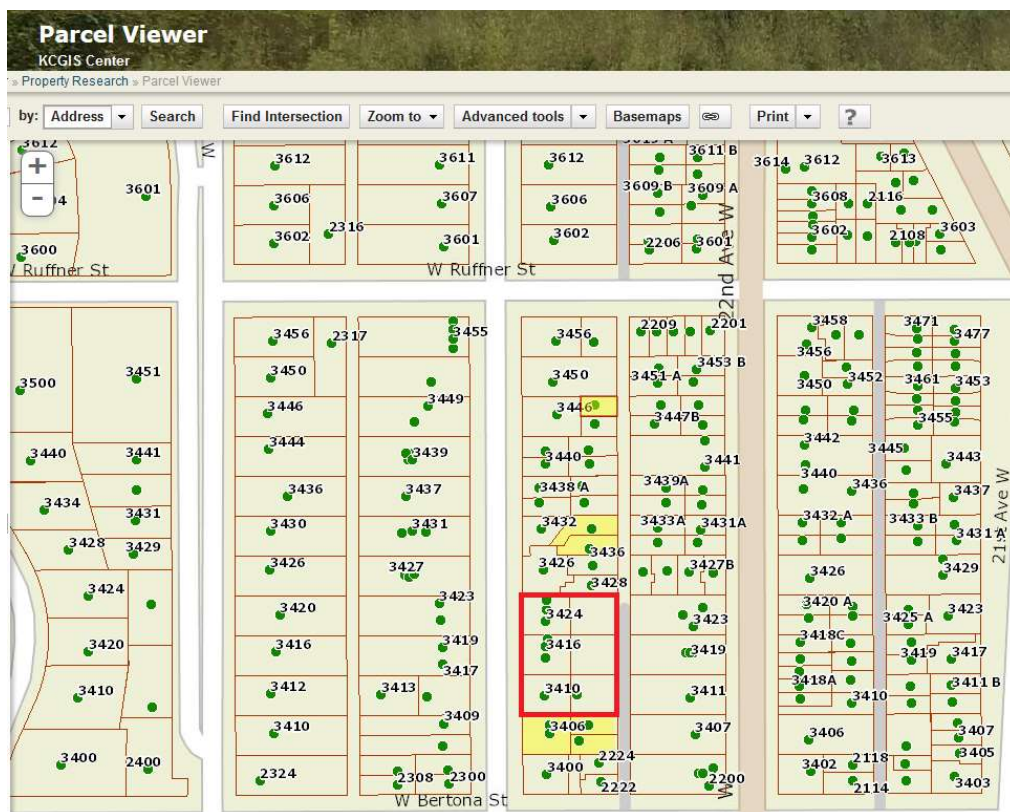
Introduction and Background to this appeal.

It is the intent, per the attachments 1 to 7, to appeal this functionally-related development as one appeal relative to the SEPA Determination of Non-Significance (hereafter 'DNS') including the stated conditions to mitigate environmental impacts. This administrative appeal challenges the notice issued with the "City of Seattle Analysis and Decision of the Director of the Seattle Department of Construction and Inspections (Hereafter the "Department")" on both SDCI application numbers 3032878-LU and 3032941-LU.¹

¹ Reference Appeal Attachment '1'

The scope of the decision includes “Land Use Application (3032878-LU) to allow a 3-story, 3-unit rowhouse building. Parking for 3 vehicles proposed. Existing building to be demolished. Review includes future unit lot subdivision. To be considered with Project #3032941-LU for shared access.” The scope also includes “Land Use Application (3032941-LU) to allow a 3-story townhouse building (2-units total). Parking for 2 vehicles is proposed. Existing building to be demolished. Review includes future unit lot subdivision. To be considered with Project #3032878-LU for shared access.” Therefore, within this decision are a total of 5 dwelling units within a combined parent lot area of 6,000 square feet. Following a short plat subdivision from 2019, this SEPA DNS decision consists of addresses 3422 and 3420 23rd Ave West.² The referenced drawing shows:

- 3422 23rd Ave West, portion of functionally-related development to the west or street side (thereby Land Use Application 3032878-LU) for a 3-unit rowhouse building; and
- 3420 23rd Ave West, portion of functionally-related development to the east side or unimproved alley (thereby Land Use Application 3032941-LU) for a 2-unit townhouse.



The Appellant, Neighbor to Mirra Homes Developments, believes the applicant represents the owner of the 3420-3422 23rd Ave W property, Mirra Homes, LLC or Mirra 111 LLC³,

² Reference drawing from within application shown in appeal attachment ‘2’. This drawing has been obtained from the public records of the Department on their Electronic Document Management System (EDMS).

³ Reference the December 12, 2018 refiling found in the King County parcel records (gismaps.kingcounty.gov/parcelviewer2/ for parcels 277060-1480 and 277060-1475).

I. What is your interest in this decision? (State how you are affected by it)

The Appellant resides and owns a property within 300 feet to the Mirra Homes / Mirra 111 development of three adjacent lots located within an Environmentally Critical Area (ECA).⁴ The Mirra Homes / Mirra 111 combined development includes three adjacent parent lot parcels including the King County assigned street addresses of 3410, 3416 and 3424 23rd Avenue West. In addition to the specific property listed in this appeal, the Department has issued within the same week simultaneous SEPA determinations of the two remaining parent lots to the south of 3032878-LU and 3032941-LU as follows:

3032671-LU	East (alley)	Land Use Application to allow a 3-story, 2-unit townhouse building. Parking for 2 vehicles is proposed. Existing building to be demolished. Review includes future unit lot subdivision. To be considered with Project #3032877-LU for shared access.
3032877-LU	West (street)	Land Use Application to allow a 3-story, 3-unit rowhouse building. Parking for 3 vehicles proposed. Existing building to be demolished. Review includes future unit lot subdivision. To be considered with Project #3032671-LU for shared access
3032876-LU	East (alley)	Land Use Application to allow a 3-story, 2-unit townhouse building. Parking for 2 vehicles proposed. Existing building to be demolished. To be considered with Project #3032940-LU for parking and access.
3032940-LU	West (street)	Land Use Application to allow a 3-story, 3-unit rowhouse building. Parking for 3 vehicles proposed. Existing building to be demolished. To be considered with Project #3032876-LU for shared parking and access.

⁴ None of the Neighbors received noticed from the Department regarding the SEPA decision. The prior appeals MUP-19-019 to MUP-19-021 included concerned neighbors resided at several properties along this east side of the street. The addresses south of the development included the households of 3404 A 23rd Avenue West, 3404 B 23rd Avenue West, and 3406 23rd Avenue West. The concerned neighbors who reside at three properties at the north of the development include the households of 3434 23rd Avenue West, 3436 23rd Ave W and 3444B 23rd Avenue West. All of these appellants live in townhouse plats with no more than three dwellings on the original or parent lot of 6,000 square feet – which is the normal density for developments within this low-rise multifamily zone.

Our property is impacted by the cumulative impacts of this 18,000 square foot development lot with a total of (15) fifteen three-story townhouses and rowhouses. Instead of the zoning established normal density of no more than (3) three dwellings within the original or parent lot of 6,000 square feet each, the development drawings and public notice indicate that there will be (5) five dwellings on each of the original or parent lots of 6,000 square feet. Accordingly, the Appellant is primarily concerned about the cumulative environmental impacts of building more than the typically allowed number of dwellings, the capacity of services provided by the City, and the long-term capacity of a designated landslide area that has been pierced by numerous segmented foundations and retaining structures. The Appellant shares the same ECA2 potential land slide area and nearby ECA1 Steep Slope area per the City of Seattle GIS maps⁵. The SEPA DNS ignores and provides insufficient evaluation of the environmental adverse

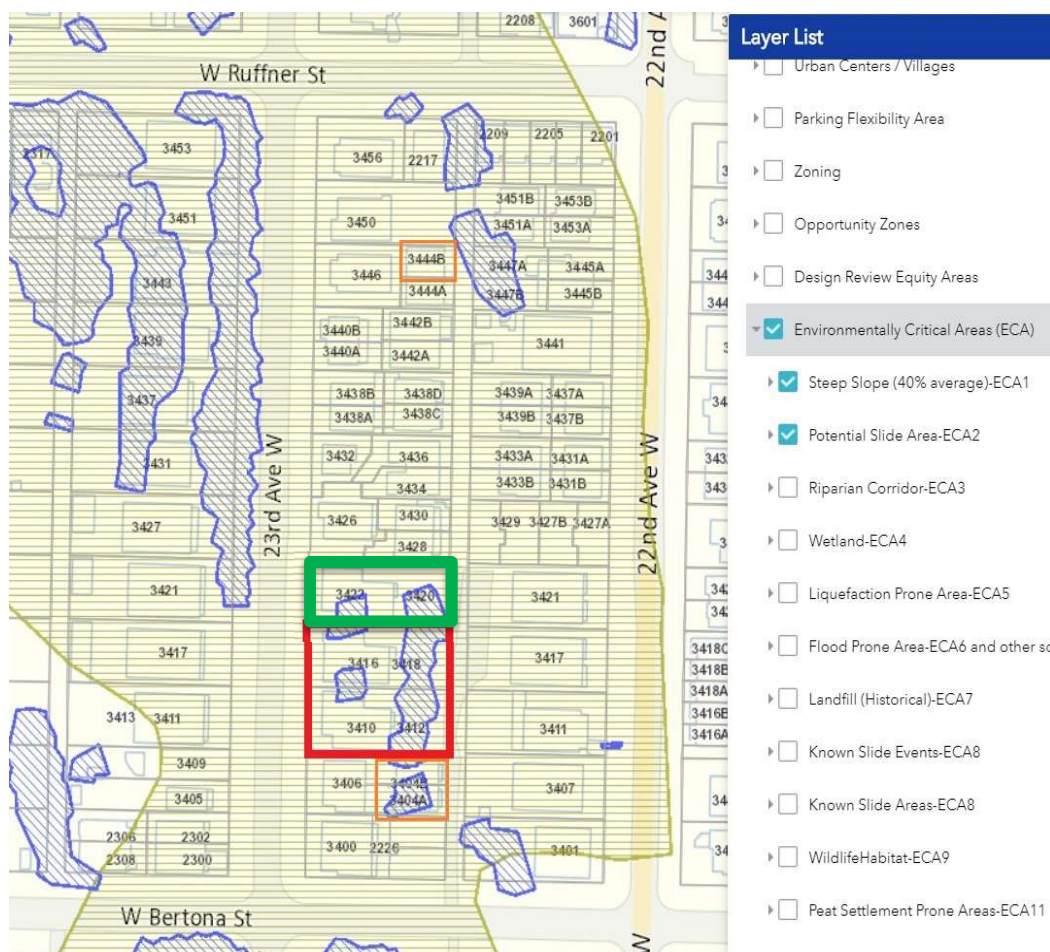


Figure 2 - Seattle Department of Construction & Inspections GIS interactive map. Area of related development outlined in red as it relates to the SEPA decision property outlined in green,

⁵ A recent Directors' Rule 12-2019 updates the advisory map for two Environmentally Critical Areas (ECAs): Known landslide areas (25.09.012.A.3.a) and steep slope erosion hazard areas (25.09.012.A.3.b.5). The updated maps are titled "Known Landslide Areas," dated July 15, 2019 and "Steep Slope Erosion Hazard Areas," dated July 15, 2019. You can view the updated advisory map layers and the existing layers at <http://seattlecitygis.maps.arcgis.com/apps/webappviewer/index.html?id=f822b2c6498c4163b0cf908e2241e9c2>

impacts that this, prior, and subsequent code-exceeding development of this magnitude relative to the block's soil integrity and occupants' health safety. Over-development impacts the neighboring properties availability to light and air and privacy. As the existing parking for the development is accessed off the street rather than the unimproved and dead-end alley, we are concerned about the maneuverability and safety of those using the alley after being surcharged with parking for 15 new dwellings. The aerial view of the development is provided in Figure 2 below.⁶



Figure 3- Site view of three sites from the King County Parcel Viewer taken in 2017. The alley right-of-way is unimproved behind the Mirra Homes developments and the only means of turning vehicles around is to encroach on adjacent properties east of the alley. (North is up.)

II. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

In support of the objections to the SEPA DNS decision, reference the attachments and appeal documentation submitted in advance to the appeal statement. In summary, the Department has failed to demonstrate per the Seattle Municipal Code that this property qualifies a SEPA Determination of Non-Significance including inadequate conditions to mitigate environmental impacts⁷. In addition, the DNS ignores that the application exceeds the allowable LR1 zoned density. At the time of the application, this area is limited to maximum number of 1 dwelling for every 2,200 square feet of lot area. Alternatively, a higher density of (1) one dwelling for every 1,600 square feet may be pursued if meeting all exceptions including (a) green performance, (b) parking

⁶ <http://seattlecitygis.maps.arcgis.com/apps/webappviewer/index.html?id=f822b2c6498c4163b0cf908e2241e9c2>

⁷ Pursuant to SEPA substantive authority provided in SMC 25.05.660, and the breadth of review including, but not limited to, the requirements of 25.05.315, 25.05.330, 25.05.335, 25.05.670 and 25.09.

locations, and (c) alley improvements.⁸ This application has not been revised to pursue higher densities and affordable housing production requirements as amended in April 2019 with the Mandatory Housing Affordability (MHA) ordinance; but even if the applicant did re-apply, the proposed density is exceeded. This and the cumulative Mirra Homes developments are proposing (15) fifteen market-rate 3-story townhouses on 18,000 square feet of land. As such, the density average of 1,200 sq ft of land area for each primary residence exceeds the allowable Floor Area Ratio by at least 33 percent without any consideration to the environmental impacts. The Department cannot make this determination without a SEPA review on the previously developed and concurrently developed functionally-related sites within the block.

A. The Analysis and Decision is erroneous for several reasons:

1. The decision has failed to provide sufficient notice. No sign posting or no letter has been mailed to the appellant or those within 300 feet of the property.
2. The Analysis and Decision fails to consider the full scope of the functionally related development.
 - a. Directors Rule 19-2018 was not factored into the evaluation by the Department for the prescribed purposes of determining if two or more development proposals are considered as one for applying State Environmental Policy Act categorical exemptions and Design Review thresholds. In other words, the Department is considering the proposal of this functionally-related 15-dwelling development as three (3) independent SEPA reviews. The Rule states that the “Department receives applications for development *proposals on abutting or adjacent lots that are potentially related to one another*. We [The Department] must determine whether the development proposals should be evaluated separately or as a single proposal for the purpose of applying SEPA categorical exemptions.”(emphasis added).
 - b. The Rule further states that “The same rules apply for determining whether multiple development proposals are evaluated as a single development proposal for purposes of applying SEPA categorical exemptions and Design Review thresholds. Two or more projects under review at the same time are *treated as a single development proposal if any of the following are true*: a. *Any feature physically spans the property lines between lots, such as shared structures*, shared driveways, shared pedestrian access (including easements to rights-of-way), *shared drainage and utility designs*, foundation footings, or *retaining walls*. f. The design of two or more development proposals are *dependent on grading, construction of retaining walls, and/or foundation design across the lot lines*.⁹ (emphasis added).

⁸ Chapter 23.24, Seattle Municipal Code and associated land use Title 23 codes.

⁹ The following project non-relevant statements of the Directors Rule were removed: “b. A shared driveway accesses a parking area(s) for more than one development proposal, regardless of whether the parking is required. c. Parking for a development proposal, including maneuvering, aisle requirements, or other parking-related easements, whether the parking is required or not, is proposed to be provided (or partially provided) on the site of another development proposal, even if the sites do not abut each other. d. Proposed structures are joined, or share a common wall for purposes of reduced setbacks. e. Proposed developments share required open space and/or amenity area.”

- c. The demonstrate that the three lots meet the criteria for concurrent analysis and evaluation, the appeal refers to Attachment 4 drawings.
- d. For example, development of the eastern half of the three properties cannot occur until the existing structures that straddle both the east and west half has been removed. Contrary to the conditions of the determination, the demolition of the existing structures will change the soil retention conditions and not permit, at least as submitted, the soil stabilization of the eastern half before the western half¹⁰. This fact has not been analyzed.¹¹
- e. Another example is that all three properties are dependent on one of two options addressing the design and construction of adding an additional storm drain connection from the alley fronting the project site to the combined sewer main in 22nd Avenue.¹² The three properties all make connections to this storm service.
- f. Another example is that all three properties required street and alley improvements to be completed to provide access to the northern-most development¹³.
- g. Another example is the building cross sections that indicate construction excavation cuts deep into the existing designated landslide areas (Figure 3).
- h. Another example is the north-south retaining shoring that runs parallel to the lot subdivision line. The drawing shows that the shoring continues to the adjacent lot to the south.¹⁴ As such, the developments are functionally related.¹⁵
- i. Even more of a concern if the shoring absent along the south property line of the 3420 and 3422 property as is shown along the south property line. With excavations shown at over 12 feet in depth, it is impossible to cut into this designated landslide ECA without causing destabilized soils in the adjacent lot to the south.¹⁶ Instead of one deep excavation with width of one lot, there will be a deep excavation that spans all three lots. The SEPA checklist does not consider this functional relation.

¹⁰ Per Directors Rule 2018-7: Demolition. "Demolition of any structure or facility requires SEPA review if construction of that structure or facility would have required SEPA review. Demolition of an otherwise exempt structure is required to be reviewed under SEPA if it is part of a larger proposal that requires SEPA review."

¹¹ The fourth and seventh and seventeenth sheets of 43 sheets.

¹² The eleventh of 43 sheets. A note spanning all three properties references a condition on 'Drainage and Wastewater Determination' for addresses ranging between 3410-3424 23rd Avenue West, and recorded as SDCI Project 012603-18PA.

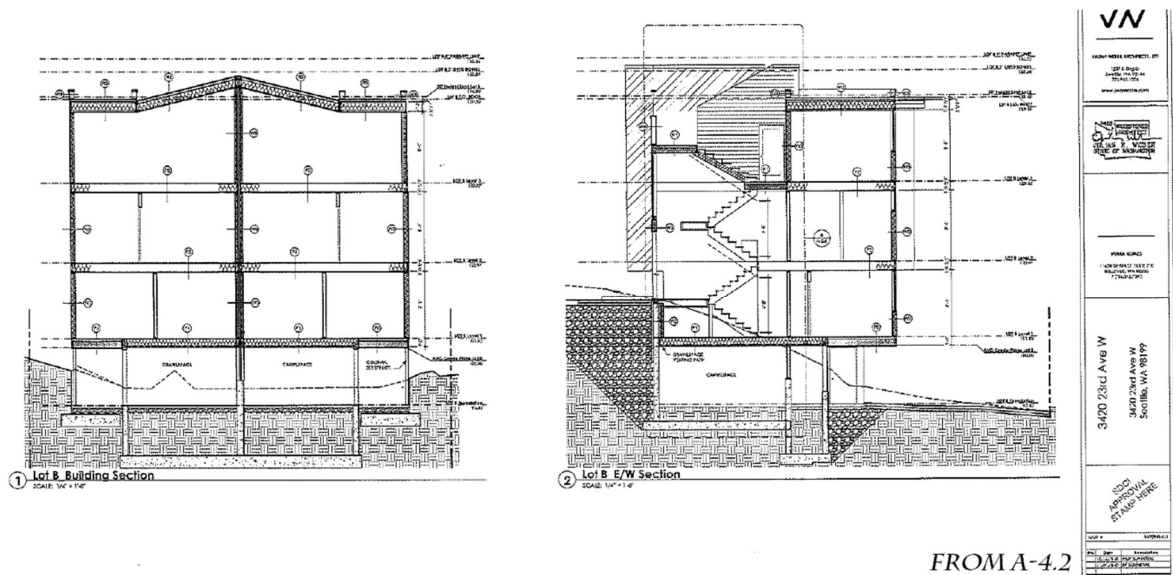
¹³ The twelfth of 43 sheets shows the functionally-related alley which is currently unimproved.

¹⁴ The forty-second of 43 sheets.

¹⁵ As per correction notice for SDCI Project #3032876-LU at 3412 23rd AVE W relative to SMC 25.09.080: "*The slope stability analysis indicates that complete stabilization for the proposed development is dependent on the installation of the proposed permanent anchored soldier pile wall. Consequently, it appears that the wall must be completed before other construction is completed upslope of the wall for Lots A and B. Please provide a geotechnical report addendum detailing the construction sequencing needed to provide complete stabilization during and after construction. Correct the plans to show the location of the wall, the required sequencing, and conceptual wall details.*" As well as SMC 25.09.080 B. that requires the plans to show that pile foundations are required for the townhomes.

¹⁶ Ditto. The similar issue exists between the 3410 and 3416 properties.

- j. Another example is that proposed new trees are shown to require access and excavation into the neighbors' lot to the north¹⁷ and south.



FROM A-4.2

Figure 4 The twenty-sixth of 43 sheets typical for all three developments. The left-hand side shows the north-south structure cross section of the proposed eastern structures. The right drawing shows the east-west cross section looking north.

- B. The analysis fails to adequately address SMC 25.05.670 - Cumulative effects policy. This project or action which by itself may be deemed not to create undue impacts on the environment will indeed create undue impacts when combined with the cumulative effects of prior or simultaneous developments; further, this approved DEPA DNS will directly induce other developments, due to a causal relationship, which will adversely affect the environment. Primarily, these impacts are evident in the soil retention (as noted above), number of parking and street congestion, and the sanitary capacity (as noted below.) The excess number of dwellings allows for this zone will have an adverse impact on the environment or public facilities and services which, though acceptable in isolation, will not be sustained given the probable development of subsequent projects with similar impacts. Of the twenty-four properties on this block, over half of them are eligible for probable development that will increase their current density and demands on public services and storm water.¹⁸ This 15-unit project creates undue impacts based on cumulative effects as provided for in SMC Section 25.05.670.

¹⁷ The fifteenth of 43 sheets.

¹⁸ The code states that the "analysis of cumulative effects shall include a reasonable assessment of: a. The present and planned capacity of such public facilities as sewers, storm drains, solid waste disposal, parks, schools, streets, utilities, and parking areas to serve the area affected by the proposal; b. The present and planned public services such as transit, health, police and fire protection and social services to serve the area affected by the proposal; c. The capacity of natural systems-such as air, water, light, and land-to absorb the direct and reasonably anticipated indirect impacts of the proposal; and d. The demand upon facilities, services and natural systems of present, simultaneous and known future development in the area of the project or action."

- C. The existing street sanitary system¹⁹ has not been analyzed by the Department. This area was originally single-family homes. Accordingly, the smallest allowed sanitary system was installed at only 8-inches pipe (reference Attachment 7). These developments of five dwellings and multiple bathrooms increase the amount of sanitary sewage appropriately. Prior development increased the sewage capacity by a factor of three (3), whereas this and pending development at 3411 23rd Avenue west are trending the capacity increase by a factor of five (5). The analysis has failed to consider the impacts.²⁰
- D. The Analysis and Decision is erroneous relative to the overall scope. As indicated in Attachment A: The “ANALYSIS AND DECISION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS” for 3032878-LU and 3032941-LU highlights the non-compliance of three (3) rowhouses on a subdivided lot less than 3,000 square feet. In general, the analysis is flawed as it fails to address the functionally-related developments to the south as identified herein.
- a. Page 2 paragraph 3 identifies the non-compliant scope of the proposal with three (3) rowhouses on each of the street-facing lots being less than 3,000 square feet. It states: “Through separate applications, all three properties were approved for a land subdivision resulting in each lot being divided into two equal parcels sharing a common property line drawn in a north south direction. The resulting properties identified as a parent lot and resultant child lot as follows; 3410 and 3412 23rd Ave W., 3416 and 3418 23rd [Ave W.,] and 3420 and 3422 Ave W. Each of the parent parcels and their resultant child lots are *now functionally related for purposes of parking access*. The resultant *street facing parent lots are now 2,999 sq. ft.* while each rear child lot is approximately 3,000 sq. ft in area.” (emphasis added). For reference, 2,999 lot area divided by the maximum density of 1 dwelling per 1,600 square foot of lot area calculates to 1.8125 or just two (not three) rowhouses per each of the three lots.
 - b. The above analysis paragraph also claims the developments are only functionally related relative to parking access. This is not an accurate assessment as it is missing several other functional dependencies considered in SEPA evaluation (further described within this section.)
 - c. This appeal will not challenge the flawed Approved Relief from Prohibition on Steep Slope Development for 6694812-EX; 3422 and 3420 23rd Avenue W., in which Environmentally Critical Areas (ECA) review are required for this project²¹. As noted in the analysis, the Appellant argues that the Department has failed to enforce conditions given that “...the remaining ECA Regulations will apply.”
 - d. Page 3 references that the “Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle

¹⁹ Side Sewer Cards and Maps are public information:

<http://web6.seattle.gov/dpd/sidesewercardsv2/Map.aspx?pin=2770601470>

²⁰ Reference the Directors Rule 4-2011, Requirements for Design & Construction of Side Sewers (Drainage & Wastewater Discharges). Side sewers that serve two units and up to eight dwelling units maximum must be at least 6 inches. Each of these six-inch side sewers are connecting into one eight-inch line which serves 24 properties within this block of 23rd Ave West.

²¹ SMC 25.09.090.B

SEPA Ordinance (Seattle Municipal Code (SMC) Chapter 25.05).” However, the Department has reviewed the development in three (3) separate sections rather than one comprehensive development.²²

- E. Attachment 6 is the SEPA checklist for just the north property which overlooks the cumulative impacts with the adjacent properties. Relative to the SMC 25.05.315 Environmental checklist, the Department has failed to use the environmental checklist substantially in the form found in Section 25.05.960 to assist in making threshold determinations for this proposal. The items in the environmental checklist as outlined above demonstrate that a probable significant adverse impact on the environment may result in the need for an EIS.

III. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

The relief requested shall include:

- A. Vacation of the Analysis and Decision for short plat approval;
- B. Advise the department to consolidate the three SEPA Checklists into one.
- C. Per SMC 25.05.335, request that the Department make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal. This may result in the Department require the applicant to submit more information on subjects in the checklist; or make its own further study, including physical investigation on a proposed site or communicating with interested parties; or consult with other agencies, requesting information on the proposal's potential impacts which lie within the other agencies' jurisdiction or expertise; or decide that all or part of the action or its impacts are not sufficiently definite to allow environmental analysis and commit to timely, subsequent environmental analysis.
- D. If after following Section 25.05.080 (incomplete or unavailable information), and Section 25.05.335 (additional information), the lead agency reasonably believes that a proposal may have a significant adverse impact, an EIS is required.
- E. The imposition of conditions requiring possible improvements to the capacity of the street sewer system.
- F. The imposition of conditions to assure compliance with the Land Use code relative to the number of multifamily residential standards and Rowhouse Development Rules which prohibit primary dwellings behind row-houses.
- G. For such other relief as may be warranted by the appeal.

²² SMC 25.05.330 establishes the SEPA threshold determination process. “An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below. C. In determining an impact's significance (Section 25.05.794), the responsible official shall take into account that: 1. The same proposal may have a significant adverse impact in one location but not in another location; and 2. The absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment.”



Appellant
David Moehring, AIA NCARB

Appellants identified as the Neighbors to Mirra Homes Developments includes:

DAVID and BURCIN MOEHRING
3444 B 23RD AVE W
Seattle WA 98199

Prior short plat prior appellants (MUP-19-021) and interested neighbors eligible without objection to intervene from the Neighbors to Mirra Homes Developments include:

BENJAMIN and KERRY LOUISE CHEW
Owners of 3406 23RD AVE W 98199
2255 78th Ave Southeast
Mercer Island, WA 98040

DANIEL+KAZUYO MONAHAN
3436 23RD AVE W 98199

MEGAN+TIMOTHY WHALIN
3434 23RD AVE W 98199