

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**DAVID MOEHRING, ET AL.**

from a decision issued by the Director,  
Department of Construction and Inspections

Hearing Examiner Files:  
**MUP-16-016 (W)**

Department Reference:  
3020730

**ORDER ON MOTION  
TO DISMISS**

The Department of Construction and Inspections (“Department”) issued a SEPA Determination of Nonsignificance without conditions (“DNS”) for a proposal to allow four single-family residences in an environmentally critical area. The Appellants, David Moehring, et al., appealed the DNS. The Applicant, Sound Builders/Einar Novion, filed a motion to dismiss the appeal, and the Department filed a response in support of the motion. The Appellants filed a response to the motion, and the Applicant filed a reply to the response. The Hearing Examiner has reviewed the file in this matter including the motion documents.

The subject property, located at 3477 22<sup>nd</sup> Avenue West, is zoned Lowrise 1, and the development of four single-family residences on it would be permitted outright under the Land Use Code except for the fact that the property is mapped as a potential landslide environmentally critical area (“ECA”). Pursuant to SMC 25.09.180.B, the property received a limited exemption from steep slope development standards, but its status as a steep slope ECA triggered a requirement that the application be reviewed pursuant to the City’s codification of the State Environmental Policy Act, Chapter 25.05 SMC (“SEPA”). SMC 25.05.908 limits the scope of such review to “1) [d]ocumenting whether the proposal is consistent with [the ECA regulations in] Chapter 25.09; and 2) [e]valuating potentially significant impacts on the [ECA] resources not adequately addressed in [the ECA regulations], including any additional mitigation measures needed to protect the [ECAs] in order to achieve consistency with SEPA ....”

The Department performed the limited SEPA review prescribed by SMC 25.05.908, addressing both short-term and long-term environmental impacts. The SEPA Overview Policy, SMC 24.05.665 provides that “[w]here City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to some limitations not applicable here. The Department noted that a geotechnical study had been submitted for the project had reviewed by the Department’s geotechnical experts “who will require what is needed for the proposed work to proceed without undue risk to the property or to adjacent properties. The existing Grading and Stormwater Codes will sufficiently mitigate adverse impacts to the ECAs. No additional conditioning is warranted pursuant to SEPA policies.”<sup>1</sup>

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<sup>1</sup> Analysis and Decision of the Director of the Seattle Department of Construction and Inspections in Application Number 3020730, dated July 18, 2016.

The Department issued a determination of nonsignificance (“DNS”) for the proposal and published it in the July 18, 2016 Land Use Information Bulletin. The publication notes that the only decision subject to appeal was the DNS. The Appellants timely appealed the Department’s decision.

The Applicant has moved for dismissal of the appeal, citing Rule 3.02(a) of the Hearing Examiner Rules of Practice and Procedure. That rule reads as follows:

An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous or brought merely to secure delay.

The Applicant contends that the appeal is without merit on its face and fails to state a claim for which the Examiner has jurisdiction to grant relief. The appeal states three bases: “(1) the proposed density; (2) misled waiver of soil stabilization areas relative to steep slope areas; and (3) proposed clear-cutting of site trees.”<sup>2</sup>

Under density, the appeal asserts that only three, rather than four units are allowed on the property, and that some of the proposed on-site parking is likely to be inaccessible, making it necessary for some of the future owners to park their vehicles on the street. The relief sought is all under the umbrella of asking that the decision be reversed because of inadequate documentation. Under the issue of density, the appeal asks that the number of units be reduced to 3 unless the Department can demonstrate the basis for 4 units in the zone, and suggests an alternative development approach; that window placements be revised for privacy in adjacent homes and alleged errors on drawings be corrected; and that vehicle access and turning diagrams for each of the four garages be provided. The Appellants sought to add additional requests for relief in their response to the motion to dismiss, but they are not timely. Appeals are limited to the issues raised and the relief sought in the appeal document filed prior to the filing deadline. In any event, all of these density-related issues and the related relief requested are outside the scope of the limited SEPA review required and completed for the proposed development. Consequently, the Examiner lacks jurisdiction to consider them, and they are **DISMISSED**.

Under “Stabilized Soil,” the appeal states in some detail why the Appellants believe that the calculations for the slope are incorrect and concludes that part of it is clearly over the 40% threshold for a critical area. The relief sought includes assurances concerning the soil’s stability and the Applicant’s compliance with Code requirements, and corrections of the slope diagrams; revisions to the “red line excavation; and assurances on temporary and permanent soil retention, with drawings and calculations showing how it is to be done. The existence of a steep slope ECA on part of the property is a given, which is why the Applicant sought a limited steep slope exemption pursuant to SMC 25.09.180.B. The exemption was granted under SMC 25.09.180.B.2.c, part of the ECA Code. That decision is not part of the Department’s SEPA DNS and thus, cannot be, and is not a part of this appeal. Again, the only decision on the project that was subject to appeal was the Department’s SEPA DNS. The Department’s SEPA review considered issues related to soil stability and determined, pursuant to the SEPA Overview Policy,

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<sup>2</sup> Appeal dated July 28, 2016 (“appeal”).

that the existing Grading and Stormwater Codes would be sufficient to mitigate any adverse impacts to ECAs. The appeal issues do not challenge this determination, and the requested relief related to soil stability is outside the Examiner's authority to grant. Therefore, all appeal issues related to soil stability are **DISMISSED**.

Under "Trees," the appeal notes alleged discrepancies between the arborist report and the plan drawings, asserts that two trees are located within the steep slope and should not be removed, and states that a City map shows the site "with significant trees within the local area." The appeal does not indicate how these statements are related to the Department's DNS and does not seek any relief concerning trees. As such, this issue is without merit on its face and is therefore are **DISMISSED**.

All appeal issues having been dismissed, the appeal is **DISMISSED**, and the hearing scheduled for September 13, 2016, is **CANCELLED**.

Entered this 31<sup>st</sup> day of August, 2016.



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**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 **Order on Motion to Dismiss** to each person listed below, or on the attached mailing list, in the matter of **David Moehring et al.** Hearing Examiner File: **MUP-16-016 (W)** in the manner indicated.

<b>Party</b>	<b>Method of Service</b>
Neighbors of 3447-9 22 <sup>nd</sup> Ave West c/o David Moehring 3444 23 <sup>rd</sup> Ave W, # B Seattle, WA 98199 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
Sound Builders/Einar Novion c/o Samuel M. Jacobs Helsell Fetterman 1001 4 <sup>th</sup> Ave, Suite 4200 Seattle, WA 98154 sjacobs@helsell.com  Debra Akhbari dakhbari@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
Breanne McConkie SDCI Breanne.McConkie@seattle.gov  Jerry Suder Jerry.Suder@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
SCI LUIB SCI_LUIB@seattle.gov  PRC PRC@seattle.gov  Sue Putnam Sue.Putnam@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: August 31, 2016

TK  
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Tiffany Ku  
Legal Assistant