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7 BEFORE THE HEARING EXAMINER  
8 CITY OF SEATTLE

9 In Re the Matter of the Appeal of:

10 DAVID M. MOEHRING, in the interest of  
the neighbors to 1532 NW 60<sup>th</sup> Street,

11 From a Short Subdivision Decision Issued by  
the Director, Department of Construction and  
12 Inspections.

Hearing Examiner File No. MUP-17-\_\_\_\_

SDCI Project No. 3026908

1532 NW 60<sup>th</sup> Street  
1534 NW 60<sup>th</sup> Street

**LAND USE DECISION APPEAL**

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14 COMES NOW the Appellant, David M. Moehring, in the interest of the neighbors to  
15 1532 NW 60<sup>th</sup> Street and hereby files this land use decision appeal of the grant of a short  
16 subdivision to subdivide one parcel into two parcels of land. The 4,750 sq. ft. parcel to be  
17 subdivided is owned by Ecoworks Homes Inc. and recorded by King County as Parcel #:  
18 2767603335 (hereafter “parent lot” or “Subject Property”). The proposed parcel sizes are: 3,149  
19 sq. ft. (hereafter “Lot A”) and 1,601 sq. ft. (hereafter “Lot B”). Existing structure to be  
20 demolished. As recorded by the SDCI, the purpose of the short subdivision is to build a row  
21 house development of three (3) dwellings on Lot A and build one (1) dwelling on Lot B.  
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1 On May 25, 2017, the Seattle Department of Construction and Inspections (SDCI) issued  
2 a land use decision to grant a short subdivision creating two lots from the parent lot on behalf of  
3 Ecoworks Homes Inc. as submitted by David Biddle of Blueprint Capital (Exhibit 1). On the  
4 same date, the SDCI posted the basis to grant the subdivision which requires applying all of the  
5 criteria as listed in the “City of Seattle Analysis and Decision of the Director of the Seattle  
6 Department of Construction and Inspections” (Exhibit 2).

7 The basis of this appeal is that, by code, this property can only be subdivided when all  
8 of the Criteria has been met. Pursuant to the Seattle Municipal Code (SMC) section 23.24.040,  
9 the following criteria have not been applied by the Director relative to this subdivision:

10 *1. The proposed subdivision yields the non-conformance to the applicable Land Use*  
11 *Code provisions, as modified by Chapter 23.24; and*

12  
13 *4. The proposed subdivision has not demonstrated how the public use and interests are*  
14 *served by permitting the proposed division of land.*

15 Therefore, we, the Appellant, submit this appeal as a Type II decision to the Hearing Examiner,  
16 who has the authority to consider the short plat subdivision decision and its impacts as outlined  
17 in the Seattle Municipal Code Section 23.24.045 and other related land use codes.

As requested in a typical appeal form, the decision being appealed is included within the header above; the name(s) of the Appellant and Authorized Representative are listed at the end of the document; and appeal information has been provided in the following three sections:

- Section [A] – What is our interest in the decision (how affected by it?)
- Section [B] – What are our objections to the decision (errors, omissions, and problems with the decision.)
- Section [C] – What relief do we want from the Hearing Examiner?

APPEAL INFORMATION:

A. Appellant interest in the decision. The Appellant, as expressed in the public comment period for the proposed short subdivision to 1532 NW 60th Street, has the Following Interest in the SDCI decision that improperly granted a Short Subdivision.

1. Assuring the neighborhood density is regulated and limited to the intent of the Code in terms of the number of dwellings and separate living units.
2. Assuring the privacy of the neighboring properties will not be encroached by the overdevelopment of an individual property.
3. As stated by a 60<sup>th</sup> Street residents during the February 2017 comment period, this development lot is allowed up to three dwellings/ townhomes. Plans were requested with the proposed subdivision to provide comment. No plans were made available during the comment period (Exhibit 3). The neighbors requested to be fully informed as to the intent of the subdivision, especially if more than three units would be proposed as a result of the subdivision (Exhibit 4). The decision for this subdivision has been made applying the criteria without full disclosed to the intended land use.

1 B. Appellant objections to the decision. In error, the City is seeking to approve a Short  
2 Subdivision without fully applying the criteria to make such a decision.

3 The Subject Property subject to the appeal of the proposed land use short plat subdivision  
4 decision is a Type II land use decision pursuant to SMC 23.76.002(G)(2). A Type II decision  
5 made by the Director may be appealed to the hearing examiner. Therefore, this is a proper land  
6 use appeal of the grant of the short subdivision into two parcels.

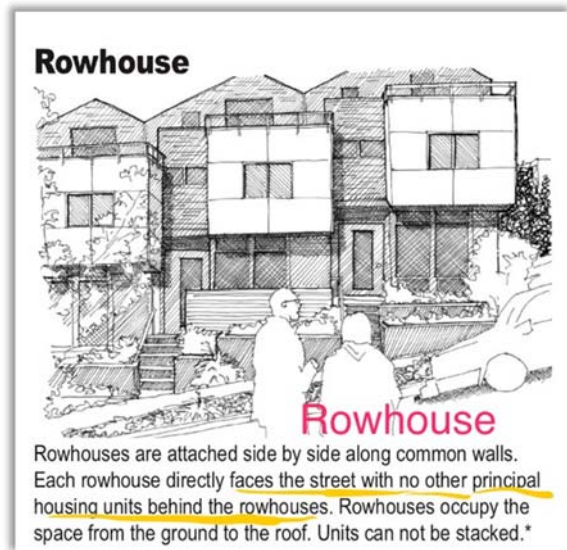
7 i. The SDCI decision to subdivide the property suggests that the owner / developer  
8 has the right to build a residential dwelling on the parent lot behind three (3)  
9 rowhouses, In fact, such as decision does not meet the criteria for short  
10 subdivisions. Per SMC 23.24.040 - Criteria for approval - The SDCI Director  
11 shall, after conferring with appropriate officials, use the following criteria to  
12 determine whether to grant, condition, or deny a short plat:

13 (1) Conformance to the applicable Land Use Code provisions, as modified by  
14 this Chapter 23.24.

15 ii. The SDCI decision is not conditional. It allows nonconformance with the SMC  
16 23.84A.032(R)(20) regarding "**Rowhouse development**" which sets clear limitations  
17 on multifamily residential use in which all principal dwelling units on the [parent]  
18 lot must meet the following six (6) conditions. The decision, therefore, must stipulate  
19 these conditions in the proposed lot subdivision. At least four (4) stipulated rowhouse  
20 development conditions have been omitted from the land use decision. Specific  
21 evident concerns of nonconformance to the Land Use Code 23.24 should be applied  
22 in the criteria in the analysis of the Applicant's current submission includes rowhouse  
23 development criteria as follows:

- (1) each dwelling unit is attached along at least one common wall to at least one other dwelling unit, with habitable interior space on both sides of the common wall, or abuts another dwelling unit on a common lot line;
- (2) the front of each dwelling unit faces a street lot line;
- (3) each dwelling unit provides pedestrian access directly to the street that it faces; and perhaps the most relevant,
- (4) no portion of any other dwelling unit (except for an attached accessory dwelling unit) is located between any dwelling unit and the street faced by the front of that unit. This last paragraph, SMC 23.84A.032(R)(20)(f), stipulates that rowhouses may not be located in front of others dwellings on the same parent lot.

Without this criteria, there would not be any way to discern a rowhouse development to be different from a townhouse development. This lot subdivision is a precursor to the Applicant's purpose to build a housing unit behind the three (3) rowhouses.



*Figure 1- Excerpt diagram from the SDCI - for reference only - not binding to the code.*

- iii. The SDCI decision was based on an incomplete application. Under SMC 23.76.004(G)(2), a separate application is required for a short subdivision of property in the City of Seattle. Under both the Code and state law, an application

1 for a short plat is not vested until the application is decreed complete by the City.  
2 SMC 23.76026(b); RCW 58.17.033. The specific land use decision being appealed  
3 is the Director's May 25, 2017 approval of the short subdivision of 1532 NW 60th  
4 Street into two lots. (Exhibit 1)

5 iv. As referenced by SMC 23.24.045.C. Subsequent platting actions, additions or  
6 modifications to the structure(s) may not create or increase any nonconformity of  
7 the parent lot.

8 v. The permit and application history is relevant is demonstrating the lack of complete  
9 information with the submissions and subsequent decision as recorded on the  
10 public SDCI web site. this application may be summarized as follows:

- 11 1) On January 26, 2017, a Plan Set was issued to the SDCI showing the existing  
12 parent lot to be subdivided. An existing early 1900's house and addition was  
13 shown. The existing heritage house straddles both sides of the proposed  
14 subdivision (reference site plans dated 1/24/17 in Exhibit 5, page 3 and 4).
- 15 2) On January 31, 2017, a Land Use application was submitted to the SDCI to  
16 subdivide one parcel into two parcels of land.
- 17 3) On January 31, 2017, the Application was deemed compete by SDCI, despite no  
18 information was provided on the intended change of use of the Subject Property  
19 from a duplex to three rowhouses and a single-family residence.
- 20 4) On February 6, 2017, the Notice issued for Land Use application was posted by  
21 the SDCI, stating only the following: "*Land Use Application to subdivide one*  
22 *parcel into two parcels of land. Proposed parcel sizes are: A) 3,149 sq. ft. and*  
*B) 1,601 sq. ft. Existing structure to be demolished.*" (Exhibit 6)

- 5) Between February 16 and March 15, 2017 Pubic Comments submitted by 3 individuals. No responses to these comments have been acknowledged or recorded.
- 6) On February 16, 2017 (before the close of public comment period), the SDCI creates a second address of 1534 NW 60th Street to existing address of 1532 NW 60th Street (Exhibit 7). This suggests the decision to accept the application for short subdivision has already been accepted.
- 7) As a point of reference, February 21, 2017 was the last day for public comments to be submitted on the Land Use application.

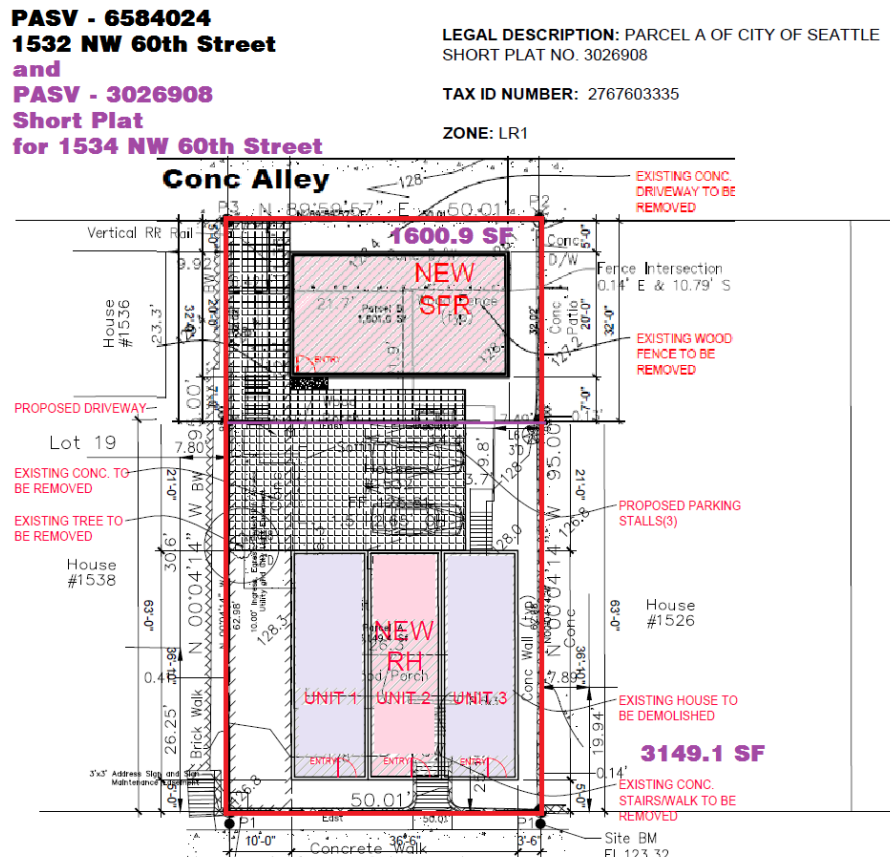


Figure 2- Full intent of the development was not disclosed with the application despite requests made by neighbors during the public comment period. The attached drawing above is a compilation of two (2) separate drawings submitted in piecemeal to the SDCI at different times. The square foot of the proposed subdivisions have been added to this compilation drawing for reference only.

- 1           8) On March 2, 2017, before a decision is determined, the Applicant submits a new  
2           site plan with three (3) rowhouses. No public notice was provided with this  
3           application, despite the requests for such information by the neighbors. This  
4           submission of three rowhouses is only compliant with SMC 23.84A.032(R)(20)  
5           if the rowhouses are not located between the street and any other dwellings within  
6           the Subject Property.
- 7           9) One day later, on March 3, 2017 and under a separate address of 1534 NW 60<sup>th</sup>  
8           Street, the Applicant submits a new site plan with a new single family home.  
9           Again, no public notice was provided with this application. This submission was  
10          made simultaneously with the three rowhouses, and is not compliant with  
11          rowhouse developments per SMC 23.84A.032(R)(20).
- 12          10) On March 20, 2017, before the decision was determined on the lot subdivision,  
13          the Applicant submitted for permit to “Demolish existing SFR. Construct new  
14          three unit rowhouse with parking per plan.”
- 15          11) On March 25, 2017, also before the land-use decision was determined, the SDCI  
16          accepted the application #6584024 to permit the Construction and Development  
17          to “Establish use as rowhouses and construct townhouses, per plans.”
- 18          12) Finally, on May 25, 2017, the City issues a public notice regarding the Land Use  
19          Application to subdivide one parcel into two parcels of land, and to demolish the  
20          existing building. No notice is provided regarding the submission to add three (3)  
21          row-houses and one (1) single family home on this site.



vi. The above notices and submissions appear to deceive the public as to the purpose of the subdivision and noncompliance with SMC 23.24.040, SMC 23.84A.032(R)(20), SMC 23.24.045.C, and other applicable land use codes.

vii. The Subject Property is situated in the LR1 zone and per SMC23.45.512 as amended in August 2015, only allows three dwellings within the parent lot of 4,750 square feet. Under SMC 23.45.512, Table A, the proposed short subdivision of the parent lot that will accommodate three (3) townhouses on the original parent lot of 4,750 square feet. As such, the rowhouses and single family home may not be labeled as townhouses and comply with the land use ordinances (Figure 3 below). Footnote (1) of Table A for SMC 23.45.512 states: "When density calculations result in a fraction of a unit, any fraction up to and including 0.85 constitutes zero additional units and any fraction over 0.85 constitutes one additional unit." Therefore, it is clear from Table A that a site of 4,750 square feet, which describes the subject property, may only be subdivided for three dwellings rather than four rowhouse and single-family dwellings as apparent by the Applicant's overlapping submissions. The math performed under the LR1 zoning table is 4,750 square feet divided by 1,600 equals 2.97 units. Under the LR1 zoning code this is rounded down to three units under the authority of SMC23.45.512(1).

23.45.512 - Density limits—LR zones



A. The minimum lot area per dwelling unit in LR zones for cottage housing developments, townhouse developments, and apartments, is shown on Table A for [23.45.512](#), except as provided in subsections 23.45.512.B, 23.45.512.C, 23.45.512.D, 23.45.512.E, and 23.45.512.G.

Table A for <a href="#">23.45.512</a> Density Limits in Lowrise Zones				
Zone	Units allowed per square foot of lot area by category of residential use <sup>(1)</sup>			
	Cottage housing development <sup>(2)</sup> and single-family dwelling unit <sup>(6)</sup>	Rowhouse development	Townhouse development <sup>(4)</sup>	Apartment <sup>(5)</sup>
LR1	1/1,600	1/1,600 or No limit <sup>(3)</sup>	1/2,200 or 1/1,600	1/2,000 Duplexes and Triplexes only
LR2	1/1,600	No limit	1/1,600 or No limit	1/1,200 or No limit
LR3	1/1,600	No limit	1/1,600 or No limit	1/800 or No limit

Footnotes for Table A for [23.45.512](#)

<sup>(1)</sup> When density calculations result in a fraction of a unit, any fraction up to and including 0.85 constitutes zero additional units, and any fraction over 0.85 constitutes one additional unit.

<sup>(2)</sup> See [Section 23.45.531](#) for specific regulations about cottage housing developments.

<sup>(3)</sup> The density limit for rowhouse development in LR1 zones applies only on lots less than 3,000 square feet in size.

<sup>(4)</sup> For townhouse developments that meet the standards of subsection [23.45.510.C](#), the higher density shown is permitted in LR1 zones, and there is no density limit in LR2 and LR3 zones.

<sup>(5)</sup> For apartments that meet the standards of subsection 23.45.510.C, there is no density limit in LR2 and LR3 zones.

<sup>(6)</sup> One single-family residence meeting the standards of subsection 23.45.510.C and [Section 23.45.526](#) may be built on a lot that is existing as of April 19, 2011, and has an area of less than 1,600 square feet.

*Figure 3 - SMC 23.45.512 DENSITY LIMITS IN LR ZONES as adopted on August 10, 2015*

- viii. Per SMC 23.22.054 regarding “Public use and interest”, “the Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication.” The ‘Livable Ballard’ organization has already determined that the housing goals set by the city for this area have been achieved. Nothing will be gained in overlooking the rowhouse development zoning criteria with this subdivision.

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2 C. Relief Appellant seeks from the Hearing Examiner. The proposed decision by the  
3 Director as issued and described herein should be reversed given the criteria to  
approve cannot be based on incomplete and non-compliant to zoning standards.

4 Under SMC23.76.026(B), an application for approval of a short subdivision of land  
5 “shall be considered under the land use code and other land use control rises in affect when a  
6 fully completed application for such approval that satisfies the requirements of section  
7 23.22.020(subdivision) or sections 23.24.0420 and 23.24.030(short subdivision) is submitted to  
8 the Director.” Under the LR1 zoning in effect on the date of the application, only three  
9 dwellings are allowed for a 4,750 square foot parent lot, not the four being sought by the  
10 applicant.

11 Furthermore, RCW 58.17.030 is relevant here. RCW 58.17.03(1) states in relevant part:

12 A proposed division of land, as defined in RCW 58.17.020, shall  
13 be considered under the subdivision or subdivision ordinance, and  
14 zoning or other land use control ordinances, in effect on the land  
at the time a fully completed application for preliminary plat  
approval of the subdivision, or shorter plat approval of the short  
subdivision, has been submitted to the appropriate county, city, or  
town official.

15 In summary, the Director’s land use decision to subdivide the subject property into four  
16 lots does not meet all of the required criteria to be applied by the Director pursuant to  
17 SMC23.24.040. Thus, the hearing examiner should rule that the application is should be  
18 conditional and is entitled to a three dwellings on the Subject Property, or resubmit the complete  
19 intent of the developments proposed in compliance with the Land Use Codes.

20 The intentional manipulation of the code limits on low-rise multi-family density through  
21 the subdivision of a parent lot must not be condoned by the SDCI Director and, as a reaction to  
22

1 this appeal, by the Hearing Examiner. The selective application of the criteria for subdivision is  
2 not permitted. In this case.

3 Based on the above arguments and submissions and exhibits, the appellant seeks the  
4 following relief from the hearing examiner.

- 5 1. Reverse the decision to approve the land use given its noncompliance  
6 with the zoning code for allowable dwelling units and configuration of  
7 dwellings within a rowhouse development.
- 8 2. Request that development documents be submitted in their entirety for  
9 the proposed short subdivision.
- 10 3. Access an appeal hearing for the review of all evidence in this matter.

11 DATED this eighth day of June, 2017.

12 By

  
Appellant  
David M. Moehring