

BEFORE THE HEARING EXAMINER
City of Seattle

In the Matter of the Appeal of)	Hearing Examiner File:
)	
David Moehring)	MUP-17-023 (P)
)	
of a decision issued by the Director, Seattle)	Department reference:
Department of Construction and Inspections,)	Project 3026908
regarding a Land Use Application to subdivide)	
one parcel into two parcels of land located at)	SDCI MOTION TO DISMISS
<u>1532 NW 60th Street</u>)	

The Seattle Department of Construction and Inspections (SDCI) respectfully requests that, pursuant to Hearing Examiner Rules (HER) 2.16 and 3.02, the Hearing Examiner dismiss the appeal by David Moehring in the above-captioned matter. Under HER 3.02, the Examiner may dismiss an appeal without a hearing if the appellant fails to state a claim for which the Examiner has jurisdiction to grant relief or if the appeal is without merit on its face. The subject appeal presents both jurisdictional issues and states claims that are without merit because they pertain to development standards of the Land Use Code that are not relevant to an appeal of a short subdivision. SDCI also concurs with the motion to dismiss filed by the project applicant on June 22, 2017 that disputes the appellants' standing to appeal.

Background

The subject appeal is from a decision by the Director on a land use application to subdivide one parcel into two parcels of land. The property is zoned LR1: Lowrise-1 Multifamily Residential. The property is developed with an existing single-family residence. Notice of publication of MUP No. 3026908 was provided in the SDCI Land Use Information Bulletin dated May 25, 2017. A copy of the MUP decision is attached to this motion.

Argument

The appeal raises two primary objections to the SDCI decision. These objections are without merit or outside the Hearing Examiner's jurisdiction.

1. The first objection is that the proposed short subdivision does not meet the short subdivision approval criterion of Section 23.24.040.A.1, requiring conformity to the applicable Land Use Code provisions. The appellants' objections have nothing to do with the plat itself but instead either focus on proposed development that is under separate permit or raise irrelevant unit lot subdivision standards in Section 23.24.045 that are not part of the plat analysis. The proposed short plat is not a unit lot subdivision.

The appellant contends that development of rowhouses on one of the proposed lots and a separate single-family residence on the second proposed lot will not meet definitions and development standards of the Code. These questions are beyond the scope of the plat appeal. First, they are not within the Hearing Examiner's jurisdiction, since the issues have nothing to do with conformity of the plat to the Code. For example, no issues of lot configuration or access are raised, nor does the appellant argue that the two proposed lots are not separately developable. Instead, he argues about the type of development that may occur. However, the issues raised are about development that is under separate permit from the plat. The building permit applications described are not within the scope of the appeal and not subject to the Hearing Examiner's jurisdiction in the context of an appeal of the plat. To the extent the appellant tries to relate these applications to the plat, the objections include discussion of compliance with Section 23.24.045.C, which is a requirement for unit lot subdivisions. The proposed plat is reviewed under Section 23.24.040. Argument about Section 23.24.045 is thus beyond the scope of the Hearing Examiner's jurisdiction and irrelevant.

Even if the proposed development were considered relevant to the platting proposal, the appellant has raised issues of the meaning, application, and intent of the Code, particularly with respect to definitions of rowhouse and townhouse and whether density standards are met. These questions should have been raised in a separate formal Code interpretation request per Section 23.88.020.C.3.c, to be filed together with the plat appeal. Failure to request a Code interpretation at the time of the plat appeal disqualifies these definitional and development standard issues from being raised.

2. The second objection is that the proposed division of land does not serve the public use and interest because, apparently, the housing goals for the neighborhood have been achieved. Even if this is so, the appeal fails to explain why the plat itself is not compliant with Land Use Code standards. The public use and interest is not compromised by a plat of one existing lot developed with one house into two separately developable lots in a zone that has no minimum lot area and allows many different types of multifamily development.

Conclusion

For the reasons stated above, the appeal of Project No. 3026908 should be dismissed. If the Hearing Examiner concludes that there is a basis for appeal, SDCI respectfully requests that the Hearing Examiner order the appellant to supplement the appeal with more specific statements of why the criteria in Sections 23.24.040 are not satisfied, so that the Department may determine how to respond in any scheduled hearing.

Entered this 29th day of June 2017.

Allison Whitworth

Allison Whitworth, Land Use Planner
SDCI

cc. David Moehring, appellant
Brandon Gribben, for applicant Dave Biddle

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<u>1532 NW 60th Street</u>)	

The undersigned certifies the following:


1. I am a Land Use Planner at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above-entitled appeal proceeding; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Friday, June 29, 2017, I delivered a Motion to Dismiss in this matter, with attachments, by e-mail only, to the following named parties:

Via E-Mail Only
David Moehring, appellant
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dmoehring@consultant.com

Via E-Mail Only
Brandon S. Gribben,
for applicant Dave Biddle
1001 – Fourth Avenue, Suite 4200
Seattle, WA 98154
bgribben@helsell.com

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

DATED this 29th day of June 2017.



Allison Whitworth, Land Use Planner
SDCI
cc. David Moehring, appellant
Brandon Gribben, for applicant Dave Biddle