

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

DAVID MOEHRING,

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

Hearing Examiner File:
MUP-17-023

Department Reference:
3026908

REPLY IN FURTHER SUPPORT OF
APPLICANT’S MOTION TO
DISMISS

Comes now, the Applicant, Blueprint Capital, by and through its undersigned attorneys, Brandon S. Gribben and Samuel M. Jacobs of Helsell Fetterman LLP, and submits this reply in further support of Blueprint’s Motion to Dismiss the Appeal.

A. Introduction.

On June 22, 2017, the Blueprint filed a motion to dismiss based on two independent grounds: first, that Moehring lacked standing and failed to show that he is significantly affect by or interested the matter, and second that Moehring had failed to comply with the pleading requirements of HER 3.01¹. On June 30, 2017, Moehring filed his Response. This Reply will briefly discuss Moehring’s Response under the two independent reasons for dismissing the Appeal in the Motion.

¹ For sake of brevity, Applicant will use the terms defined in Applicant’s Motion to Dismiss Land Use Appeal (the “Motion”).

1 **B. Moehring failed to demonstrate that he has standing to maintain the**
2 **Appeal.**

3 As explained more fully in Blueprint’s motion-in-chief, Moehring, who lives far
4 from the Site and has no particular interest in or special relationship to the Site, lacks
5 standing under general rules of judicial and quasi-judicial review. Moehring has also failed
6 to demonstrate, as he must under SMC 23.70.022.C.2 and HER 3.01(d), that he is
7 significantly affected by or interested in the matter being appealed. This reply will address
8 Moehring’s numerous assertions and matters raised in his Response under three distinct
9 categories, as follows:

10 1. Much of the information in Moehring’s Response are assertions about the
11 merits of his Appeal or the general subject matter of the Appeal. These assertions have
12 nothing to do with standing nor how Moehring is significantly affected by or interested in
13 the matter. While Blueprint disagrees with most, if not all, of these assertions, they are not
14 germane to the Motion, and Blueprint will not respond to these assertions in its reply.

15 2. Moehring’s Response contains various argument and allegations about how
16 he is representing the interests of the neighbors of the Site and how some of those neighbors
17 allegedly support the Appeal. These arguments and allegations not only do not support
18 Moehring’s standing, but further demonstrate how he lacks standing and is not significantly
19 affected by or interested in the Decision. It is evident that Moehring is attempting to bestow
20 standing upon himself through others who might have standing and might be significantly
21 affected by or interested in the Decision. These arguments are of no avail. Whatever
22 standing others might have is irreverent to Moehring’s lack of standing.

23 The Appeal itself, as referenced on page two of Moehring’s Response, refers to the
24 Appellant as “David M. Moehring *in the interest of the Neighbors to 1532 NW 60th Street.*”
25 Emphasis added. While Moehring acknowledges that he is not an attorney and indicates
 that he is not representing the neighbors as an attorney, he nonetheless seems to believe that,

1 because, in his own mind, he is representing the interests of the neighbors, and because
2 some neighbors allegedly support his appeal, that he has the right to bring the Appeal.
3 However, that is fundamentally misunderstanding the concept of standing and the role of an
4 attorney or other lawfully authorized representative. If the neighbors had timely filed an
5 appeal of the Decision, in their names, and demonstrated their standing among other Appeal
6 requirements, then, other issued aside, such an appeal might have been proper to consider on
7 its merits, but that did not occur. The only appeal that was filed to the Decision was the
8 appeal filed by Moehring. As such, it is Moehring who must have standing and demonstrate
9 how he is significantly affected by or interested in the matter.

10 More to the point, by attempting to conjure his own standing by showing that he is
11 acting, in his own mind, in the interests of the neighbors, he further demonstrates his own
12 lack of standing. For example, at the bottom of page 2 of Moehring's Response he states
13 that "... the neighbors have vouched for my standing." No one can vest standing in another.
14 Alleged support for the Appeal is simply irrelevant to the question of the Moehring's
15 standing.

16 In the last two lines on page 5 of Moehring's Response he admits his lack of
17 standing where he states "While I the Appellant, David Moehring, may not be directly or
18 immediately affected, the decision being appealed adversely affects others..." Finally, in
19 the last paragraph of Moehring's Response, he requests that "the Appellant *representing the*
20 *interest of the neighbors*...should be allowed a hearing..." Emphasis added.

21 Moehring cannot establish his standing by reference to others who may have had
22 they timely appealed the Decision, and his attempts in this regard fatally undermine his own
23 attempts to show that he has standing.

1 3. Finally, Moehring attempts to establish his own standing in seven bullet
2 points, under subsection (i) at the bottom of page 6 and the top of page 7 of Moehring's
3 Response.

4 At the outset, the Hearing Examiner should disregard the factual allegations in these
5 seven bullet points, and generally in Moehring's Response, which raise new facts trying to
6 demonstrate that Moehring has standing. HER 3.01(d)(2) requires that the Appeal include
7 "[a] brief statement as to how the Appellant is significantly affected by or interested in the
8 matter appealed." Therefore, the factual matters to establish standing must be in the Appeal
9 and new factual matters attempted to be introduced by Moehring in his Response should be
10 disregarded. However, even if these new factual matters are considered, they do not
11 establish Moehring's standing.

12 In the first bullet point under (i) on page 6, Moehring alleges that he is a member of
13 an organization with certain interests. He fails to provide any specific information about the
14 group, the area of interest to that group nor how that group might have standing.² More to
15 the point, he has provided no authority for the proposition that membership by an individual
16 in a group, which group conceivably might have standing to bring an appeal, vests that
17 individual with standing. This group is a separate and distinct entity from Moehring.
18 Whatever standing that group might have, Moehring brought the Appeal, not that group, and
19 his potential membership in that group does not vest Moehring with whatever standing the
20 group might have.

21 In the second and third bullet points under (i), Moehring alleges that he rides the bus
22 through Ballard and frequents various institutions and establishments in the Ballard area.

24 ² In fact, the link embedded in Moehring's Response takes you to a webpage for this group. This webpage
25 indicates that the group is interested in a development at 2002 – 2014 NW 60th Street. This is not the Site and
appears to be approximately 5 blocks from the Site. From the information provided by Moehring, this group is
not even interested in the Decision.

1 First of all, we have no idea how close these bus routes are to the Site, nor the proximity of
2 the various institutions and establishments he lists to the Site. More importantly, if visiting a
3 general area vests someone with standing to appeal a land use decision in the general area,
4 then anyone who periodically visited any part of the City would have standing to challenge
5 any land use decision in the City; they would not even be required to reside in the City.
6 That is clearly not what was intended by City Council when they adopted the significantly
7 affected by or interested in language. It is also not the applicable standard for establishing
8 standing in the cases cited in the Motion.

9 In the fourth bullet point under (i) (at the top of page 7 of Moehring's Response)
10 Moehring asserts that his civic, professional and personal interests are not bound by
11 geographic location. However, his subjective personal interests are not sufficient to
12 establish standing nor to show that he is significantly affected by or interested in this matter.
13 If that was all that was required to have standing, then everyone would have standing to
14 challenge anything simply by claiming that they are interested in that subject matter. It is
15 not the interest in the subject matter (i.e. what Moehring characterizes as overdevelopment)
16 that he must show in order to appeal the Decision, rather he *must* show he is significantly
17 affected by or interest in the subdivision of the Site which he has not done, and which he
18 cannot do. In a similar vein, in the sixth bullet point under (i), Moehring argues that he has
19 standing because he is an architect and planner with many years of experience. Moehring
20 cites no authority for the proposition that professional training and experience bestows
21 standing on an individual to challenge a decision which may be generally relevant to their
22 education and work experience, and that proposition is not supported by applicable case law
23 cited in the Motion.

24 In his fifth bullet point under (i), Moehring seems to argue that, because SDCI and
25 Blueprint are participating in the Appeal, even though SDCI staff members and Blueprint's

1 representatives may not live in close proximity to the Site, that Moerhing has standing to
2 bring this Appeal. That is not the case. SDCI staff participates in the Appeal because it is
3 that Department's decision that is being appealed, and the Blueprint participates in the
4 Appeal, through its attorneys, because it is the Applicant for the Permit which is subject to
5 the Appeal.

6 Finally in the last bullet part under (i), Moerhing argues that, as he lives in a LR1
7 zone and has been concerned about development in his own neighborhood, he is vested with
8 authority to appeal a subdivision far distant from his home. While Moerhing may have had
9 standing to challenge subdivisions in close proximity to his home, that does not grant him
10 standing to appeal other subdivisions, which present similar issues, on property far removed
11 from his home. It is not interest in land use or subdivision, or even a particular land use and
12 subdivision topics, that is required for Moerhing to have standing to bring the Appeal.
13 Rather, standing and SMC 23.76.022 requires that he has some significant and particular
14 relationship to the Site in order to bring the Appeal.

15 C. **Blueprint withdraws that part of its motion that sought to dismiss the**
16 **appeal under HER 3.01 because Moerhing did not include his address.**

17 In the Motion, Blueprint moved to dismiss the appeal because the Moerhing failed to
18 include his address. Blueprint based this portion of the Motion on the pleadings contained
19 on the Hearing Examiner's website for this matter. None of Moerhing's initial pleadings on
20 the website contained his address.

21 In Moerhing's Response, he points out that, at the time of filing the Land Use
22 Decision Appeal, he also filed an online form which included his address. Based on this,
23 Blueprint withdraws the portion of its Motion seeking to dismiss the Appeal for failure to
24 include Moerhing's address in the Appeal. This does not, in any way, affect the portion of
25

1 the Motion to dismiss the Appeal based on Moehring's lack of standing and his failure to
2 show that he is significantly affected by or interested in the matter being appealed.

3 **D. Conclusion.**

4 Moehring essentially acknowledges in his Response that he is not significantly
5 affected by or interested in the matter. Moehring's blatant attempts to bestow vesting upon
6 himself by showing the purported affect on others is of no avail. His assertions about how
7 he is interested in the matter should not be considered because they introduce new factual
8 assertions not contained in his Appeal but, even if they are considered, they do not, in any
9 way, show that he has standing or that he meets the standard to bring an appeal under SMC
10 23.76.022.C.2 or HER 3.01(d)(2). As such, the Appeal should be dismissed with prejudice.
11

12 Respectfully submitted this SM day of July, 2017

13
14 HELSELL FETTERMAN LLP

15
16 By: 

17 Samuel M. Jacobs, WSBA No. 8138
18 Brandon S. Gribben, WSBA No. 47638
19 Attorneys for Applicant Blueprint Capital
20
21
22
23
24
25

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that she caused the foregoing document to be served on the following parties in the manner indicated below:

Appellant Contact:
David Moehring

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email to dmoehring@consultant.com

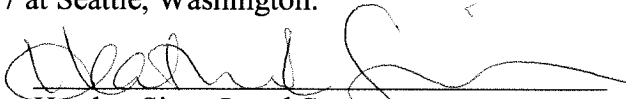
Hearing Examiner
Office of Hearing Examiner
700 Fifth Avenue, Suite 4000
Seattle, WA 98104

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email to tiffany.ku@seattle.gov

Department Contact:
Allison Whitworth
SDCI
PO Box 34019
Seattle, WA 98124

- Via first class U. S. Mail
- Via Legal Messenger
- Via Facsimile
- Via Email to Allison.whitworth@seattle.gov

Signed this 5 day of July, 2017 at Seattle, Washington.


Heather Sims, Legal Secretary