

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by

The Neighbors to 3641 22nd Ave West

to the SDCI decision on SDCI #3028431
Short Subdivision - to create two parcels of
land from 3641 22nd Avenue West lot.

NOTICE OF APPEAL

I. APPELLANT INFORMATION

1. Appellant:

Name: The Neighbors to 3641 22nd Ave West

Address: c/o David Moehring

3444 23rd Ave West, #B

Seattle, WA 98199

Email: dmoehring@consultant.com

In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: ☐ U.S. Mail ☐ Fax ☒ Email Attachment

2. Authorized Representative:

Name David Moehring AIA NCARB

Address 3444 23rd Ave West, #B, Seattle WA 98199

Phone:: (312) 965-0634

Email: dmoehring@consultant.com

In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: ☐ U.S. Mail ☐ Fax ☒ Email Attachment

II. DECISION BEING APPEALED

1. **Decision Appealed:** Analysis & Decision in MUP File Nos. 3028431, dated December 18, 2017 and issued the following day, copy of which is available from the SDCI website at <http://web6.seattle.gov/dpd/eplan/GetDocument.aspx?id=991785&src=WorkingDocs&n=Decision%2FRecommendation>

2. **Property address of decision being appealed:** The King County Assessor Parcel #: [2770601655](#) including the proposed addresses on the original parcel:

- a. [3641 22ND AVE W](#)
- b. [3641 A 22ND AVE W](#)
- c. [3641 B 22ND AVE W](#)
- d. [3641 D 22ND AVE W](#)

1. **Elements of decision being appealed. Check one or more as appropriate:**

- | | |
|--|---|
| <input checked="" type="checkbox"/> Adequacy of conditions | <input type="checkbox"/> Variance (Departures) |
| <input type="checkbox"/> Design Review and Departure | <input type="checkbox"/> Adequacy of EIS |
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> Interpretation (See SMC 23.88.020) |
| <input type="checkbox"/> EIS not required | <input checked="" type="checkbox"/> Short Plat |
| <input type="checkbox"/> Major Institution Master Plan | <input type="checkbox"/> Rezone |
| <input type="checkbox"/> Other (specify:) | |

III. APPEAL INFORMATION

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

The appellant lives within a residence (Figure 3) near the site of 3641 22nd Avenue West (hereafter the "Subject Property"). The proposed development will adversely affect the appellant by the proposed short plat. Subsequent development is indicated on the SDCI's public records website for this property. Ultimately, there would be adverse impacts upon neighborhood character and aesthetics, the availability of light and air to surrounding properties, which would impair use and enjoyment of the immediate neighborhood properties. The short plat has been granted without necessary conditions to control future overdevelopment of a property within its LR1 zone. Allowing such over development by granting the subdivision without conditions is unjust to those who own properties in the surrounding area including the appellant. The direct impact includes burdening on-street parking, bus traffic, and infrastructure capacity.

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

- a. The Analysis and Decision is based upon an erroneous application of the short subdivision approval criteria at SMC 23.24.040.A including:

- i. Failure to conform to other applicable land use code provisions (.040.A.1), including failure to provide adequate access and adequate area to meet amenity area requirements and failure to allow for conformance to requirements of rowhouse development;
 - ii. Failure to provide adequacy of access for vehicles (.040.A.2), by failure to provide exclusive access for each of the proposed lots (23.84A.024);
 - iii. Failure to serve the public use and interests on account of failure to conform to other land use code provisions (.040.A.3);
- b. The Analysis and Decision lacks support by adequate reasoning in that the decision contains no findings of fact, the analysis is conclusory and fails to consider all applicable criteria and land use code provisions, and the decision fails to show how the decision criteria have been satisfied. The decision differs in no material respect from other decisions approving short plats in LR 1 zones.
- c. SDCI's approval of the challenged short plat and its approval of similar short plats in the LR 1 zone conflicts with purpose, intent, and requirements for rowhouse development.
- d. The decision fails to identify or require conditions to be applied in the granting of the subdivision to assure subsequent development resulting from the subdivision does not result in non-compliance with all relative sections. Especially the following:
 - i. SMC 23.84A.024 - "L" for easement access requirements;
 - ii. SMC 23.84A.032 – "R" (20) for rowhouse development rules;
 - iii. SMC 23.45.512 for Density Limits in Lowrise Zones (Figure 1).
 - iv. Tree Protection rules – preservation of existing trees (see Figure 2 on page 5).
- e. The decision intentionally ignores the developer's primary intent of the subdivision, which is to circumvent allowable zoning density by the use of a short plat subdivision. The SDCI does not typically approve of any development for a site of this size where the number of dwellings exceed the permissible calculated density of three dwellings on an LR1 Lot of this size. Reference http://www.kingcounty.gov/council/legislation/kc_code/22_Title_19A, which specifically states:
"19A.08.180 Circumvention of zoning density prohibited. A legal lot, which has been subject to a boundary line adjustment or created through a legally recognized land segregation process and is of sufficient land area to be subdivided at the density applicable to the lot, may be further segregated. However, such further segregation of the lot shall not be permitted if the total number of lots contained within the external boundaries of the lots subject to the original boundary line adjustment or the total number of lots contained within the external boundary of the parcel subject to the original land segregation, exceed the density allowed under current zoning. (Ord. 13694 § 53, 1999)."

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2 **3. Relief Requested.**

3 The Appellant requests that the Hearing Examiner remand the decision with instructions to prepare
4 a complete analysis and recommendation that has applied all of the criteria required to grant a
5 decision. This includes any of the following measures as allowed by the Hearing Examiner:

- 6 a. Vacation of the Analysis and Decision;
- 7 b. Correct the SDCI Director's failure to include conditions assuring compliance with
8 Land Use Code requirements.
- 9 c. Require a certified arborist evaluation to be submitted so that the Director may apply
10 the required criteria of whether the proposed division of land is designed to maximize
11 the retention of existing trees. This report must also consider all smaller trees that are
12 within environmentally critical areas.
- 13 d. Require a completed site plan with the existing trees shown that have the potential to
14 be retained, including alternative approaches to the lot subdivision so that the
15 Director may apply the required criteria of whether the proposed division of land is
16 designed to maximize the retention of existing trees.
- 17 e. Require a completed site plan showing the adequate width of easements for access
18 required for pedestrians, vehicles, utilities and fire protection as provided in Section
19 23.53.005, Access to lots, and Section 23.53.006, Pedestrian access and circulation.
- 20 f. Require a decision which is granted on a condition that subsequent development does
21 not exceed the allowed dwelling density of the parent lot (Figures 1 and 7).

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Filed on behalf of the Neighbors to 3641 22nd Ave West this Second day of January, 2018.

By: 
David Moehring, Neighbor to 3641 22nd Ave West

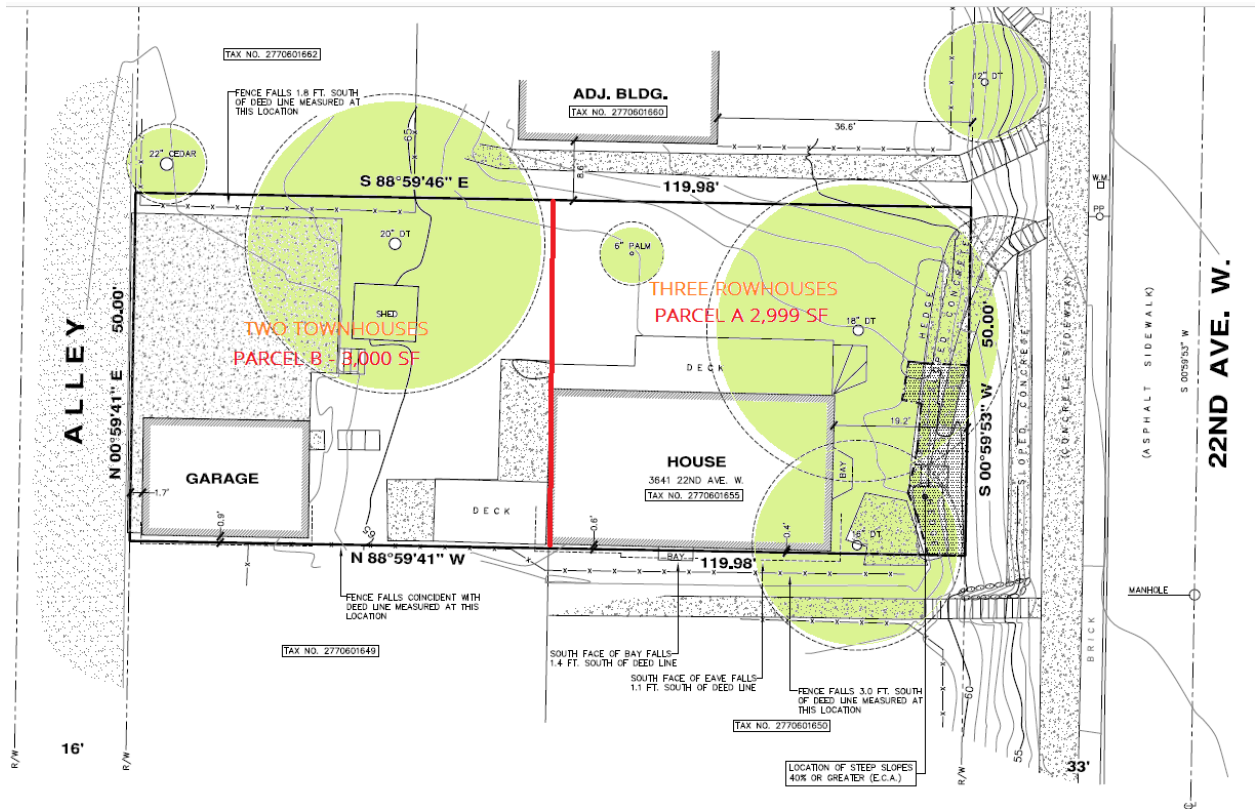


Figure 2- Composite development site showing added emphasis on existing trees relative to existing buildings that are scheduled to be demolished. Reference Figure 4.

Table A for 23.45.512 Density Limits in Lowrise Zones				
Zone	Units allowed per square foot of lot area by category of residential use (1)			
	Cottage Housing Development ⁽⁽¹⁾⁾ (2) and Single-family Dwelling Unit	Rowhouse Development ⁽³⁾	Townhouse Development ⁽⁽²⁾⁾ (4)	Apartment ⁽⁽³⁾⁾ (5)
LR1	1/1,600	1/1,600 or No limit.	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

(1) 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.

((1)) (2) See Section 23.45.531 for specific regulations about cottage housing developments.

(3) The density limit for rowhouse development in LR1 zones shall apply only on lots less than 5,000 square feet in size.

((2)) (4) 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.

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

Figure 1- SMC 23.45.512 Table A showing allowable dwelling density limits for an LR1 site.

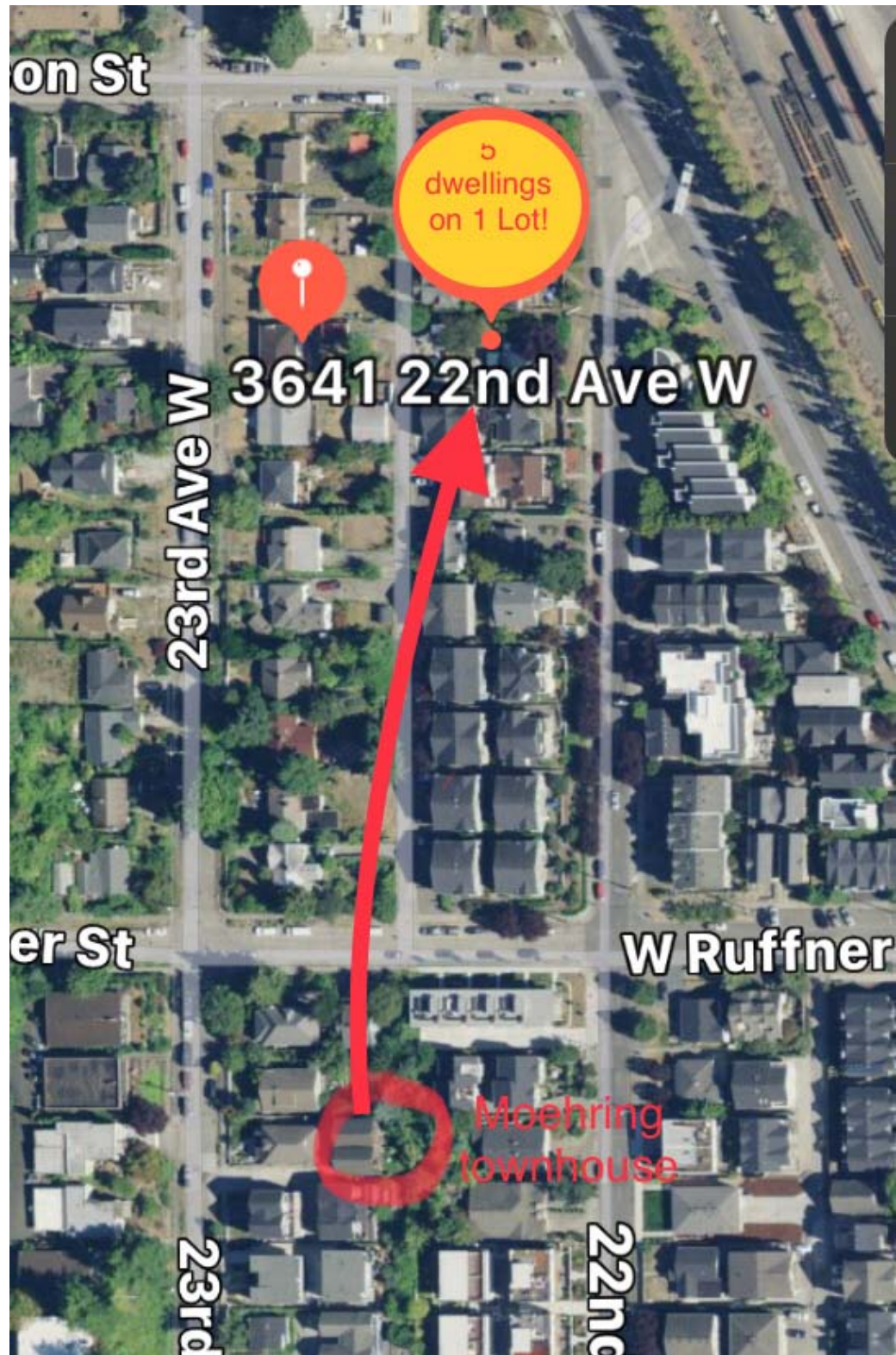


Figure 3- Context map showing location of proposed subdivision relative to appellant neighbor.



Figure 4- East-facing street facade of the Subject Property ; image taken in January 2018



Figure 5- On-street parking along 22nd Ave West - with stops for Bus Numbers 31 and 33 along both sides across from Subject Property. Photo taken on a Sunday afternoon in January 2018.



Figure 6 - On-street parking along 22nd Ave West - with stops for Bus Numbers 31 and 33 along both sides across from Subject Property.

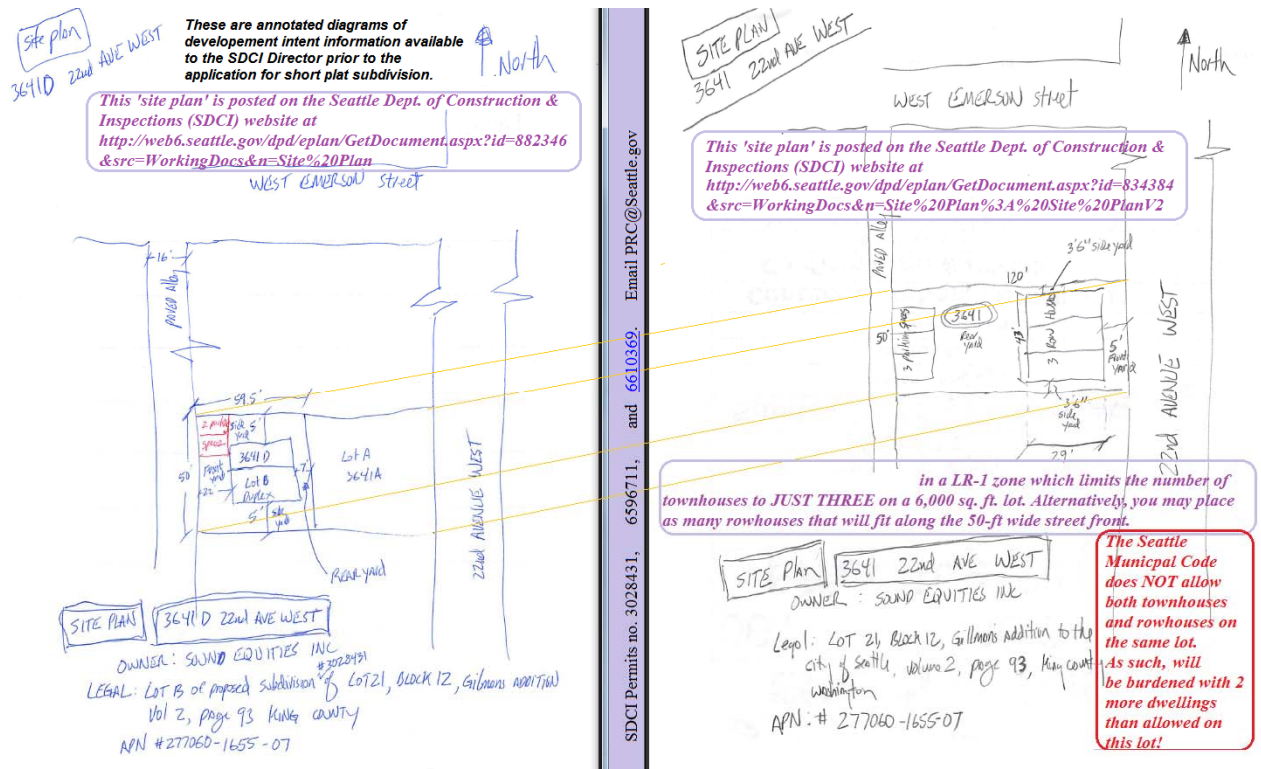


Figure 7- Annotated development intent diagrams available to the SDCI prior to the application for subdivision. Left- west rear portion of site; Right – east front portion + parking on west portion.