

January 12, 2018

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of:

Hearing Examiner File: MUP-18-001
Department Reference: 3028431

David Moehring, a Neighbor to 3641 22nd
Ave West, to the Short Subdivision to
create two parcels of land from the lot at
3641 22nd Avenue West
.

APPELLANT'S MOTION No. 2:
DECLARATION & MOTION FOR RE-
ASSIGNMENT OF THE HEARING
EXAMINER

I, David Moehring the Appellant, respectfully submit this request for the reassignment of the appeal MUP-18-001 to another Hearing Examiner.

Firstly, I am well over 18 years of age and competent to make this declaration.

This appeal appears to be recently assigned to be heard by a pro tem hearing examiner named Alison Moss. I do not feel that I will receive an impartial hearing before the assigned pro tem examiner and do ask that this matter be reassigned to another hearing examiner.

The attached shows that Alison Moss is a shareholder in the law firm of Schwabe Williamson & Wyatt. Their firm is quoted as being “embedded in the real estate industry” and their clients include “leaders in asset classes” involving residential development. This suggests that Ms. Moss or her firm may have represented developers and development companies in the past, and may not have prior perspectives of neighboring residents seeking full compliance of Seattle’s land use code. Reportedly, Alison Moss’s work with the firm includes working with the City of Seattle in developing housing strategies and regulations. It is uncertain if those regulations may be the very ones being considered in this appeal. Her website page states the following (emphasis added):

Alison Moss helps private residential and commercial developers, contractors, local governments, ports and individuals navigate complex land use and dispute resolution issues throughout the Pacific Northwest. With more than 34 years of experience in land use, she is an active force in advocating for clients in environmental and planning issues throughout the region. Alison’s clients appreciate her creative, collaborative solutions fueled by her in-depth industry knowledge, dispute resolution skills, and sense of humor and adventure.

Her business website includes an article that Ms. Moss has co-authored titled “*Subdivisions May Speed Up in Jurisdictions Near You*” dated October 6, 2017. It concludes by indicating “In the coming years, we are likely to see faster [subdivision] approvals statewide. This will save time,

money, and resources for local jurisdictions and builders in Washington.” Such an article and its conclusion suggest that expediting builder’s time and effort may be more important than assuring legal matters and land use codes have been adhered to. (Reference <https://www.schwabe.com/newsroom-publications-14793>)

This appeal involves challenging the Seattle Department of Construction and Inspections discretionary decision to grant a short plat subdivision without conditions. It involves a non-compliant practice of subdividing LR1-zoned lots in order to allow more dwelling units than what was originally allowed at the time of property purchase. Given that her firm is embedded in the real estate industry and its financial interests lie in securing and expediting real estate development approvals, it is apparent that Alison Moss may not be an impartial judge to the issues presented. Accordingly, as was done with a prior similar appeal, I request reassignment of this case to another Hearing Examiner.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "David Moehring", with a large, stylized loop at the end.

David Moehring
Dated January 12, 2018

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, via e-mail, of the attached David Moehring, the Neighbor to 3641 22nd Ave West **DECLARATION & MOTION FOR RE-ASSIGNMENT OF THE HEARING EXAMINER** to every person listed below, in the matter of the **LAND USE DECISION APPEAL** to the Short Subdivision to create two parcels of land from 3641 22nd Avenue West lot, Hearing Examiner File No. MUP-18-001.

- **Applicant:**

Brandon Gribben
Helsell Fetterman LLP
Email: bgribben@helsell.com
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- **Department:**

Joseph Hurley
Seattle Department of Construction & Inspections
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- **Office of the Hearing Examiner:**

City of Seattle
Seattle, WA 98124
hearing.examiner@Seattle.gov

Dated January 12, 2018

A handwritten signature in black ink, appearing to read 'David Moehring', with a large, loopy flourish at the end.

David Moehring
Appellant, Neighbor to 3641 22nd Avenue West
3444 23rd Ave West
Seattle WA 98199

Excerpts of web-postings by assigned pro tem examiner, Alison Moss

As reported on LinkedIn:

I help private residential and commercial developers, contractors, local governments, ports and individuals navigate complex land use and dispute resolution issues throughout the Pacific Northwest. With more than 34 years of experience in land use, I am an active force in advocating for clients in environmental and planning issues throughout the region. My clients appreciate my creative, collaborative solutions fueled by my in-depth industry knowledge, dispute resolution skills, and sense of humor and adventure.

As reported experience on Schwabe, Williamson & Wyatt

Growth Management Implementation

Assisted the City of Seattle in developing affordable housing strategies and regulations.

Listed under Agency Actions and Rulemaking

We have decades of experience working to shape regulations that impact Pacific Northwest industries, landowners and maritime interests. We help our clients build coalitions and develop information to influence and inform rulemaking and regulatory compliance. When all else fails, we use our know-how and trial experience to challenge agency actions, initiatives, municipal ordinances and other government action.

Listed under Land Use and Entitlement

Our land use team is known for working cooperatively with local governments and state and federal agencies to find innovative solutions to all types of land use permitting problems. On those occasions when speaking softly proves insufficient, we have the experience and skills to wield the "big stick" of litigation with precision and effectiveness.

Listed under Litigation & Dispute Resolution

We represent large and small companies in a broad range of business and commercial disputes, tort litigation, bankruptcy litigation and other civil disputes, working closely with our clients to understand their needs and priorities. Whether by securing early resolution through mediation, by winning dispositive motions, or by taking cases through trial and appeal, we seek to obtain the optimal result for every client.

Listed Under Real Estate

Embedded in the real estate industry

Schwabe has grown up with the real estate industry in the Northwest. For more than 100 years, we have assisted clients with signature projects throughout the region, including the building of the country's largest petroleum transloading facility and the leasing and sale of downtown Seattle's Exchange Building.

Known as one of the Northwest's premier real estate firms, we represent clients in all aspects of development, financing, ownership and disposition of commercial, industrial and office properties. Our focus is on what needs to happen—and what does not need to happen—to achieve client goals and complete a transaction effectively.

Diverse projects

Our broad understanding of the real estate industry, deep team and pragmatic approach help clients succeed in a diverse range of projects, including:

- Timberland transactions
- Energy projects
- Healthcare facilities
- Sustainability/conservation work
- Industrial developments
- Office projects
- Retail stores
- Lending
- Multifamily projects
- Condominium developments
- Municipal projects
- Assisted-living facilities
- Affordable-housing developments
- Residential developments
- Resort developments

Listed under Real Estate and Construction

With an industry-leading Real Estate and Construction team and considerable experience balancing private and public interests, Schwabe is partnered with developers, contractors and owners in building the future of the Pacific Northwest.

From a bare piece of land to the finished project, top developers and contractors rely on Schwabe to accomplish their goals

The Pacific Northwest is in a period of rapid development. Our clients call on us for support at every stage, from identification of raw land through sale or other disposition. Our clients are leaders in the following asset classes and industry subsets, and share Schwabe's commitment to building a better future for our neighborhoods, cities and the Pacific Northwest as a whole:

- Construction
- Office
- Retail and hospitality
- Health and senior care

- Mixed-use
- Residential development
- Industrial

Strong experience for a strong economy

The depth and breadth of our industry relationships in the primary real estate markets in the Pacific Northwest open doors, get deals done and help effectively resolve contract disputes. The collective experience of the Schwabe Real Estate and Construction team provides the clarity of focus and purpose to achieve our clients' goals in the most effective manner possible. We understand the tremendous risks our clients undertake in this industry, and the urgency with which each transaction or dispute must be addressed, and we consistently deliver practical, smart and efficient results.

A summary of her work with the firm

Permitting

- Secured approvals for retail, office and multifamily projects for a major landowner in downtown Bellevue.
- Represented large landowners in a comprehensive plan amendment, rezone and development agreement for a mixed-use project in Pierce County.
- Aided an industrial landowner in negotiation of substantial reduction in system development charges for a sanitary sewer.
- Advised the purchaser of the former Snoqualmie Mill in the annexation of the property to the City of Snoqualmie, adoption of a development agreement and defense of the zoning and development agreement before the Growth Management Hearings Board.
- Counseled numerous developers of urban infill projects.
- Permitted a large sand and gravel operation in Thurston County, working with state agencies and other shareholders and avoiding all appeals.

Growth Management Implementation

- Assisted the City of Seattle in developing affordable housing strategies and regulations.
- Assisted Island County in developing its full range of growth management implementation, including its comprehensive plan, zoning regulations, critical areas regulations, subdivision regulations, storm water regulations and concurrency regulations.
- Representing Pierce County in the defense of a community plan.

Ports

- Assisted Port of Skagit County in a wide range of critical areas regulations and in persuading regulatory agencies that drainage ditches should not be regulated as streams.
- Represented Port of Tacoma in Pierce County's adoption of its initial Growth Management Act (GMA) critical areas regulations.

-Counseled Port of Chehalis in Lewis County's adoption of its GMA comprehensive plan and development regulations as well as development of an industrial park.

Appeared for the Master Builders Association:

Pilchuck Audubon Association v. Snohomish County, GMHB 95-3-0047c .

LEGAL ARTICLES



Ideas Fuel Industries

Subdivisions May Speed Up in Jurisdictions Near You

October 6, 2017

As we all know, many areas of Washington are experiencing considerable growth. The Seattle metro region, in particular, grew approximately 1,100 people per week since 2010 [1]. People are moving to our state in droves, and housing production is having trouble keeping up [2].

In an effort to speed up approvals, the Washington Legislature approved Senate Bill 5674, allowing local governments to administratively approve final plats for long subdivisions [3]. Prior to SB 5674, the legislative body (city or county council or county board of commissioners) was required to approve final plats.

The Master Builders Association of King and Snohomish Counties ("MBA") testified in support of the bill in both the House and Senate; no one spoke in opposition. With the urging of the MBA and many local builders, a number of local governments in the Puget Sound region are welcoming the opportunity to make this change.

Subdivisions in a Nutshell

By way of background, a subdivision is a division of land into multiple lots. Subdivisions must pass through preliminary and final plat review. The preliminary plat review is extensive, with stormwater review often taking the longest. The local government considers environmental impacts of the project and provides multiple opportunities for public comment, generally including a public hearing. The hearing is typically held by a hearing examiner who must determine that appropriate provisions are made for the public health, safety, and general welfare; open space; parks and recreation; drainage; transportation; potable water; sewage disposal; schools; and features that assure safe walking conditions for students who walk to school.

Once a subdivision is out of preliminary plat review, the applicant's project goes through engineering review. Plat infrastructure and other required improvements such as landscaping are also built or bonded after preliminary plat review and before final plat approval. When the applicant has satisfied all conditions set forth in the preliminary plat approval, he or she may submit a final plat, which, once approved and recorded, creates the actual lots.

Problems Caused by Final Plat Approval Before SB 5674

WRITTEN BY



Kyler Danielson

Associate

[Email](#)

Alison Moss

Shareholder

[Email](#)

The purpose of final plat approval is to determine whether conditions in the preliminary plat approval have been satisfied. Final plat approval is not discretionary. Nevertheless, prior to the approval of SB 5674, final plat approval for long subdivisions required the legislative body approval or, as in some cities in Pierce County, approval by a hearing examiner following a public hearing. This step could add considerable time, particularly when there was more pressing business before the legislative body, such as budget adoption. It could also result in confusion. Members of the public might attend the meeting thinking that the legislative body or hearing examiner could impose additional requirements.

Changing the Process

As with short plats, final plats for long subdivisions may now be administratively approved. Local governments need to opt-in to the new approval process by amending their subdivision regulations. And many jurisdictions are doing just that.

Auburn was the first to adopt administrative approval; other local cities and counties have followed suit. The following are some select jurisdictions in the Puget Sound area that (often unanimously) approved ordinances to allow administrative final plat approvals:

<u>Jurisdiction</u>	
<u>Status</u>	
King County	
Ordinance in draft form Consideration and vote are forthcoming.	
Snohomish County	
Adopted July 26, 2017 Ordinance 17-045	
Pierce County	
In process Considered by the Planning Commission August 22, 2017	
Auburn	
Adopted June 19, 2017 Ordinance 6654	
Lynnwood	
Adopted August 14, 2017 Ordinance 3271	
Kent	
Adopted September 19, 2017 Ordinance 4252	
Renton	
In process Considered by the Planning Commission September 20, 2017	

Source: Master Builders Association of King and Snohomish Counties and relevant regulatory documents.

In the coming years, we are likely to see faster approvals statewide. This will save time, money, and resources for local jurisdictions and builders in Washington.

[1] Sarah Anne Lloyd, "The Seattle area has grown by more than 1,000 people per week since 2010," *Seattle Curbed*, Mar. 24, 2017, <https://seattle.curbed.com/2017/3/24/15055650/seattle-metro-population-growth/>.

[2] Monica Nickelsburg, "Booming Seattle maintains title as nation's hottest housing market for 8th month in a row," *Geekwire*, June 27, 2017, <https://www.geekwire.com/2017/booming-seattle-maintains-title-nations-hottest-housing-market-8th-month-row/> ("Despite countless cranes that dot the Seattle skyline, real estate development has not been able to keep up with the city's breakneck population gains.").