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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

DAVID M. MOEHRING,

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

Hearing Examiner File:
MUP-18-001

Department Reference: 3028431
3641 22nd Avenue West

APPLICANT’S RESPONSE IN
OPPOSITION TO APPELLANT’S
MOTION FOR REASSIGNMENT
OF THE HEARING EXAMINER

COMES NOW the applicant, Loren Landstrom of Sound Equities Incorporated (“Sound Equities”), by and through its undersigned attorney, Brandon S. Gribben of Helsell Fetterman LLP, and submits this response in opposition to appellant David Moehring’s (“Moehring”) motion for reassignment.

I. INTRODUCTION AND RELIEF REQUESTED

Moehring has filed a motion to reassign this case to a different hearing examiner based upon the alleged bias of Hearing Examiner Pro Tem Allison Moss. Because Moehring has failed to demonstrate that Examiner Moss cannot remain objective due to personal bias, prejudice, financial interest, or other substantial reason, the motion should be denied.

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II. STATEMENT OF FACTS

This matter concerns the appeal of a land use decision approving a short subdivision for the property located at 3641 22nd Avenue West, Seattle, WA. Shortly after the appeal was filed, Hearing Examiner Pro Tem Allison Moss was assigned to the appeal. Immediately after Examiner Moss was assigned, Moehring filed a motion to reassign the case to another hearing examiner because he alleged, without any basis, that Examiner Moss could not be an impartial arbiter of this proceeding. Moehring’s motion for reassignment should be denied because he has failed to demonstrate any of the elements identified under HER 2.12(b), which is a prerequisite before a case may be reassigned to a different hearing examiner.

III. STATEMENT OF ISSUES

Should the Motion for Reassignment be denied where Moehring has not met the requirements under HER 2.12 by failing to demonstrate that Examiner Moss cannot remain objective due to personal bias, prejudice, financial interest, or other substantial reason? Yes.

IV. EVIDENCE RELIED UPON

This motion is based upon the Decision, the Appeal, the Amended Appeal, the file in this matter and the exhibits attached hereto.

V. AUTHORITY

Hearing Examiner Rules of Practice and Procedure (“HER”) 2.12(b) provides the circumstances under which a matter may be reassigned to a different hearing examiner.

HER 2.12(b) – Disqualification or Recusal of an Examiner – states that:

(b) Prior to hearing, a party who reasonably believes that the Examiner assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion that a different Examiner be assigned to the matter. The request should be made at the earliest possible time, preferably no later than 7 business days prior to the day the hearing is to begin. The request must set forth the reasons

1 for the belief that the assigned Examiner cannot remain objective in hearing
2 the matter.

3 Moehring has failed to identify any personal bias, prejudice, financial interest, or other
4 substantial reason why Examiner Moss will not preside over an impartial hearing.

5 Moehring partially relies on Examiner Moss's firm biography,¹ for the proposition
6 that she works with developers and local governments. While this language is selectively
7 highlighted in Moehring's motion, he blatantly ignores the fact that her biography also states
8 that she helps "individuals navigate complex land use and dispute resolution issues
9 throughout the Pacific Northwest." To the extent that a firm biography is sufficient to
10 demonstrate bias, which it is not, Examiner Moss's firm bio does not indicate that she favors
11 developers over individuals, or vice versa. Thus, it is insufficient to demonstrate bias under
12 HER 2.12(b).

13 Moehring goes on to allege that an article² written last year by Examiner Moss
14 regarding subdivisions demonstrates bias. This argument is also unpersuasive. The article
15 does not concern, much less express an opinion, regarding approval of short subdivisions in
16 the City of Seattle. The article discussed the Washington Legislature's approval of Senate
17 Bill 5674 that allowed counties to administratively approve final plats for long subdivisions.
18 It did not discuss short subdivisions, much less short subdivisions in the City of Seattle.

19 Finally, Moehring argues that because Examiner Moss's firm, Schwabe Williamson
20 & Wyatt, has represented developers, that Examiner Moss's "financial interests lie in
21 securing and expediting real estate development approvals" and that she "may not be an
22 impartial judge to the issues presented." Moehring's motion is utterly devoid of any facts
23 that support this specious argument. He has failed to introduce any evidence that Examiner
24

25 ¹ A copy of Examiner Moss's firm bio is attached as Exhibit A.

² A copy of the article is attached as Exhibit B.

1 Moss has a financial interest in expediting building permits, or that she will not be an
2 impartial hearing examiner. For all of these reasons, the motion should be denied.

3 **VI. CONCLUSION**

4 Moehring has woefully failed to satisfy the requirements under HER 2.12(b) to
5 disqualify Examiner Moss and reassign the appeal to another hearing examiner. This
6 motion is nothing more than “judge shopping.” And motion for reassignment should be
7 denied.

8 Respectfully submitted this 16th day of January, 2018.

9
10 **HELSELL FETTERMAN LLP**

11 By: *s/ Brandon S. Gribben*

12 **Brandon S. Gribben, WSBA No. 47638**
13 **Attorneys for Applicant Sound Equities Incorporated**

EXHIBIT A

ALISON MOSS



Alison Moss

Shareholder
206-407-1563
amoss@schwabe.com

INDUSTRY FOCUS

Natural Resources
Real Estate and Construction
Transportation, Ports and Maritime

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

EDUCATION

University of Chicago
Law School
Juris Doctor, 1982

Radcliffe College
Bachelor of Arts, cum
laude, 1977

her in-depth industry knowledge, dispute resolution skills, and sense of humor and adventure.

ADMISSIONS

Washington State Courts

United States District
Court, Western District
of Washington

United States Circuit
Court for the Ninth
Circuit

United States Supreme
Court

OUTSIDE THE OFFICE

IDEAS FUEL INDUSTRIES

REAL ESTATE AND CONSTRUCTION

Subdivisions May Speed
Up in Jurisdictions Near
You

REAL ESTATE AND CONSTRUCTION

Sky Bridges are Making
a Comeback in These
Pedestrian-Friendly
Times

EXHIBIT B

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

WRITTEN BY



Kyler Danielson
Associate
Email



Alison Moss
Shareholder
Email

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

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:

Jurisdiction

Status

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.").

[3] "Short subdivisions" are divisions resulting in four or fewer lots, but cities and counties may increase the number of lots created in a short subdivision to nine. All other land divisions are simply "subdivisions," commonly referred to as long subdivisions. SB 5674 did not affect short subdivisions, which were already approved administratively.