

Hearing Examiner Ryan Vancil
February 7, 2018

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of:

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

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

APPELLANT'S RESPONSE TO
APPLICANT'S MOTION TO DISMISS

The Appellant, David Moehring, respectfully submits the attached timely response and three (3) appendices relative to the Applicant's Motion to Dismiss.

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

Dated February 7, 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 **response to the Applicant's Motion to Dismiss and appendices** 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.

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Dated February 7, 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

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of)	Hearing Examiner File:
)	MUP-18-001
DAVID MOEHRING, NEIGHBOR)	
TO 3641 22 ND AVE W)	
)	APPELLANT'S RESPONSE to the
SHORT PLAT SUBDIVISION)	MOTION to DISMISS
to Create Two Parcels of Land from)	
the Lot at 3641 22 nd Ave West)	
)	

Herein are the Appellant's responses to the Applicant's Motion to Dismiss. These responses are provided along with the Appellant's concern that the Applicant is not the actual owner of the property at 3641 22nd Ave West (hereafter the "Subject Property") and there is no record that the owner recorded by King County has authorized the Applicant to act on her behalf. As such, we would like to request for the Hearing Examiner to consider this Motion only after it has been demonstrated that the Applicant has a legitimate standing in the appeal in compliance with the Land Use Code (SMC 23.24.020.D and SMC 23.24.030.A.1 and 4). Applications for approval of a short subdivision shall include the name and address of owner(s) of the tract; and a certificate giving a full correct description of the lands divided as they appear on the short plat, including a statement that the short subdivision has been made with the free consent and in accordance with the desires of the owner or owners; and all short plats containing a proposed dedication must be accompanied by a title report confirming that the title of the lands as described and shown on the short plat is in the name of the owner signing the certificate or instrument of dedication.

1
2 **Responses to Hearing Examiner's Authority to this Appeal**

3 As demonstrated in the responses to follow, the Appellant maintains that the Hearing Examiner
4 indeed has all of the authority as granted by Hearing Examiner Rules 3.02(a). As posted on the
5 SDCI website for this application, it is evident that the Applicant is seeking to subdivide the
6 parent lot for the purpose to construct a duplex on the rear (alley-facing) portion of the lot and
7 three rowhouses on the front (street-facing) portion of the lot. The sketches provided by the
8 Applicant to the SDCI Director have been included in Figure 7 of the appeal for ease of
9 reference. These sketches have also been annotated for their significance relative to the appeal.
10 The Applicant's motion to dismiss intentionally ignores the full development intentions of the
11 Applicant which is available as a public record from the SDCI website for this proposed
12 development.

13 The Applicant should be required to answer with the appeal hearing if one of their purposes of
14 the short plat subdivision is to indeed construct a duplex and rowhouses as preliminarily
15 identified on the submitted site plans. If so, then they would be knowingly seeking to bypass the
16 land use code's rowhouse development rules per SMC 23.84A.

17
18 According to SMC 23.84A.032 – part "R" 20 states that "'Rowhouse development" means a
19 multifamily residential use in which all principal dwelling units on the lot meet the following
20 conditions:

- 21 a. each dwelling unit occupies the space from the ground to the roof of the structure in
22 which it is located;
23 b. no portion of a dwelling unit, except for an accessory dwelling unit or shared parking
24 garage, occupies space above or below another dwelling unit;
25

1 *c. each dwelling unit is attached along at least one common wall to at least one other*
2 *dwelling unit, with habitable interior space on both sides of the common wall, or abuts*
3 *another dwelling unit on a common lot line;*

4 *d. the front of each dwelling unit faces a street lot line;*

5 *e. each dwelling unit provides pedestrian access directly to the street that it faces; and*

6 *f. no portion of any other dwelling unit, except for an attached accessory dwelling unit,*
7 *is located between any dwelling unit and the street faced by the front of that unit.”*

8 (emphasis added).

9 Given the preliminary intent of this development does not comply with item ‘c’ – as all of the
10 proposed dwellings on the lot are not attached to each other, and it does not comply with item ‘f’
11 which prohibits a dwelling unit between the street and any other dwelling unit, then all of the
12 Director’s criteria for granting a short plat subdivision has not been accomplished. The “Analysis
13 and Decision of the Director of Seattle Department of Construction and Inspections” for this (and
14 every) application 3028431 dated December 18, 2017 specifically requires the Director to use
15 eight (8) criteria to determine whether to grant, condition, or deny a short plat. The first criteria
16 states” “1. Conformance to the applicable Land Use Code Provisions, as modified by Chapter
17 23.24.”

18 No special exceptions have been noted within the Director’s decision or identified elsewhere in
19 compliance with the requirements of SMC 23.24.040. As such, this short plat is not exempt from
20 the requirements of row house development rules identified in SMC 23.84A. Nor is this
21 development exempt from the parking location as identified in SMC 23.45.510.C.3 and the LR
22 density limits for LR1 sites with townhouse (duplex) developments as identified in SMC
23 23.45.512.

24 This appeal thereby demonstrates specific land-use compliance concerns that may hardly be
25 dismissed as not having the merit to justify review by a Hearing Examiner. The items of merit
include:

- Failure of the decision to require conditions of the land use code on the subsequent development after the short plat;
- Failure of the decision to review an arborist evaluation so that the proposed division of land is designed to maximize the retention of existing trees;
- Failure of the decision to consider exclusive or dedicated access for vehicles to each of the proposed short plats of the lot;
- Failure of the decision to required proposed new lots shall either have sufficient street frontage or provide an access easement from the proposed new lot or lots to the alley that meets the standards for the zone which the property is located;
- Failure of the decision to serve the public use and interests by permitting the proposed division of land which is granted without conditions; and failure to be accountable to the same development standards as the other neighboring properties within the LR1 zone as resided within by the Appellant.

Responses to Motion Comments

In order to assist in facilitating the review of the Motion dated 29 January, 2018, the Appellant has included herein partial duplications of the document. The responses are meant to include that relevant to the entire motion, regardless if the duplications of the Motion are included for reference herein or not.

1	A. <u>The Decision correctly concludes that the short plat meets the approval criteria under SMC 23.24.040.A.</u>
2	SMC 23.24.040.A sets forth the approval criteria when approving short plats.
3	Moehring alleges that the Decision does not conform to the following land use requirements
4	under the Code:
5	<ul style="list-style-type: none"> • Failure to provide adequate access and adequate area to meet amenity area
6	requirements and failure to conform to rowhouse development requirements.
7	<ul style="list-style-type: none"> • Failure to provide adequate vehicle access.
8	<ul style="list-style-type: none"> • Failure to serve the public use and interest by failing to conform to other land
9	use code provisions.

Figure 1- From Page 4 of the Applicant's Motion, Item A

Item A01 – issue raised (see Figure 1 above): Short Plat decision has not demonstrated applying the necessary criteria for approval.

Code Reference: SMC 23.24.040.A

Does item have merit to appeal: Yes

Explanation: A granting of a short plat subdivision may be appealed to the Hearing Examiner per SMC 23.76.004 Table A Land Use Decision Framework. The Director's decision to unconditionally grant this Type II discretionary approval is ripe for an appeal due to multiple oversights. Per the code, the Director's decision on the short plat subdivision are applied to subsequent development applications, and for that reason the decision must not be taken lightly assuming that issues will be worked out at some later time. SMC 23.24.050.C. states that "a short plat shall be governed *by the terms of approval of the Director's decision*, and any lots created thereunder shall be deemed to meet lot requirements imposed by this Land Use Code for a period of no less than five years unless the City Council finds that a change in circumstances has occurred" (emphasis added).

The decision should be made by the Director only upon a completed application for Short Plat Subdivisions. This application is not complete per the short plat requirements of SMC 23.24.020.

1 This application does not indicate the location and dimensions of existing buildings in relation to
2 the proposed short subdivision; nor does this application include the specific location and
3 description of all trees at least 6 inches in diameter measured 4.5 feet above the ground, with
4 complete scientific and common names of species indicated. As indicated in the appeal, there is
5 no indication to the form of **vehicular access to both lots** being proposed. SMC 23.24.035.D.5
6 requires the condition that "There is identifiable access for the public and for emergency
7 vehicles." Applications for Short Plats are to include "Roads not dedicated to the public must be
8 clearly marked on the face of the short plat." per SMC 23.24.030.A.3. The Director, therefore, is
9 unable to apply the criteria simply because the application has not provided the necessary
10 information and is incomplete.

11 SMC 23.24.040.A states "The Director shall, after conferring with appropriate officials, use
12 several criteria to determine whether to grant, condition, or deny a short plat:"

13 The first criteria requires the short plat to demonstrate "Conformance to the applicable Land Use
14 Code provisions, as modified by this Chapter 23.24;" To this criteria the Director's analysis
15 states that "The short subdivision meets all minimum standards or applicable exceptions set forth in
16 the Land Use Code." Yet other than this blanket declaration, there is no analysis provided by the
17 Director to demonstrate that the Land Use Code has been met. As we will review further in this
18 response, the created lots do not comply with the minimum requirements of a lot.

19 The second criteria requires the short plat to demonstrate "Adequacy of access for pedestrians,
20 vehicles, utilities, and fire protection as provided in Section 23.53.005, Access to lots, and
21 Section 23.53.006, Pedestrian access and circulation". To this criteria the Director's analysis
22 states that "This short subdivision will provide pedestrian and vehicular access (including emergency
23 vehicles), and public and private utilities". Per SMC 23.53.025, access for emergency access vehicles
24 is to be at least 20 feet wide: "Vehicle Access Easements serving at least three but fewer than ten
25 single-family units, or multifamily dwelling units should be at least 20 feet wide". To the contrary,
the alley boundary line to boundary line width is shown on the site survey to be only 16 feet
(Chadwick & Winters sheet 3 of 5 dated 06-28-17.) Thus, although the parent lot and proposed front
APPELLANT RESPONSE TO APPLICANT MOTION - 6

1 lot complies with this requirement, the subdivision creating a rear lot along the alley does not provide
2 the required lot access for emergency vehicles as indicated in the Director's analysis.

3 The appeal takes no issue to the third criteria that requires adequacy of drainage, water supply,
4 and sanitary sewage disposal.

5 The appeal does, however, take issue on the fourth criteria that require the short plat to
6 demonstrate "whether the public use and interests are served by permitting the proposed division
7 of land." To this criteria the Director's analysis states that "The public use and interest are served
8 by the proposal since all applicable criteria are met and the proposal creates the potential for
9 additional housing opportunities in the City." However, as indicated above, the applicable criteria
10 have not been met in accordance with the requirements of the code. Further, the analysis suggests the
11 proposal creates additional housing opportunities. Yet whether a LR1-zoned site of 6,000 sq. feet is
12 subdivided by a short plat or not subdivided, its calculated number of dwellings or development
13 potential does not increase beyond the limits established with SMC 23.45.512. Given the lot areas is
14 fixed in size, the only way to increase the number of housing opportunities on this lot is by changing
its zoning from LR1 to LR2 or higher.

15 The appeal takes no issue (except relative to trees) on the fifth criteria that requires
16 "Conformance to the applicable provisions of Section 25.09.240, Short subdivisions and
17 subdivisions, in environmentally critical areas."

18 However, the sixth criteria requires the short plat to demonstrate "Whether the proposed division
19 of land is designed to maximize the retention of existing trees." At least one of the existing trees
20 exists within a 40% steep slope along the street side of the property (Reference Figure 2 with the
21 Notice to Appeal. The above mentioned site plan identifies a toned area and labels it "Location
22 of Steep Slopes 40% or Greater (E.C.A.)." In error, to this criteria the Director's analysis states
23 "The site is not subject to the provisions of Section 25.09.240 since it is not located in a riparian
24 corridor, wetland, wetland buffer, or *steep slope area*. There does not appear to be any
25 reasonable alternative configuration of this plat that would *better maximize the retention of trees*
than the proposed plat." (Emphasis added.) Yet, there is no record of the Director asking for

1 alternative configurations of the plat, nor do the existing trees show up on the proposed short plat
2 site plan as referenced above. The Applicant's Motion to Dismiss also shows this site plan within
3 their Exhibit B as well as footnote 6 on page 4. To the contrary, both easements shown on the
4 site plan conflict with existing trees if one overlays the existing site survey with the proposed
5 short plat plan. Specifically, there is a 5-foot-wide Seattle City Light easement proposed to be
6 beneficial to the proposed rear parcel along the south side of the front parcel. Yet, there exists a
7 16" diameter deciduous tree located within this easement that would require removal to provide
8 the proposed SCL easement. Likewise, there is a 5-foot-wide Pedestrian Access and Utilities
9 Easement shown along the entire length of the development site, including a 20" diameter
10 deciduous tree (DT) within its path. This tree would also be removed in order to provide an
11 access easement. Neither of these two easements would be required if the lot was subdivided
12 longitudinally resulting in two 25-foot wide by 119.98-foot long lots. Vehicle access would not
13 be an issue as well given both lots would have direct access to the street and to the alley. Thus,
14 the analysis stating that "there does not appear to be any reasonable alternative configuration of
15 this plat that would better maximize the retention of trees" fails to apply the required criteria.
16 Moreover, although the Applicant indicates several times within the Motion that the short plat is
17 made independently of subsequent development plans, the Director states "Future construction
18 will be subject to the provisions of SMC 23.44.008, 25.11.050 and 25.11.060 which sets forth
19 tree planting and exceptional tree protection requirements." In other words, the Director has
20 deferred the required consideration to maximize the protection of existing trees within the short
21 plat to a subsequent building permit application that will be bound and limited by the decision
22 rendered with the short plat. Instead, the decision should provide only the conditional granting of
23 a short plat where easements are shown to avoid existing mature and exceptional trees.
24 Therefore, for the many reasons identified above, the motion to dismiss the appeal relative to this
25 issue should be denied.

10 As an initial matter, this is an appeal of a short plat to subdivide one parcel of land
11 into two separate lots. The Permit is a land use permit, not a construction permit. It does
12 not allow development of the land. While SMC 23.24.040.A.2 does require that the short
13 plat provide adequate access, Moehring does not identify how or why the short plat fails to
14 comply with this requirement. He also ignores the fact that the short plat *does* provide for
15 pedestrian access.⁶

Figure 2- From Page 4 of the Applicant's Motion, Item A

Item A02 – issue raised (see Figure 2 above): The Permit is a Land Use Permit, not a Construction Permit.

Does item have merit to appeal: Yes

Code Reference: SMC 23.24.040.A-

Explanation:

First, the Appellant has no concerns relative to pedestrian access. It was simply asked that the site plan be completed showing adequate easements per SMC 23.53.005 and 23.53.006.

Second, this appeal is not concerning the construction permit, but only the land use. Of concern to the Motion, however, is the Applicant suggesting that the approval of the Land Use Permit does not need to consider issues with the future development of the land. This is especially concerning given the Applicant has made their development intentions known. The applicant's approach suggests that the site development may be phased by beginning with the short plat subdivision, then subsequently seeking a determination on the SEPA, then completing the building permit on the three row-houses and the separately filed building permit on the duplex, then applying for two separate unit lot subdivisions on each of the subdivided lots.

In fact, several building permit applications have already been made:

- SDCI #6610369 "Construction of Townhouse Building" dated 10/11/2017; and
- SDCI #6596711 "Establish use rowhouse and construct new townhouse building, per plan" dated 10/19/2017; and

- SDCI #6625086 “Demolish existing residence and garage structure, subject to field inspection” dated 10/19/2017.

The Applicant states that this land use permit does not allow development of the land, and therefore, implies that the Director’s decision should not bind the development to land-use code requirements such as vehicular access, row-house development rules, or maximizing the protection of existing trees.

This logic, however, makes an interpretation of the code that is not substantiated within the text of the land use code. To the contrary, phased development is only allowed by SMC 23.47A.007 - Major Phased Developments. This project does not qualify for phased development thresholds which include (1) a minimum site size of five acres, and (2) the first phase of the development consists of at least 100,000 square feet in gross building floor area. In addition, Director’s Rule 18-2017 also clarifies that development like this must be considered as one rather than the proposed sequencing of phased permits; (as in this case with the apparent attempt to bypass the land use code rowhouse development rules). The development intent (reference the submitted building permit applications and Appeal Figure 7) shows all the parking to be provided on the rear lot off the alley. The Director’s Rule indicates that “two or more projects under review at the same time are treated as a single development proposal if parking for a development proposal, whether parking is required or not, is proposed to be provided (or partially provided) on the site of another development proposal.” This Subject Property proposes just that.

Therefore, the motion to dismiss based on this appeal is independent of proposed subsequent development should be denied. The Director’s must apply the appropriate land-use conditions to the granting of the short plat.

4 requirements. Amenity area requirements are not part of the short plat approval
5 requirements and are not a valid objection to the Decision. The amenity area requirements
6 are based upon what is ultimately developed on the property; it is not dictated by the land
7 use permit. And Moehring has failed to identify what the amenity area requirements are, or
8 how they are purportedly inadequate.

Figure 3- From Page 5 of the Applicant's Motion, Item A

Item A03 – issue raised (see Figure 3 above): Amenity Area requirements.

Does item have merit to appeal: Yes

Code Reference: SMC 423.28.030 and 7A.024 and 23.73.016.

Explanation: The appeal does not request relief relative to amenity area requirements. However, per SMC 23.24.035.A, “Every short subdivision shall include adequate provision ...public open spaces for general purposes as may be required to protect the public health, safety and welfare.”

Moreover, before a Short Plat may be granted, the SDCI must determine that “no lot contains insufficient area and dimensions to meet the minimum standards for development.” Per SMC 23.28.030, the minimum standards for development include lot size limits, density limits, and other development standards in the code. Even though the proposed street-side Parcel A measures 60.45-feet by 50-feet, it includes at least two easements of 5-feet in width, totaling 604.5 square feet. The front 7 feet of the southeast corner of the lot is a designated steep slope ECA, deducting an approximate 140 square feet. The remaining area for development on the front parcel is approximately 2,275 square feet. Even less area will remain should two mature 16-foot dripline diameter Cherry Plum trees be preserved. Per SMC 23.45.512 Table A footnote 7, the maximum density of row-houses on lots less than 3,000 square feet in LR1 zones is one dwelling per 1,600 square feet. Considering just the easements, only 1 row-house would be allowed¹. The alley-side parcel with 20-feet wide access easement would yield less area.

¹ (3,022 sq. ft. parcel less 604 sq. ft. easements equals 2, 419 sq. ft. development area divided by the lot area to dwelling ratio of 1,600 equates to 1.5 dwellings.)

10 because the short plat fails to provide exclusive access for each of the two lots. Moehring
 11 cites to SMC 23.84A.024, presumably referring to the definition of "Lot," which provides
 12 that:
 13 "Lot" means, except for the purposes of a TDR sending lot for Landmark TDR
 14 or housing TDR, a sending lot for South Downtown Historic TDR or South
 15 Downtown Historic TDP, and a sending lot for open space TDR, a parcel of
 16 land that qualifies for separate development or has been separately developed.
 17 A lot is the unit that the development standards of each zone are typically
 18 applied to. A lot shall abut upon and be accessible from a private or public
 19 street sufficiently improved for vehicle travel or abut upon and be accessible
 from an exclusive, unobstructed permanent access easement. A lot may not be
 divided by a street or alley (Exhibit A for 23.84A.024).
 The definitions section of the Code is intended to provide clarity; it is not a requirement for
 short plat approval, a valid objection to the Decision, or basis for appeal.

Figure 4- From Page 5 of the Applicant's Motion, Item A

Item A04 – issue raised (see Figure 4 above): Short Plat fails to provide exclusive access for each of the two lots and comply with minimum lot requirements.

Does item have merit to appeal: Yes

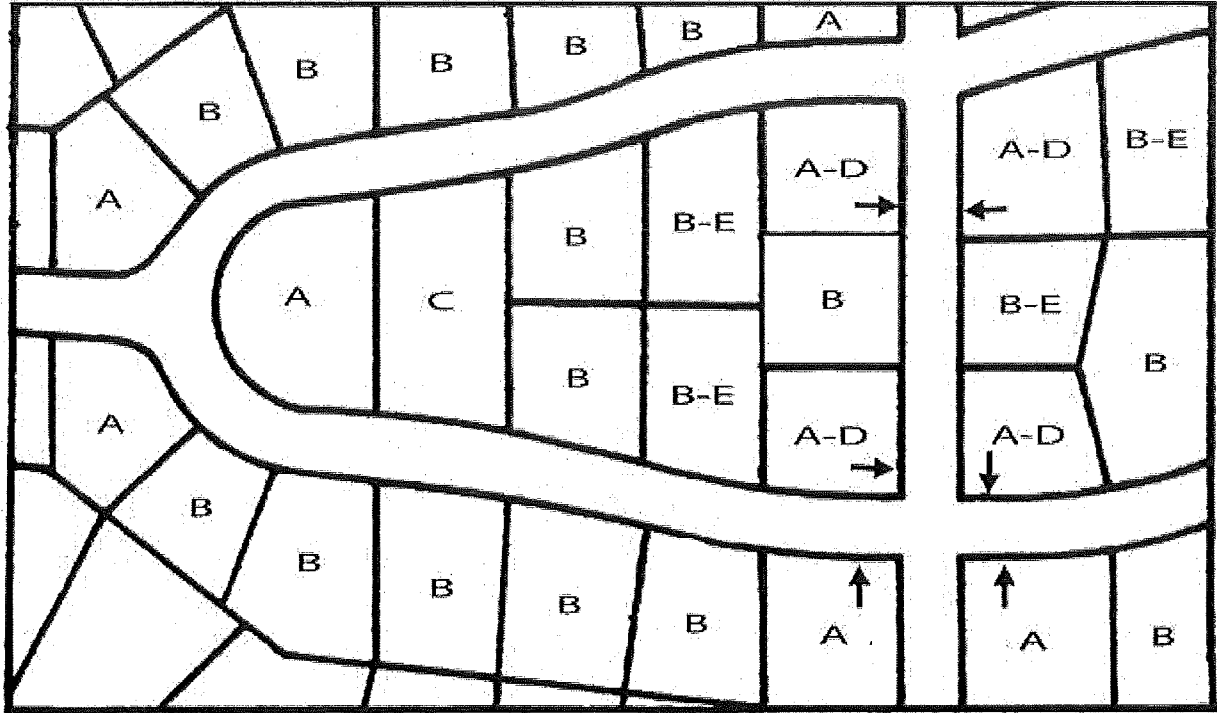
Code Reference: SMC 23.84A.024, 23.53,010 (Appendix 3), and 23.53.025

Explanation:

According to SMC 23.84A.001 - Applicability and interpretation, part A, states "The definitions in this chapter provide the meanings of terms used in this title, except as otherwise provided by this title or as the context may otherwise clearly require." The definitions established within section 23.84A applies to all of Title 23. As such, the Applicant's suggested interpretation that the Land-Use code definitions are not a requirement of the short plat is not a valid statement.

The case of Faben Point Neighbors v. City of Mercer Island, 102 Wn.App, 775, 11 P.3d 322 (Div. 1 2000) decided that because municipal ordinances are the equivalent of a statute, they are evaluated under the same rules of construction. Again, the Applicant's interpretation that SMC section 23.84A would not apply to this short plat is an erroneous interpretation.

In order to have a legitimate lot from the short plat subdivision, vehicular access has been identified as a requirement in several applicable areas of the land-use code. The first example is referenced by the Applicant as Exhibit A of SMC 23.88A.024 (see Figure 5 below). Graphically



- A = Corner lot
- B = Interior lot
- C = Through (or double frontage) lot
- D = Reversed corner lot
- E = Key lot
- = Indicates front lot line

Figure 5- Exhibit A of SMC 23.84A.024 that shows how a "lot shall abut upon and be accessible from a private or public street sufficiently improved for vehicle travel or abut upon and be accessible from an **exclusive, unobstructed permanent access easement.**"

this Land Use code Exhibit demonstrates how any lot (including those formed by a short plat subdivision) "shall abut upon and be accessible from a private or public street sufficiently improved for vehicle travel or abut upon and be accessible from an *exclusive, unobstructed permanent access easement.*" (emphasis added.)

1 The approximate 16-foot wide alley right-of-way behind the Subject Property does not substitute
2 as a street. Per SMC 23.53.010 Table A, the minimum required right-of-way width for a street
3 within an LR1-zoned area is 50-feet. The rear lot does not abut upon a street nor is there shown
4 on the application an exclusive, unobstructed permanent access easement. As such, the Director
5 has not applied the criteria of considering the Land-Use code in the decision to unconditionally
6 grant short plat subdivision. What is typically done with LR1 parent lots of this configuration is
7 to provide unit lot subdivisions so the issue of a legitimate lot is avoided. A 'unit lot' is not a lot,
8 as identified in the code. A "Unit Lot" means one of the individual divisions created from the
9 subdivision of a parent lot pursuant to Section 23.22.062 or Section 23.24.045. In lieu of
10 accepting conditions to the granting of a short plat, the Applicant could pursue a unit lot
11 subdivision in order to provide access to each dwelling on the parent lot.

12 This appeal and Motion response cites the lack of vehicular access to the proposed rear lot for
13 emergency vehicles. SMC 23.24.035.D.5 requires the condition that "There is identifiable access
14 for the public and for emergency vehicles." Additionally, this Short Plat has not identified other
15 means of vehicular access, such as "Roads not dedicated to the public [which] must be clearly
16 marked on the face of the short plat." per SMC 23.24.030.A.3.

17 The motion to dismiss this appeal relative to this issue should be denied.

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20	SMC 23.24.040.A.2, which sets forth the approval criteria for short plats, requires
21	adequate access for vehicles as provided under SMC 23.53.005. SMC 23.54.005 (Access to
22	lots), subsection A.1 (Street or private easement abutment required) states that: "For
23	residential uses, at least 10 feet of a lot line shall abut a street or a private permanent vehicle
24	access easement meeting the standards of Section 23.53.025, or the provisions of subsection
25	23.53.025.F for pedestrian access easements shall be met." The short plat meets this

Figure 6- From Page 5 of the Applicant's Motion, Item A

23 **Item A05** – issue raised (see Figure 6 above): Short Plat decision fails to provide vehicular
24 access.

25 Does item have merit to appeal: Yes

APPELLANT RESPONSE TO APPLICANT MOTION - 14

Code Reference: SMC 23.24.035-

Explanation: As indicated in the prior item (Item A04), this short plat does not meet the land use code requirements for each lot to have exclusive access. Per SMC 23.24.035.D, vehicular access to new lots shall be from a dedicated street unless the Director permits (with special conditions) access by a permanent private easement. No private easement for vehicular access has been shown. There is no identifiable access for the public and for emergency vehicles.

Accordingly, the motion to dismiss this appeal due to lack of merit must be denied.

12	of analysis. SMC 23.76.020 – Director's decisions on Type I and Type II Master Use
13	Permits – governs Type II decisions, which includes approval of short plats. It states, in
14	part, as follows:
15	Master Use Permit Review Criteria. The Director shall grant, deny, or
16	conditionally grant approval of a Type II decision based on the applicant's
17	compliance with the applicable SEPA policies pursuant to Section 25.05.660,
18	and with the applicable substantive requirements of the Seattle Municipal Code
19	pursuant to 23.76.026...
20	The Code is clear: findings of fact and a particular level of analysis are not required. That
21	being said, the Decision sufficiently analyzes the short plat and provides sound reasoning for
22	its approval.

Figure 7- Page 6 of the Applicant's Motion; Item B

Item B01 – issue raised (see Figure 7 above): Sufficient analysis for a decision.

Does item have merit to appeal: Yes

Code Reference: SMC 23.24.040-and 25.11.050

Explanation: The Applicant identifies decisions for Type I and Type II Master Use Permits. Per the Director's published analysis, this appeal is relative to that stated "Short Subdivision – to create two parcels of land." The Applicant has not clearly identified what code is being referenced relative to this decision, nor has the Applicant defined how the decision sufficiently analyzes the short plat and has provided sound reasoning. Unless the applicant's legal representative has been designated to represent the SDCI Director, it would be appropriate for the City to justify the claimed thoroughness to their analysis. As identified in the 'Conclusion' of

the Director's analysis, all one can glean in terms of the Land Use Planner's review are these unjustified statements:

- "... the above criteria have been met."
- "The short subdivision meets all minimum standards or applicable exceptions set forth in the Land Use code."
- "The short subdivision will provide ...vehicular access (including emergency vehicles), and public and private utilities."
- "The site is not subject to the provisions of Section 25.09.240 since it is not located in a ... steep slope area."
- "There does not appear to be any reasonable alternative configuration of this plat that would better maximize the retention of trees than the proposed plat."

Given the application has failed to meet all of the criteria, has failed to meet the standards of the Land Use code, has failed to provide emergency vehicle access to the rear lot, has failed to recognize the steep slope, and has failed to demonstrate or consider alternatives to maximize the retention of exceptional and existing trees, the motion to dismiss this appeal should be denied.

C. The Decision does not authorize any development of the short plat.

Moehring argues, incorrectly, that the short plat "conflicts with [the] purpose, intent, and requirements for rowhouse development."⁷ Again, the Decision merely approves the short plat, which subdivides one parcel of land into two separate lots. The Permit is a land use permit and does not authorize or allow any particular development on the Site. Thus, it cannot conflict with the requirements for rowhouse developments because it does not authorize *any* type of development on the Site, including rowhouses.

Figure 8- Pages 6 and 7 of the Applicant's Appeal, Item C

Item C01 – issue raised (see Figure 8 above): Short Plat does not authorize development.

Does item have merit to appeal: Yes

Code Reference: SMC 23.28.030 and 23.47A.007-

Explanation: The Applicant has failed to indicate in their Motion that the Short Plat is one of several active applications for the interdependent development of the parent lot. As indicated in response to item A02, the Short Plat is simply to facilitate concurrent development applications initiated in October 2017:

- SDCI #6610369 "Construction of Townhouse Building" dated 10/11/2017; and
- SDCI #6596711 "Establish use rowhouse and construct new townhouse building, per plan" dated 10/19/2017; and
- SDCI #6625086 "Demolish existing residence and garage structure, subject to field inspection" dated 10/19/2017.

In fact, by checking the SDCI public record for this King County Assessor Parcel #: 2770601655, there exist development site plans under the presumptive addresses of '3641 A 22ND AVE W' and '3641 B 22ND AVE W' posted without dates on 5/15/2017 and 7/28/2017 (reference <http://www.seattle.gov/dpd/toolsresources/Map/default.htm>). The application for the Discretionary Land Use Action (#3028431) followed on 7/31/2017. Although it is correct that the Short Plat will not authorize any type of development of the site, it is a fact that this Short Plat is mandatory for the SDCI reviewers to approve the concurrent building applications to construct townhouses and row-houses on a single Interior Lot. Thus, the motion to dismiss this appeal without applying land-use conditions to subsequent development should be denied.

D. There is no authority for conditioning approval of the short plat on what might be developed in the future.

Moehring goes on to argue that the Decision fails to condition the short plat to ensure that future development will comply with the following requirements:

- SMC 23.84A.024 – "L" for easement access requirements;
- SMC 23.84A.032 – "R" (20) for rowhouse development rules;
- SMC 23.45.512 for density limits in lowrise zones; and
- Tree protection rules – preservation of existing trees.

Figure 9 - Page 7 of the Applicant's Appeal, Item D

Item D01 – issue raised (see Figure 9 above): Conditioning approval for Land-Use Code.

Does item have merit to appeal: Yes

Code Reference: As noted.

Explanation: The Director's decision must consider the land use code.

The motion to dismiss this appeal by ignoring the applicable requirements of the land use code on lots and subdivisions is contradictory to requirements of the Director's Analysis and, therefore, should be denied.

E. The King County Code does not govern approval of short plats in the City of Seattle.

Finally, Moehring argues, in essence, that the Decision does not comply with King County Code ("KCC") 19A.08.180. The KCC does not apply to this Site or the short plat approval process. That process is governed by the SMC. While the KCC governs the development of property in unincorporated King County, it does not govern property located in the City of Seattle. Property located within the boundaries of the City of Seattle are governed by the SMC. This is not a valid objection to the Decision.

Figure 10- Page 8 of the Applicant's Appeal, Item E

Item E01 – issue raised (see Figure above): Short Plat decision fails approval criteria.

Does item have merit to appeal: Possible

Code Reference: KCC 19A.08.180-

Explanation: If the King County rules do not apply to properties within King County when the Seattle Municipal Code is mute on the issue, then the Appellant trusts the Hearing Examiner to determine if the argument applies.

F. The Hearing Examiner does not have authority under SMC 23.76.022 to award numerous forms of relief that Moehring requests.

In the Amended Appeal, Moehring seeks six separate, or alternative, forms of relief.

They are:

- a. Vacation of the Analysis and Decision.
- b. Correct the SDCI Director's failure to include conditions assuring compliance with the Land Use Code requirements.
- c. Require a certified arborist evaluation to be submitted so that the Director may apply the required criteria of whether the proposed division of land is designed to maximize the retention of existing trees. This report must also consider all smaller trees that are within environmentally critical areas.
- d. Require a completed site plan with the existing trees shown that have the potential to be retained, including alternative approaches to the lot subdivision so that the Director may apply the required criteria of whether the proposed division of land is designed to maximize the retention of existing trees.
- e. Require a completed site plan showing the adequate width of easements for access required for pedestrians, vehicle, utilities and fire protection as

Figure 11- Page 8 of the Applicant's Appeal, Item F

Item F01 – issue raised (see Figure above): Hearing Examiner Forms of Relief.

Does item have merit to appeal: Yes

Code Reference: SMC 23.76.022-

Explanation: Per SMC 23.76.022, the Hearing Examiner's Scope of Review is "inclusive to the requested relief. The Hearing Examiner shall entertain issues cited in the appeal that relate to compliance with the procedures for Type II decisions as required in this Chapter 23.76, compliance with substantive criteria, determinations of nonsignificance (DNSs), adequacy of an EIS upon which the decision was made, or failure to properly approve, condition, or deny a permit based on disclosed adverse environmental impacts, and any requests for an interpretation included in the appeal or consolidated appeal pursuant to Section 23.88.020.C.3."

There is also precedent as there is an active appeal that has identified similar issues and similar requested relief that proceeds this appeal.

Therefore, the motion to dismiss this appeal based on the appeal being outside the scope of a hearing examiner should be denied

1	provided in Section 23.53.005, Access to lots, and Section 23.56.006.
2	Pedestrian access and circulation.
3	f. Require a decision which is granted on a condition that subsequent
4	development does not exceed the allowed dwelling density of the parent lot.
5	The Hearing Examiner does not have authority to grant the vast majority of the relief
6	requested by Moehring.
7	SMC 23.76.022 - Administrative reviews and appeals for Type I and Type II Master
8	Use Permits -- subsection C.10, provides that:
9	C. Hearing Examiner Appeal Procedures
10	10. Hearing Examiner's Decision. The Hearing Examiner shall issue a written
11	decision, including written findings and conclusions supporting the decision,
12	within 15 days after closing the record. <i>The Hearing Examiner may affirm,</i>
13	<i>reverse, remand, or modify the Director's decision.</i> The Director and all parties
	of record shall be bound by the terms and conditions of the Hearing Examiner's
	decision. (emphasis added)

Figure 12- Page 9 of the Applicant's Appeal, Item F

Item F02 – issue raised (see Figure 12 above): Short Plat decision fails approval criteria.

Does item have merit to appeal: Yes

Code Reference: SMC 23.24.040.A-

Explanation: Reference the response to Item A03.

The motion to dismiss this appeal issue should be denied

14 It is axiomatic that the Hearing Examiner does not have any greater authority than SDCI to
15 condition or modify a project. For this reason, the Hearing Examiner does not have
16 authority to grant the relief sought in subsection (b) through (f).

17 The first request for relief sought by Moehring is to vacate the Decision. While the
18 Hearing Examiner does have this authority under SMC 23.76.022.C.10, for the reasons
19 discussed above, the Amended Appeal should be dismissed because it is without merit on its
20 face and the Decision should be affirmed.

21 Next, Moehring requests that the Decision be modified to include conditions
22 ensuring that the short plat complies with the Code. The Amended Appeal fails to identify
23 any Code provision applicable to short plat approvals that is being violated. Thus, Moehring
24 has failed to identify any basis for conditioning the short plat.

Figure 13 from Page 9 of the Applicant's Motion, Item F-

Item F03 – issue raised (see Figure 13 above): Short Plat decision fails approval criteria.

Does item have merit to appeal: Yes

Code Reference: SMC 23.76.022-

Explanation: As indicated within this extensive and detailed response document, there are numerous issues of merit to this appeal. Code sections that have been violated have been identified in the appeal. Accordingly, the motion to dismiss relative to this issue is not justified.

1 Moehring then request, under subsections (c) and (d), that the Hearing Examiner
2 award certain relief to demonstrate that the short plat is designed to maximize the retention
3 of trees. While one of the short plat approval criteria (SMC 23.24.040.A.6) concerns
4 whether “the proposed division of land is designed to maximize the retention of existing
5 trees,” Moehring fails to allege in the Amended Appeal that the short plat fails to meet this
6 requirement. Because Moehring has failed to raise this issue in his Amended Appeal, the
7 Hearing Examiner does not have authority to award this relief. Regardless, the short plat is
8 designed to maximize the retention of trees, and Moehring fails to allege, much less identify,
9 how the short plat fails not meet this requirement.

10 Moehring goes on to argue that the Hearing Examiner should require a site plan that
11 shows the various easements for access, utilities, etc. The site plan⁸ clearly demonstrates the
12 various easements across the Site, which satisfies the applicable code criteria.

Figure 14- from Page 10 of the Applicant's Appeal, Item F

Item F04 – issue raised (see Figure 14 above): Requested relief on existing trees.

Does item have merit to appeal: Yes

Code Reference: SMC 23.24.040, criteria item 6-

Explanation: Item 'd' of the requested relief (page 4 of the amended appeal) clearly states that the proposed Short Plat decision has not considered the retention of existing trees. It states "Require a completed site plan with the existing trees shown that have the potential to be retained, including alternative approached to the lot subdivision so that the Director may apply the required criteria of whether the proposed division of land is designed to maximize the retention of existing trees." Note that the site plan included within the Applicant's Motion to Dismiss as Exhibit B has removed the trees so that it is not possible to conduct an analysis. Therefore, the motion to dismiss this appeal issue on tree retention should be denied.

13	Finally, Moehring argues that the Decision should condition subsequent
14	development on the lot. As discussed at length above, the Decision only approves the short
15	plat, which divides one parcel of land into two lots. It does not authorize any construction
16	on the Site. Thus, there is no authority to modify the Decision to condition future
17	development of the short plat.

Figure 15 - from Page 10 of the Applicant's Appeal, Item F

Item F05 – issue raised (see Figure 15 above): Condition future development on the site.

Does item have merit to appeal: Yes

Code Reference: SDCI Tip 213-

Explanation: As indicated earlier, the Director is must apply the designated criteria to determine whether to grant, condition, or deny a short plat. The first criteria is conformance with the applicable Land Use Code provisions. A determination on conformance may only be determined with the completed – rather than piecemeal – land use application. SDCI Tip document 213A updated February 10, 2016 (Appendix 1) identifies the "Application Requirements for Short Subdivisions and Unit Lot Subdivisions." Page 2 Item 9 lists all the information that must be

1 included within the Short Plat application. It states that the Applicant needs to include several
2 items on the survey and a site plan drawings including the following (with emphasis added):

- 3 a. Parent lot boundary lines with dimensions,
- 4 b. Unit lot lines with dimensions,
- 5 c. *Proposed structure footprint(s) of roof overhangs, bay windows, chimneys, etc.,*
- 6 d. *Required private open space/private amenity space,*
- 7 e. *Dimensions of any parking spaces located outside of a structure,*
- 8 f. Existing curb cuts to be altered or removed,
- 9 g. Shows all existing improvements on the site,
- 10 h. Notes structures and features to be removed,
- 11 i. *Identifies any critical areas on the site, and*
- 12 h. Indicates any easements, covenants or deed restrictions that may affect development.

13 Even though the Director's decision is on the Short Plat, the Application Requirements are clear
14 in terms of what information needs to be submitted so that a proper decision may be rendered.
15 Given the Applicant is interpreting the submittal requirement different from what has been
16 identified by the Department, the motion to dismiss this appeal should be denied.

17 **G. The Amended Appeal should be dismissed because it was brought**
18 **merely to secure delay.**

19 Under HER 3.02(a), the Hearing Examiner may dismiss an appeal prior to the
20 hearing if the appeal is brought merely to secure delay. Moehring has filed numerous land
21 use appeals in the short time since he moved to Seattle. Many of those appeals concerned
22 property that was located miles away from his townhome in Magnolia. As far as the
23 applicant is aware, each of those land use appeals concerned many of the same issues that
24 were raised in this appeal. And each of those appeals were dismissed prior to a hearing.
25 Moehring is well aware that the issues raised in his Amended Appeal have no merit, because
2 he has raised them many times before. Because it is readily apparent that Moehring brought
3 this appeal merely to secure delay, the Amended Appeal should be dismissed on that basis
4 as well.

5 Figure 16- from Pages 10 & 11 of Applicant's Motion, Item G

1
2 **Item G01** – issue raised (see Figure 16 above): Intent to Cause Delay.

3 Does item have merit to appeal:

4 Code Reference:

5 Explanation: The Applicant claims that the appeal is merely to cause a delay to the project based
6 on numerous appeals, including two short plat appeals submitted within a week of each other in
7 southeast Ballard, about 2.5 miles from the Appellant's place of residence. As an architect who
8 has a good understanding of the land-use code, to come to a conclusion that the motive is to
9 delay development is a simple fabrication and non-genuine attempt to dismiss valid concerns.

10 This appeal is the Appellant's fifth, with the first related to the same neighboring development
11 immediately at the toe of a steep slope below the Appellant's residence (MUP-16-016 and MUP-
12 17-024). The second two were on behalf of sets of owners in Ballard (MUP-17-023 and MUP-
13 17-024), given the Appellant's role with Ballard's Baker Street Community Group. Living in a
14 townhouse within an LR1 area, the Appellant has no reservations against density within Seattle,
15 as long as it is the appropriate density for the zone. The appellant attempts to be proactive rather
16 than reactive regarding his concerns as public record for this project shows that David Moehring
17 had attempted to bring to the SDCI's attention of the noncomplying use of short plats to build
18 behind row-houses back in August 3, 2017 (Appendix 2). The Director's lack of applying all of
19 the criteria to grant a short plat directly impacts the neighborhood that the appellant has chosen
20 to live. The Hearing Examiner is Washington's prescribed means of assuring that the Department
21 may be held accountable for their decisions.

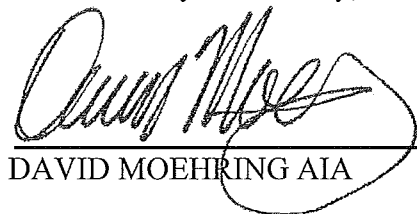
22
23
24
25 The motion to dismiss this appeal on the basis to cause delay issue should be denied.

1
2 Conclusion

3 The Applicant's motion to dismiss lacks support in the Land Use Code and should be denied.
4 Relief should be granted to the Appellant to continue with the scheduled hearing.

5 Dated this Sixth day of February, 2018

6
7
8 By:


DAVID MOEHRING AIA