

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-18-001

Department Reference: 3028431
3641 22nd Avenue West

APPLICANT AND OWNER'S LIST
OF WITNESSES AND EXHIBITS

COMES NOW the applicant and property owner Sound Equities Incorporated ("Sound Equities"), who intends to call the following witnesses and introduce the following exhibits, but reserves the right to not call one or more of these witnesses and not introduce one or more of these exhibits as the Owners determine to be appropriate at the hearing.

I. WITNESSES

1. Loren Landerholm. Mr. Landerholm is the applicant for permit number 3028431 and owner of the property located at 3641 22nd Avenue West. He is expected to testify regarding the facts of this case and all aspects of the project. Mr. Landerholm is expected to testify for approximately 15 minutes.

2. Ryan Ringe. Mr. Ringe the principal and consulting arborist at Arbor Options Tree Consulting. He is expected to testify regarding the facts of this case, the

1 arborist report he drafted and trees located on the property. Mr. Ringe is expected to testify
2 for approximately 30 minutes.

3 3. Rod Novion. Mr. Novion is the principal of the Novion Group and a licensed
4 architect in Washington state since 1988. He is expected to testify regarding the facts of this
5 case, and the proposed development of the property. Mr. Novion is expected to testify for
6 approximately 30 minutes.

7 4. Bill Mills. Mr. Mills is a Strategic Advisor and Land Use Planner Supervisor
8 at SDCI. He is expected to testify about SDCI's interpretation and application of the Seattle
9 Land Use Code, including the definition of "exclusive easement," as well as other permitting
10 and land use issues. Mr. Mills is expected to testify for approximately 30 minutes.

11 5. Joseph Hurley. Mr. Hurley is a Land Use Planner at SDCI and he drafted the
12 Decision that is being appealed. He is expected to testify regarding the facts of this case,
13 including the Decision he drafted. Mr. Hurley is expected to testify for approximately 30
14 minutes.

15 6. Cheryl Waldman. Ms. Waldman is a Land Use Team Supervisor with SDCI.
16 She is expected to testify regarding the facts of this case and SDCI's approval of the short
17 subdivision. Ms. Waldman is expected to testify for approximately 15 minutes.

18 II. EXHIBITS

- 19 1. Director's Decision dated December 18, 2017.
- 20 2. Appeal dated January 2, 2018.
- 21 3. Amended Appeal dated January 7, 2018.
- 22 4. Short plat.
- 23 5. Ryan Ringe resume.
- 24 6. Arborist report dated October 17, 2017.
- 25 7. Overhead view of neighborhood from King County Parcel Viewer.

- 1 8. Plan set for front parcel.
- 2 9. Plan set for rear parcel.
- 3 10. Land use forum meeting minutes from May 7 2003 and July 11, 2006.
- 4 11. Land Use Interpretation No. 95-001 for the property located at 2409 29th
- 5 Avenue West.
- 6 12. Hearing Examiner Decision in the Matter of the Appeal of Sunset Addition
- 7 Neighbors Association, Hearing Examiner File: S-95-004.
- 8 13. Each and every document listed by Moehring in his list of exhibits.
- 9 14. Each and every document listed by SDCI in its list of exhibits.
- 10 15. All documents publicly available at <http://web6.seattle.gov/dpd/edms/> for
- 11 project number 3028431.

12 **III. RESERVATION OF RIGHTS**

13 By identifying a particular witness or exhibit, Sound Equities does not concede and,

14 specifically reserves the right to object, that the same or similar witnesses and exhibits are

15 not relevant to the two remaining appeal issues and should not be considered by the Hearing

16 Examiner or admitted into evidence. Sound Equities also reserves the right to present

17 additional witnesses and exhibits and to elicit additional testimony from the witnesses listed

18 herein to rebut, impeach and respond to testimony and exhibits presented by other parties in

19 this matter.

20 Sound Equities further reserves the right to introduce any exhibit listed as an exhibit

21 by another party in this matter, to introduce illustrative exhibits and to utilize copies of Code

22 and other provisions of law. Withdrawal of a listed witness or exhibit listed by another party

23 will not preclude Sound Equities from calling that witness or utilizing that exhibit.

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Respectfully submitted this 5th day of April, 2018.

HELSELL FETTERMAN LLP

By: s/ Brandon S. Gribben
Brandon S. Gribben, WSBA No. 47638
Attorneys for the Applicant and Owner Sound Equities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 5, 2018, the foregoing document was sent for delivery on the following party in the manner indicated:

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
Alayna.johnson@seattle.gov

Department Contact:
Joseph Hurley
SDCI
PO Box 34019
Seattle, WA 98124

☐ Via first class U. S. Mail
☐ Via Legal Messenger
☐ Via Facsimile
☐ Via Email to
joseph.hurley@seattle.gov

s/ Kyna Gonzalez
Kyna Gonzalez, Legal Assistant

EXHIBIT 1



CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS

Application Number: 3028431
Applicant Name: Loren Landerholm
Address of Proposal: 3641 22nd Avenue West

SUMMARY OF PROPOSED ACTION

Land Use Application to subdivide one parcel into two parcels of land. Proposed Parcel sizes are: A) 3,024 sq. ft. and B) 2,975 sq. ft. Existing structures to be demolished.

The following approval is required:

Short Subdivision - to create two parcels of land.
(Chapter 23.24, Seattle Municipal Code)

SITE AND VICINITY

Site Zone: LR1 (Lowrise 1)

Site Description: The site is in an LR1 zone, just off Gilman Avenue W., approximately 1000 feet southwest of Fisherman's Terminal.

BACKGROUND

The site was granted relief from Steep Slope development standards by the SDCI Geotechnical Engineer on June 29, 2017: "Based on a review of the submitted information and the City GIS system, SDCI concludes that the ECA Steep Slope Area in the eastern region of the property was created by previous legal grading associated with right-of-way improvements. Consequently, that area qualifies for Relief From Prohibition On Steep Slope Development, as described in SMC 25.09.090B2a. Neither an ECA Steep Slope Area Variance, or an Exception, are required for this application. Except as described herein, the remaining Environmentally Critical Areas requirements apply."



PUBLIC COMMENT:

The public comment period ended on August 16, 2017. Comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to the review process. Comments were also received that are beyond the scope of this review and analysis per SMC 23.24. (Related to code compliance, density, architectural context and character, construction impacts.)

I. ANALYSIS – SUBDIVISION

General short subdivision standards: Pursuant to SMC 23.24.040, the Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition, or deny a short plat:

1. *Conformance to the applicable Land Use Code provisions, as modified by Chapter 23.24;*
2. *Adequacy of access for pedestrians, vehicles, utilities and fire protection as provided in Section 23.53.005, Access to lots, and Section 23.53.006, Pedestrian access and circulation;*
3. *Adequacy of drainage, water supply and sanitary sewage disposal;*
4. *Whether the public use and interests are served by permitting the proposed division of land;*
5. *Conformance to the applicable provisions of Section 25.09.240, Short subdivisions and subdivisions, in environmentally critical areas;*
6. *Whether the proposed division of land is designed to maximize the retention of existing trees;*
7. *Conformance to the provisions of Section 23.24.045, Unit lot subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of single-family dwelling units, townhouse, rowhouse, cottage housing developments, and existing apartment structures built prior to January 1, 2013, but not individual apartment units, or any combination of the above types of residential development, as permitted in the applicable zones; and;*
8. *Every lot except unit lots and lots proposed to be platted for individual live-work units in zones where live-work units are permitted, shall conform to the following standards for lot configuration, unless a special exception is authorized under subsection 23.24.040.B:*
 - a. *If a lot is proposed with street frontage, then one lot line shall abut the street for at least 10 feet; and*
 - b. *No lot shall be less than 10 feet wide for a distance of more than 10 feet as measured at any point; and*
 - c. *No proposed lot shall have more than six separate lot lines. The lot lines shall be straight lines, unless the irregularly shaped lot line is caused by an existing right-of-way or an existing lot line; and*
 - d. *If the property proposed for subdivision is adjacent to an alley, and the adjacent alley is either improved or required to be improved according to the standards of Section 23.53.030, then no new lot shall be proposed that does not provide alley access, except that access from a street to an existing use or structure is not required to be changed to alley access. Proposed new lots shall either have sufficient frontage on the alley to meet*

access standards for the zone in which the property is located or provide an access easement from the proposed new lot or lots to the alley that meets access standards for the zone in which the property is located.

Conclusion:

Based on information provided by the applicant, referral comments from SDCI and other City Departments, and review and analysis by the Land Use Planner, the above criteria have been met.

The short subdivision meets all minimum standards or applicable exceptions set forth in the Land Use Code. This short subdivision will provide pedestrian and vehicular access (including emergency vehicles), and public and private utilities.

Adequate provisions for drainage control, water supply and sanitary sewage disposal will be provided for each lot and service is assured, subject to standard conditions governing utility extensions.

The short plat application has been reviewed by Seattle Public Utilities and a Water Availability Certificate (WAC) was issued on August 7, 2017. The site is not subject to the provisions of Section 25.09.240 since it is not located in a riparian corridor, wetland, wetland buffer, or 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.

Future construction will be subject to the provisions of SMC 23.44.008, 25.11.050 and 25.11.060 which sets forth tree planting and exceptional tree protection requirements.

The public use and interest are served by the proposal since all applicable criteria are met and the proposal creates the potential for additional housing opportunities in the City.

DECISION –SHORT SUBDIVISION

The proposed Short Subdivision is **GRANTED**.

CONDITIONS – SHORT SUBDIVISION

None.

Signature: Joseph Hurley, Land Use Planner Date: December 18, 2017
Seattle Department of Construction and Inspections

JH:bg

Hurley/3028431.docx

IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by SDCI within that three years or it will expire and be cancelled. (SMC 23-76-028) (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at prc@seattle.gov or to our message line at 206-684-8467.

EXHIBIT 2

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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 WAS 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

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2 **3. Other Appellants:**

3 *NOTE: Due to the Christmas and New Years' holidays, the Appellants' representative*
4 *requested on December 20, 2017 an additional day to submit the appeal. That request was*
5 *denied. The list of neighbors affected by the decision will not be officially identified until*
6 *after they meet the evening of January 2, 2018. Therefore, the below list will be amended*
7 *according to Hearing Examiner Rules.*

8 Home-Owner(s): MARK and STACEY MARRON
9 Address: 3637 22ND AVE W
10 Email:

11 Home-Owner(s): SERGEI SHINKAREV
12 Address: 3643 22ND AVE W
13 Email:

14 Home-Owner(s): HOLLY ASHINHURST
15 Address: 3645 22ND AVE W
16 Email:

17 Home-Owner(s): SCOTT and KATERYNA ADAMS
18 Address: 3626 23RD AVE W
19 Email:

20 Home-Owner(s): JEFF and SHELLEY LINCOLN
21 Address: 3653 22ND AVE W

22 Home-Owner(s): DAVID and KATHERINE STONE
23 Address: 3632 23RD AVE W
24 Email:

25 Home-Owner(s): BETTY GREENE
26 Address 1: 3646 23RD AVE W
Address 2: 3642 23RD AVE W
Email:

Home-Owner(s): SIMON PATRICK and JANESEA STYCK
Address: 3636 23RD AVE W
Email:

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 appellants live within residences adjacent to and near the site of 3641 22nd Avenue West (hereafter the "Subject Property"). The proposed development will adversely affect the appellants 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 to of light and air to surrounding properties, which would impair use and enjoyment of their properties. The short plat granted without conditions to control overdevelopment of a property based on it's LR1 zone is unjust to those who own properties in the surrounding area – 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

- 1 amenity area requirements and failure to allow for conformance to
2 requirements of rowhouse development;
- 3 ii. Failure to provide adequacy of access for vehicles (.040.A.2), by failure to
4 provide exclusive access for each of the proposed lots (23.84A.024);
- 5 iii. Failure to serve the public use and interests on account of failure to conform
6 to other land use code provisions (.040.A.3);
- 7 b. The Analysis and Decision lacks support by adequate reasoning in that the decision
8 contains no findings of fact, the analysis is conclusory and fails to consider all
9 applicable criteria and land use code provisions, and the decision fails to show how
10 the decision criteria have been satisfied. The decision differs in no material respect
11 from other decisions approving short plats in LR 1 zones.
- 12 c. SDCI's approval of the challenged short plat and its approval of similar short plats in
13 the LR 1 zone conflicts with purpose, intent, and requirements for rowhouse
14 development.
- 15 d. The decision fails to identify or require conditions to be applied in the granting of the
16 subdivision to assure subsequent development resulting from the subdivision does
17 not result in non-compliance with all relative sections. Especially the following:
- 18 i. SMC 23.84A.024 - "L" for easement access requirements;
- 19 ii. SMC 23.84A.032 – "R" (20) for rowhouse development rules;
- 20 iii. SMC 23.45.512 for Density Limits in Lowrise Zones (Figure 2).
- 21 iv. Tree Protection rules (see Figure 1 on last page).
- 22 e. The decision intentionally ignores the developer's primary intent of the subdivision,
23 which is to circumvent allowable zoning density by the use of a short plat
24 subdivision. The SDCI does not typically approve of any development for a site of
25 this size where the number of dwellings exceed the permissible calculated density of
26 three dwellings on an LR1 Lot of this size. Reference
[http://www.kingcounty.gov/council/legislation/kc_code/22 Title 19A](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.

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

By: _____
David Moehring, representing Neighbors to 3641 22nd Ave West

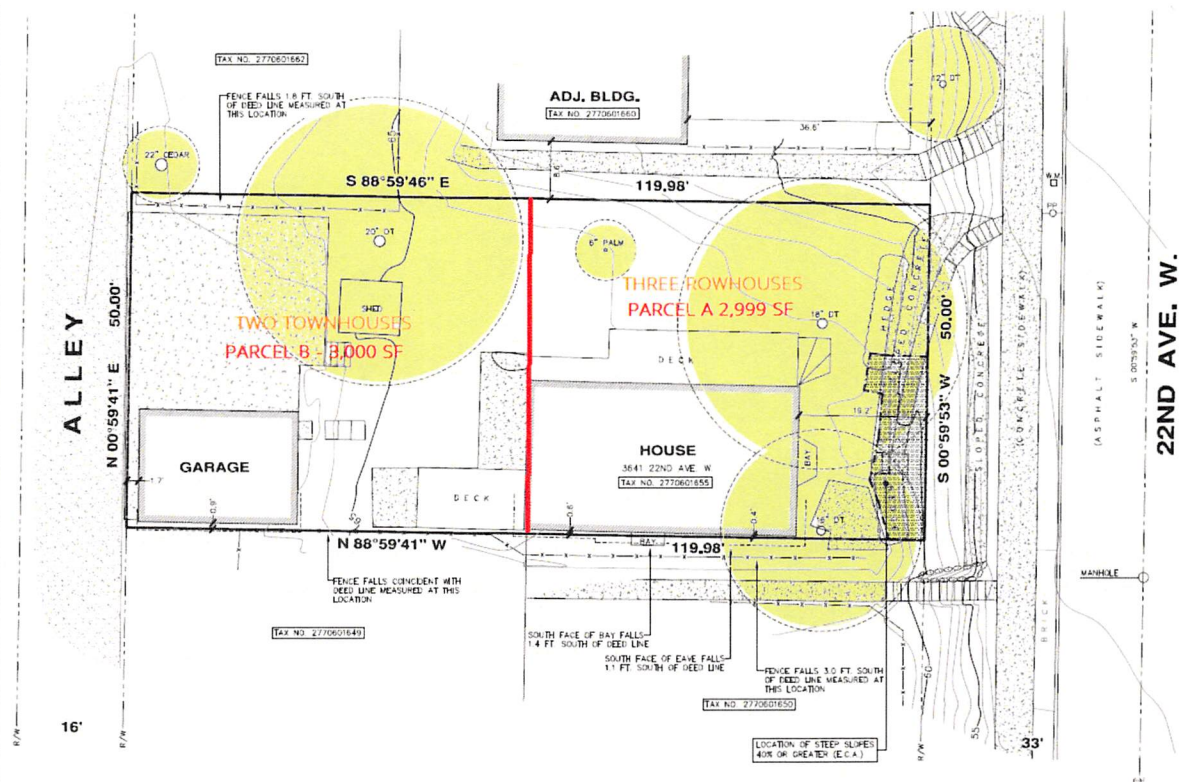


Figure 1- Composite development site showing added emphasis on existing trees relative to existing buildings that are scheduled to be demolished.

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

EXHIBIT 3

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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 23nd 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 23nd 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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27 Filed on behalf of the Neighbors to 3641 22nd Ave West this Second day of January, 2018.

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30 By: 

31 David Moehring, Neighbor to 3641 22nd Ave West

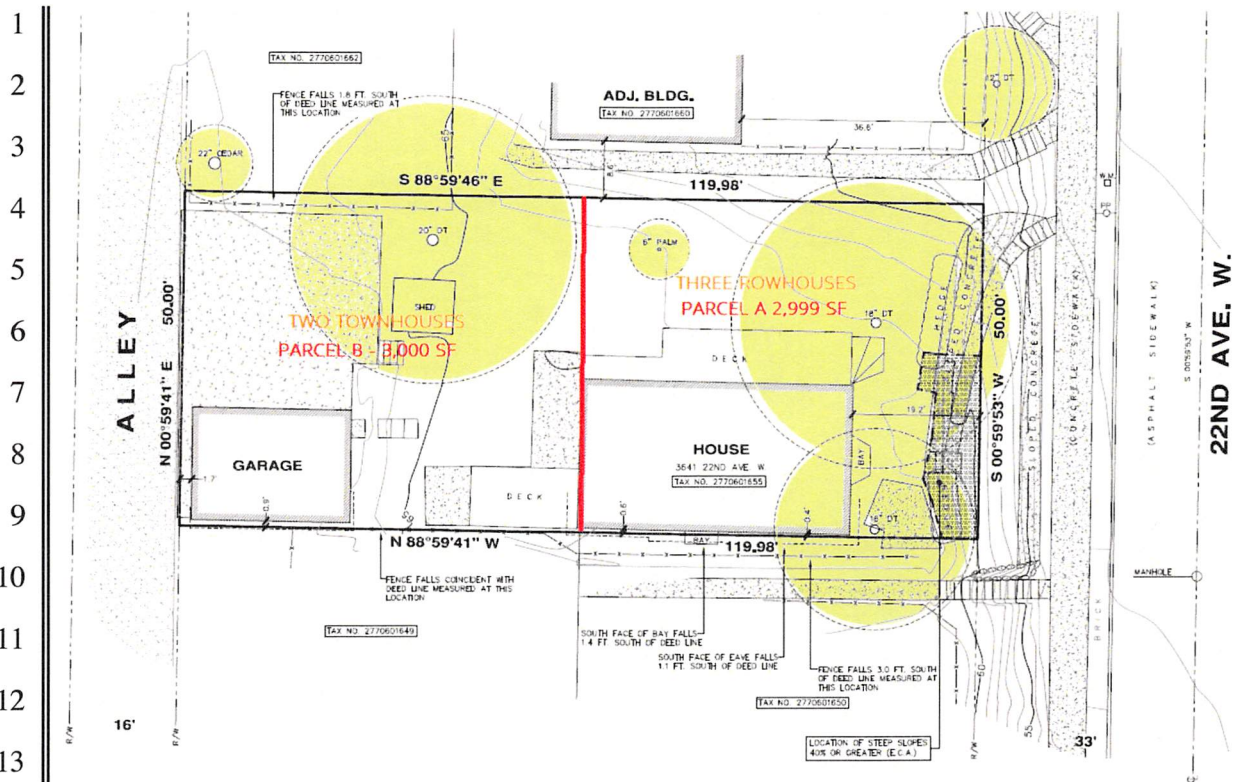


Figure 2- Composite development site showing added emphasis on existing trees relative to existing buildings that are scheduled to be demolished. Reference Figure 4.

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.

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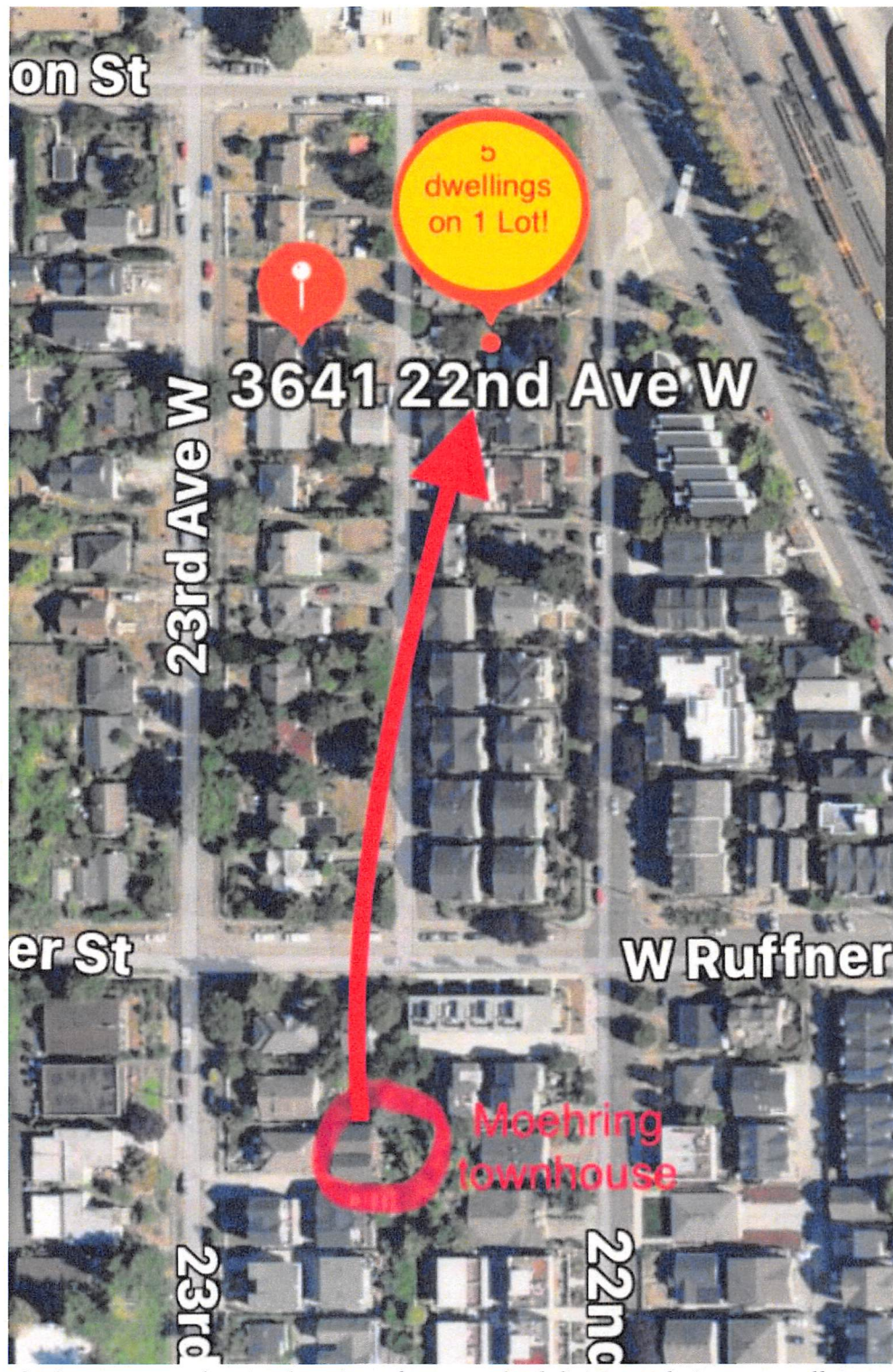


Figure 3- Context map showing location of proposed subdivision relative to appellant neighbor.



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.

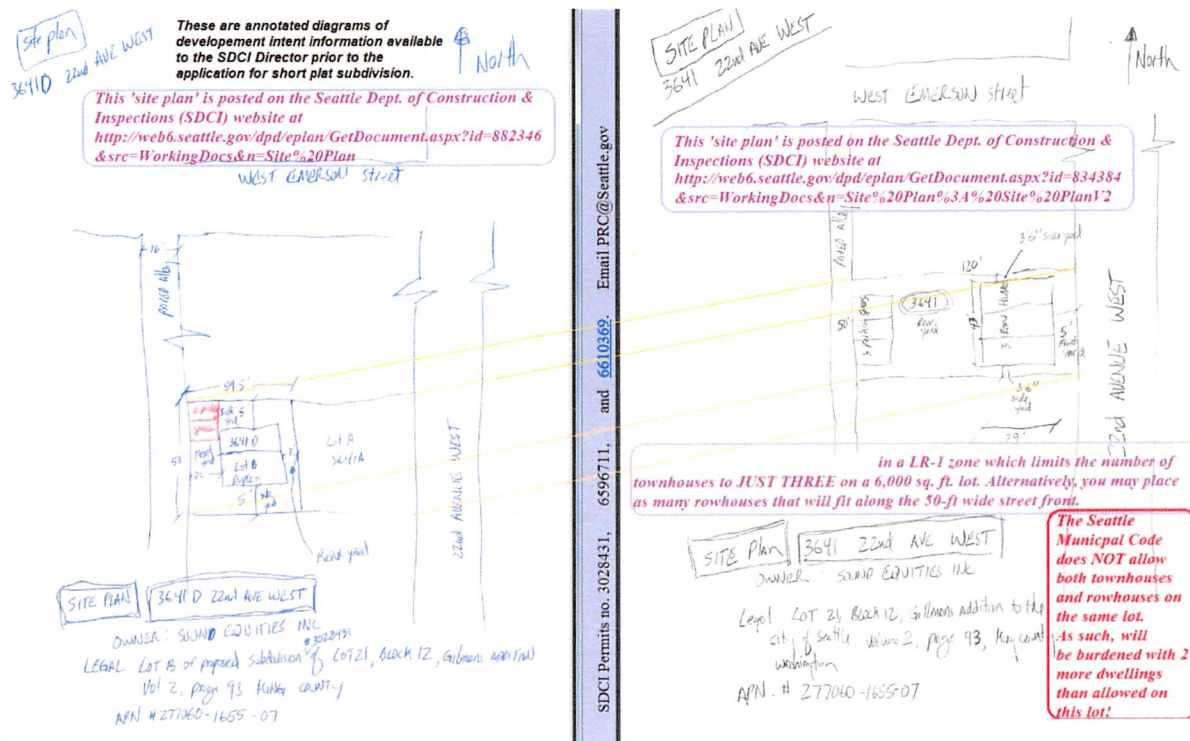


Figure 7- Annotated development intent diagrams available to the SDCI prior to the application for subdivision. Left- west rear portion of site; Right – east front portion + parking on west portion.

EXHIBIT 4

SHORT SUBDIVISION NO. 3028431

GRANTOR: SOUND EQUITIES, INC.
3641 22ND AVE. W.
SEATTLE, WA 98199

CONTACT PERSON:
IZABELLA PHILLIPS
206.297.0996
IZABELLA@CHADWICKWINTERS.COM

GRANTEE: CITY OF SEATTLE
KING CO., WA.

ABBREVIATED LEGAL: LOT 21, BLOCK 12, GILMAN'S
ADDITION TO THE CITY OF SEATTLE
VOL. 5 OF PLATS, PG. 93

PROPERTY ADDRESS: 3641 22ND AVE. W.

ASSESSOR'S PARCEL #: 2770601655

REFERENCE NO.'S FOR RELATED PROJECTS:

APPROVAL:

CITY OF SEATTLE
SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS
NATHAN TORGELSON, DIRECTOR

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2017

BY: _____ DIRECTOR

NOTE:

APPROVAL OF THIS SHORT SUBDIVISION BY THE DIRECTOR OF THE SEATTLE
DEPARTMENT OF CONSTRUCTION AND INSPECTIONS UNDER CHAPTER 23.24 OF THE
SEATTLE MUNICIPAL CODE, AS AMENDED, IS NOT TO BE CONSTRUED AS SATISFACTION
OF ANY OTHER APPLICABLE LEGISLATION OR REGULATIONS.

KING COUNTY DEPT. OF ASSESSMENTS

EXAMINED AND APPROVED THIS _____ DAY OF _____, 2017

ASSESSOR: _____

DEPUTY ASSESSOR: _____



DATE: _____

EXISTING LEGAL DESCRIPTION

(5,999 SQ.FT.)

LOT 21, BLOCK 12, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA.

NOTES:

1. THIS SURVEY WAS PERFORMED BY FIELD TRAVERSE USING A 10 SECOND "TOTAL STATION" THEODOLITE SUPPLEMENTED
WITH A 100 FT. STEEL TAPE. THIS SURVEY MEETS OR EXCEEDS THE STANDARDS FOR LAND BOUNDARY SURVEYS AS
SET FORTH IN WAC CHAPTER 332-130-090.
2. BASIS OF BEARINGS = N 00°59'41" E BETWEEN THE TWO FOUND MONUMENTS IN THE CENTERLINE OF 23RD AVE. W.
AS SHOWN HEREON.
3. ALL EXISTING STRUCTURES AS SHOWN ON SHEET 3 ARE TO BE LEGALLY REMOVED UNDER SEPARATE PERMIT.
4. NO CURBCUTS OR VEHICULAR ACCESS FROM 22ND AVENUE W. WILL BE GRANTED FOR ANY FUTURE DEVELOPMENT
PERMITS ASSOCIATED WITH PROPOSED PARCEL A.

DECLARATION:

WE THE UNDERSIGNED, OWNER(S) IN FEE SIMPLE [AND CONTRACT PURCHASER(S)]
OF THE LAND HEREIN DESCRIBED DO HEREBY MAKE A SHORT SUBDIVISION THEREOF
PURSUANT TO RCW 58.17.060 AND DECLARE THIS SHORT PLAT TO BE THE GRAPHIC
REPRESENTATION OF SAME, AND THAT SAID SHORT SUBDIVISION IS MADE WITH THE
FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE OWNER(S).
IN WITNESS WHEREOF WE HAVE SET OUR HANDS AND SEALS.

NAME: _____

NAME: _____

STATE OF WASHINGTON)

COUNTY OF KING) SS

ON THIS _____ DAY OF _____, 2017 BEFORE ME, THE UNDERSIGNED, A
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, DULY COMMISSIONED
AND SWORN, PERSONALLY APPEARED LOREN LANDERHOLM, MEMBER OF SOUND
EQUITIES, INC., TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO
EXECUTED THE FOREGOING INSTRUMENT FOR THEMSELVES, AND ACKNOWLEDGED TO
ME THAT THEY SIGNED AND SEALED THE SAME AS THEIR VOLUNTARY ACT FOR
THE USES AND PURPOSES THEREIN MENTIONED.

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR IN
THIS CERTIFICATE ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

RESIDING AT _____

RECORDING CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 2017
AT _____ M. IN VOLUME _____ OF SURVEYS,
PAGE _____ AT THE REQUEST OF CHADWICK & WINTERS.

DEPARTMENT OF RECORDS & ELECTIONS

MANAGER _____ SUPT. OF RECORDS _____

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE
BY ME OR UNDER MY DIRECTION IN CONFORMANCE
WITH THE REQUIREMENTS OF THE SURVEY RECORDING
ACT AT THE REQUEST OF LOREN LANDERHOLM
IN _____, 2017.

R.H. WINTERS, L.S. 18104

**CHADWICK
WINTERS**
LAND SURVEYING AND MAPPING
1422 N.W. 85TH ST., SEATTLE, WA 98117
PHONE 206.297.0996
FAX 206.297.0997
WEB WWW.CHADWICKWINTERS.COM

SURVEY IN:

**NW 1/4, SE 1/4, SEC. 14, T. 25 N., R. 3 E., W.M.
KING COUNTY, WASHINGTON**

17-5841X.DWG

DRAWN BY: ACH

DATE: 06-28-17

PROJECT #: 17-5841

CHK. BY: RHW

SCALE: N/A

SHEET: 1 OF 5

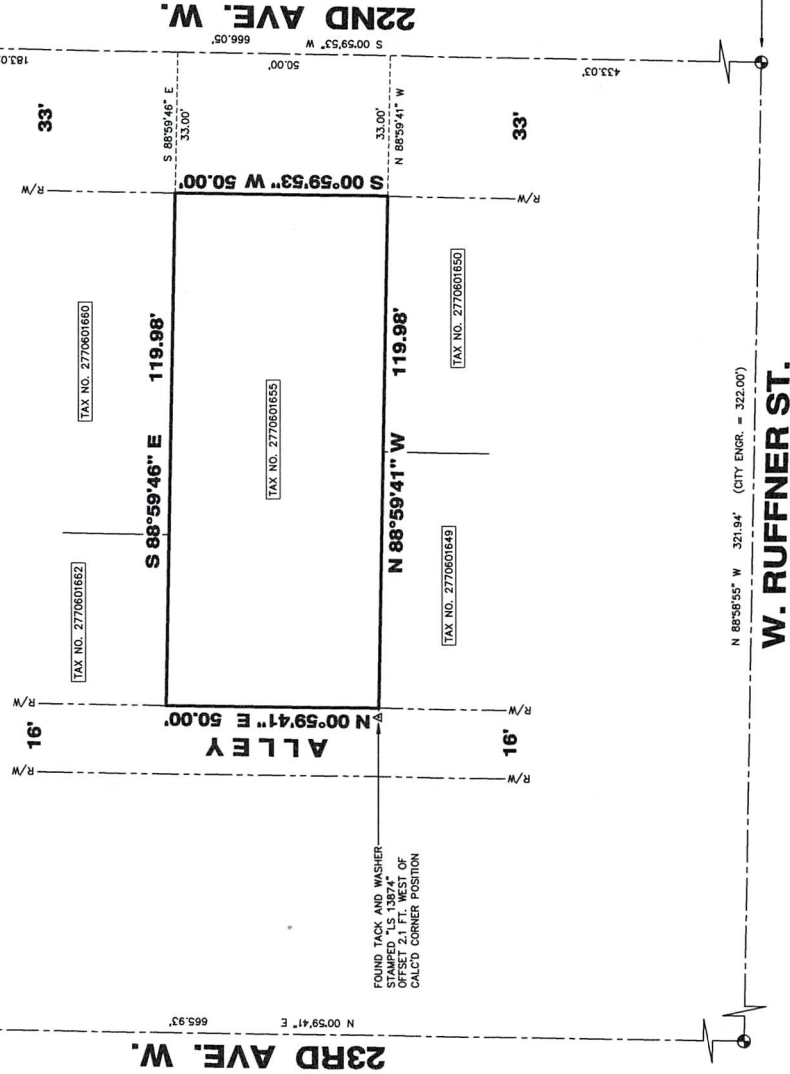
SHORT SUBDIVISION NO. 3028431

W. EMERSON ST.

S 89°00'14" E 321.98' (CITY ENGR. = 321.92')



SCALE: 1"=20'



W. RUFFNER ST.

BLOCK & BOUNDARY DETAIL

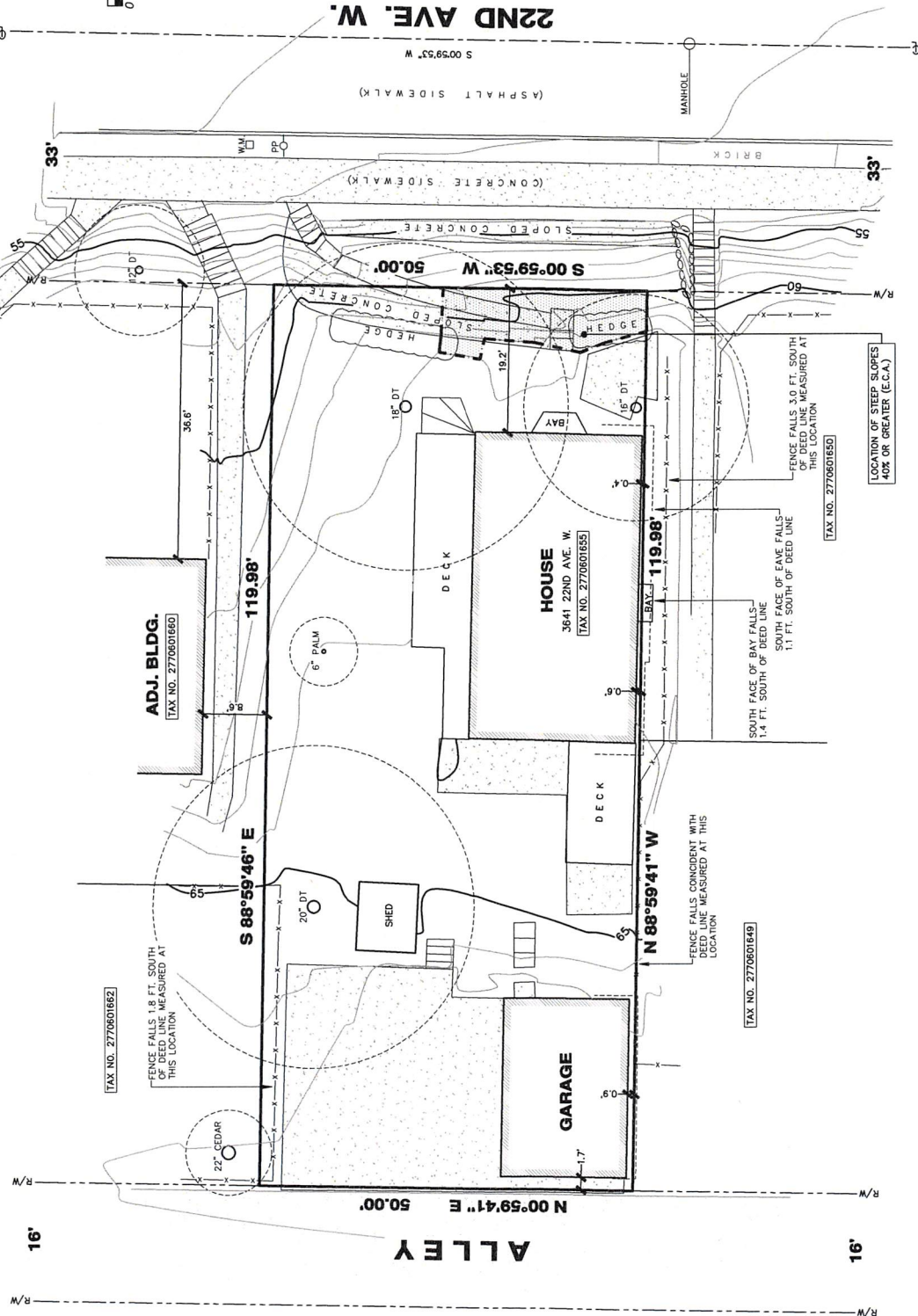
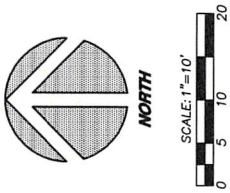


**CHADWICK
WINTERS**
LAND SURVEYING AND MAPPING
1422 N.W. 86TH ST., SEATTLE, WA 98117
PHONE: 206.297.0998
FAX: 206.297.0997
WEB: WWW.CHADWICKWINTERS.COM

SURVEY IN:
NW 1/4, SE 1/4, SEC. 14, T. 25 N., R. 3 E., W.M.
KING COUNTY, WASHINGTON

DRAWN BY: ACH	DATE: 08-28-17	PROJECT #: 17-5841
CHECK BY: RHW	SCALE: 1" = 20'	SHEET: 2 OF 5

SHORT SUBDIVISION NO. 3028431



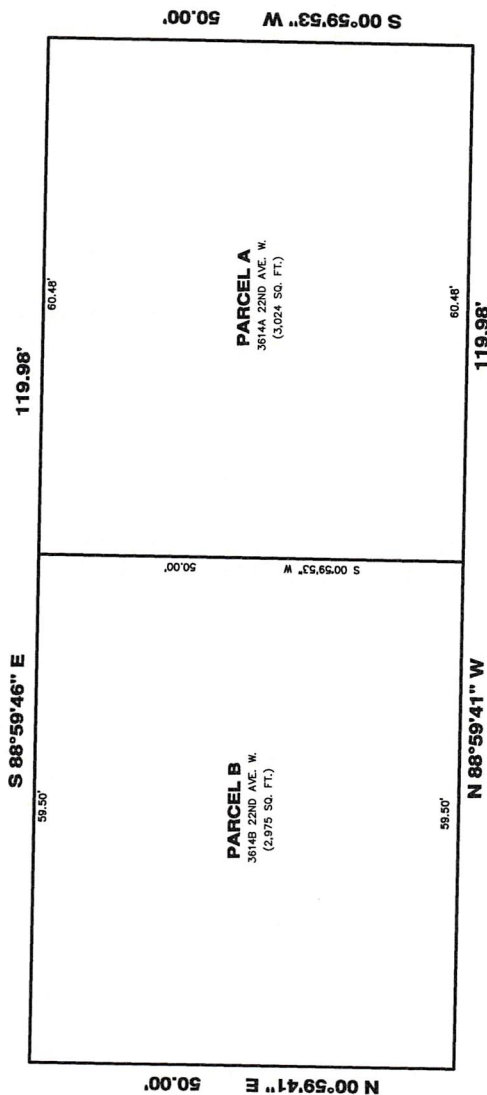
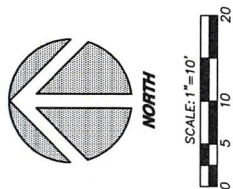
EXISTING SITE
CONDITIONS DETAIL

CHADWICK WINTERS
LAND SURVEYING AND MAPPING
1422 N.W. 86TH ST., SEATTLE, WA 98117
PHONE: 206.297.0998
FAX: 206.297.0997
WEB: WWW.CHADWICKWINTERS.COM

SURVEY IN:
NW 1/4, SE 1/4, SEC. 14, T. 25 N., R. 3 E., W.M.
KING COUNTY, WASHINGTON

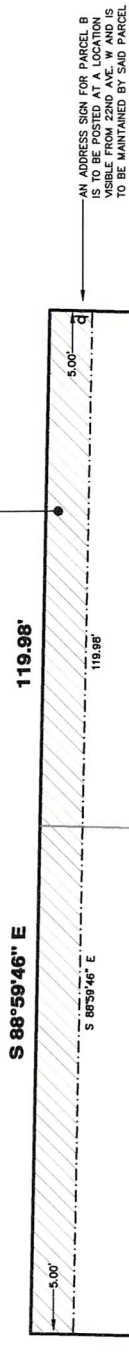
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SHORT SUBDIVISION NO. 3028431



SHORT SUBDIVISION DETAIL

PEDESTRIAN ACCESS & UTILITIES EASEMENT
LOCATION OF EASEMENT AREA FOR PEDESTRIAN ACCESS, UTILITIES AND FOR ADDRESS SIGN PLACEMENT BENEFICIAL TO ALL LOTS WITHIN THIS SUBDIVISION.



EASEMENT DETAILS



CHADWICK WINTERS
LAND SURVEYING AND MAPPING
1422 N.W. 85TH ST., SEATTLE, WA 98117
PHONE: 206.297.0996
FAX: 206.297.0997
WEB: WWW.CHADWICKWINTERS.COM

SURVEY IN:
NW 1/4, SE 1/4, SEC. 14, T. 25 N., R. 3 E., W.M.
KING COUNTY, WASHINGTON

DRAWN BY: ACH	DATE: 06-28-17	PROJECT #: 17-5841
CHECK BY: RHW	SCALE: 1" = 10'	SHEET: 4 OF 5

SHORT SUBDIVISION NO. 3028431

PROPOSED PARCEL DESCRIPTIONS:

PARCEL A (3,024 SQ. FT.)

THAT PORTION OF LOT 21, BLOCK 12, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE N.E. CORNER OF SAID LOT 21; THENCE S 00°59'53" W, ALONG THE EAST LINE OF SAID LOT FOR A DISTANCE OF 50.00 FT.; THENCE N 88°59'41" W, 60.48 FT.; THENCE N 00°59'53" E, 50.00 FT.; THENCE S 88°59'46" E, 60.48 FT. TO THE **POINT OF BEGINNING**.

SUBJECT TO AND TOGETHER WITH AN EASEMENT FOR PEDESTRIAN ACCESS, UTILITIES AND ADDRESS SIGN PLACEMENT AS SHOWN AND DESCRIBED AS "PEDESTRIAN ACCESS & UTILITIES EASEMENT" ON THIS CITY OF SEATTLE SHORT SUBDIVISION.

AND SUBJECT TO AND TOGETHER WITH ALL AGREEMENTS AS SHOWN AND DESCRIBED UPON THIS CITY OF SEATTLE SHORT SUBDIVISION.

PARCEL B (2,975 SQ. FT.)

THAT PORTION OF LOT 21, BLOCK 12, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE S.W. CORNER OF SAID LOT 21; THENCE N 00°59'41" E, ALONG THE WEST LINE OF SAID LOT FOR A DISTANCE OF 50.00 FT.; THENCE S 88°59'46" E, 59.50 FT.; THENCE S 00°59'53" W, 50.00 FT.; THENCE N 88°59'41" W, 59.50 FT. TO THE **POINT OF BEGINNING**.

SUBJECT TO AND TOGETHER WITH AN EASEMENT FOR PEDESTRIAN ACCESS, UTILITIES AND ADDRESS SIGN PLACEMENT AS SHOWN AND DESCRIBED AS "PEDESTRIAN ACCESS & UTILITIES EASEMENT" ON THIS CITY OF SEATTLE SHORT SUBDIVISION.

AND SUBJECT TO AND TOGETHER WITH ALL AGREEMENTS AS SHOWN AND DESCRIBED UPON THIS CITY OF SEATTLE SHORT SUBDIVISION.

PEDESTRIAN ACCESS & UTILITIES EASEMENT

AN EASEMENT FOR PEDESTRIAN ACCESS, UTILITIES AND ADDRESS SIGN PLACEMENT BENEFICIAL TO ALL LOTS WITHIN THIS SHORT SUBDIVISION

THAT PORTION OF LOT 21, BLOCK 12, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING N.W. CORNER OF SAID LOT 21; THENCE S 88°59'46" E ALONG THE NORTH LINE OF SAID LOT FOR A DISTANCE OF, 119.98 FT.; THENCE S 00°59'53" W, 5.00 FT.; THENCE N 88°59'46" W, 119.98 FT.; THENCE N 00°59'41" E, 5.00 FT. TO THE **POINT OF BEGINNING**.

EASEMENT MAINTENANCE AGREEMENT

SAID EASEMENTS OF THIS SHORT PLAT TO BE EQUALLY MAINTAINED, REPAIRED, AND/OR REBUILT BY THE OWNERS OF THE PARCELS HAVING LEGAL ACCESS AND UTILITY SERVICE THEREFROM AND THEIR HEIRS, ASSIGNS AND SUCCESSORS.

INDIVIDUAL UTILITY SERVICE LINES, INCLUDING STORM AND SANITARY SIDE SEWER LINES, ARE THE SOLE RESPONSIBILITY OF THE OWNERS OF THE UNIT OR PARCEL THE INDIVIDUAL SERVICE LINE SERVES. UTILITY SERVICE LINES WHICH SERVICE MORE THAN ONE UNIT OR PARCEL SHALL BE EQUALLY MAINTAINED, REPAIRED, AND/OR REBUILT BY THE OWNERS OF THE UNITS OR PARCELS SERVICED.

THIS MAINTENANCE AGREEMENT COVERS NORMAL USAGE, WEAR AND TEAR, AND LIFE EXPECTANCY OF MATERIALS. ANY DAMAGE INCURRED BY AN INDIVIDUAL OWNER SHALL BE REPAIRED AND/OR RESTORED TO PRE DAMAGED CONDITION WITHIN 30 DAYS. THE OWNER WHICH INCURRED THE DAMAGE SHALL BE SOLELY RESPONSIBLE FOR THE COST OF REPAIR OR REPLACEMENT OF THE MATERIALS. IN NO EVENT SHALL ACCESS OR UTILITY SERVICE BE DENIED OTHER PROPERTY OWNERS OF SAID EASEMENTS FOR MORE THAN 24 HOURS

ADDRESS SIGN MAINTENANCE AGREEMENT

ANY PARCEL BENEFITING FROM THE POSTING OF THE ADDRESS SIGN AS SHOWN HEREON IS RESPONSIBLE FOR THE MAINTENANCE, SHARING EQUALLY IN THE COST OF REPAIR AND/OR MAINTENANCE TO SAID ADDRESS SIGN.

SEATTLE CITY LIGHT EASEMENT

CITY OF SEATTLE LAND USE ACTION NO. 3028431
EASEMENT (OVERHEAD AND UNDERGROUND)
KING COUNTY ASSESSOR'S TAX PARCEL NO. 2770601655

THE OWNER OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS LAND USE ACTION ("GRANTOR") HEREBY GRANTS TO THE CITY OF SEATTLE ("GRANTEE") AND THE RIGHT, PRIVILEGE AND AUTHORITY (AN "EASEMENT") TO INSTALL, CONSTRUCT, ERECT, RECONSTRUCT, ALTER, IMPROVE, REMOVE, REPAIR, REPLACE, ENERGIZE, OPERATE, AND MAINTAIN OVERHEAD AND UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES, WHICH MAY CONSIST OF, BUT ARE NOT LIMITED TO: POLES WITH BRACES, GUY WIRES AND ANCHORS, CROSS ARMS, TRANSFORMERS, DUCTS, VAULTS, MANHOLES, SWITCHES, CABINETS, CONTAINERS, CONDUITS, WIRES AND OTHER CONVENIENT APPURTENANCES NECESSARY TO MAKE SAID OVERHEAD AND UNDERGROUND DISTRIBUTION FACILITIES AN INTEGRATED ELECTRIC SYSTEM ("ELECTRIC SYSTEM"). ALL SUCH ELECTRIC SYSTEM SHALL BE LOCATED ACROSS, OVER, UPON AND UNDER THE REAL PROPERTY DESCRIBED WITHIN THIS LAND USE ACTION ("PROPERTY") SITUATED IN THE COUNTY OF KING, STATE OF WASHINGTON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SEATTLE CITY LIGHT EASEMENT LYING WITHIN PARCEL A OF THIS CITY OF SEATTLE SHORT PLAT NO. 3028431 WHICH SHALL BE OCCUPIED AND CONTROLLED EXCLUSIVELY BY SEATTLE CITY LIGHT, A DEPARTMENT OF THE CITY OF SEATTLE.

THAT PORTION OF LOT 21, BLOCK 12, GILMAN'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE S.E. CORNER OF SAID LOT 21; THENCE N 88°59'41" W, ALONG THE SOUTH LINE OF SAID LOT FOR A DISTANCE OF 60.48 FT.; THENCE N 00°59'53" E, 5.00 FT.; THENCE S 88°59'41" S, 60.48 FT.; THENCE S 00°59'53" W, 5.00 FT. TO THE **POINT OF BEGINNING**.

TOGETHER WITH GRANTEE'S AND ITS ASSIGNS' UNRESTRICTED RIGHT OF ACCESS TO AND FROM THE PROPERTY FOR THE PURPOSES OF EXERCISING ITS RIGHTS GRANTED HEREIN.

TOGETHER WITH GRANTEE'S AND ITS ASSIGNS' RIGHT TO CUT AND TRIM BRUSH, TREES OR OTHER PLANTS STANDING OR GROWING UPON THE PROPERTY WHICH, IN THE OPINION OF THE GRANTEE, INTERFERE WITH THE MAINTENANCE OR OPERATION OF, OR CONSTITUTE A MENACE OR DANGER TO, THE ELECTRIC SYSTEM.

GRANTOR, ITS SUCCESSORS AND ASSIGNS, COVENANTS AND AGREES THAT NO STRUCTURE OR FIRE HAZARDS WILL BE BUILT OR PERMITTED WITHIN THE EASEMENT AREA(S) DESCRIBED ABOVE; THAT NO DIGGING WILL BE DONE OR PERMITTED WITHIN THE PROPERTY WHICH WILL IN ANY MANNER DISTURB GRANTEE'S ELECTRIC SYSTEM OR ITS SOLIDITY OR UNEARTH ANY PORTION THEREOF; AND THAT NO BLASTING OR DISCHARGE OF ANY EXPLOSIVES WILL BE PERMITTED WITHIN FIFTY (50) FEET OF THE ELECTRIC SYSTEM.

THE CITY OF SEATTLE SHALL BE RESPONSIBLE, AS PROVIDED BY LAW, FOR ANY DAMAGE TO THE GRANTOR THROUGH ITS NEGLIGENCE IN THE CONSTRUCTION, MAINTENANCE AND OPERATION OF THE ELECTRIC SYSTEM.

THE RIGHTS, TITLE, PRIVILEGES AND AUTHORITY HEREBY GRANTED SHALL CONTINUE AND BE IN FORCE UNTIL THE GRANTEE PERMANENTLY REMOVES ITS ELECTRIC SYSTEM FROM THE PROPERTY OR PERMANENTLY ABANDONS THE ELECTRIC SYSTEM, AT WHICH TIME ALL SUCH RIGHTS, TITLE, PRIVILEGES AND AUTHORITY HEREBY GRANTED SHALL TERMINATE.



DATE:

**CHADWICK
WINTERS**
LAND SURVEYING AND MAPPING
1422 N.W. 85TH ST., SEATTLE, WA 98117
PHONE: 206.297.0996
FAX: 206.297.0997
WEB: WWW.CHADWICKWINTERS.COM

SURVEY IN:
NW 1/4, SE 1/4, SEC. 14, T. 25 N., R. 3 E., W.M.
KING COUNTY, WASHINGTON

17-5841X.DWG

DRAWN BY: ACH	DATE: 06-28-17	PROJECT #: 17-5841
CHK. BY: RHV	SCALE: N/A	SHEET: 5 OF 5

EXHIBIT 5



Arbor Options, LLC
Tree Consultants
Ryan Ringe, Principal
(206) 755-5826
Email: ryan@arboroptions.com
Certified Arborist # PN 5892-A
Certified Tree Risk Assessor # CRTA 699

RESUME

Education & Certifications:

B.S. Biology, Chemistry minor, Boise State University 1998

I.S.A Certified Arborist #PN-5892-A, 2006, Seattle, WA (International Society of Arboriculture)

P.N.I.S.A T.R.A.Q. Certified Tree Risk Assessor # CRTA 699, 2011 (Pacific Northwest International Society of Arboriculture Tree Risk Assessor Qualification)

A.S.C.A Consulting Academy Graduate 2014 (American Society of Consulting Arborists)

Professional Experience:

I.S.A. Certified Arborist/ Consultant (1/1/13-Present, Arbor Options Tree Consulting)

- Hazard Tree Assessment/ Surveys (commercial and residential)
- Tree/ Plant Inventories (commercial and residential)
- Tree and Landscape Appraisal / Valuations (commercial and residential)
- Tree Protection during Development Assessments (commercial and municipal)
- Analysis of Tree and Landscape Health and Care (commercial and residential)
- Insect and Disease I.D. and Management (commercial and residential)
- Tree Planting Programs (commercial and residential)
- Tree Watering and Fertilization Programs (commercial and residential)

Notable Consulting Contracts:

- Sound Transit/ JCM U-LINK Project Arborist for N-125 TBM Tunnels (June 2013 to 2016)
- Sound Transit/ JCM U-LINK Project Arborist for U-240 Capital Hill Site Station (June 2013 to 2016)
- Sound Transit/ JCM U-LINK Project Arborist for U-230 Capital Hill Site Station (2009 to 2016)

I.S.A. Certified Arborist/ Consultant (2005-2013, Arbor Barber Tree Service)

Owner, Arbor Barber Tree Service (2007-2013)

- Sales/ Business Manager/ Director of Operations (residential, municipal, commercial)
- I.S.A. and T.R.A.Q. Certified Arborist
- Educate/ consult clients on options related to tree care
- Coordinate residential, commercial, and municipal tree care operations
- Educate customers about tree codes/ policies compliance
- Supervise daily operations of tree removals, pruning, planting, and fertilizing

Foreman, Davey Tree Expert Company (2004-2007)

- Climbing foreman
- Supervise day to day tree care operations
- Coordinate with Davey Tree Arborists Resistometer/ Decay Detection Operations
- I.S.A. Certified Arborist

Wildland Forest Fire Fighter (U.S.D.A Forest Service and Bureau of Land Management, 1994-2004)

- Smokejumper 3 years, Hotshot 5 years, Initial Attack firefighter 3 years
- A.P.H.I.S. Tree Climbing Asian Longhorn Beetle Detection Program, Chicago,
- Implementation of Prescribed Burns
- Implementation and Inspection of U.S.D.A. Tree Planting Programs
- Implementation of Tree Thinning projects

Affiliations

I.S.A., International Society of Arboriculture (2007-2017)

P.N.I.S.A., Northwest Chapter, International Society of Arboriculture (2007-2017)

A.S.C.A., American Society of Consulting Arborists (2014-2017)

EXHIBIT 6

Sarah Novion

From: Ryan Ringe <ryan@arboroptions.com>
Sent: Tuesday, October 17, 2017 4:52 PM
To: Sarah Novion; Rod Novion; Landerholm Loren
Subject: Tree info @ 3641 22nd Ave West Seattle, 10/16/17
Attachments: Novion - Landerholm Tree Location Map, 3641 22nd Ave W Seattle, 10-17-17.pdf

Hello,

I visited the site at 3641 22nd Avenue West in Seattle yesterday (10/16/17).

There were no (0) R.O.W. trees, three (3) significant subject property trees (None Exceptional), and two (2) encroaching adjacent property significant trees (1 Exceptional; Tree #B).

Tree #B is not on the survey, but its location is given below. A Tree Location Map is attached showing the location of all trees.

The tree info is below:

Subject Property Significant Trees

Tree #1: Cherry Plum (*Prunus cerasifera*), 12.5" DBH, Good/ Fair condition, 16 ft. dripline radius, Non-Exceptional tree (threshold diameter: 21" DBH)

Tree #2: Cherry Plum (*Prunus cerasifera*), 12.5" DBH, Good/ Fair condition, 16 ft. dripline radius, Non-Exceptional tree (threshold diameter: 21" DBH)

Tree #3: Flowering Cherry Spp (*Prunus Spp*), 17.8" DBH, Good/ Fair condition, 24 ft. dripline radius, Non-Exceptional tree (threshold diameter: 23" DBH)

Encroaching Adjacent Property Significant Trees

Tree #A: Leyland Cypress (*Cupressus × leylandii*), approx. 15" DBH, Good condition, 17 ft. dripline radius, Non-Exceptional Tree (threshold diameter: 30" DBH)

Tree #B: Subalpine Fir (*Abies lasiocarpa*), approx. 14" DBH, Good/ Fair condition, 14 ft. dripline radius, 40 ft. tall, **Exceptional Tree due to size** (threshold diameter: 12.6" DBH)

North dripline: 9 ft. radius
East dripline: 14 ft. radius
South dripline: 14 ft. radius
East dripline: 13 ft. radius

Note: Tree #B is located 13.5 ft. south and 2.5 ft. west of the SE corner of existing building on the subject property in the front yard. The south side of the house is on the south property line, so the center of tree is 13.5 ft. south of the property line (dripline radius [14 ft. radius] extends 6 inches over property line; actual north dripline does not encroach with property line [9 ft radius]).

Because the existing foundation is located at the south property line, any new foundation/ excavation is acceptable because it would either be located within the old foundation, or would be outside of the tree's dripline radius (if proposed foundation is located east of old foundation).

Please let me know if you have any questions, or if you desire a formal Inventory or Tree Protection Plan.

Thank you,

Ryan

Arbor Options, LLC

Tree Consultants

Ryan Ringe, Principal

(206) 755-5826

Email: ryan@arboroptions.com

Certified Arborist # PN 5892-A

Certified Tree Risk Assessor # CRTA 699

N 00°59'41" E 50.00'

N 00°59'41" E 50.00'

GARAGE

64.76

DECK

S 00°59'53" W 50.00'

S 88°59'46" E

179.98

ADJ. BLDG.

TAX NO. 2770601662

FENCE FALLS 1.8 FT. SOUTH OF
DEED LINE MEASURED AT THIS
LOCATION

Significant

Tree Location Map; 3641 22nd Ave W, Seattle, WA

33'

MA
RIN

EXHIBIT 7(a)

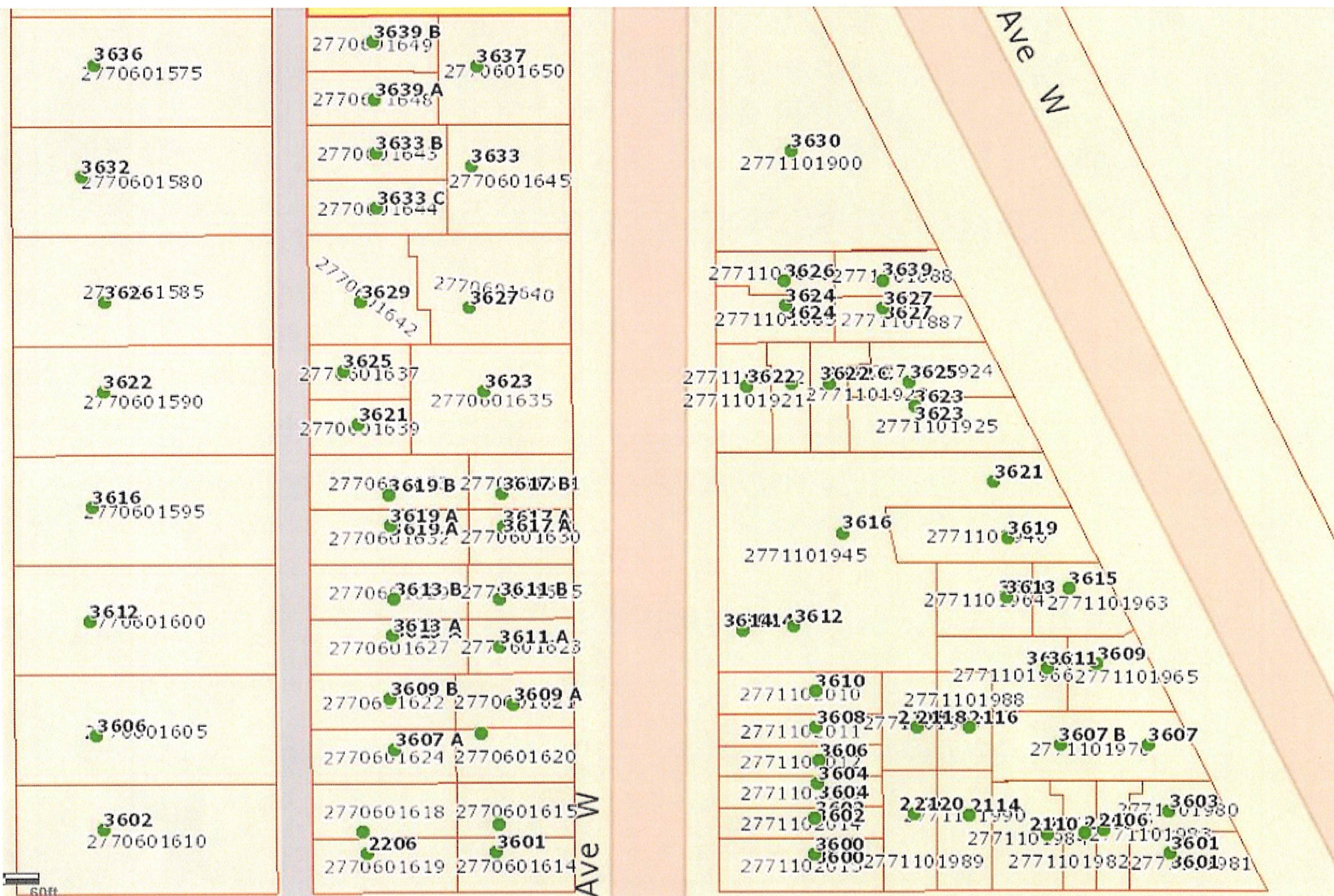


EXHIBIT 7(b)



3636
2770601575

3632
2770601580

2736261585

3622
2770601590

3616
2770601595

3612
2770601600

3609
2770601605

3602
2770601610

2770601649 3639 B

2770601648 3639 A

2770601647 3633 B

2770601646 3633 C

2770601645 3633

2770601644 3629

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2770601642 3621

2770601641 3619 B

2770601640 3619 A

2770601639 3617 A

2770601638 3617 B

2770601637 3613 A

2770601636 3613 B

2770601635 3611 A

2770601634 3609 B

2770601633 3607 A

2770601632 3607 B

2770601631 3601

2771101900 3630

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2771101902 3627

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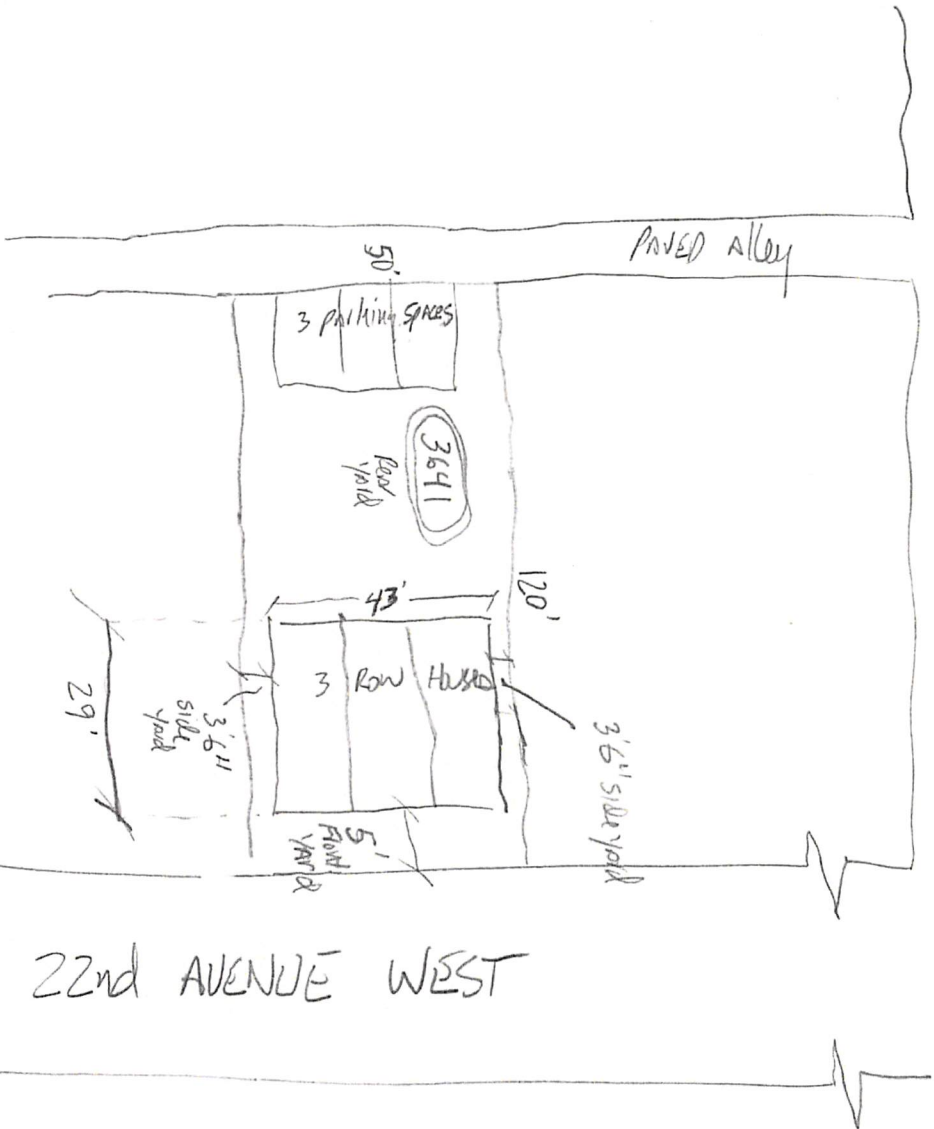
2771101915 3600

EXHIBIT 8

SITE PLAN
3641 22nd AVE WEST

West Emerson Street

North



SITE PLAN
3641 22nd AVE WEST

OWNER: SOUND EQUITIES LLC

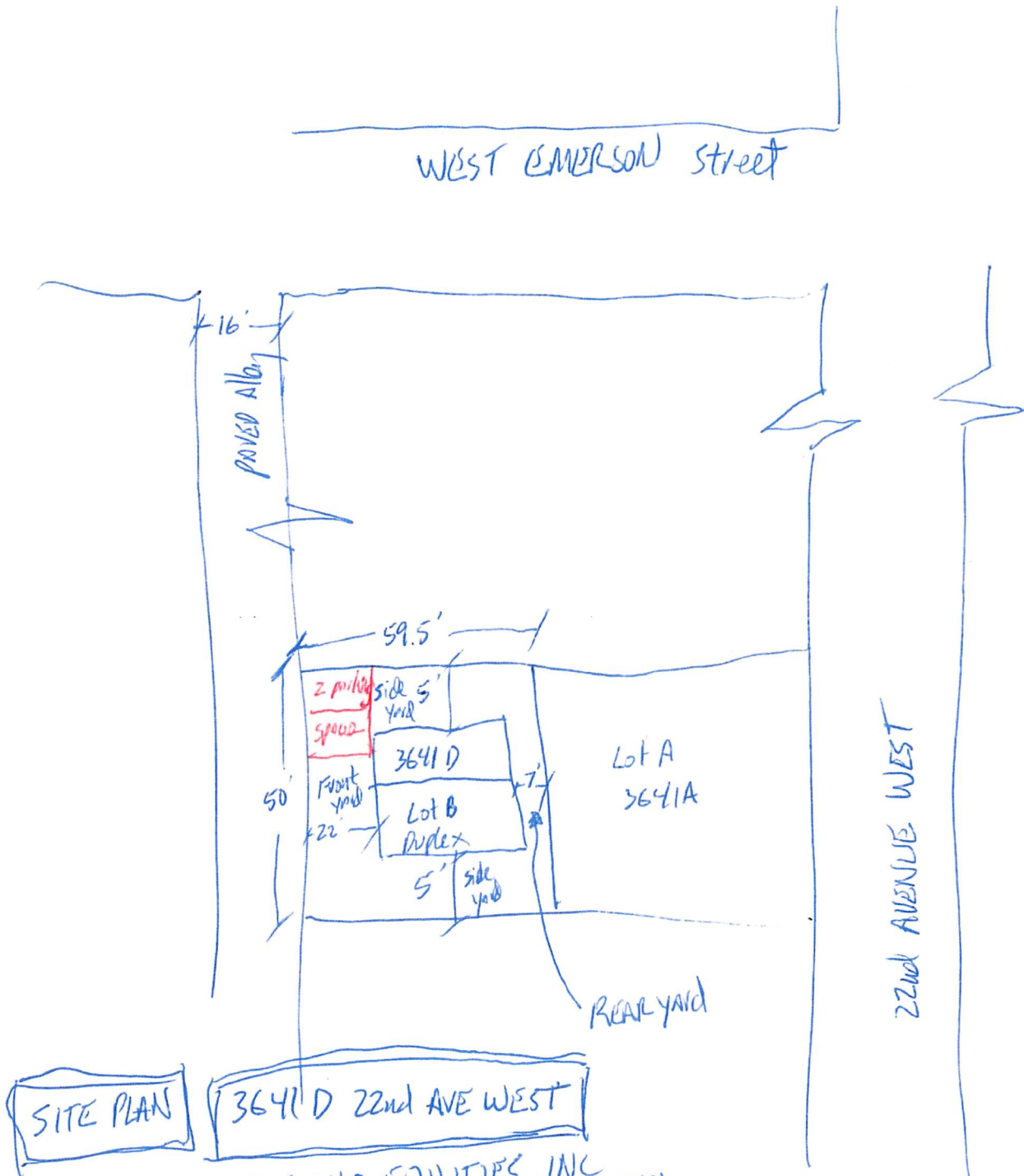
Leqol: LOT 21, Block 12, Gillman's Addition to the
city of Seattle, volume 2, page 93, King count
Washington

APN: # 277060-1655-07

EXHIBIT 9

Site plan
3641 D 22nd AVE WEST

North



OWNER: SOUND EQUITIES INC #3028431
LEGAL: LOT B of proposed subdivision of LOT 21, BLOCK 12, GILMONS ADDITION
Vol 2, page 93 KING COUNTY
APN #277060-1655-07

EXHIBIT 10

1. Community center in school building in SF zone
Section 23.44.006 H
Alan Oiye for Dawn Bern

Issue: The Ravenna-Eckstein School building is located partially in an SF zone, and partially in a multifamily zone. A different institutional use, such as a community center, is proposed in the building, and a 500-square-foot mezzanine addition is proposed to be built to accommodate that use. The Code, at Section 23.44.006 H1, says that community centers are permitted outright in existing or former public schools. But Section 23.44.006 H3 says: "Additions to existing public schools may be made only when the proposed use of the addition is a public school." If the mezzanine is to be located in the SF-zoned portion of the building, is the use of that mezzanine for community center purposes permitted outright, or is conditional use approval required?

Discussion: Although this would not change the envelope of the building, it must be regarded as an addition or expansion. The general rule is that an expansion that increases floor area requires an ACU. (See Section 23.44.018 F.) There was some question as to whether the limitation in Section 23.44.006 H3 applies, as this is a former school rather than one that is currently operating as a school. However, we read this provision as meaning additions for purposes other than public school use require an ACU, regardless of whether public school use continues elsewhere in the building.

**DRAFT MINUTES
LAND USE FORUM
MAY 7, 2003**

[There are no minutes from April 30, 2003.]

Land Use Forum minutes are intended for the use of DCLU staff, as a record of discussion and of code-related issues within the Department. Although minutes may provide some guidance as to how issues are to be addressed in general, discussions at the Forum are site-specific, and how an issue is resolved sometimes turns on the specific details of the particular proposal and site. Minutes are not intended as a record of a final decision on any issue, and should not be presented as such to the public.

1. Lapse of Nonconforming Use
Section 23.42.110, (23.44.028)
2235 - 1st Avenue North (at McGraw Street)
Cheryl Waldman

Issue: A nonresidential structure was built c. 1900, in what is now a single-family residential zone. It housed the Queen Anne Bakery from 1920 until 1950 or so, then, from 1950 until 1979, it was used by the Floyd Pedersen Fish Company. In 1979 an upholstery shop evidently took over the building, though we have no record of any permit

to change the use at that time. Since 2000 or 2001, it has been used by a business that prints t-shirts and produces software. An application has been submitted to establish an administrative office use, via a conditional use to change one nonconforming use to another use not normally allowed in the zone. The issue raised is whether the building is eligible for this provision, i.e., whether there an existing nonconforming use remains viable. An argument has been made that that any nonconforming use of the building lapsed one year after the actual use was changed without a permit, either in 1979 or 2000-2001. (The facility is not eligible for ACU to allow a use not otherwise permitted in a "structure unsuited" to permitted uses, under Section 23.44.028, as that section is limited to structures containing a floor area of 4000 square feet or more, and the structure in this case contains closer to 3000 square feet of floor area.)

Discussion: A thorough answer to this question might require research into historic codes. To the extent that food processing, custom and craftwork uses are lumped together it might be argued that there has never been a change of use, and all of the uses of the building fall into that larger use category. Barring that, it is possible that changes of use between nonconforming uses under historic codes did not require conditional use approval, when such changes occurred in 1950 and 1979.

The bottom line, however, is that this issue has arisen regularly, and we have always treated the uses leniently in these cases. If an upholstery shop could have been converted to an administrative office by administrative conditional use under the code in effect in 2000, and it could likewise be converted by ACU under the current code, and if it comes to light in 2003 that the owner changed the use without getting a permit in 2000, our response has been that an ACU is needed to cure the defect, and not that the use has lapsed so that neither the former use nor the new use may be undertaken. This lenient reading reflects our understanding of how the law applies to the lapsing of nonconforming uses: Notwithstanding the test in Section 23.42.110, we are inclined to say a nonconforming use doesn't lapse if there was no intent to abandon the nonconforming use. In this case, it is clear that the owners intended to continue to use the building for commercial uses.

As a side note, we will continue to process this application as one to establish an administrative office use, though there is some question as to how best to categorize the current activities in the building. The software use could reasonably be regarded as an administrative office use, but the t-shirt printing would likely be regarded as something else, either custom and craft work or a manufacturing use of some sort.

2. Variance for Lost Parking
Section 23.40.020
10225 - 64th Avenue South
Malli Anderson, Bradley Wilburn

Lot 5 of Block 1 of Kinnear's First Rainier Beach Addition was formerly under common ownership with Lot 6, to the south. These platted lots each have an area of more than

5000 square feet in an SF 5000 zone, but parking for the house on Lot 5 was provided on Lot 6. A developer purchased the entire property, and obtained a permit to build a new house on Lot 5, as well as a permit to provide a parking pad legally located on Lot 6 to the south for the existing house. The house was completed, and its permit was finalized. The driveway and parking spot on Lot 6 was never provided. Lot 6 has been sold to a new owner, who is balking at providing the parking, and has requested a variance from the parking requirement instead. (The contractor allegedly showed up to put the driveway and parking pad in, but the new owner refused to allow it.) Providing the parking, as approved, evidently would create some unforeseen expenses, such as moving a side sewer. It also would entail removal of part of a rockery.) Issues discussed were whether we should grant such a variance, and what we can do to prevent this sort of problem in the future.

Discussion: A concern about granting the variance is that it lets the developer off the hook, and makes it more likely that this developer, or others, will deliberately pull this sort of switch in the future. We may consider whether there are new facts that might justify the variance, but it seems fair also to consider whether we would have approved such a variance if it had been requested prior to the time the lots were separated and one was newly developed.

The first line of defense against this sort of potential abuse is at intake. If two adjacent lots are under common ownership, whether undersized or not, staff should check the ownership of adjacent properties to try and detect whether they may have been used to meet a development standard such as parking for an existing house.

A second thing we can do is make clear notes on the permit and plans that the permit for the new house is not to receive final approval until the replacement parking has been physically provided. (Obtaining a permit to put in the replacement parking is not sufficient.) A "key area inspection form" can be filled out and placed with the approved plans, to make sure that the inspector verifies that the replacement parking has indeed been provided, before giving final approval to the new house.

3. Easement and Driveway Standards
Sections 23.53.005, 23.53.025 and 23.54.030
11754 Lakeside Avenue NE
Tami Garrett

Issue: Applicant proposes to demolish a house and short plat the property to create two lots. Both would have frontage on NE 119th Street, an unimproved right-of-way. Improvements to that street are unlikely, due to the steepness of its slope. Access to the parking on each of the new lots would be via a shared driveway from Lakeside Avenue NE, across a lot to the south (11748 Lakeside Ave NE). (Thus, the portion of the driveway on that lot to the south would be shared by both of the new houses, and each would have an easement for the use of that portion of the driveway, and, additionally, the driveway would extend over the more southerly of the new lots to reach the more

northerly, and the more northerly lot would have an easement for the use of that portion of the driveway as well.) The easement standards of Section 23.53.025 allow a 10- or 12-foot-wide easement if it serves only one or two houses, but requires a 20-foot-wide easement if three houses are served. Does the short plat in this case trigger the requirement for the wider easement?

Discussion: The easement standards of Section 23.53.030 do not come into play in this case: That section applies to easements that are provided in lieu of street frontage. In this case, the lots have frontage on a right-of-way, albeit unimproved. The driveway standards of Section 23.54.030 will still apply, but not the easement standards. This is sometimes a point of confusion, as there will, and should, be easements to support the right of the residents of the lots in this short plat to use the proposed driveway.

Even if the two lots resulting from this short plat had no street frontage, the wider easement requirement would not apply: Although some of the driveway might be shared by the house on the lot it crosses (11748 Lakeside Ave NE), the residents of that house would not require an easement to secure their right to use the driveway, as it would be on their own property. So, only *two* lots would have an easement over that portion of the driveway. Similarly, the next portion of the driveway, across the southern new parcel, might serve both the southern new parcel and the northern new parcel, but only the northern new parcel would need an easement to secure that right.

4. Density on split-zoned lot
Sections 23.45.006, 23.45.008
Vince Lyons

Issue: A multifamily structure is proposed on a site that is split-zoned: Lowrise Duplex Triplex (LDT) and Midrise (MR). There is sufficient lot area in the LDT zone to support one dwelling unit, under the applicable density limit. (There is no density limit for the MR zone.) The proposed building would have one ground-related unit entirely within the LDT zone, and portions of three additional units also would extend slightly into the LDT zone. Is this permissible?

Discussion: No, if the applicable density limit would only allow one unit based on the area in the LDT zone, then no portion of any additional unit may extend into the LDT zone.

**DRAFT MINUTES
LAND USE FORUM
MAY 14, 2003**

Land Use Forum minutes are intended for the use of DCLU staff, as a record of discussion and of code-related issues within the Department. Although minutes may provide some guidance as to how issues are to be addressed in general, discussions at the Forum are site-

case if the organizations using the facilities are nonprofit arts and social/recreational agencies. The activities at the other facility, in Lake City, appear to cross the line: regular rental of a church facility to be used commercially as a concert venue by for-profit entities goes beyond what may be regarded as incidental to a religious facility use.

Because these cases raise potentially sensitive constitutional concerns, care must be exercised in reviewing proposals or complaints regarding use of religious facilities. When questions regarding uses in religious facilities arise, it is best to elevate them for internal discussion before taking action.

**DRAFT MINUTES
LAND USE FORUM
JULY 11, 2006**

[Land Use Forum did not meet on July 4.]

Land Use Forum minutes are intended for the use of DPD staff, as a record of discussion and of code-related issues within the Department. Although minutes may provide some guidance as to how issues are to be addressed in general, discussions at the Forum are site-specific, and how an issue is resolved sometimes turns on the specific details of the particular proposal and site. Minutes are not intended as a record of a final decision on any issue, and should not be presented as such to the public.

1. Variances for house illegally expanded
Sections 23.44.010, 23.44.014, 23.40.020
4017 - 22nd Avenue SW; Project No. 3004175
Art Pederson

Issue: Based on permit history and other records, it is evident that this house in an SF zone was illegally expanded. It is well over the permissible lot coverage, and stairs from a deck to the ground on the rear of the house extend impermissibly into the rear yard. A portion of the structure, including an attached garage, is located in the required front yard, and extends into the right-of-way and also onto the neighboring lot. It is evident that many of these improvements were made by the former owner. The neighboring house is located about 12 feet from the encroaching structure, and the neighbors have granted an easement for the encroachment. Enforcement action was initiated, but is on hold pending this variance application. The garage is to be removed, eliminating the encroachment into the right-of-way. The application includes variances from lot coverage and the rear yard requirement. Also covered in the variance application is the applicants' request for an upper-level deck, extending over an area currently occupied by the main-floor deck. A spiral staircase from the upper-level deck to the ground is requested. This came to Land Use Forum for general input on how we should respond to the variance application, and also on how we should address the encroachment onto the neighbor's property, if at all.

Discussion: One school of thought is that we should analyze the variance request as if the illegally-built structures were not yet there, and not give the applicants any benefit based on the fact that the structures are already in place. The other school of thought is that the problem was created by a former owner, and some leniency may be reasonable. Those present were generally inclined to look for reasonable compromises, at least in areas where it was clear that the illegal construction had occurred under a former owner.

It was agreed that we cannot authorize the encroachment onto the neighboring property by means of a variance. The options appear to be either for the owner to adjust the lot line, or for the encroaching portion of the house to be removed. It is not clear that this would need to happen concurrently with the variance that has been requested, however, as code enforcement evidently has been placed on hold pending the variance review, it would make sense to coordinate with Code Compliance staff to make sure that a unified message is sent about what is to be required.

The owners proposed to reduce the lot coverage by removing the garage and replacing it with an underground garage. The proposed upper-level deck would add bulk, but no more lot coverage than the deck that is currently in place. If the structure were legally nonconforming to lot coverage, an upper-level deck in that location would be permitted, as it would not increase the extent of the nonconformity. However, the current application is for a variance to allow both the existing illegal deck and an upper-level deck over it. Even if we are inclined to approve the existing deck, we are not compelled by code or policy to approve the upper-level deck as well. It would not be logically inconsistent to approve the existing deck and nix the proposed deck above. One potential compromise that was proposed: We could allow the upper-level deck, together with its spiral staircase to the ground, but require that that staircase also connect to the lower-level deck, and eliminate the larger staircase from that deck to the ground, which currently extends into the required rear yard in a manner not permitted by the code.

The property-related hardship offered for exceeding lot coverage is the slope of the lot. This may be seen as a bit weak, but the proposal includes some reduction of the lot coverage by removal of the garage, and there may be an argument for considering the existing configuration of the house, itself, as a part of the "hardship" if the current owners are innocent purchasers and the situation was created by a former owner. It is not clear, however, whether the existing deck was built by the current owners or the previous owners. Art will look at the historic aerial photos to try to determine that.

2. Front yard averaging, and existing attached garage
Section 23.86.010 B 1 c, and DR 10-95
1635 - 51st Avenue North
Cheryl Mosteller

Issue: An existing garage, abutting a house and extending into the required front yard of an SF-zone lot, does not quite meet current standards for terraced garages: It extends more than two feet above grade at a point ten feet back from the front property line. May

the neighbors treat it as a part of the house, for purposes of front yard averaging, for an addition the neighbors wish to make to their house?

Discussion: The front yard averaging provisions in the Measurements Chapter specifically exclude garages that may be permitted in front yards under certain specified exceptions in the current code. By implication, anything bigger than what could qualify for those exceptions is to be treated as a portion of the house for purposes of front yard averaging.

3. Driveway vs. Easement Standards

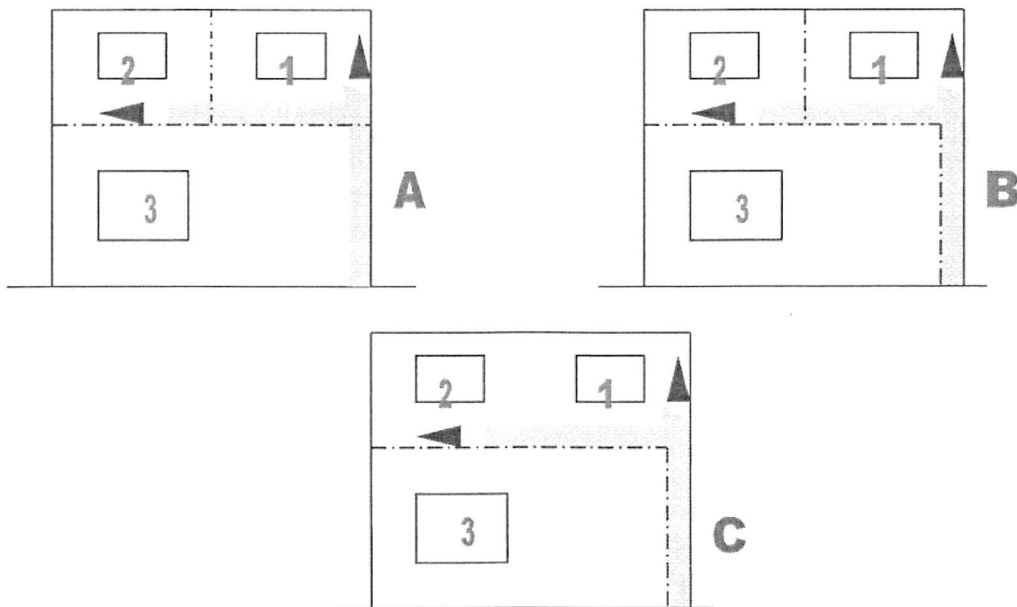
Sections 23.53.025 A 1 and 23.54.030 D 1 d

Cheryl Mosteller

Issue: Under Section 23.53.005, if a lot doesn't have at least 10 feet of street frontage, it must be served by an access easement meeting the standards of Section 23.53.025. Assuming there is no alley frontage, that section requires a ten-foot wide easement, or twelve feet wide if required by the Fire Department, for vehicle access easements serving one or two houses. There is no maximum permissible length, but if the easement is more than 150 feet long, a vehicle turn-around must be provided.

Under Section 23.54.030 D, driveways less than 100 feet long and serving 30 or fewer parking spaces must be ten feet wide. Except for driveways serving only one single-family dwelling, driveways longer than 100 feet are required to be at least 16 feet wide or else provide a passing area at least 20 feet wide and 20 feet long.

The first provision suggests that a 10-foot-wide, 150-foot-long easement is adequate to serve two houses, but the second standard appears to conflict, requiring either a 16-foot-wide driveway or else a passing area, if the driveway is longer than 100 feet. How should we harmonize these provisions? The routine practice has been to apply the lesser, easement standard rather than the more restrictive driveway standard.



Discussion: These provisions appear to conflict in cases where access is provided to two houses, over an access-way that is more than 100 feet and less than 150 feet long. If we were to take the hard line, and say that the access-way technically functions as a driveway to the parking for both of the houses to the rear, and must be 16 feet wide or else provide a passing area, this would render useless the provision apparently allowing the two houses to be served by a 10-foot wide easement.

In Diagram A, it might be argued that both Houses 1 and 2 are served by an easement over Lot 3, and that that a driveway to two houses is provided over that easement. However, our practice has been to apply the driveway standard only in cases where there is no easement. In Diagram A, we would apply the more lenient easement standard to the access way across Lot 3. According to the same reasoning, in Diagram B, where there is a "dog's leg" portion of Lot 1 extending to the street, the access over that area is a driveway for House 1, but an easement for House 2. Because it is only a driveway for one house, it still qualifies for the more lenient standard. It may be 10 feet wide with no passing lane. In Diagram C, where Houses 1 and 2 are on the same lot, with a dog's leg extension to the street, there is no easement, and the more stringent driveway standards would control.

The evident policy concern behind the driveway standard is that the occupants of the two houses might find themselves trying to enter and exit at the same time, and someone would need to back up an unsafe distance. The evident judgment behind the lesser easement standard is that this sort of conflict is unlikely unless a larger number of people are trying to use the access. A **CODE FIX** is needed to bring these two provisions into line with each other. Until then, we will continue to apply the lesser standard in cases where they conflict.

EXHIBIT 11

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)
the Use of the) Interpretation
Property at) No. 95-001
2409 - 29th Avenue West)

Background

This interpretation was requested by Sunset Addition Neighbors Association (SANA) on issues relating to a proposed subdivision of one parcel of property into three (proposed Parcels A, B, and C). The questions presented are whether a building site may be created with alley but not street access, and whether an access easement, crossing Parcel B of the proposed short plat and serving Parcel A, is properly counted towards minimum lot area requirements for Parcel B.

Findings of Fact

1. The subject property is addressed in DCLU records as 2409 - 29th Avenue West. It is legally described as Lots 7 and 8, Block 7, Sunset Addition. The property is presently developed with one single-family residence, built in 1941. A copy of the official Land Use Map, showing the existing configuration of the property, is attached to this interpretation as Appendix A.
2. According to the Land Use Map, Lots 7 and 8 are each about 60 feet wide by 140 feet deep. The property thus has a total area of about 16,800 square feet. The lots, combined, have 120 feet of frontage on 29th Avenue West, to the east of the property, and also front on a twenty-foot-wide improved alley to the west.
3. The zoning for Lots 7 and 8 is SF-5000: Single-Family Residential, with a minimum lot size of 5000 square feet. According to a survey of the property dated December 15, 1994, the existing house and a smaller structure to the west of the house straddle the existing lot line between Lots 7 and 8.
4. On December 21, 1994, according to records maintained by the Department of Construction and Land Use (DCLU), the property owners applied for a Master Use Permit to subdivide one parcel into three parcels of land (DCLU Project #9406032). According to the survey of December 15, 1994 and the DCLU decision on the short

subdivision application, proposed Parcel A would have an area of 5,043.8 square feet, proposed Parcel B would have an area of 5,002 square feet, and proposed Parcel C would have an area of 6,755 square feet. A copy of this survey, showing the proposed configuration of three lots, is attached to this interpretation as Appendix B.

5. As proposed, Parcel A would have 120 feet of frontage on the alley to the west of existing Lots 7 and 8, but no frontage on a street. Parcel B would have 41 feet of frontage on 29th Avenue West, and Parcel C would have 79 feet of frontage on that street. A "pedestrian easement," ten feet wide and 96 feet long, is shown on Parcel B running from 29th Avenue West to the northeast corner of Parcel A. As discussed in the DCLU short subdivision decision, this easement provides pedestrian access from 29th Avenue West to Parcel A. Although not shown on the survey (Appendix B), a ten-foot-wide vehicular access easement is required across Parcel A to provide alley access to Parcel B, as set forth on Page 3 of the DCLU short subdivision decision. Condition No. 5 of the short subdivision decision specifically requires revision of the survey to show this vehicular access easement to Parcel B.
6. DCLU approved the short subdivision application. SANA has appealed the DCLU short subdivision decision, in addition to requesting this interpretation.
7. The Land Use Code provisions governing short plats (or short subdivisions) are set forth in Chapter 23.24 of the Seattle Municipal Code (SMC). Section 23.24.035 sets forth standards for access to lots created in a short plat. Subsection (C) says:

"Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be required."

Subsection (D) also says that "[a]ccess to lots shall be from a dedicated street," unless DCLU determines that certain listed conditions are met permitting access by easement. The full text of Section 23.24.035 is attached to this Interpretation as part of Appendix C and incorporated herein as a Finding of Fact.

8. Section 23.24.040 sets forth the specific criteria for approval of short plats. One criterion, at Section 23.24.040 (A) (2), is "[a]dequacy of access for vehicles, utilities, and fire protection as provided in Section 23.53.005." The complete text of Section 23.24.040 is attached to this interpretation as part of Appendix C and incorporated herein as a Finding of Fact.
9. SMC Section 23.40.004 (C) provides:

"No minimum lot area, yard, setback, open space, landscaping, access, screening or other element of a development used to meet a development standard for one (1) use or structure may be used to meet the development standards of another use or structure except as specifically provided in this Code."

10. Section 23.44.010 (A) establishes minimum lot area requirements for the three Single-Family zones of 5,000, 7,200, and 9,600 square feet. Section 23.84.024 says, in part:

"'Lot' means a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley."

"'Lot area' means the total area of the horizontal plane within the lot lines of a lot."

"'Lot lines' means the property lines bounding a lot."

11. Section 23.44.016 (A) sets the standards for access to parking on Single-Family-zoned lots. This regulation requires access to parking from an improved street, alley, or easement, and then sets specific conditions for permitting access to parking through a required yard abutting a street. The complete text of Section 23.44.016 (A) is attached to this interpretation as Part of Appendix D, and is incorporated herein as a Finding of Fact.

12. Section 23.53.005 (A) (1) says:

"For residential uses, at least ten feet (10') of a lot line shall abut on a street or on a private permanent vehicle access easement meeting the standards of Section 23.53.025; or the provisions of Section 23.53.025 F for pedestrian access easements shall be met."

Section 23.53.025 (F), which sets the standards for pedestrian access easements, is attached to this interpretation as part of Appendix D, and is incorporated herein as a Finding of Fact.

13. The term "alley" is defined in Section 23.84.002 as follows:

". . . a public right-of-way not designed for general travel and primarily used as a means of vehicular and pedestrian access to the rear of abutting properties. An alley may or may not be named."

The term "easement" is defined in Section 23.84.010 as follows:

". . . a grant by a property owner to specific persons or to the public to use land for a specific purpose or purposes."

14. The adopted policies for the Single-Family zones, at SMC Section 23.16.002, include policies on parking. The parking policies say, in part:

"Implementation Guideline 1: When a surfaced alley is accessible to the rear yard, accessory parking shall be accessed from the alley, unless prevented by topography. Front yard driveways and curbcuts shall be prohibited under this circumstance."

. . .

"Implementation Guideline 3: When there is no accessible surfaced alley, access through the front yard to parking shall be allowed. . . ."

15. DCLU has previously approved short subdivisions in SF-5000 zones that include lots without street frontage; vehicular access to these lots is provided from an adjacent alley, and pedestrian access is provided directly to the nearest street via a pedestrian access easement. The area of the easement has been included in the lot area of the servient lot (i.e., Parcel B in the present case) in these prior decisions. A representative example is DCLU Project #8907953, published April 12, 1990, which approved subdivision of one parcel into six parcels. Three of the six parcels have frontage on a street (47th Avenue Southwest). Two of the other three parcels have access to the street by vehicular easement. The sixth parcel has vehicular access to a sixteen-foot-wide alley that reaches the lot in its southwest corner, and pedestrian access to the street.
16. A second example is DCLU Project #9305075, published in 1994, approving subdivision of two parcels into three. Parcels A and B of this short plat are less than 5,000 square feet in area, and qualify as lots under SMC Section 23.44.010 (B) (1), the so-called "75/80" rule. Parcels A and B have street frontage on 29th Avenue, but Parcel C fronts only on the alley to its westerly, or rear, side. A ten-foot-wide pedestrian and utility easement, crossing over both Parcels A and B, connects Parcel C to the street. This particular decision was appealed to the City Hearing Examiner, who affirmed the DCLU decision. In the Matter of the Appeal of 29th Avenue Community Council (MUP-94-001 (P, W)), decided April 11, 1994. In Conclusion No. 2 of this decision, the Hearing Examiner noted, in part, that "[t]he plat would allow adequate pedestrian and vehicular access to the site." In Conclusion No. 5, the Hearing Examiner further stated, in part: "Although the location of the proposed Parcel C with alley access is unusual in this neighborhood, it is not unusual throughout the City."

Conclusions

1. Lots 7 and 8, as presently configured, have ample area for creation of a third lot in the SF-5000 zone. The three proposed lots all exceed the minimum lot area requirement, and thus comply with SMC Section 23.44.010 (A). (Findings of Fact Nos. 2, 3, 4, and 10, and Appendix A.) Given the location of the existing house on the property, it is clear that the short plat was proposed as set forth in Appendix B in order to avoid partial demolition or movement of the existing house.
2. If an existing alley is located adjacent to a lot, as in the case of Lots 7 and 8, the Land Use Code does not require a lot line to abut on a street or vehicle access easement. Section 23.53.005 (A) (1) (Finding of Fact No. 12) makes this plain, by providing that a lot may meet the standards for a pedestrian access easement if it has less than ten feet of frontage on a street or vehicular easement. The standards for pedestrian access easements in Section 23.53.025 (F) (Finding of Fact No. 12 and Appendix D), permit pedestrian access easements only if a lot abuts an alley but does not abut a street. Nothing in these sections, or anywhere else in the Land Use Code, suggests that these provisions are limited only to existing lots, and may not also apply to lots newly created by short subdivision. So long as the newly created parcel meets the definition of "lot" (Finding of Fact No. 10), by abutting upon a street or an access easement (pedestrian or vehicular is not specified), then it should qualify as a lot.
3. Proposed Parcel A will abut the improved alley to the west of the property, but will not abut a street or vehicular easement. (See Finding of Fact No. 5 and Appendix B). Thus, a pedestrian access easement, as shown in the proposed short subdivision, is not only an allowable option, but is required. The proposed pedestrian easement, which is ten feet wide and 96 feet long (Finding of Fact No. 5) meets the standards of Section 23.53.025 (F). Since vehicular access is available from the alley and pedestrian access standards are satisfied, the requirements for vehicular easements set forth in Section 23.53.025 (A) are not relevant to the subject short subdivision.
4. The Code standards for access within short plats, set forth in Section 23.24.035 (Finding of Fact No. 7 and Appendix C), do not conflict with Sections 23.53.005 and 23.53.025. Nowhere in Section 23.24.035 is there a requirement that new lots front on a street. Thus, lots that do not front on a street may meet the access standards of Section 23.24.035 by other means, as proposed Parcel A does.
5. Sections 23.24.035 (C) and (D), stating that convenient pedestrian and vehicular access is required to every lot in a short plat by way of a dedicated street or permanent appurtenant easement, and stating that access to lots shall be from a street unless certain conditions are met, have previously been regarded as satisfied in DCLU short plat decisions if vehicular access through an improved alley leads to a street, and separate pedestrian access is also provided by easement. Support for this DCLU practice is found in the definition of "alley" (Finding of Fact No. 13), which specifically states that alleys are primarily used for both vehicular and pedestrian

access to the rear of abutting properties. This definition, in itself, indicates that the Code contemplates the existence of lots which have their principal means of access from an alley only.

6. Comparison of the definition of "alley" and the definition of "easement" (Finding of Fact No. 13) also shows that, in effect, a platted and improved alley functions as a "permanent appurtenant easement," as required by Section 23.24.035 (C). An alley, as a public right-of-way by definition, is also in effect a grant to the public to use the alley for a specific purpose (i.e., access to a lot or lots), and may thus be considered a type of easement. A private easement is clearly unnecessary to achieve access to Parcel A, where a public alley exists. The concerns in Section 23.24.035 (D) are satisfied by the alley access arrangement, since the alley leads to an improved street. The conditions set forth in this section clearly apply only to situations in which there is no adequate street system, and a private access easement is the only means of access. To read this section narrowly, to require street frontage for new lots in areas with an improved system of streets and alleys, is unreasonable and unjustified, particularly as such a reading would conflict with Sections 23.53.005 and 23.53.025.
7. SMC Section 23.44.016 (A) (Finding of Fact No. 11) also supports approval of short subdivisions in which one or more lots does not front on a street, if those lots have frontage on an improved alley. Section 23.44.016 (A) specifically requires vehicular alley access to lots in single-family zones, where an improved alley exists, by forbidding access through a required yard of such lots abutting a street, unless certain listed conditions apply. In its decision to grant the short subdivision in Project #9406032, DCLU specifically found that these listed conditions did not apply. Thus, if alley access for vehicles is required by Section 23.44.016 for the proposed lots in Project #9406032 that abut on the improved alley, then it makes no sense to require direct access to 29th Avenue West instead of, or in addition to, alley access.
8. The single-family parking policies of Section 23.16.002 (Finding of Fact No. 14) further show a clear intent to promote alley access to parking in single-family zones wherever such access is available. Implementation Guideline 1 specifically states that access to parking shall be from a surfaced alley, where a surfaced alley is accessible to the rear yard. Even Parcel B of the proposed short plat, with no frontage on the alley, is required to have an access easement to the alley across Parcel A, as set forth on Page 3 of the DCLU decision on Project #9406032, and in Condition No. 5 (see Finding of Fact No. 5), in order to promote the policy intent of the Code. In particular, Implementation Guideline 3, which limits access to parking through front yards only where there is no accessible surfaced alley, is promoted by the DCLU decision. Parcel C of the proposed short plat, of course, has access directly onto 29th Avenue West, but this proposed lot contains the existing house and garage, with an existing driveway and curcut leading onto the street. Thus, its lack of alley access merely reflects an existing situation that is maintained by the DCLU short plat decision.

9. Approval of Project #9406032 is further supported by past DCLU short plat decisions and Hearing Examiner decisions. In both cases described in Findings of Fact Nos. 15 and 16, lots in SF-5000 zones were approved that abut alleys but not streets and meet their street access requirements through a pedestrian access easement across one of the other lots. In particular, the Hearing Examiner decision in Matter of the Appeal of 29th Avenue Community Council suggests that these short plats typically allow adequate vehicular and pedestrian access, as required by the short plat criteria, and that they are common in Seattle. Nothing in the present case is sufficiently different from these other decisions to merit denial of the proposed short plat. In fact, to do so would directly contravene the logic of the prior DCLU decisions and treat one property owner differently from others who have previously benefited from this practice.
10. There is no support anywhere in the Land Use Code for the notion that an easement is not counted in the lot area of the lot over which it is created (called the "servient lot"). Section 23.40.004 (C) sets forth a basic requirement that an element of one development cannot be used to meet development standards for another use or structure except as specifically provided in the Code (Finding of Fact No. 9). The intent of this section is specifically to prevent one development feature or characteristic from satisfying Code requirements for another development. Thus, an easement area cannot be counted towards the minimum lot area of both the servient lot and the lot that the easement serves (the "dominant" lot). However, if we were to assume that an area subject to an access easement could not even be used to meet lot area requirements for the servient lot, a logical extension of that position would be that areas subject to other easements, such as driveway or utility easements, could not be counted for purposes of lot coverage or yards as well. There would then be no difference between an easement and a conveyance of a fee interest. There is no support in the Code for such an analysis.
11. Section 23.40.004 (C) arguably does not apply to easements at all, because they are rights in land, not Land Use Code development standards. A right to use land, created by easement, has no specific effect on the size of that land, its yards, open space, or any other "elements" related to development on that land. However, even if the area of the pedestrian easement across Parcel B is somehow considered to meet Land Use Code development standards for two different lots (the minimum lot size requirement on Parcel B and the access requirements for Parcel C), this easement is specifically provided for in the Code at Sections 23.53.005 and 23.53.025 (F). Because the Code "specifically provides" for pedestrian access easements, it is clear that Section 23.40.004 (C) is met.
12. Support for Conclusions Nos. 10 and 11 is found in the definitions of "lot" and "lot area" (Finding of Fact No. 10). As defined, "lot area" is the total area of the horizontal plane within the lot lines of a lot. This definition does not except the area of an easement, for whatever purpose the easement was created. To do so in the context of a short subdivision decision would exceed DCLU authority and contravene

this definition. In any case, the prior decisions cited in Findings of Fact Nos. 15 and 16 have counted the area of access easements toward minimum lot area. In fact, Parcels A and B in the 29th Avenue Community Council decision needed the access easement area not to meet the basic minimum lot area requirement but to meet the even more restrictive "75/80" rule of Section 23.44.010 (B) (1).

DECISION

Parcel A of proposed short plat #9406032 meets the minimum lot size requirement and therefore qualifies as a legal building site, even though it does not front directly on a street. Vehicular access from the improved alley to the west, combined with a pedestrian access easement across proposed Parcel B, meets the access requirements of the Land Use Code for Parcel A. The access easement across Parcel B, specifically provided for in the Code, is also properly counted toward the minimum lot area requirement for Parcel B.

Entered this ____ day of _____, 1995.

R. F. Krochalis, Director
Department of Construction and Land Use

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EXHIBIT 12

- [Election Code Administration](#)
- [Seattle Hearing Examiner](#)
- [Business Tax Rules](#)
- [Taxicab and For-Hire Vehicles](#)
- [Public Corporations](#)



City of Seattle Hearing Examiner Decision

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Findings and Decision of the Hearing Examiner for the City Of Seattle

In the Matter of the Appeal of SUNSET ADDITION NEIGHBORS ASSOCIATION from an Interpretation of the Land Use Code by the Director of the Department of Construction and Land Use

Hearing Examiner File: S-95-004

Associated File Numbers:

Department Reference Numbers: 95-001

Date: September 5, 1995

Type: Land Use Code Interpretation

Examiner: Guy E. Fletcher

Introduction

The appellant exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

This matter was consolidated with the appeal from the Director's decision on project 9406032 (Hearing Examiner file MUP 95-005) and heard before the undersigned Deputy Hearing Examiner (Examiner) on August 9 and 10, 1995. The record was left open until August 21, 1995 to allow time for a site visit by the Examiner, and for the submittal of memoranda by the parties.

Present at the proceeding were: the appellant, Sunset Addition Neighbors Association, by John O'Connor project applicant, Bryce Holland, by Joshua Preece, attorney-at-law; and the Department of Construction and Land Use by William Mills, LandUse Planning and Development Analyst.

After due consideration of the evidence elicited during the appeal hearing, and as a result of the personal inspection of the subject property and surrounding area by the undersigned Examiner, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner.

Findings of Fact

1. By an Interpretation dated June 7, 1995, the Director of the Department of Construction and Land Use (DCLU) made the following determinations in reference to short plat application 9406032:

* That Parcel A of the proposed short plat met the minimum lot size requirement and therefore qualified as a legal building site, even though it did not front directly on a street; that vehicular access from the improvement alley to the west, combined with a pedestrian access easement across proposed Parcel B met the access requirements of the Land Use Code; and

* That the portion of Parcel B subject to an easement for the benefit of Parcel A could be counted toward the minimum lot area requirement for Parcel B.

The Interpretation was appealed on March 24, 1995.

2. The property subject to the short plat application is located at 2409 29th Avenue West in Magnolia. The property consists of two platted lots, Lots 7 and 8, Block 7, Sunset Addition. Each lot measures 60 feet by 140 feet, such that the overall area of the property is approximately 16,800 square feet.

3. The subject property is zoned Single Family with a minimum lot size of 5000 square feet (SF 5000).
4. The property is bordered to the east by 29th Avenue West and to the west by a 20-foot wide improved alley.
5. The western portion of the property is substantially lower than the eastern part of the property, there being a substantial topographical break in the middle of the lot.
6. The property is currently developed with a single family residence built in 1941. That house is located on the southern portion of the property.
7. Under the proposed short plat, the property would be divided into three lots. Parcel A would have an area of 5,034 square feet, Parcel B an area of 5,002 square feet, and Parcel C, the site of the existing house, an area of 6,755 square feet.
8. As proposed, Parcel A would have 120 feet of frontage on the alley to the west of existing Lots 7 and 8 but no frontage on a street. Parcel B would have 41 feet of frontage on 29th Avenue West, and Parcel C would have 79 feet of frontage on that street. A pedestrian easement, ten feet wide and 96 feet long, would run across Parcel B from 29th Avenue West to the northeast corner of Parcel A.
9. As a result of the topographical break discussed above, the eastern edge of Parcel A is at an elevation approximately 25 feet below the elevation of 29th Avenue West. As a result, a person using the proposed pedestrian easement would have to descend 25 feet when walking from the street down to Parcel A.
10. The plans submitted with the short plat do not indicate how the pedestrian easement would be developed, whether it would be with stairs, a ramp, an elevator, or some combination of those methods.
11. The alley to the west of the property opens onto McGraw Street to the south and Smith Street to the north. Both streets slope steeply downwards from east to west where they intersect the alley. An old garage and some overgrown bushes obstruct the view eastwards on McGraw from the southern end of the alley. The alley is, however, not a safety hazard involving access to the alley itself from abutting properties.
12. The portion of Parcel B that would be subject to the pedestrian access easement has an area of approximately 960 square feet. If that area is deducted from the total area of Parcel B, Parcel B would measure 4,042 square feet and would not satisfy the minimum lot size requirements of the SF 5000 zoning.
13. The proposed configuration of lots under this proposal would represent a substantial departure from the existing pattern in the neighborhood where all of the lots abut a street. However, it was not shown that the proposed lot configuration would compromise the goals of the Land Use Code in terms of adequate light, air, and usable open space between structures.
14. The servicing of Parcel A by way of a pedestrian access easement creates no issue in terms of provision of water or storm drainage. It also has no impact on the availability of on-street parking.
15. No evidence was introduced to suggest that the proposed pedestrian access easement would not provide identifiable access to Parcel A.
16. There have been a few other instances where DCLU has allowed the creation of a new lot that does not abut a street and has vehicular access solely by means of an alley.
17. SMC 23.24.035 sets forth standards for access to lots created in a short plat. Subsection C reads as follows:

"Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be required."

"Subsection D provides, in part, as follows:

"Access to new lots shall be from a dedicated street, unless the Director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the Land Use Code to provide for adequate light, air and usable open space between structures; and "

* * *

"5. There is identifiable access for the public and for emergency vehicles; "

* * *

18. SMC 23.40.004(C) reads as follows:

"No minimum lot area, yard, setback, open space, landscaping, access, screening or other element of a development used to meet a development standard for one (1) use or structure may be used to meet the development standards of another use or structure except as specifically provided in this Code. " 19. The term "lot" is defined at SMC 23.84.024 as follows:

"A platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley. " 20. The term "lot area" is defined at SMC 23.84.024 as *"the total area of the horizontal plane within the lot lines of a lot. "Lot lines" are defined in the same section as "the property lines bounding a lot."*

21. SMC 23.44.016(A) requires that vehicular access to parking be from *"an improved street, alley, or easement."* The section goes on to provide that access to parking is permitted through a required yard abutting a street only under certain conditions such as there being no improved alley or existing topography not permitting alley access.

22. SMC 23.53.005(A)(1) provides as follows:

"For residential uses, at least ten feet (10") of a lot line shall abut on a street or on a private permanent vehicle access easement meeting the standards of Section 23.53.025; or the provisions of Section 23.53.025(F) for pedestrian access easements shall be met. " 23. SMC 23.53.025(F) reads as follows: *" Pedestrian Access Easements. Where a lot proposed for a residential use abuts an alley but does not abut a street and the provisions of the zone require access by vehicles from the alley, or where the alley access is an exercised option, an easement providing pedestrian access to a street from the lot shall be provided meeting the following standards:*

- 1. Easement width shall be a minimum of ten feet (10");*
- 2. Easements serving one (1) or two (2) dwelling units shall provide a paved pedestrian walkway at least three feet (3") wide;*
- 3. Easements serving three (3) or more dwelling units shall provide a paved pedestrian walkway at least five feet (5") wide;*
- 4. Easements over one hundred feet (100") in length shall provide lighting at intervals not to exceed fifty (50"). Lighting placement shall not exceed fifteen feet (15) in height;*
- 5. Pedestrian access easements shall not exceed two hundred feet (200") in length.*

" 24. The term "alley" is defined in SMC 23.84.002 as follows:

"[A] public right-of-way not designed for general travel and primarily used as a means of vehicular and pedestrian access to the rear of abutting properties. An alley may or may not be named. " 25. The term "right-of-way" is defined in SMC 23.84.032 as follows:

" [A] strip of land platted, dedicated, condemned, established by prescription, or otherwise legally established for the use of pedestrians, vehicles or utilities. " 26. The term "easement" is defined in SMC 23.84.010 as follows:

"[A] grant by a property owner to specific persons or to the public to use land for a specific purpose or purposes. "

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.88, Seattle Municipal Code.
2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. SMC 23.88.020 The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous" *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981).
3. A finding or decision is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed" *Ancheta v. Daly*, 77 Wn.2d 255 (1969), citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 9 L.Ed 746, 68 S.Ct. 525 (1948).
4. In reference to the question of whether the area of the proposed pedestrian access easement must be subtracted from the calculation of the area of Parcel B, the Director's determination must be upheld. The definition of lot, lot lines, and lot area make it clear that in calculating lot area, one includes the entire area within the lot lines. The Code does provide for subtracting the area of certain environmentally critical areas when calculating whether a new lot meets minimum lot size, but nowhere does the Code suggest that one would make a similar subtraction for areas subject to easements.
5. The provisions of SMC 23.40.004(C) do not contradict the above conclusion. That section is clear in prohibiting multiple properties from claiming the same front yard or setback or open space, but does not suggest that areas subject to an easement for some purpose cannot be counted as lot area by the servient lot. To adopt the appellant's argument would act as a substantial deterrent to the granting of easements not only of access easements, but of other easements such as side yard easements pursuant to SMC 23.44.014(D)(2).
6. In relation to the issue of whether Parcel A would satisfy the access provisions of the Code, two questions must be resolved. The first of those is whether the proposed access easement would provide "convenient pedestrian access to the parcel; the second is whether a parcel may be legally created that does not abut a street, but that has vehicular access off an alley, and that is served by a pedestrian access easement.
7. In answer to the first question, the Director cannot be said to have erred in determining that the pedestrian access easement would provide convenient pedestrian access. Pursuant to the provisions of SMC 23.53.025, such easements are limited in length, have minimum width requirements, and are required to be paved and in some cases even lighted. An easement complying with these standards can reasonably be said to be as providing convenient access. It is true that the stairs that are likely to be required here would result in this pedestrian walkway being less convenient than ones crossing more level terrain. It is probably also true that persons visiting the property may, on occasion, find it more convenient to use the alley for pedestrian access than the pedestrian walkway. However, neither of these facts are so compelling as to allow a finding that the Director erred in determining that the proposed easement would provide "convenient" pedestrian access.
8. The second question is more difficult and requires a careful reading of paragraphs C and D of SMC 23.24.035. Looking first at paragraph C, it requires "[c]onvenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement . . ." As discussed above, the proposed easement includes an easement across Parcel B that will provide convenient pedestrian access. The only question, then, is whether vehicular access is provided to Parcel A by way of a dedicated street or permanent appurtenant easement. The Director resolves this question by concluding that to abut a developed alley that connects to the street system is to provide the "access from a dedicated street" required by SMC 23.24.035(C) and (D). Without discounting this rationale, the Director's ultimate decision is also justified under a different analysis.
9. In this regard, it is worth noting that paragraph C does not require that an access easement serving as an alternative to street access be private, only that it be permanent and appurtenant. An alley, in turn, is an easement, albeit one for the benefit of the public as opposed to specific property owners. *Burmeister v. Howard*, 1 Wash. Terr. 208 (1867), *Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wn.2d 222, 422 P.2d 795 (1967). In this case, the alley would function in exactly the same manner as would a private vehicular easement in terms of providing access to the City's street system.
10. Paragraph D goes on to require that access to new lots "be from a dedicated street" unless certain conditions exist, in which case the Director may permit access by a "permanent private easement." Once again, it is important first to determine what the paragraph does not require. It does not say that if there

11. To the extent that the above conclusion may be seen as drawing a fine line, the conclusion is justified by a number of factors. First, none of the conditions listed under paragraph D for determining when access from a "permanent private easement" should be permitted are violated by this application. Thus, determining that the pedestrian access easement satisfies the requirement for a "permanent private easement" does not violate the intention of the Code provision. Second, such reading is consistent with other Code provisions that require vehicular access to parking by way of an alley if the alley is developed. To require a vehicular access easement in a case where the property already abuts a developed alley would not only be redundant, but contrary to the policy of discouraging vehicle access points off of streets. It would seem especially ironic to say that Parcel A is required to have a vehicular access easement leading to 29th Avenue West, when current Code would not allow any of the properties actually fronting on 29th Avenue to develop a driveway leading onto that street.

The Director's Interpretation is AFFIRMED.

