

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

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

I. Relief requested

Pursuant to Hearing Examiner Rule (HER) 2.20, David Moehring, Neighbor to 3641 22nd Avenue West, requests to deny untimely exhibits and expert witnesses or provide a continuance of the hearing per HER 2.15. Additionally, this motion seeks to allow the City's pending production of requested documents including the selection of exhibits from the expected production, as well as the designation of witnesses with knowledge of those documents. In accordance with HER 2.04 (time), the desired new hearing date should be at least seven (7) calendar days after the receipt of the Department's Exhibit & Witness List and at least seven (7) business days after the fulfilled and complete receipt of the timely requested production documents. The Department was sent a discovery request dated March 8, 2018 with a deadline for production within 30 calendar days, or no later than April 9th. These documents have not been received as of 12:30pm today. After receipt, all submitted documents must be reviewed to be adequate in terms of responding to the questions.

II. Relevant Facts

1 The Department submitted their Exhibit and Witness list to the Hearing Examiner on
2 April 6, 2018 at 2:45 PM. A copy of that submission posted by e-file is set forth at
3 Attachments “B”, “C” and “D” to this motion. The Appellant responded to all parties of
4 the untimely submission as set forth in Attachment “A”. Given the Appellant’s motion
5 for subpoenas were denied the same week by the Hearing Examiner after being
6 considered overdue, it would only be fair that the Department’s untimely list of witnesses
7 and exhibits would also be denied; or alternatively that both the Appellant’s subpoena
8 requests and the Department’s Exhibits and Witnesses be allowed after an equitable
9 extension of time beyond the scheduled April 12th hearing date. The Appellant’s
10 subpoenas where denied for good cause in respect for time to review by the Applicant
11 and the Department. Similarly, the Appellant should be provided that same opportunity to
12 prepare for the Department’s submitted exhibits including a possible written rebuttal to
13 any such material. The Department’s lists were first posted to the hearing examiner the
14 afternoon following the Hearing Examiner’s established deadline. The Department
15 submitted six total exhibits including four that have not been previously produced or on
16 record for this case. At the same time, the Department has not been able to produce any
17 of the documents requested back in the March 8th discovery request. Accordingly, I so
18 move that these witnesses and exhibits as part of the department’s case be equitably
19 denied or that the desired four (4) subpoenas are allowed to be served along with a
20 corresponding hearing continuance. In addition, and following the Hearing Examiner’s
21 ruling on the motion to dismiss, the Appellant has identified within the submitted the
22 Final Exhibit and Witness list those remaining discovery items (subsequent to the Order
23 on the Motion to Dismiss) from that Department that are still relevant to the appeal. A
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1 copy of the said request is set forth at Attachment "E" to this motion. Without the
2 relevant evidence being produced on access easements and tree protection as requested,
3 the Appellant will be denied a fair hearing. Per HER 3.13, each party in an appeal
4 proceeding has the right to presentation of evidence and other rights determined by the
5 Hearing Examiner as necessary for the full disclosure of facts and a fair hearing. There
6 was sufficient time for the Department to reply to the Appellant's request, noting that the
7 appellant submitted the second interrogatories and requests for documents to the
8 Department (in accordance with Hearing Examiner Rule 3.11) immediately after the
9 Applicant denied replying to the first interrogatories and requests of February 27, 2018
10 for documents¹.

11
12
13 **III. Conclusion**

14 For the reasons given above, please accept this motion for continuance and provide an
15 order to the Department to produce all of the relevant discovery documents. Alternatively, the
16 Department's untimely exhibits and witnesses should be denied.
17

18 Dated this 9th day of April, 2018.

19 Respectfully submitted,

20 A handwritten signature in black ink, appearing to read "David Moehring", is written over the typed name and title.

21
22 David Moehring, Authorized Representative
23 Neighbor to 3641 22nd Avenue West

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¹ Refer to Attachment "F": February 27, 2018 email from David Moehring to the Office of the
Hearing Examiner with emailed copies to the Department and the Applicant."



Attachment "A"

Re: MUP-18-001 SDCI exhibits &witnesses

From: "David Moehring" <dmoehring@consultant.com>
To: "Hurley, Joseph" <Joseph.Hurley@seattle.gov>, "Johnson, Alayna" <alayna.johnson@seattle.gov>
Cc: "BRANDON GRIBBEN" <bgribben@helsell.com>
Bcc: "Margaret Boyle" <margaret@boylemartin.com>, "Toby Thaler" <fremont@louplop.net>, "bill@grandscheme.com" <bill@grandscheme.com>, "Tess Stelzer" <tesstify@gmail.com>
Date: Apr 7, 2018 7:20:44 AM

Hello Alayna,

Given my subpoenas were denied by the hearing examiner after being 4 hours overdue, should these witnesses and exhibits from SDCI be accepted without a request for continuance?

The lists were first posted to the hearing examiner the following afternoon.

Accordingly, I so move these witnesses and exhibits as part of the department's case be equitably denied or that my subpoenas are allowed to be served along with a continuance.

This motion will be posted in the hearing examiners' case as an e-file.

Thank you.

David Moehring

<https://web6.seattle.gov/Examiner/case/document/9604>

<https://web6.seattle.gov/Examiner/case/MUP-18-001>

Sent using the mail.com mail app

On 4/5/18 at 5:11 PM, Hurley, Joseph wrote:

> Please find attached:
> SDCI witness and exhibit list and copies of the exhibits, Certificate of service
>
> Joseph Hurley
> Senior Land Use Planner, SDCI
> Joseph.Hurley@seattle.gov<mailto:Joseph.Hurley@seattle.gov>
> 206/684.8278
>
> [cid:image003.png@01D3CD01.0E3E4660]City of Seattle
> 700 5th Ave, Suite 1900
> Seattle, WA 98124-4019
> As stewards and regulators of land and buildings, we preserve and
> enhance the equity, livability, safety and health in our communities.

Attachment "B"

Case Details for HE File Number: MUP-18-001

Case Name:	David Moehring	Date Received:	1/2/2018
Property Address:	3641 22nd Ave West	Date Filed:	1/2/2018
Mailing Address:		Filing Fee:	\$85.00
Examiner:	VANCIL	Form of Payment:	cc

Master Use Permit

Notations: Short Plat

Contacts**Appellant:**

David Moehring
3444 23rd Ave W, Ste/Apt#: #B
Seattle, WA 98199

Email: dmoehring@consultant.com
Phone: (312) 965-0634

Applicant:

Loren Landerholm
PO Box 99173
Seattle, WA 98139-0173

Email: soundequitiesinc@gmail.com
Phone: (206) 669-2711

Department:

Joseph Hurley
SDCI

Email: joseph.hurley@seattle.gov

Applicant Legal Counsel:








































Brandon Gribben

Email: bgribben@helsell.com

Events

1/29/2018 1:00 PM Pre-Hearing Conference
4/12/2018 9:00 AM Hearing
4/13/2018 9:00 AM Hearing

Documents

 Notice of Appeal 1/2/2018 4:33:29 PM
 Project Plan Set 1/2/2018 4:33:29 PM
 SDCI Decision 1/2/2018 4:33:29 PM
 SDCI Notice of Decision 1/2/2018 4:33:29 PM
 Proposed Amended Notice of Appeal 1/8/2018 9:21:14 AM
 Motion to Amend Appeal 1/8/2018 9:21:25 AM
 Applicant NOA 1/10/2018 3:45:09 PM
 Notice of Prehearing Conference 1/11/2018 11:08:01 AM
 Notice of Hearing 1/11/2018 11:08:15 AM
 Motion for Reassignment 1/12/2018 9:52:37 AM
 Applicant Response to Motion for Reassignment 1/16/2018 11:08:22 AM
 Appellant Intent for Discovery 1/17/2018 9:22:43 AM
 MUP-17-036 Order on Motion 1/17/2018 9:23:09 AM
 Order of Reassignment 1/17/2018 10:54:58 AM
 Applicant Motion to Dismiss 1/29/2018 11:06:45 AM
 Prehearing Conference 1/29/2018 1:37:48 PM
 Prehearing Order 1/31/2018 10:50:30 AM
 Order of Continuance 1/31/2018 10:50:45 AM
 Appellant Discovery Request 1/31/2018 11:00:24 AM
 Appellant Response to Motion to Dismiss 2/6/2018 5:02:34 PM
 Appellant Response Appendix 1 2/7/2018 9:29:23 AM
 Appellant Response Appendix 2 2/7/2018 9:29:43 AM
 Appellant Response Appendix 3 2/7/2018 9:30:11 AM
 Appellant Response with COS 2/7/2018 9:53:41 AM
 Respondent Reply 2/13/2018 2:20:49 PM
 Department Reply to Response to Motion 2/16/2018 11:00:56 AM
 Order on Motion to Dismiss 3/15/2018 2:35:37 PM
 Appellant Witness & Exhibit List 3/29/2018 5:01:03 PM
 COS 3/29/2018 5:05:59 PM
 Appellant Amended Witness & Exhibit List 4/4/2018 7:27:37 AM
 Motion to Subpoena Fire Department 4/5/2018 1:01:02 PM
 Motion to Subpoena Geoffrey Wentlandt 4/5/2018 1:01:11 PM
 Motion to Subpoena Robert Winters 4/5/2018 1:01:24 PM
 Affidavit of Service 4/5/2018 1:02:15 PM
 Motion to Subpoena Loren Landerholm 4/5/2018 1:02:40 PM
 Order on Motions to Subpoena 4/5/2018 3:23:59 PM
 Applicant Witness & Exhibit List 4/5/2018 3:37:23 PM
 SDCI Witness & Exhibit List 4/6/2018 12:45:35 PM
 COS 4/6/2018 12:45:49 PM



Attachment "C"

MUP-18-001 (P)

From: "Hurley, Joseph" <Joseph.Hurley@seattle.gov>
To: "dmoehring@consultant.com" <dmoehring@consultant.com>, "BRANDON GRIBBEN" <bgribben@helsell.com>
Cc: "Waldman, Cheryl" <Cheryl.Waldman@seattle.gov>, "Mills, William" <William.Mills@seattle.gov>
Date: Apr 5, 2018 5:11:09 PM

Please find attached:

SDCI witness and exhibit list and copies of the exhibits, Certificate of service

Joseph Hurley

Senior Land Use Planner, SDCI

Joseph.Hurley@seattle.gov

206/684.8278



City of Seattle

700 5th Ave, Suite 1900

Seattle, WA 98124-4019

*As stewards and regulators of land and buildings, we preserve and
enhance the equity, livability, safety and health in our communities.*

Attachments

- image001.png
- image003.png
- plat_sub_map.pdf
- S_95_004.pdf
- Plan SetV3.pdf
- Exclusive_ Definition.pdf
- Land Use Forum minutes.pdf
- Decision_Recommendation.pdf
- MUP-18-001 Final_Exhibitlist.pdf
- MUP-18-001 cert of service .pdf

**BEFORE THE HEARING EXAMINER
City of Seattle**

In the Matter of the Appeal of

The Neighbors to 3641 22nd Ave West c/o
David M. Moehring to the SDCI decision on
SDCI #3028431 Short Subdivision - to create
two parcels of land from 3641 22nd Avenue
West lot.

) Hearing Examiner File:
MUP-18-001

) Department Reference:
3028431

) **DPD FINAL LIST OF EXHIBITS AND
WITNESSES**

As requested by the Hearing, the Seattle Department of Construction and Inspections (SDCI) provides the following final list of exhibits and witnesses to be offered at hearing. SDCI reserves the right to provide additional exhibits and/or witnesses in rebuttal of testimony that may be offered by the other parties to this proceeding.

The Department lists the following exhibits:

1. Land Use Forum Minutes from May 7, 2003 and July 11, 2006
2. 1995 HE Decision, Hearing Examiner File: S-95-004 (DCLU Project 9406032)
<http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s2=&s3=95-001&S4=&Sect4=AND&l=20&Sect3=PLURON&Sect5=HEAR1&Sect6=HITOFF&d=HEAR&p=1&u=%2F%7Epublic%2FHEAR1.htm&r=1&f=G#hb>
3. Plat map for Project 9406032 and SDCI Geocortex map showing Short Subdivision No. 9406032
4. "Exclusive" definition (Webster's Third International Dictionary)
5. Approved plan set for Project No. 3028431
6. Analysis and Decision of the Director Project No. 3028431

The Department Lists the following witness:

Joseph Hurley, Land Use Planner, will testify regarding all facts and analysis of the review (Project 3028431).

William K. Mills, Strategic Advisor will testify regarding analysis of adequacy of access for vehicles and adequacy of access to the proposed lots as required under the Land Use Code (Project 3028431).

Entered this 5th day of April, 2018.

Signature on file

William K. Mills, Strategic Advisor
Land Use, SDCI

Signature on file

Joseph Hurley, Reg. Arch.
Land Use Planner, SDCI

cc. David Moehring, for The Neighbors to 3641 22nd Ave West
Brandon S. Gribben, Helsell Fetterman LLP



Attachment "E"

Re: Discovery Request to SDCI for MUP-18-001

From: "David Moehring" <dmoehring@consultant.com>
To: "Hurley, Joseph" <Joseph.Hurley@seattle.gov>
Cc: "Gribben, Brandon S." <BGribben@helsell.com>, "soundequitiesincgmail.com" <soundequitiesinc@gmail.com>, PRC <PRC@seattle.gov>, "Johnson, Alayna" <Alayna.Johnson@seattle.gov>
Bcc: "Tess Stelzer" <tesstify@gmail.com>, "Toby Thaler" <toby@louploup.net>
Date: Apr 8, 2018 7:23:16 PM

RE: APPELLANT'S SECOND INTERROGATORIES AND REQUESTS (relative to 3641 22nd Avenue West) FOR DOCUMENTS.

Mr. Hurley,

Please verify the status of the request for documents dated March 8 in accordance with the Public Records Request as defined in RCW42.56.

David Moehring
312-965-0634

Sent: Thursday, March 08, 2018 at 11:22 AM
From: "David Moehring" <dmoehring@consultant.com>
To: Joseph.Hurley@seattle.gov
Cc: "Gribben, Brandon S." <BGribben@helsell.com>, "soundequitiesincgmail.com" <soundequitiesinc@gmail.com>
Subject: Discovery Request to SDCI for MUP-18-001

Good morning, Mr. Hurley-

Attached is the previously requests for documents relative to the land-use appeal to the Subject Property at 3461 22nd Ave W (MUP-18-001). Due to the number of pages, a hard-copy will be mailed / or sent via messenger to the Office of the Hearing Examiner for their record.

Please let me know if you would like an editable version of the questions, and what file format that you would prefer.

Complete responses are due within 30 days, or by Monday, April 9th, in order to qualify the completeness of the application.

Sincerely,

David Moehring AIA
3444 23rd Ave W, #B
Seattle WA 98199
dmoehring@consultant.com

=====



Attachment "F"

Applicant's objections to Appellent's questions relative to MUP 18-00

From: "David Moehring" <dmoehring@consultant.com>
To: "Johnson, Alayna" <Alayna.Johnson@seattle.gov>
Cc: "Hurley, Joseph" <Joseph.Hurley@seattle.gov>, "BRANDON GRIBBEN" <bgribben@helsell.com>, "soundequitiesinc@gmail.com" <soundequitiesinc@gmail.com>
Bcc: "Toby Thaler" <toby@louplop.net>, "Bill Bradburd" <bill@grandscheme.com>, "Cindi Barker" <cindilbarker@gmail.com>
Date: Feb 27, 2018 6:42:02 PM

Dear Office of the Hearing Examiner:

I have received the attached objections to the Applicant who has failed to respond to all of my questions relative to the ownership of the Subject Property of this appeal. I believe that I am not in a position to reply without the the Office of the Hearing Examiner making a determination if these objections to interrogatory are valid or if they are obstructing the information necessary to proceed with the scheduled hearing for case MUP-18-001.

To reiterate what was first initiated on January 17, the purpose of these questions are to confirm the Applicant's standing to act on behalf of the property owner for this appeal. From what public records show, Debra Wood should be the authorized applicant rather than Sound Equities and their legal representative. Whereas the Applicant has the right to request just one relative representative to act on behalf of the Appellant, the Appellant also has the right to assure the stated Applicant has the authority to represent the short plat being proposed. The question was raised, as well, at the Pre-Hearing, and deferred by the Examiner to the Discovery process. Now, six weeks after the initial question was raised relative to the rightful owner of the property, we are yet to see evidence providing written authorization of Sound Equities to act on the behalf of the deeded owner. We still do not know if the Applicant is valid to represent this application or be active in the appeal proceedings.

I am not sure exactly how to proceed, but will look through the HER and code to find more direction. I suspect this non-response by objection will be followed by an Appellant motion to the Hearing Examiner to make a determination on the objection. In addition, as the Appellant, I will likely initiate a 30-day public records request to the SDCI - including a record of the deed for the Subject Property as required by the Seattle Land Use Code.

Good evening,

David Moehring
 3444 23rd Ave W
 Appellant to MUP-18-001

=====

Below is attached in support of the date provided above:

Sent: Wednesday, January 17, 2018 at 10:43 AM
From: "Johnson, Alayna" <Alayna.Johnson@seattle.gov>
To: "David Moehring" <dmoehring@consultant.com>
Cc: "Hurley, Joseph" <Joseph.Hurley@seattle.gov>, "BRANDON GRIBBEN" <bgribben@helsell.com>, "soundequitiesinc@gmail.com" <soundequitiesinc@gmail.com>, PRC <PRC@seattle.gov>
Subject: RE: MUP 18-001 and SDCI project #3028431