Hearing Examiner Ryan Vancil
April 20, 2018

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:	Hearing Examiner File: MUP-18-001 Department Reference: 3028431
David Moehring, a Neighbor to 3641 22nd Ave West, to the Short Subdivision to create two parcels of land from the lot at 3641 22nd Avenue West	APPELLANT'S CLOSING ARGUMENT

The Appellant, David Moehring, respectfully submits the attached closing arguments relative to the appeal originally issued on January 2, 2018.

Dated April 20, 2018

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies, via e-mail, of the attached David Moehring, the Neighbor to 3641 22nd Ave West, **closing argument** to every person listed below, in the matter of the **LAND USE DECISION APPEAL** to the Short Subdivision to create two parcels of land from 3641 22nd Avenue West lot**,** Hearing Examiner File No. MUP-18-001.

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Dated April 20, 2018

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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

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

I. INTODUCTION

An administrative appeal hearing on case MUP-18-001 for the above indicated Subject Property[1] took place on Thursday, April 12th from 9:00am to 4:43pm. The hearing was regarding Seattle Department of Construction and Inspection Director's (hereafter the "Department") unconditional granting of the Short Plat subdivision. The Appellant's case is based on the erroneous granting of the proposed Short Plat subdivision of a single 6,000 square foot lot zoned low-rise multifamily (hereafter "LR-1")[2] given the failure of the Department to apply all of the criteria as required by the Seattle Municipal Code (hereafter "SMC".)

[1] At present, the Department has assumed that the parent lot subdivision is authorized and have since assigned at least four addresses to the King County Assessor Parcel #: 2770601655 as follows:

(a) 3641 A 22ND Avenue West,
(b) 3641 B 22ND Avenue West,
(c) 3641 D 22ND Avenue W, and
(d) 3641 22ND Avenue West.

[2] Low-Rise multifamily zoning includes three different and distinct density limits as prescribed by SMC 23.45.512 Table A. LR-1 is the least dense of the three at 1 dwelling per every 1,600 square feet of lot area for single detached and attached townhouses; or unlimited number of street-facing rowhouses that meet the requirements of SMC 23.84A.032,'R',(20).

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On March 15, 2018, the Hearing Examiner issued an Order on the Applicant's Motion to Dismiss which limited the scope of this appeal to two (2) items:

a. ii.) Failure to provide adequacy of access for vehicles (SMC 23.24.040.A.2), by failure to provide exclusive access for each of the proposed lots; and

d. iv.) The decision failed 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 the tree protection rules – preservation of existing trees.

The evidence was compiled during the hearing within Exhibits 1 to 18 along with testimony of the Appellant's expert witness - Michael Oxman, the Department, the Department's expert witness - William Mills, the Applicant's expert witness - Ryan Ringe, and the Applicant - Mr. Landerholm. Mr. Moehring, the appellant, inadvertently failed to identify himself as a witness in the required pre-submitted list of witnesses and was, therefore, precluded from offering testimony.

II. STANDARDS OF REVIEW

The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 23.76.022. Appeals shall be considered de novo for issues that relate to "compliance with procedures for Type II decisions, compliance with substantive criteria, determinations of non-significance (DNSs) or failure to properly approve, condition, or deny a permit based on disclosed adverse environmental impacts, and any requests for an interpretation included in the appeal." This particular appeal is relevant given the non-compliance with procedures for Type II decisions, namely Short Plat subdivisions, and meeting the substantive criteria.

Note that both the Applicant's representative and the Department both referenced the future development as considerations to this Short Plat easements and lot division location within their inquiry and testimony. It is understood from the Order on the Motion to Dismiss that the future development will not be considered within the facts brought forth in this appeal. The case Exhibit 2 does confirm that this Short Plat application is running concurrent with the Type I building permit application #6596711 accepted by SDCI on October 19, 2017 to "Establish use *rowhouse* and construct new *townhouse* building, per plan" (emphasis added). The intent of the Applicant to build two townhouses behind three rowhouses shall not be a consideration in

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determining to grant a short plat. What is required (per the published analysis – Exhibit 1) is that the Department's decision must follow general short subdivision standards. The intent of future development, therefore, shall not take precedent over the criteria to provide vehicle access for each created new lot. Similarly, the intent of future development shall not take precedent over the criteria to maximize the retention of existing trees. 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.

(Note: additional criteria have been omitted here for the purposes of brevity.)

III. ARGUMENT

1. The testimony of Mr. Hurley, representing the Department, has revealed that the Short Plat decision was made without substantive conference with appropriate officials for either the vehicle access requirements or to maximize the retention of existing trees.
2. The Conclusion of the Director's Decision (Exhibit 1) specifically states that "this short subdivision will provide pedestrian *and vehicular access* (including emergency vehicles), and public and private utilities (emphasis added)." This statement or the application is erroneous as the submitted survey drawings for the subdivision (Exhibit 4) does not indicate any form of vehicular access to the proposed Parcels A (street fronting) or B (back of parent lot). Accordingly, all of the testimony from Mr. Mills that attempted to justify a pedestrian access in lieu of the decision's stated required vehicular access contradicts the published Short Plat decision. The decision did not state 'this short subdivision will provide pedestrian *or* vehicular access.' Appropriately, the appeal pertains to the failure of the application (Exhibit 4) to graphically indicate any access for vehicles in noted in the decision

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following the requirement (SMC 23.24.040.A.2)[3]. To provide the stated vehicle access, this section requires compliance the SMC 23.53.005.A.1-Access to lots, which states: "For residential uses, at least 10 feet of a lot line shall abut a street or a private permanent vehicle access easement meeting the standards of Section 23.53.025." Parcel B does not extend to the street; nor is there a private permanent vehicle access easement through Parcel A to Parcel B being indicated. As such, the criteria and decision based on vehicle access is an obvious error.

3. The Department's witnesses provided in Exhibits 15, 16, and 17 metaphorical examples, at best, of possible explanations for how vehicular access could be achieved for the subject property. However, none of these are facts that apply to this appeal and must not be considered as evidence.
    a. Exhibit 15 were "Draft Minutes" of notes dated between May 7, 2003 and July 11, 2006. These notes are illusive and not binding to the requirements of the Seattle land use code as a basis to make legal decisions.
    b. Exhibit 16 was an interpretation 95-011 of the land-use code without a specific date. The interpretation does not appear to be available on the SDCI website[4], it is over 20 years old and does not relate to the current version of the land-use code, and moreover is an interpretation from a Single-Family zoned property rather than a low-rise multifamily zone code relative to the Subject Property.
    c. Exhibit 17 is the results of an appeal to the above indicated interpretation. The Hearing Examiner is being asked to equate the differences of this interpretation and appeal results to the Subject Property that falls within different requirements of zoning and an antiquated version of the code.
4. The Conclusion of the Director's Decision (Exhibit 1) also states that "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." It should be noted that two of these cited sections (as reiterated in the conclusion) pertain to Single-Family zones, not relevant to the Subject Property. Mr. Hurley's erroneous written conclusion and testimony

[3] This code section states "Adequacy of access for pedestrians, vehicles, utilities, and fire protection as provided in Section 23.53.005, Access to lots".

[4] http://www.seattle.gov/dpd/codesrules/codeinterpretations/default.htm

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suggests that the issues of existing trees were not of significance for this Short Plat decision, despite the criteria that requires the criteria of 'whether the proposed division of land is designed to maximize the retention of existing trees.'

5. The testimony of expert witness and arborist, Mr. Oxman, clarified the location, type, and number of trees within and overlapping the Subject Property though the evidence of drawings (Exhibits 4 and 10- illustrated at the hearing by Figure 1), photographs (Exhibits 11 and 12), the email from the Applicant's arborist to the Department (Exhibit 10), and a visit to the site the day proceeding the hearing. Mr. Oxman testified that up to four trees (referenced as #1, #3, A, and B) were all at risk of not being retained as a result of Seattle City Light and Utility Easements running within the root feeder zones of the significant trees. One of the two trees just outside the Subject Property Line, "B", is considered an Exceptional Tree which must be considered by the City's special requirements as defined within the Director's Rule 16-2008 (Exhibit 9). Mr. Oxman testified from his experience that excavation resulting from underground utility easements as shown on the permit application has led to permanent damage and removal of trees. He testified that removal of these trees from the Short Plat easements impacts Seattle's Canopy Cover goals.

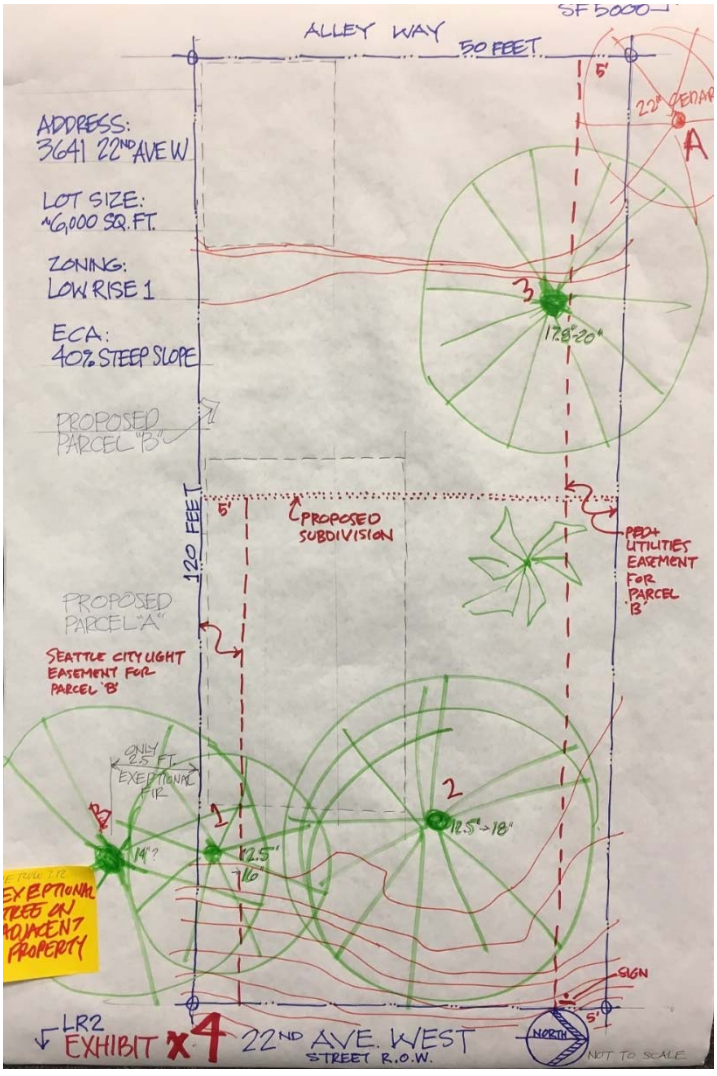

Figure 1- (above) Illustration showing the approximate location of the Subject Property parent lot, proposed Short Plat with easements, and existing trees (reference Hearing Exhibits 4 and 10);or alternatively, refer to figure 2 on page 5 of the appeal.

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6. The Applicant's arborist testified that they only made one visit to the site to take an inventory of the trees. Mr. Ringe indicated that his scope of services were limited, and that he has not been consulted in terms of what would be needed to retain the existing trees. He also testified that he was not made aware of the proposed subdivision and utility easements at the time of his October 16, 2017. Given the Short Plat application drawings were prepared four months prior to Mr. Ringe's visit, a conscious decision was made by the Applicant not to consider the retention of trees within the Short Plat application.
7. The Department testified that they had not consulted with the Applicant to consider alternatives to the Short Plat and binding easements in effort to meet the criteria of retaining existing trees. Mr. Hurley also testified that he did not examine any options for alternatives graphically, but only concluded upon observation that there would be no other workable alternatives to retain one or more of the five trees within and near the Subject Property. In Discovery, as repeated in testimony during the hearing, Mr. Hurley was asked if SDCI requested any alternative layouts of the short plat to the Subject Property to evaluate whether the proposed division of land is designed to maximize the retention [and protection of] of existing [significant and exceptional] trees per SMC 23.24.040? His answer was "No. SDCI staff reviewed the application for compliance with Section 23.24.040.A.6 and concluded that there was not another division of the property that would better maximize the retention of existing trees."
8. However, Mr. Hurley has provided an example of a recent Short Plat subdivision (Exhibit 18) for a 5,000 square foot lot within an LR-1 zone at 2432 NW 6oth Street. Mr. Hurley acknowledged that this example was not unusual for subdivisions. As applicable from the example to the Subject Property, it was deemed that indeed alternatives in utility easements are possible to reduce the impact to existing trees. Specifically, by combining the two easements within one wider easement could reduce or eliminate the impact to two of the five trees. In addition, Mr. Hurley noted that property line setbacks are usually at least 5 feet within LR1 zones – depending on the type of building that may occur. He acknowledged that shifting the location of the subdivision to center on tree #3 might result in two buildable lots while at the same time possibly protecting that tree's critical root feeder zone from damage during excavation.

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9. These erroneous results follow a pattern of the Department's neglect when it comes to the criteria for short plat subdivisions. Exhibit 5 demonstrated the Department's acknowledgement that Vehicle Access Easement Standards were not being enforced prior to November 2017. Exhibit 6 stipulates in clear language the Short Plat application requirements. The mishaps in this decision are obvious and clear.

IV. CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 of the Seattle Municipal Code. The Examiner must give substantial weight to the Director's decisions. The Appellant, David Moehring – neighbor to 3641 22nd Avenue West, has proven that the Department's decision did not meet all of the criteria and are clearly erroneous relative to the requirements of SMC 23.24.040. As such, the decision may be reversed if the Examiner, on the review of the entire record, is left with the firm conviction that a mistake has been made.
2. The decision on the Short Subdivision by the Department's Land Planner, Joseph Hurley, dated December 18, 2017 (case Exhibit 1) was granted with no conditions.
3. The published analysis issued by the Department's Land Planner on December 18, 2017 (case Exhibit 1)
4. The conclusions from the Department indicate that "the above criteria have been met." Yet the testimony provided delineates the two criteria on retention of existing trees and vehicular access have not been met.[5]
5. The same conclusion states: "This short subdivision will provide pedestrian and vehicular access (including emergency vehicles}, and public and private utilities."[6] Yet there does not exist any documentation with this application that vehicular access has been provided.[i7]
6. The same conclusion states: "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

[5] Exhibit 1, page 3. Conclusion.

[6] ditto

[7] Exhibit 4, application site plans and legal description only identifies pedestrian and utility easements.

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tree protection requirements."[8] Yet, two of these sections are relative only to single-family zoned property[9], which cannot be enforced within the low rise multifamily LR-1 zoning of the Subject Property.

7. With multiple errors and the Department's failure to apply all of the criteria in their decision to grant a short plat to the subject property, the Appellant requests relief that the Hearing Examiner execute their authority for a vacation of the analysis and the decision. Such action would allow the Department to confer with appropriate officials, fully use criteria on vehicular access and maximize the retention of existing trees, and subsequently and make a conditioned decision based on the true assessment of the Short Plat as required by SMC 23.24.040.

Dated this Twentieth day of April, 2018

By: _____

DAVID MOEHRING AIA
Appellant (MUP-18-001)

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[8] Exhibit 1, page 3. Conclusion, fifth paragraph.

[9] SMC 23.44.008.I erroneously states that "Trees are required when single-family dwelling units are constructed" whereas paragraph A. states "The development standards set out in this subchapter apply to principal and accessory uses permitted outright in single-family zones". And erroneously SMC 25.11.060 is titled 25.11.060 – "Tree protection on sites undergoing development in Single-family and Residential Small Lot zones."

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