Hearing Examiner Ryan Vancil

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'S RESPONSE TO APPELLANT'S CLOSING ARGUMENT

In his closing argument, Mr. Moehring argues that the Short Plat does not meet the vehicular access requirements of SMC 23.53.005 and that SDCI did not adequately consider alternative proposed subdivisions to determine whether they might better maximize the retention of existing trees. Both claims are without merit. The Examiner should affirm the Decision and dismiss the Appeal.

A. <u>The Short Plat complies with SMC 23.53.005 because Parcel A has 10 feet of a lot line that abuts 22nd Avenue West, and Parcel B has an exclusive pedestrian access easement to 22nd Avenue West.</u>

Mr. Moehring argues that because the Decision states that the Short Plat will provide pedestrian and vehicular access, that certain language must be contained on the face of the Short Plat. There is no requirement that the Short Plat contain any particular language

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concerning vehicular access, and Mr. Moehring fails to identify any section of the Code in support of this allegation.

Mr. Moehring goes on to allege that Parcel B (rear lot) does not comply with SMC 23.53.005.A because "Parcel B does not extend to the street; nor is there a private permanent vehicle easement through Parcel A…"[1] In support of this argument, Mr. Moehring provides a selective quotation of SMC 23.53.005.A, intentionally omitting the language concerning pedestrian access easements. SMC 23.53.005.A.1 states, in its entirety, that:

> 23.53.005 - Access to lots
> A. Street or private easement abutment required
> 1. 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, *or the provisions of subsection 23.53.025.F for pedestrian access easements shall be met*. (emphasis added)

SMC 23.53.005.A.1 provides that a pedestrian access easement meets the requirements for access to lots. As discussed in Sound Equities' post-hearing brief, Parcel A has direct vehicle and pedestrian access to 22nd Avenue West, and pedestrian access to the improved alley over an exclusive pedestrian easement. Parcel B has direct vehicle and pedestrian access to the improved alley and pedestrian access to 22nd Avenue West over an exclusive pedestrian easement. This access exceeds the requirements set forth in SMC 23.53.005.

Sound Equities introduced several SDCI exhibits that Mr. Moehring fails to distinguish from the facts of this matter. They are the Land Use Forum Draft Minutes,[2] Interpretation No. 95-001[3] and Hearing Examiner's decision.[4] While Mr. Moehring is correct that the Draft Minutes concerned property located in a single-family zone, the provisions of Chapter 23.53 SMC – Requirements for Streets, Alleys, and Easements – is not specific to a particular zone. Furthermore, the criteria for approval for short plats, SMC

[1] Moehring's Closing Argument, 4:3-5.
[2] Ex. 15.
[3] Ex. 16.
[4] Ex. 17.

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23.24.040, does not distinguish between single-family zones and low rise zones. Thus, SDCI's analysis and application of the Code in these exhibits supports its Decision in this matter.

Finally, Mr. Moehring alleges that a SDCI document titled Vehicle Access Easement Standards[5] purportedly demonstrates that SDCI was not enforcing the standards for vehicle access easements prior to November 2017. There is no evidence for this assertion. But, more importantly, it is irrelevant to the issues before the Examiner. The Short Plat does not provide a vehicle access easement so any arguments concerning SDCI's prior application of those requirements are not germane to this Appeal.

B. Mr. Moehring fails to identify an alternative division of land that is better designed to maximize retention of existing trees.

In his closing statements, Mr. Moehring fails to identify a better alternative division of land. Without an alternative proposed subdivision with which to compare the Short Plat that is being appealed, it is impossible to conclude that the Director's Decision is clearly erroneous.

Mr. Moehring recites the testimony of his arborist, Michael Oxman, which is largely irrelevant because it relates to future development of the property. While Mr. Oxman discussed the general impacts of utilities in the easement area, there was no specific testimony concerning the exact location of the utilities or how the utilities would be installed. There was also no testimony or evidence concerning the location of the tree root zones. Without this evidence, it is impossible to know what impacts, if any, the installation of utilities in the easement areas might have on the trees.

Mr. Moehring's reliance on a completely different short plat that had a single 10 foot utility easement is also misplaced. While Mr. Hurley testified that this was not an

[5] Ex. 5.

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uncommon practice, there is no evidence that combining two five foot easements into a single 10 foot easement would result in the retention of more trees. As discussed in Sound Equities' post-hearing brief, the development of rowhouses and other structures in low rise zones have very minimal setback requirements. In fact, rowhouses do not have any side setback requirements in low rise zones. By combining the utility easements to one side of the Site would only serve to move the development further to the other side. Because there are no side setback requirements, this would not result in creating any additional buffer from development activities, which again, are not part of this land use appeal.

Finally, Mr. Moehring argues that Mr. Hurley did not properly consider other alternative plat configurations. There is no requirement that SDCI review, or require the applicant to provide, multiple subdivision examples. Mr. Hurley is an architect with over 25 years of experience. He testified credibly that he reviewed the Short Plat and was not able to identify an alternative division of land that was better designed to maximize the retention of trees. This testimony is bolstered by the fact that Mr. Moehring also failed to identify a better division of land.

Mr. Moehring mischaracterizes Mr. Hurley's testimony stating that 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."[6] This was not Mr. Hurley's testimony. Mr. Hurley specifically testified that reconfiguring the easements or moving the property division line would not maximize the retention of trees.[7]

Likewise, moving the property line to where tree #3 is located, would not mitigate any development impacts to that tree. Under SMC 23.45, if a property abuts an alley, a

[6] Mr. Moehring's Closing Argument, 6:22-24.
[7] See generally, Mr. Hurley's testimony, Hearing Part 4, minutes 30-38.

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rowhouse may be developed with no rear setbacks. This means that a rowhouse could be developed up to that theoretical rear lot line.

C. Conclusion.

Mr. Moehring woefully failed to meet his burden of proof, which requires that he demonstrates that the Director's Decision is clearly erroneous. The Short Plat not only meets, but it exceeds the access requirements of SMC 23.53.005. Because Moehring failed to identify an alternative short plat that was better designed to maximize the retention of existing trees, there is no factual basis that could lead to "a definite and firm conviction that a mistake has been committed."[8] Thus, the Examiner should dismiss the Appeal and affirm the Decision.

Respectfully submitted this 24th day of April, 2018.

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[8] *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 24, 2018, the foregoing document was sent for delivery on the following party in the manner indicated:

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