

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

DAVID MOEHRING

from a decision and interpretation of the Director,
Department of Construction and Inspections

Hearing Examiner Files:
MUP-18-001 (P)

Department Reference:
3028431

Introduction

The Director (“Director”) of the Department of Construction and Inspections (“Department”) issued a Decision approving a short subdivision (“Decision”), and the Appellant exercised his right to appeal the Decision.

The appeal hearing was held on April 12, 2018, before the Hearing Examiner. The Appellant, David Moehring (“Appellant”), represented himself, *pro se*; the Applicant, Sound Equities Incorporated (“Applicant”), was represented by Brandon Gribben, attorney-at-law; and the Director was represented by Joe Hurley, Land Use Planner. The Hearing Examiner subsequently visited the site. The parties submitted written closing arguments on April 20, 2018, and the record closed on that date.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The subject site is addressed as 3641 22nd Avenue West (“Property”). The site is approximately 6,000 square feet in size.

Proposal

2. The proposal is to subdivide the Property into two lots consisting of 3,024 square feet, and 2,975 square feet.

Director’s Review and Decision

3. The Director issued the Decision granting the proposed subdivision on December 18, 2017. The Director’s analysis included identifying the subdivision approval criteria from SMC 23.24.040, and concluded that the criteria had been met. The Decision specifically concluded that “[t]his short subdivision will provide pedestrian and vehicular access (including emergency vehicles, and public and private utilities,” and “[t]here does not appear to be any

reasonable alternative configuration of this plat that would better maximize the retention of trees than the proposed plat.”

Appeal

4. The Appellants filed a timely appeal of the Director’s Decision. After a decision on a motion to dismiss the appeal filed by the Applicant, the following appeal issues remained:
 - a. The Analysis and Decision is based upon an erroneous application of the short subdivision approval criteria at SMC 23.24.040.A including: . . . 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); and
 - b. 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: . . . Tree Protection rules (see Figure 1 on last page).
5. The Appellant presented expert testimony from arborist Michael Oxman. Mr. Oxman testified as to the current condition of trees on the property, and potential impacts of future development on the trees.

Applicable Law

6. The criteria for short plat approval are found in SMC 23.24.040, which provides in relevant part:
 - A. The Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition, or deny a short plat: . . .
 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; . . .
 6. Whether the proposed division of land is designed to maximize the retention of existing trees; . . .
 8. . . .
 - 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.
7. SMC 23.53.005 provides:

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.

8. SMC 23.53.025 states:

If access by easement has been approved by the Director, the easement shall meet the following standards. Surfacing of easements, pedestrian walkways required within easements, and turnaround dimensions shall meet the requirements of the Right-of-Way Improvements Manual.

A. Vehicle access easements serving one or two single-family dwelling units or one multifamily residential use with a maximum of two units shall meet the following standards:

1. Easement width shall be a minimum of 10 feet, or 12 feet if required by the Fire Chief due to distance of the structure from the easement, or a minimum width as needed to meet the driveway standards of subsection 23.54.030.D.1.

...

F. 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 five (5) feet;
2. Easements serving one (1) or two (2) dwelling units shall provide a paved pedestrian walkway at least three (3) feet wide;
3. Easements serving three (3) or more dwelling units shall provide a paved pedestrian walkway at least five (5) feet wide;
4. Easements over one hundred (100) feet in length shall provide lighting at intervals not to exceed fifty (50) feet. Lighting placement shall not exceed fifteen (15) feet in height.

9. Pursuant to SMC 23.84A.024:

"Lot" means, except for the purposes of a TDR sending lot for Landmark TDR or housing TDR, a sending lot for South Downtown Historic TDR or South Downtown Historic TDP, and a sending lot for open space TDR, a parcel of land that qualifies for separate development or has been separately developed. A lot is the unit that the development standards of each zone are typically applied to. A lot shall abut upon and be accessible from a private or public street sufficiently improved for vehicle travel or abut upon and be accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley (Exhibit A for 23.84A.024).

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's decisions. SMC 23.76.022 C.6 and C.7; SMC 23.88.020.G.5. The Appellant bears

the burden of proving that the Director's Decision was "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Hearing Examiner, on review of the entire record, and in light of the public policy expressed in the underlying law, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).

2. Neither SMC 23.24.040.A.2 nor 23.24.040.A.2 requires dedicated vehicular access to be established on each lot for the subdivision. Instead, these provisions require lot access that satisfies that requirement elsewhere in the Code. In this case, the proposed lots meet the definition of "Lot" because the subdivision includes a 5-foot-wide pedestrian access easement that serves both lots. Both lots benefit from this easement, and thus "abut upon and [are] accessible from an exclusive, unobstructed permanent access easement," where an "access easement" is not required to be an easement for vehicles, but also encompasses pedestrian easements. The pedestrian easement is "exclusive" because it is dedicated solely to access from the two proposed lots and not to the public or other users. Both lots meet the standards for street frontage as Parcel A has street frontage, and Parcel B fronts an improved alley and has access to the pedestrian easement for access to the street. The Appellant failed to demonstrate that the proposed short plat does not meet the criteria of SMC 23.24.040.A.2.
3. The Decision shows that the Director considered short plat criteria SMC 23.24.040.A.6 concerning tree retention. In addition, testimony from Mr. Hurley indicated that maximizing tree retention through lot configuration had been part of his review of the application. While the Appellant raised questions about the process used by the Department, and identified alternative means of drawing lot lines for the proposal, the Appellant failed to meet its burden of proof, and demonstrate that these proposed reconfigurations would maximize the retention of existing trees.
4. Many of the Appellant's arguments are based on the assumption that the Department should be interpreting and applying the short plat criteria differently, but the Appellant failed to demonstrate that these different interpretations and applications are anything but a different point of view. It was Appellant's burden to show that his interpretation and requested review processes are required by law, and that the City's interpretation and practices are legally incorrect - the Appellant has failed to do so.
5. On review of the entire record, the Decision was not shown to be clearly erroneous, and it should therefore be affirmed.

Decision

The appeal of the Director's Decision approving the short plat is **AFFIRMED**.

Entered this 16th day of May, 2018.



Ryan Vancil

Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

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 of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **David Moehring**. Hearing Examiner File: **MUP-18-001** **(P)** in the manner indicated.

Party	Method of Service
Appellant David Moehring dmoehring@consultant.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel Brandon Gribben bgribben@helsell.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: May 16, 2018



Alayna Johnson
Legal Assistant