1 2 Hearing Examiner Galt 3 4 5 6 7 BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND 8 In Re The Appeal of: 9 No. APL19-002 SHANE MILLER, 10 Petitioner, 11 CITY OF MERCER ISLAND'S v. RESPONSE TO APPELLANT'S 12 REOUEST FOR CONTINUANCE/ CITY OF MERCER ISLAND, RESCHEDULING OF HEARING 13 DATE Respondent. 14 15 16 **RESPONSE** 17 18 19 20

The City of Mercer Island Department of Community Planning and Development ("CPD") opposes Mr. Miller's second Request for Continuance/Rescheduling of Hearing Date submitted on November 1, 2021 ("Miller's Second Request"). This request is the latest in a long line of stall tactics by Mr. Miller and would work undue prejudice on CPD's ability to defend its actions in the appeal brought by Mr. Miller.

The vast majority of Miller's Second Request is apparently made on the basis that Mr. Miller believes that the Public Records Act is a discovery mechanism for appeals of code enforcement actions. It is not. Neither the Mercer Island City Code nor the Hearing Examiner's rules afford Mr. Miller discovery by right. While the Hearing Examiner patiently explained to Mr. Miller that he has no jurisdiction over PRA requests at the October 28

CITY OF MERCER ISLAND'S RESPONSE TO APPELLANT'S REQUEST FOR CONTINUANCE / **RESCHEDULING OF HEARING DATE - 1** 

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14205 SE 36th Street Suite 100, PMB 440 Bellevue, WA 98006 Phone: 425-201-5111 www.MadronaLaw.com

rescheduling conference, Mr. Miller persists in attempting to use the PRA to delay this case. Mr. Miller has admittedly received documents prior to the latest installment of records produced to him. However, even had he received zero documents through PRA requests, this would not form a basis to delay the hearing in this proceeding. Again, the PRA is not a discovery mechanism; it is a separate statutory doctrine. Accordingly, Miller's Second Request is improper and should be denied on this basis alone.

Further, Mr. Miller has demonstrated a clear pattern of delay in this proceeding. To wit, this proceeding was stayed for 18 months, at Mr. Miller's request, to give Mr. Miller the opportunity to resolve this issue voluntarily by obtaining the necessary permits. The facts are that Mr. Miller did not pay for such permit application until more than a year after submittal (City Ex. 31) and failed to follow up on any review comments provided by the CPD (City Ex. 30). As a result, his application expired per MICC 17.14.020 (105.3.2(1)). (Ex. 32).

Mr. Miller also previously requested a continuance/rescheduling of hearing on October 18, 2021. The Hearing Examiner granted this request, and accordingly, the hearing was continued for more than three weeks, from October 28, 2021 to November 19, 2021. However, Mr. Miller now files his Second Request even after the Hearing Examiner continued the hearing at Mr. Miller's request. Undoubtedly, if the Hearing Examiner grants the Second Request, a third request is sure to follow.

It must be emphasized that delay prejudices CPD. Any additional delay simply serves to further prejudice CPD's ability to defend itself in this appeal. Delay makes it more likely that CPD witnesses will not be available to testify or that memories of crucial events may fade. CPD again reiterates that this is Mr. Miller's appeal, one that he initiated in 2019, and has had ample time to either resolve voluntarily or to prepare to prosecute. The Hearing Examiner should reject Mr. Miller's latest delay tactic.

CPD respectfully requests the Hearing Examiner deny Mr. Miller's second request for continuance/rescheduling of hearing.



1	DATED this 2nd day of November, 2021.
2	DATED this 2nd day of November, 2021.
3	MADRONA LAW GROUP, PLLC
4	By: /s/Fileen M Keiffer
5	By: <u>/s/ Eileen M. Keiffer</u> Eileen M. Keiffer, WSBA No. 51598
6	CITY OF MED CED ICL AND
7	CITY OF MERCER ISLAND OFFICE OF THE CITY ATTORNEY
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	By: /s/ Bio Park
9	Bio Park, WSBA No. 36994
10	Attorneys for the City of Mercer Island
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1	DECLARATION OF SERVICE
2	I, Tori Harris, declare and state:
3	1. I am a citizen of the State of Washington, over the age of eighteen years, not a party
4	to this action, and competent to be a witness herein.
5	2. On the 2nd day of November, 2021, I served a true copy of the foregoing City
6	of Mercer Island's Response to Appellant's Request for Continuance/Rescheduling of
7	Hearing Date on the following counsel of record using the method of service indicated
8	
9	below:
10	Shane Miller
11	Mercer Island, WA 98040
12	☐ Facsimile  Pro Se Petitioner ☐ E-Mail: shane miller usa@yahoo.com
13	shanemillerus@gmail.com  ⊠ EService pursuant to LGR
14	I declare under penalty of perjury under the laws of the State of Washington that the
15	
16	foregoing is true and correct.
17	DATED this 2nd day of November, 2021, at Seattle, Washington.
18	The Obuis
19	Tori Harris
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