

JOHN E. GALT

Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
(425) 259-3144
Voice: (425) 259-3144
E-mail: jegalt755@gmail.com

January 8, 2021

Central Puget Sound Transit Authority
ATTN: Stephen G. Sheehy, Managing Legal Counsel
401 South Jackson Street
Seattle, WA 98104-2826
stephen.sheehy@soundtransit.org
SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island
C/o Bio F. Park, Interim City Attorney
9611 SE 36th Street
Mercer Island, WA 98040
bio.park@mercergov.org
SERVICE BY E-MAIL (First class mail service if requested)

Subject: Scheduling Guidance for Type I – III Administrative Appeals: APL21-001

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner (“Examiner”).

On January 7, 2021, I received the appeal which Central Puget Sound Transit Authority (“Sound Transit”) filed on January 5, 2021, with the City of Mercer Island *in re* Right-of-Way Use Permit No. 2010-186 issued by the City on or about December 22, 2020. Right-of-Way Use Permit applications are classified as Type I land use actions. [Mercer Island City Code (“MICC”) 19.15.030(E), Table A] Decisions made on Type I – III permit applications are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(E), Table B] The MICC provides for a 14 calendar day appeal period from date of service/issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for an appeal from a Type I – III permit decision are set forth in MICC 19.15.130(D). It would appear that Sound Transit’s appeal was timely and complete when filed.

Because of restrictions attendant to the current COVID-19 pandemic, all proceedings in the foreseeable future in this appeal will have to be conducted remotely. Mercer Island uses the “Zoom” platform for its remote proceedings.

The MICC contains basic regulations for appeals of Type I – III decisions [MICC 19.15.130] and the open record hearings associated therewith [MICC 19.15.140]. Those regulations refer to rules that may be adopted by the Hearing Examiner. I promulgated Rules of Procedure (“RoP”) on December 2, 2019, pursuant to

MICC 3.40.080(B). Please note that the current RoP are different from those of my predecessor. I have more recently promulgated an Emergency Rule addressing electronic filing of documents. (I have attached a copy of both the new RoP and the Emergency Rule to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.)

Subsection 19.15.130(F) MICC requires that notice of the open record hearing on a Type I – III administrative appeal must be given as required by MICC 19.15.100 which requires that notice be mailed to specified persons, published, and posted not less than 30 days before the open record hearing. To ensure fairness to all principal parties, I set the hearing date in consultation with the principal parties; the City issues the required hearing notices. RoP 224 requires a pre-hearing document pre-filing process in appeal cases. The pre-filing process starts not less than 14 days before the hearing date. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings.

The RoP provide for prehearing conferences. [RoP 208] The Examiner has sole discretion to convene prehearing conferences. [RoP 208(a)] Any principal party may request that the Examiner convene a prehearing conference; the Examiner may call for a prehearing conference on his own initiative. [RoP 208(c)] By letter dated and received on January 7, 2021, Sound Transit has requested that I convene a prehearing conference. I herewith agree to convene the requested prehearing conference. Unless waived by the principal parties, I am required to give not less than seven days notice of a prehearing conference. [RoP 208(c)]

I suggest that the prehearing conference in this matter be held as soon as possible. If I allow the principal parties a week in which to determine and convey their date/time preferences to me, then the earliest that we could hold a conference would be January 22, 2021. **I am presently available on January 22, 25, 26, and 29 (as well as many dates in February if none of the January dates work for both parties).** (I schedule proceedings on a first-come-first-served basis, so the longer it takes us to choose a date, the greater the likelihood that another jurisdiction may have reserved my services. Time is of the essence.)

Please communicate your availability and date preference(s) directly to me by E-mail by January 15, 2021, at the latest. My E-mail address is “jegalt755@gmail.com”. I will select a date and time based upon timely received responses. If the parties submit a mutually-agreed-upon date/time, I will do my best to accommodate that request.

Please be aware that *ex parte* communication with me is strictly limited. (See RoP 120.) You may communicate with me only on scheduling or other procedural matters. Whenever you communicate with me on such matters, you must cross-copy your communication to all other parties.

Last but by no means least, two procedural items: 1) If you are willing to continue to accept e-mail service from me in this case, please so advise by sending me an e-mail at jegalt755@gmail.com; and 2) If you have key associates or assistants that I should include in e-mail service to you, please provide their names and e-mail addresses in your e-mail.

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Sincerely,

\s/ *John E. Galt*

John E. Galt,
City of Mercer Island Hearing Examiner