

Dianne K. Conway
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March 25, 2021

VIA EMAIL

John E. Galt
Hearing Examiner
927 Grand Ave.
Everett, WA 98201
(jegalt755@gmail.com)

RE: APL21-002 & A21-003
Request/Motion for Continuance of April 8, 2021 Hearing

Dear Mr. Galt:

On behalf of Appellants Barcelo Homes, Inc., Premium Homes of Mercer Island, LLC, and Bogdan and Nadezhda Maksimchuk, I am requesting the April 8, 2021 hearing on the above matter be continued.

As set forth in the Notices of Violation, the City has filed notices of violations against two entities and two individuals for two different properties seeking significant penalties. I have many questions regarding how the City came to arrive at its decision to name four parties for the same violations and how it calculated its penalties. After reviewing the Rules of Procedure you provided and City Code and concluding neither had provisions for discovery, I filed a public-records request on March 5, 2021, seeking

[a]ll documents—including but not limited to emails, text messages, meeting notes, records of phone conversations, photographs, videotapes, and audiotapes—mentioning or otherwise relating to Barcelo Homes, Inc.; Premium Homes of Mercer Island LLC; Bogdan Maksimchuk; and/or Nadezhda "Nadia" Maksimchuk that were created, received, or issued between June 1, 2020, and the date the City responds to this request.

After receiving no response to my public-records request (aside from the automatic electronic response), on March 19th I called the attorney representing the City on these appeals, Eileen Keiffer, to discuss whether she would stipulate to continuing the hearing

Reply to:

Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
520 Pike St, Suite 2350 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell^{LLP}

March 25, 2021

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date given the City's delay in responding to my request; I followed up with a written email request (copy attached). On March 22nd, Ms. Keiffer responded to my email and advised that the City would not agree to a continuance since "[t]he Public Records Act is not a discovery mechanism and your PRA request is a separate matter from the code enforcement appeals, as I stated last Friday." (copy of email attached).

Following my discussion with Ms. Keiffer on March 19th, I received the first response to my public records request, which indicated a first installment of documents would be produced on March 22nd. I received and have reviewed this installment, and it consists mostly of documents that I already had. The City has indicated that I will receive a second installment of documents by tomorrow.

It is imperative that I receive and have time to review the documents I requested so I can properly prepare for my clients' defense in this multi-layered dispute with appropriate witnesses, exhibits, and argument. Accordingly, I respectfully ask that the hearing be continued for at least one month.

Very truly yours,

/s/ Dianne K. Conway

Dianne K. Conway

DKC:cls

Enclosures

cc: City of Mercer Island (w/Enc.)

From: Conway, Dianne <DConway@gth-law.com>
Sent: Friday, March 19, 2021 5:43 PM
To: Eileen Keiffer <eileen@madronalaw.com>
Subject: APL21-003 Barcelo 2021 et al
Importance: High

Eileen,

Further to our discussion, the current April 8 date hearing date is not feasible given—among other things—the City's failure to respond to my public records request relating the City's claims (I attach the City's first response since my March 5 submission). At this juncture, it is unclear to me when I will receive a response, and the responsive documents are integral to my client's defense. Given my other caseload, I propose that we continue the hearing until early May at the very earliest.

Please let me know as soon as possible your thoughts and if you will object to such a continuance.

All the best.

Dianne

Dianne K. Conway
Attorney at Law

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From: Eileen Keiffer <eileen@madronalaw.com>
Sent: Monday, March 22, 2021 4:16 PM
To: Conway, Dianne
Subject: RE: APL21-003 Barcelo 2021 et al

Good afternoon Dianne,

After consulting with my client representatives, the City does not agree to a continuance. The Public Records Act is not a discovery mechanism and your PRA request is a separate matter from the code enforcement appeals, as I stated last Friday. Therefore, the City cannot agree to a continuance of appeals APL 21-002 and 21-003 on the basis of your PRA request.

As a courtesy regarding your PRA request, however, I note that you should have received a notification and/or email on Friday with a revised due date for your first installment of records pursuant of your request signed by Mary Swan. That would have come through NextRequest, the City's PRA tracking and fulfillment software.

Thanks,

Eileen M. Keiffer, Member



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www.MadronaLaw.com

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Please let me know as soon as possible your thoughts and if you will object to such a continuance.

All the best.

Dianne

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Attorney at Law

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