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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

BARCELO HOMES, INC.,

Petitioner,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL21-002
APL21-003

CITY OF MERCER ISLAND’S
OPPOSITION TO APPELLANTS’
REQUEST FOR CONTINUANCE

On March 25, 2021, Appellants submitted a request for continuance of at least a month in appeals APL 21-002 and 21-003. The City of Mercer Island (“City”) opposes Appellants’ request for continuance as unfounded in either law or fact.

Appellants’ sole basis for requesting a continuance is complaints with the City’s response to their counsel’s Public Records Act Request. As acknowledged by Appellants, the Public Records Act (Ch. 42.56 RCW) is not a discovery mechanism and there is no discovery mechanism applicable to the appeals in question.¹ As Appellants are not entitled to discovery, they are similarly not entitled to a continuance.

¹ Appellants do not complain that the City is not fulfilling its request, but rather that the documents received “consists mostly of documents that [Appellants’ lawyer] already had.” This is not a proper basis for a continuance. Appellants also note they will receive a second installment of documents on March 26, 2021, yet also claim to require at least a month’s continuance to prepare for hearing.

1 The City notes that Appellants’ request is not promptly submitted, and indeed comes
2 over three weeks after Appellants agreed to an April 8 hearing date. Crucially, the code
3 violation incidents giving rise to these appeal proceedings date all the way back to October
4 of 2020 and the City has been in touch with Appellants about such code violations since that
5 time. *See, e.g.* APL 21-002 City Exhibits 1, 8, 12, and 15 and APL 21-003 City Exhibits 1,
6 5, 7, and 10. To the extent Appellants “have questions as to the calculation of the fines,” those
7 questions are addressed within the notices of violation, which were served in early February.
8 APL 21-002 City Exhibit 15 and APL 21-003 City Exhibit 10. The nature of the code
9 violations in question is not a surprise to Appellants and Appellants’ request for a continuance
10 would only serve to further delay long standing code violation issues.

11 The City also notes that Appellant’s request for continuance was filed shortly after
12 the City filed its exhibit lists and exhibits. A continuance at this late juncture will therefore
13 place the City at a strategic disadvantage.

14 Finally, the City notes the continuing nature of the code violations, as well as the fact
15 that the Appellants, the Maksimchuks, and their associated legal entities have a long history
16 of code violations within the City, including not obtaining required permits and violating
17 posted City Stop Work Orders. APL 21-002 City Exhibits 5, 6, 8, 17, 18, 19, 25 and APL 21-
18 003 City Exhibits 2, 5, 7, 22, 23, 24, and 25. Indeed, the City received another citizen
19 complaint regarding Appellants’ work at 2906 74th Ave. SE just this week. APL 21-003 City
20 Exhibit 8. It would serve the interest of public health and safety to ensure the timely
21 disposition of the appeals as currently scheduled.

22 For the reasons stated above, the City respectfully requests the Hearing Examiner
23 deny Appellants’ request for continuance.

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DATED this 26th day of March, 2021.

MADRONA LAW GROUP, PLLC

By: /s/ Eileen M. Keiffer
Eileen M. Keiffer, WSBA No. 51598
14205 SE 36th Street
Suite 100, PMB 440
Bellevue, WA 98006
Telephone: (425) 201-5111
Email: eileen@madronalaw.com

Attorneys for the City of Mercer Island

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 26th day of March, 2021, I served a true copy of the foregoing City of
6 Mercer Island’s Opposition to Appellants’ Motion for Continuance on the following counsel
7 of record using the method of service indicated below:

<p>8 Dianne K. Conway, WSBA No. 28542 9 Gordon Thomas Honeywell LLP 10 1201 Pacific Avenue, Suite 2100 11 Tacoma, WA 98402 12 Counsel for Appellants</p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: dconway@gth-law.com <input type="checkbox"/> EService pursuant to LGR</p>
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13 I declare under penalty of perjury under the laws of the State of Washington that the
14 foregoing is true and correct.

15 DATED this 26th day of March, 2021, at Seattle, Washington.

16 **MADRONA LAW GROUP, PLLC**

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18 Tori Harris