



1 including within the drip lines of exceptional/regulated trees. David Henderson Testimony,  
2 morning of April 8, 2021 and Exhibit 3. Mr. Henderson also confirmed that no permits had  
3 been issued at the site. David Henderson Testimony, morning of April 8, 2021. Mr.  
4 Henderson observed the dumped material was not simply dirt, but rather he also observed  
5 concrete, (possible asbestos) tiles, pipes, shovels, and other materials totaling more than 50  
6 cubic yards in volume and greater than one foot in depth.<sup>1</sup> Henderson testimony, morning of  
7 April 8, 2021; Exhibits 3-4. The piles varied in number and notably in color, indicating  
8 multiple and separate instances of dumping on the property. *See, e.g.* Exhibit 3, pages 2-3;  
9 Exhibit 4, pp. 2-3.

10 Mr. Henderson returned to the site on October 7, 2020. He documented again the fill,  
11 construction debris, and other trash that had been dumped on the property. Exhibit 4.

12 Mr. Henderson posted a stop work order on October 7, 2020. Exhibit 4, pages 1-3. He  
13 secured the stop work order by stapling it with a heavy-duty staple gun, top and bottom, to a  
14 wooden stake; Mr. Henderson hammered the wooden stake into the ground. Henderson  
15 Testimony, morning of April 8, 2021; Exhibit 4, page 1. This stop work order was not  
16 appealed.

17 B. Removal of Stop Work Order on October 9, 2020

18 Erik Maksimchuk, an agent of either Premium Homes of Mercer Island and/or Nadia  
19 Maksimchuk,<sup>2</sup> removed the stop work order on October 9, 2020, after being confronted by  
20 several neighbors who pointed out the stop work order. Testimony of Stephen McKay, and  
21 Testimony of Judith Sipiora, morning of April 8, 2021. Erik Maksimchuk then dumped  
22 another load of dirt and construction debris on the property. *Id.* and Exhibits 6-7, video taken  
23 October 9, 2020. Code compliance officer Henderson made a third site visit to the property,  
24  
25

26 <sup>1</sup> MICC 17.14.010(105.2).

<sup>2</sup> Mr. Maksimchuk testified that he was acting on request of his mother, Nadia Maksimchuk and that he is not an employee of Premium Homes of Mercer Island, nor was he being paid.

1 confirmed removal of the stop work order and the dumping of additional material. Exhibits  
2 9-10; Direct Testimony of David Henderson, morning of April 8, 2021.

3 Appellants, in their closing, indicate that the testimony regarding removal of the stop  
4 work order was inconsistent. However, such inconsistencies are between the self-serving  
5 testimonies of both Erik and Nadia Maksimchuk. In contrast, City witnesses Mrs. Judith  
6 Sipiora and Stephen McKay both testified they saw Erik Maksimchuk remove the stop work  
7 order on October 9, place it in the cab of his truck, and proceed to dump material on the  
8 property in question even after they confronted him. Mr. McKay took a video of the dumping  
9 that occurred on October 9, 2020. McKay testimony, morning of April 8, 2021 and Exhibit  
10 7. Further, Mr. Sipiora's contemporaneous documentation of the incident notes that the  
11 removal of the stop work order and additional dumping occurred on October 9, 2020. Exhibit  
12 6, page 5.

13 While Mr. Maksimchuk claimed he restapled the stop work order to the wooden stake,  
14 this testimony was self-serving and not credible; there is no documentation within the record  
15 to support this assertion. It is also belied by the evidence in the record—to wit, Mr.  
16 Henderson's documentation of the removed stop work order on October 19. Exhibits 8-9.  
17 Both Mr. Henderson's video and Mr. McKay's video show the original stake used for the  
18 October 9 stop work order clearly discarded behind the fence (and missing the stop work  
19 order). Exhibits 7 and 9.

20 In contrast to Erik Maksimchuk's unreliable memory on the subject, the timeline  
21 supported by the City's evidence is consistent and straightforward:

- 22 • October 6, 2020 - Mr. Henderson first visits the site (Exhibit 3)
- 23 • October 7, 2020 - Mr. Henderson visits the site again and posts the first stop  
24 work order (Exhibit 4)
- 25 • October 9, 2020 - Erik Maksimchuk removes the stop work order from the  
26 stake, places it in the cab of his truck, discards the stake behind the fence, and

1 dumps a load of dirt/debris on the property (Exhibits 5, 6, 7, Testimonies of  
2 Judith Sipiora and Stephen McKay, Morning of April 8, 2021)

- 3 • October 13, 2020 – Don Cole speaks with Nadia Maksimchuk, who confirmed  
4 they “continued working in violation of a stop work order” (Exhibit 8)
- 5 • October 14, 2020 – David Henderson speaks with Nadia Maksimchuk and she  
6 admits they removed the Stop Work Order (Testimony of David Henderson,  
7 morning of April 8, 2020)
- 8 • October 19, 2020 - David Henderson confirms stop work order removed,  
9 additional fill, stake from stop work order discarded behind fence, and posts  
10 second Stop Work Order at the Property (Exhibits 9-10)

11 C. Dumping of Gravel in January 2021 Before Inquiring With the City

12 On January 27, 2021, the City received another complaint about work at the property.  
13 Exhibits 11-12. While Ms. Maksimchuk testified this material was only gravel to avoid  
14 tracking of mud onto the road at permission from the City, it is undisputed this material was  
15 placed on the property *before* confirming with the City in February that this was permissible.  
16 Exhibits 11-13, compared with Exhibit 1001. While the City acknowledges this incident is  
17 not listed in the Notice of Violation & Civil Penalties, this is additional evidence of the pattern  
18 of seeking permission after an act has occurred.

19 Further, it is undisputed that the Appellants did not remove the copious and  
20 substantial construction debris, dirt, fill, and other materials dumped at the property until late  
21 January/early February 2021, which is four months from the placement of the first Stop Work  
22 order on October 7, 2020. This is in violation of their duty to comply established under MICC  
23 6.10.020(C)(“...acknowledgment of stop work orders, and compliance with other remedies  
24 do not substitute for performing the corrective work required...A violation shall be  
25 considered ongoing until the person responsible has come into compliance and has notified  
26

1 the director of this compliance, and an official inspection has verified compliance and all  
2 assessed penalties and costs have been paid to the City.”)

3 This type of fact pattern is familiar to City Staff. In fact, City Staff had a special  
4 meeting with Nadia Maksimchuk (then of Barcelo Homes) in February 2019 just to discuss  
5 ongoing code compliance concerns. Exhibit 25; Direct Testimony of Don Cole, morning of  
6 April 8, 2021. Despite this meeting, violations occurred at the property that is the subject of  
7 this appeal. Indeed, Ms. Maskimchuk, upon cross examination by the City, admitted that she  
8 did not even look up whether she needed a permit before dumping material at the subject  
9 property despite knowing how to contact City Staff about permitting requirements. Cross  
10 Examination of Nadia Maksimchuk, afternoon of April 8, 2021.

### 11 III. PENALTIES

12 Appellants’ suggestion that the penalties should be \$100 is preposterous. Even if the  
13 violations at issue in this proceeding were a first code violation, \$100 would be woefully  
14 insufficient in light of the fact that the violations at issue here were blatant, posed a threat to  
15 public health and safety, continued even after the posting of a stop work order, and were not  
16 remedied for four months. MICC 6.10.050(D)(2)(a); MICC 6.10.020. MICC 6.10.050  
17 provides for additional penalties for priority violations, which these violations were (damage  
18 to trees, violation of stop work order). Further, based on the testimony of Code Compliance  
19 Officer Henderson, based on the criteria at MICC 6.10.050(D)(2), Staff set the penalties  
20 lower than they would if now asked to re-draft the notice of violation. (Mr. Henderson  
21 testified that based on the difficulty and time involved in resolving the violation, he would  
22 now set the penalty higher).

23 Appellants also appear to take the position that only a property owner can be charged  
24 with code violations. This is directly contrary to MICC 6.10.110, which provides the  
25 following definition of “person responsible” for the violation:  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

‘Person responsible for the violation’ or ‘person responsible’ or ‘violation’ means any of the following: the person doing the work; a person who has titled ownership or legal control of the property or structure that is subject to the violation; an occupant or other person in control of the property or structure that is subject to the violation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the violation; a mortgagee that has filed an action in foreclosure on the property that is subject to the violation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the violation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

The code expressly recognizes that in addition to the property owner, “a developer, builder, business operator, or owner who is developing, building or operating a business on the property” and “any [other] person who created, caused, participated in, or has allowed a violation to occur” are also “persons responsible” under the MICC. Pursuant to Appellants’ interpretation of the code, one could evade the penalty multipliers within the MICC simply by forming new legal entities to own each new project and then claiming it was that entity’s “first offense.”

Indeed, Nadia Maksimchuk is a common thread between many code violations in the City and qualifies as a responsible party that “created, caused, participated in, or has allowed a violation to occur.” MICC 6.10.110. As discussed further below, Ms. Maksimchuk is the previous permitting contact for Barcelo Homes, she admitted to following up on prior Barcelo Homes projects with the City even after quitting Barcelo Homes, she also admitted to acting as an agent on behalf of a family member for a project subject to code enforcement (including listing Barcelo Homes on the application for that project), and is the sole owner of Premium Homes of Mercer Island, LLC.

While Appellants allege that Nadia Maksimchuk was not responsible for construction performed on behalf of Barcelo Homes, Inc., this greatly minimizes her role with the company. She was responsible for “most permitting” for Barcelo Homes, Inc. and was the



1 contact with the City with respect to code enforcement matters for Barcelo Homes, Inc. *See,*  
2 *e.g.* Ex. 17, page 2; Exhibit 25; Direct Testimony of Don Cole, Morning of April 8, 2021.

3 Further, Nadia Maksimchuk appears to frequently act as representative for Barcelo  
4 Homes with respect to interactions with the City. For example, City Staff testified that they  
5 frequently communicate with Nadia Maksimchuk regarding Barcelo matters. Direct  
6 Testimony of David Henderson, Morning of April 8, 2021. Additionally, on April 13, 2021,  
7 the City requested post-hearing admission of what was marked City Exhibit 30 (Permit  
8 Application dated April 6, 2020).<sup>3</sup> This exhibit shows an application made on behalf of  
9 Barcelo Homes, Inc. (as owner and contractor) and listing Bogdan Maksimchuk as the email  
10 contact for the owner and contractor for the property at issue in this proceeding.

11 Additionally, Ms. Maksimchuk applied for permits under the Barcelo Homes name  
12 for family members owning 4719 90<sup>th</sup> Avenue SE. Exhibit 19; Cross Examination of Nadia  
13 Maksimchuk, Afternoon of April 8, 2021. While she testified that this was a mistake or in  
14 error, she also testified she acted as she often does.

15 The City is not attempting to pierce the corporate veil pursuant to RCW 25.15.061,  
16 as Appellants allege.<sup>4</sup> Rather, the City is acting consistent with the language in MICC  
17 6.10.110 that “any person who created, caused, participated in, or has allowed a violation to  
18 occur” is responsible for code violations, as well as the property owner. Further, as has been  
19 readily apparent throughout this proceeding, it has been extremely difficult for City Staff to  
20 determine when Ms. Maksimchuk was acting as agent for Barcelo, or for Premium Homes,  
21 or even in her own personal capacity.<sup>5</sup> Accordingly, out of an abundance of caution, the City  
22 listed all potentially responsible persons on the Notice of Violation & Civil Penalties in order  
23

24 \_\_\_\_\_  
25 <sup>3</sup> Appellants did not address this requested admission in their closing; therefore, the City presumes there is no  
objection to admission of the exhibit.

26 <sup>4</sup> Appellants also make a comment about a woman no longer being the chattel of her husband. It goes without  
saying, but this is not the basis for the City’s naming of responsible parties in this proceeding.

<sup>5</sup> For example, the record is unclear as to whether Ms. Maksimchuk acted in her personal capacity when asking  
her son to deliver a load of material at the property.



1 to avoid an argument that the City had omitted a responsible person and that the City’s Notice  
2 of Violation was therefore faulty. Redirect of David Henderson, Morning of April 8, 2021.

3 Appellants also allege that the City double counts a previously rescinded notice of  
4 violation relating to the property (issued in November 2020). However, continued work in  
5 violation October 7, 2020 stop work order can be considered a repeat violation. MICC  
6 6.10.050(D)(3)(“A repeat violation is a violation that has occurred on the same property...for  
7 which...any enforcement action taken was not timely appealed...within the previous 36-  
8 month period.”) A stop work order is separately appealable under the Mercer Island City  
9 Code. MICC 6.10.070(C).

10 Additionally, if the Examiner finds Ms. Maksimchuk personally responsible, the  
11 multiple violations associated with 9104 SE 50<sup>th</sup> Street are more than sufficient to support  
12 that the incidents in question are a third time violation. With respect to 9104 SE 50<sup>th</sup> Street,  
13 not only did Barcelo Homes do the work in question, but it is Nadia Maksimchuk’s personal  
14 residence, making her a responsible party for code violations pursuant to MICC 6.10.110.  
15 Further, contrary to Appellants’ assertions, the record establishes that there were code  
16 enforcement issues *before* 9104 SE 50<sup>th</sup> Street. *See, e.g.* Exhibit 25 (“Work must be in  
17 accordance with the approved plans and follow adopted codes. Occurred on multiple  
18 projects.”). Indeed, the violations occurring at 9104 SE 50<sup>th</sup> Street share similarities with the  
19 violations at issue in this proceeding—namely continuing work in violation of a posted stop  
20 work order. Exhibit 17, detailing continuance of work in violation of stop work order, Exhibit  
21 18, detailing noncompliance with stop work order.

22 While Appellants continue to allege that Barcelo was informed it could not appeal the  
23 notices of violation associated with 9104 SE 50<sup>th</sup> Street, Appellants do not cite to any  
24 evidence to support that allegation. Indeed, it is belied by the plain language of the notices of  
25 violation for that property, which expressly inform the responsible parties of their right to  
26 appeal. Exhibit 17, page 3; Exhibit 18, page 2.



1 Finally, even if the Hearing Examiner agrees with Appellants that only Premium  
2 Homes of Mercer Island, LLC is the person responsible for the code violations in this case, a  
3 multiplier would still be appropriate for the deliberate nature of the violations per MICC  
4 6.10.050(D)(4). In that event, only the repeat violation multiplier for code violations  
5 occurring at other properties (such as 9104 SE 50<sup>th</sup> Street) would be inapplicable.

6 IV. CONCLUSION

7 The fact that the violations occurred is undeniable. City Staff appropriately  
8 considered the severity of the violations, including significant dumping of dirt and potentially  
9 hazardous construction debris, the difficulty to remedy the violations, past instances of code  
10 noncompliance, and the deliberate nature of the violations (including deliberate dumping in  
11 violation of a stop work order). The Hearing Examiner should dismiss this appeal and affirm  
12 the City's Notice of Violation & Civil Penalties in this proceeding.

13 DATED this 23rd day of April, 2021.

14 MADRONA LAW GROUP, PLLC

15  
16 By: /s/ Eileen M. Keiffer  
17 Eileen M. Keiffer, WSBA No. 51598

18 *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 23rd day of April, 2021, I served a true copy of the foregoing City of Mercer  
6 Island’s Closing Argument on the following counsel of record using the method of service  
7 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 Petitioner</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>
--	---

12 I declare under penalty of perjury under the laws of the State of Washington that the  
13 foregoing is true and correct.

14 DATED this 23rd day of April, 2021, at Seattle, Washington.

15 **MADRONA LAW GROUP, PLLC**

16 *Tori Harris*

17 \_\_\_\_\_  
18 Tori Harris