

**BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND**

DECISION and ORDER

FILE NUMBER: APL21-002
(Ref. Code Compliance Case CE20-0057)

APPELLANT: Barcelo Homes, Inc.
Premium Homes of Mercer Island, LLC
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Nadezhda Maksimchuk
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RESPONDENT: City of Mercer Island
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TYPE OF CASE: Appeal from a Notice of Violation & Civil Penalties

EXAMINER DECISION: SUSTAIN with changes

DATE OF DECISION: May 4, 2021

INTRODUCTION¹

Barcelo Homes, Inc. (“Barcelo Homes”), Premium Homes of Mercer Island, LLC (“Premium Homes”), Bogdan Maksimchuk (“Bogdan”²), and Nadezhda Maksimchuk (“Nadia”), collectively “Barcelo Homes *et al.*,” appeal from a Notice of Violation & Civil Penalties (“Notice”) issued by the City of Mercer Island (“City”) Department of Planning & Development’s (“Department’s”) Code Compliance Officer on February 5, 2021. (Exhibit 15³)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Where persons involved in this case have the same surname, the Examiner will use given names to refer to them. No disrespect is intended.
³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF

HEARING EXAMINER DECISION
RE: APL21-002 (Barcelo Homes *et al.*)
(Ref. Code Compliance Case CE20-0057)
(Barcelo Homes 2021 I)
May 4, 2021
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Barcelo Homes *et al.* filed the appeal on February 23, 2021. (Exhibit 16)

The property which is the subject of the Notice is located 7216 93rd Avenue SE, Mercer island, Washington. (“7216 93rd”) Its Assessor’s Parcel Number is 258190-0210. (Exhibit 15)

The Hearing Examiner (“Examiner”) held an open record hearing on April 8, 2021.⁴ The hearing was conducted remotely using the “Zoom” program due to assembly restrictions attendant to the current COVID-19 pandemic. Notice of the hearing was given as required by the Mercer Island City Code (“MICC”). (Exhibit 26)

Pursuant to Hearing Examiner Rule of Procedure (“RoP”) 224(c), the Examiner entered the following administrative exhibits into the hearing record:

- Exhibit 9001: Letter, Hearing Examiner to Principal Parties, February 25, 2021 (Scheduling guidance)
- Exhibit 9002: Appellants’ Request for Continuance, filed March 25, 2021
- Exhibit 9003: City’s Opposition to Appellants’ Request for Continuance, filed March 26, 2021
- Exhibit 9004: Interlocutory Order Denying Motion, issued March 26, 2021

Pursuant to RoP 224(d), Respondent Department pre-filed Exhibits 1 - 26 and provided an index listing of those exhibits. Respondent Department also pre-filed an un-listed Staff Report which the Examiner marked as Exhibit No. 27. Appellants Barcelo Homes *et al.* did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

Pursuant to RoP 224(e), Appellants Barcelo Homes *et al.* pre-filed Exhibits 1001 - 1003 and provided an index listing of those exhibits. Respondent Department did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

At the close of the hearing the principal parties elected to present their closing statements in writing and agreed on a schedule to do so. On April 13, 2021, Respondent Department filed a Request for Admission of Additional Exhibit, namely a copy of a building, demolition, and grading permit application for 7216 93rd filed on April 12, 2021, listing Barcelo Homes as the property owner and contractor. The Examiner advised the principal parties by e-mail that: 1) He would hold the request under advisement; and 2) The principal parties could address the request in their written closing statements. After considering the Request and the responses, the Examiner finds and concludes that an extraordinary situation exists justifying admission of

⁴ use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record. On March 25, 2021, Barcelo Homes *et al.* requested that the hearing be postponed for at least one month. (Exhibit 9002) Respondent Department opposed the request. (Exhibit 9003) On March 26, 2021, the Examiner entered an Interlocutory Order denying the postponement request. (Exhibit 9004)

the proffered document after close of the hearing but before submission of closing statements. As a result of the above, the Examiner enters the following documents into the record:

- Exhibit 9005: City of Mercer Island's Request for Admission of Additional Exhibit, filed at 4:08 p.m., April 13, 2021
- Exhibit 9006: Permit Application (Building, demolition, and grading); dated April 4, 2021, processed April 12, 2021; Property Owner: Barcelo Homes; Contractor: Barcelo Homes
- Exhibit 9007: Appellants Barcelo Homes *et al.* Closing Statement, filed April 19, 2021
- Exhibit 9008: Respondent City's Closing Argument, filed April 23, 2021

The hearing record closed with receipt of Exhibit 9008 on April 23, 2021.

The City has the record copy of the exhibits and the exhibit index lists.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Barcelo Homes is registered with the Washington Secretary of State ("SOS") as a Washington profit corporation. The corporation was formed on September 11, 2013. Its principal office street address is 1900 S Puget Drive #206 in Renton; its mailing address is 1414 E Yesler Way Unit A, Seattle. The nature of its business is construction. Bogdan is the corporation's registered agent and only governor. His mailing address is P.O. Box 1639, Mercer Island. (Exhibit 23)

Barcelo Homes' latest Annual Report, received by the SOS on October 13, 2020, lists the business's office e-mail address as "nadia@barcelohomes.com." The Annual Report stated that as of October 13, 2020, Barcelo Homes owned no real property in Washington State. Nadia completed the 2020 Annual Report for Barcelo Homes which she executed as its "Authorized Person" under penalty of perjury. (Exhibit 24)

2. Premium Homes is registered with the Washington SOS as a Washington Limited Liability Company ("LLC"). The LLC was formed September 25, 2014. Its principal office street address is 1414 E Yesler Way, Seattle; its mailing address is P.O. Box 1639, Mercer Island. The nature of its business is real estate. Nadia is the LLC's registered agent and only governor. Her mailing address is P.O. Box 1639, Mercer Island. (Exhibit 21)
3. Bogdan and Nadia are married to one another; Erik Maksimchuk ("Erik") is their adult son. (Nadia testimony) Erik was involved in some of the incidents described herein. Erik testified that he has

never worked for Barcelo Homes or Premium Homes. He said that he and his wife operate a house flipping business. (Erik testimony)

4. 7216 93rd used to be owned by Barcelo Homes but is now owned by Premium Homes. (Nadia testimony) The dilapidated house on the lot was built in 1948 and has an assessed value for 2020 of \$10,000. (Exhibit 20)
5. The fundamental facts which led to issuance of the Notice are relatively straight forward and undisputed.
 - A. In or around June, 2020, Forest Sipiora (“Forest”), who lives with his wife Judy across 93rd Avenue SE from 7216 93rd, contacted the City regarding dumping of materials at 7216 93rd. (Exhibit 2; Forest testimony)
 - B. At around noon on October 6, 2020, an abutting property owner to 7216 93rd, Don Sandstrom (“Sandstrom”), e-mailed the City regarding activities at 7216 93rd. Sandstrom informed the City that “I have observed lately that trailers loaded with construction demolition and fill material are again being dumped [at 7216 93rd].” Sandstrom reminded the City that “[i]n earlier interaction with the planning department a code compliance officer visited the site while dumping was taking place and I was informed by him that such dumping was not permitted, and that the persons involved were cautioned to cease such activity on the property.” Sandstrom observed that “[a] significant volume of demo/fill material has accumulated on the lot over the past months.” (Exhibit 2)

About an hour later Forest sent an e-mail to the City advising that “dumping of dirt and construction debris has begun again on a regular basis” at 7216 93rd. (Exhibit 1)

- C. The City’s Code Compliance Officer, David Henderson (“Henderson”), visited the site later that same day and confirmed the dumping. As of Henderson’s visit at least 17 or more piles of primarily earthen material were present. (Exhibit 3; Henderson testimony)
- D. On October 7, 2020, Henderson returned to 7216 93rd and posted a Stop Work Order (“SWO”) on a stake which he drove into the ground just north of the entrance gate to the site’s driveway.⁵ (Exhibit 4; Henderson testimony) Comparison of Henderson’s photographs in Exhibit 3 and Exhibit 4 seems to indicate that no additional materials were dumped on the site between his October 6th and 7th visits.

The SWO was on a standard, red, city form. The SWO stated that it was issued for: “Grading within a critical Area, Piling waste fill material within a water course buffer and within the

⁵ 7216 93rd is on the east side of 93rd. Pictures of the site taken from the street are looking towards the east. (Henderson testimony) North is to the left in such pictures.

drip lines of native trees. Grading of materials without required permit. Resolution shall be contact City of Mercer Island Building Official and obtain all required permits.” The SWO further said “DO NOT work at this address until you ... Obtain the Required Permit(s)” (All caps in original). Boxes for Tree Removal and Grading were checked. The SWO included two prominent sections, one entitled “WARNING! DO NOT REMOVE THIS NOTICE” [All-caps and underlining in original], the other entitled “Right to Appeal.” The “Right to Appeal” section cited MICC 6.10.090(A) and advised that the SWO could be appealed within 14 days of the posting date of the SWO. (Exhibit 4, PDF 1)

The October 7, 2020, SWO was not appealed.

- E. On the afternoon of October 9, 2020, Stephen McKay (“McKay”), who lives two houses down from 7216 93rd, and Forest observed Erik back a large white pick-up truck with a black dumper trailer into the site.⁶ Stephen and Forest walked up to the site and told Erik that there was an SWO posted which barred further dumping. Erik took the SWO off the stake, returned to the truck’s cab, made a phone call, and then proceeded to dump a load of mostly or entirely earthen material next to other piles in the driveway. McKay videoed the dumping. (Exhibit 7) Erik testified that he stapled the SWO back onto the stake before leaving; McKay testified that Erik took the SWO with him when he drove off; Forest sent an e-mail to the City on October 11, 2020, also stating that the truck driver took the SWO with him when he left. (Exhibits 5; 6; 7; Forest and McKay testimony)

The McKay video begins after the truck had backed into the driveway and was dumping its load in front of (west of) existing piles in the driveway. A stake, pointed end up, is clearly visible on the inside of the fence just north of the driveway while the dumping is occurring. The SWO is not present at that time nor when Erik drives the truck away. (Exhibit 7)

Exhibit 7 provides only partial imagery of the prior piles on the site. From that imagery it appears that the load dumped in the driveway by Erik on October 9th may have been the first load since the SWO was posted on October 7th.

- F. At 2:49 p.m. on October 9, 2020,⁷ the City’s Building Official, Don Cole (“Cole”), spoke with Nadia by telephone. She told him she thought the SWO applied only to work within the drip lines of on-site trees. He explained that it applied to the entire property until required permits were obtained. She agreed to stop all work on the site. (Exhibit 8)
- F. On October 19, 2020, Henderson visited 7216 93rd again. He observed his prior SWO stake upside-down inside the fence, observed the materials dumped by Erik on October 9th, and

⁶ Erik testified that he was the driver of the truck.

⁷ Both the Respondent (in Exhibit 27 at PDF 2, § III.6) and the Appellants (in Exhibit 9007 at PDF 4:12-14) wrongly state that this call occurred on October 13, 2020. Exhibit 8 is the City’s permit tracking system record of this call. It states that the call occurred at 2:49 p.m. on the 9th. Cole testified that he input the notes into the system on October 13th.

posted a second SWO. The second SWO was on the standard red form. The second SWO stated that it was issued for: “Grading without a permit and within the drip lines of regulated trees which may be exceptional trees. Resolution shall be to obtain all required permits prior to resuming work.” The SWO further said “DO NOT work at this address until you ... Obtain the Required Permit(s)” (All caps in original). “Grading, tree” were listed. The SWO had the standard “WARNING” and “Right to Appeal” paragraphs. (Exhibit 9, PDF 3)

The second SWO was not appealed.

A comparison of the photographs in Exhibits 4, 7, and 10 indicates that at least three additional loads were dumped between October 6th and 19th: Two in the driveway and one to the south of the driveway.

- G. On October 20, 2020, the City issued a Notice of Violation & Civil Penalties under case CE20-0057 to Barcelo Homes for the activities at 7216 93rd. Barcelo Homes appealed. On or about November 2, 2020, before the Examiner had scheduled a hearing, the City withdrew that Notice of Violation due to incorrect title research. (Henderson testimony; Official notice of date of City withdrawal)
 - H. On January 27, 2021, Forest e-mailed a complaint to the City that dumping was again occurring at 7216 93rd. (Exhibit 11) Later on January 27th Cole sent an e-mail to Nadia and Bogdan telling them that they were violating SWOs at three locations, one of which was 7216 93rd, and that they needed to cease work at all three locations until the problems were resolved. (Exhibit 12)
 - I. On January 28, 2021, Henderson visited 7216 93rd again. He observed mud tracks on 93rd outside the fence and a pile of crushed rock inside the fence. (Henderson testimony)
 - J. On February 1, 2021, Cole met Nadia at 7216 93rd. She told him that she wanted to remove all the dumped materials that week and asked for permission to place 2 cubic yards of gravel at the entry (in addition to the one load that had already been dumped there) to minimize mud tracking onto 93rd. Cole gave her a verbal authorization to place up to 2 cubic yards of gravel on the site for that purpose. He followed that up with an e-mail confirmation on February 3, 2021. That meeting and authorization occurred after the first load of gravel had been dumped. (Exhibit 1001; Cole, Henderson testimony)
 - K. On February 5, 2021, the Notice which is the subject of this appeal was issued. (Exhibit 15)
6. Exhibit 13 is a photograph taken from the Sipiora residence across the street from 7216 93rd. It shows a black Ford crew-cab type pick-up with a red Barcelo Homes dumper trailer discharging a load of material inside the fence, apparently just to the south of the driveway. The material being dumped is not visible; the trailer blocks view of the area where the materials were dumped on

October 9th. Exhibit 13 is labeled as a January 28th photograph taken by Henderson. Henderson testified that he did not take the picture: It was given to him by Forest. Henderson understood that it had been taken on January 27th. Forest said that Judy had taken that picture. Judy testified that she took the picture sometime after October 7th, but she could not say for sure when exactly she took it. Nadia and Erik testified that the black truck was being driven by Erik when Exhibit 13 was taken.

7. Nadia testified that waste materials had been dumped at 7216 93rd for quite some time. She also testified that all the piles have now been removed. No evidence was presented to corroborate that testimony nor did any City witness corroborate it.
8. The material piles that are/were present at 7216 93rd included dirt, concrete slabs, CMU ⁸ blocks, bricks, torn tarps, pipe, etc. It is indisputable that many of the piles were dumped in close proximity to a small grove of large trees, well within the drip lines of those trees. ⁹ (Exhibits 3; 4; 7; 9; 10)
9. Nadia testified that she used to work for Barcelo Homes but had not done so since 2019. She said that when she worked for Barcelo Homes she handled its permitting and accounting. She testified that she formed Premium Homes in 2014, but never got a business license until 2018, and did no projects under the LLC until 2019. She testified that Premium was in the business of buying, remodeling, and then selling homes. She testified that Premium acquired 7216 93rd from Barcelo Homes in 2019 with the intent to remodel the home and sell it. She testified that she later changed her mind (because of the poor condition of the structure) and is exploring the possibility of short subdividing the property.

Nadia admitted in testimony having earth and construction debris dumped onto 7216 93rd. She testified that Erik was doing her a favor when he dumped the loads of material on the site in 2020. She admitted that no permits had been obtained before doing the dumping as she didn't think any were required to just stockpile materials. She said that the materials came from Premium Homes projects in Seattle and on Mercer Island. She testified that Premium Holmes had one employee in 2019 but no employees in 2020.

Nadia testified that she was the person whom Erik called on October 9, 2020, before dumping the load at the site. She said she told him to go ahead as she thought the SWO only applied to dumping near the trees. She said she told Erik to put the SWO back before leaving the site. She said she asked him to take a picture of the SWO after replacing it on the stake. (No such picture was offered into evidence.) Nadia also said that Erik was the operator of both the white truck with black trailer and the black truck with red trailer pictured in the record dumping materials on 7216 93rd.

⁸ “Concrete Masonry Unit”

⁹ The first SWO refers to dumping “waste fill material within a water course buffer”. Henderson mentioned a water course that is apparently south of 7216 93rd. There is no evidence in the record about any such water course. Without specific evidence, it would be impossible to say whether dumping occurred within its regulatory buffer. Therefore, the Examiner has not considered that potential aspect of the case.

Nadia testified that she talked with Cole on Monday, October 12, 2020. She said that he told her to remove all the material piles and that she did not need a permit to remove the materials.

10. Bogdan testified that Barcelo Homes deeded 7216 93rd to Premium Homes in November, 2019. (No evidence to support this testimony was offered into evidence.) He testified that no Barcelo Homes employee worked on the site. He testified that Erik used to work for Barcelo Homes about 10 years ago. He testified that the Barcelo Homes website (Exhibit 22) had not been updated in several years and that neither Nadia nor Erik currently had anything to do with the corporation.
11. Erik testified that he was not an employee of Barcelo Homes in October, 2020, when he dumped the loads of material at 7216 93rd. He testified that neither he nor the company he and his wife operate have ever worked for Premium Homes. He said he didn't remember the source of the materials he dumped on October 9, 2020. He said he was the driver of the black truck pictured in Exhibit 13. He said he thought that trip occurred in January, 2021, but he wasn't sure. He testified that he stapled the SWO back on the stake before he left the site on October 9, 2020.
12. Cole and Henderson testified that Nadia was their primary contact person for Barcelo Homes matters.
13. The Notice charges Barcelo Homes, Premium Homes, and Nadia and Bogdan as individuals with eight separate code violations. Two of the violations are for repeat and deliberate violations. (Exhibit 15, PDF 2 & 3)

The Notice imposes "Corrective Actions." The corrective actions include: Present written affirmation of intent to comply with the SWO; remove the fill material; obtain a grading permit; obtain an arborist inspection to determine presence of tree damage, if any; develop a tree damage mitigation plan, if necessary; and implement the tree damage mitigation plan. The ultimate compliance date for completion of the corrective actions is May 6, 2021, three months after issuance of the Notice. (Exhibit 15, PDF 6)

The Notice assesses a civil penalty, a priority violation penalty, a repeat violation multiplier, and a deliberate violation multiplier.

- A. Civil penalty. The MICC provides that "[e]ach day during which a code violation is committed, occurs or continues shall be considered a separate offense for purposes of civil infractions or notices of violation." [MICC 6.10.050, ¶ 2]

A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or voluntary correction agreement shall be imposed at the rate of \$100 per day for each violation, accruing for every day after the compliance date listed in the notice of violation. Thirty days after the compliance date, the penalty will increase to a rate of \$250 per day for

each violation. Sixty days after the compliance date, the penalty will increase to a rate of \$500 per day for each violation, up to a maximum total penalty of \$50,000 for each violation.

[MICC 6.10.050(D)(1), emphasis added] The Notice assesses a civil penalty in the amount of \$100.00. (Exhibit 15, PDF 8) In one place the Notice states that the penalty “shall begin to accrue if Corrective Actions are not completed and the violations are not abated by the compliance date established above.” (Exhibit 15, PDF 7) Further in the Notice it says the civil penalties are “**Due 14 days from the Service of this Notice.**” (Exhibit 15, PDF 8; bold in original)

- B. Priority violation penalty. “In addition to the penalties described in subsection (D)(1) of this section, any person that is responsible for a violation of the provisions of the following regulations will be subject to additional penalties. These penalties for priority violations, as described below, will be assessed one time and will not accrue daily.” [MICC 6.10.050(D)(2), emphasis added] Violation of an SWO is a listed priority violation with a penalty of up to \$10,000. [MICC 6.10.050(D)(2)] Subsections 6.10.050(D)(2)(a) – (c) MICC set forth three criteria to be used in determining the amount of the priority violation penalty to be assessed in each case. Here the City set the priority violation penalty at \$2,500. (Exhibit 15, PDF 8)
- C. Repeat violation penalty.

A repeat violation is a violation that has occurred on the same property, or that has been committed by the same person responsible elsewhere within the city, for which voluntary compliance previously has been agreed to or any enforcement action taken that was not timely appealed or, if appealed, the appeal was dismissed, within the previous 36-month period. (For purposes of this subsection, repeat violation does not include each day in violation being counted as a separate violation.) To constitute a repeat violation, the violation need not be the same violation as the prior violation. Violation of a written order of the hearing examiner that has been served as provided in this chapter shall also constitute a repeat violation. Repeat violations will incur double the civil penalties set forth in subsections (D)(1) and (2) of this section. If violations are repeated a third or subsequent time within a 36-month period, the penalties will be five times those set forth above. The city also has authority to suspend or revoke a business license when a responsible party is repeatedly doing work in violation of city regulations (Chapter 5.01 MICC).

[MICC 6.10.050(D)(3), emphasis added] The City found more than three repeat violations. It thus applied a five-times multiplier. (Exhibit 15, PDF 8)

- D. Deliberate violation penalty. “If a violation was deliberate, the result of blatant disregard for direction from the city or knowingly false information submitted by the property owner, agent or their contractor, civil penalties will be incurred at double those set forth above in subsections (D)(1) through (3) of this section.” [MICC 6.10.050(D)(4)]

The City found that the violation was deliberate: The SWO was removed and dumping continued thereafter. The City applied the two-times multiplier. (Exhibit 15, PDF 8)

- E. The Notice states that the total civil penalty is \$26,000. The Notice states that “[p]ayment of the Civil Penalties is Due 14 days from the Service of this Notice.” (Exhibit 15, PDF 8, bold in original)

14. The five cases cited in the Notice as repeat violations (Exhibit 15, PDF 5) are:

- A. CE20-0057, 7216 93rd. This is the the current case number and refers to violation of the first SWO: removal of the SWO and working after the SWO was posted. A Notice of Violation was issued and appealed, but was later withdrawn by the City before it came on for hearing.
- B. CE18-0140, 7223 93rd Avenue SE. This SWO was issued to Barcelo Homes on November 21, 2018, for construction of retaining walls within the drip lines of trees and within the public right-of-way without required permits. Barcelo Homes purchased this property in April, 2014, remodeled the house, and sold the property in November, 2015. (Exhibit 1002)

Nadia and Bogdan initially asserted that they had completed the work some three years before the SWO was issued and had nothing to do with the property in 2018. After further questioning, Nadia testified that the purchasers sued Barcelo Homes for work defects and the court had ordered them to make corrections. Barcelo Homes or someone working for Barcelo Homes was actually doing work when the SWO was issued in 2018.

- C. CE19-0007, 9104 SE 50th Street. This Notice of Violation was issued to Barcelo Homes on March 4, 2019, for violating an SWO. According to Nadia’s testimony, Barcelo Homes owned the property at that time; she and Bogdan now own it as individuals, not through either the corporation or the LLC. (The record contains no evidence of when the title transfer occurred.) The SWO was issued for working around trees without complying with City regulations. When work continued after the SWO was posted, the Notice of Violation was issued. (Exhibit 17)
- D. CE19-0023, 9104 SE 50th Street. This Notice of Violation was issued to Barcelo Homes on April 2, 2019, for violating an SWO. The SWO had been posted for failure to follow plans approved for correction of the prior Notice of Violation. (Exhibit 18)

- E. CE20-0017, 4719 90th Avenue SE. This Notice of Violation was issued to Radimir and Ella Mandzyuk (“the Mandzyuks”) on April 16, 2020. An SWO was posted on February 13, 2020, when a City inspector found that significant interior work had been done without benefit of a permit. A permit for an interior remodel was issued on February 19, 2020. The permit listed Ella Mandzyuk as the owner and Barcelo Homes as the applicant/contractor. The building permit was applied for by Nadia. A second SWO was issued on March 24, 2020, when it was discovered that work outside the scope of the approved permit was occurring. The second SWO was removed and further work was done. The Notice of Violation followed. (Exhibit 19; Henderson testimony)

The Mandzyuks are relatives of Nadia and Bogdan. Nadia and Bogdan testified that neither of them own the property. On January 9, 2020, a Statutory Warranty Deed (“SWD”) was recorded transferring ownership of the property from a prior owner jointly to the Mandzyuks, Aleksander Dyneka, and Bogdan. After recording, the SWD was to be returned to 9104 SE 50th Street, Bogdan and Nadia’s address. (Exhibit 19, PDF 4 – 6) Bogdan testified that his name was not supposed to be on the SWD, but he could not explain why it was. There is no evidence in the record that he has done anything in the past year to remove his name from the title to 4719 90th Avenue SE. Bogdan also testified that the Mandzyuks operate a business that buys and remodels homes. Nadia testified that she applied for the building permit because Ella was in California and pregnant and could not easily return home due to the COVID pandemic. She also testified that Barcelo Homes did not work on the residence; Bogdan testified that he had done no work at 4719 90th Avenue SE.

15. At some time between April 6 and April 12, 2021, an architect filed a building, demolition, and grading permit application for 7216 93rd listing Barcelo Homes as property owner and contractor. The proposal is to demolish the buildings on the site and replace them with a 5,445 square foot (“SF”) single family home with a 683 SF attached garage. (Exhibit 9006) The City began processing that application on April 12, 2021. (Exhibit 9005)

The statement on that current application that Barcelo Homes is the owner of 7216 93rd is in direct conflict with and serves to impeach the sworn testimony of Nadia and Bogdan that Premium Homes owns 7216 93rd.

16. Because of the obvious conflict between Exhibit 9006 and the testimony of Nadia and Bogdan as well as Nadia’s vagueness regarding when Premium Homes acquired 7216 93rd from Barcelo Homes, the Examiner elected to look outside the record at the King County Assessor’s public on-line property records. Those public records show that Barcelo Homes Quit Claim Deeded 7216 93rd to Premium Homes on November 6, 2019, as a “mere change in identity or form”.¹⁰ (Recording Number 20191211000760) The recording number of the associated Excise Tax form is E3024935. King County excise tax records show that Barcelo Homes and Premium Homes claimed an

¹⁰ [<https://blue.kingcounty.com/Assessor/eRealProperty/Detail.aspx?ParcelNbr=2581900210>, last visited April 26, 2021]

exception to excise tax payment on the transfer under WAC 458-461A-211(6).¹¹ WAC 458-461A-211 is entitled “Mere change in identity or form – Family corporations and partnerships.” Subsection (6) reads: “(6) **Transfers when there is not a change in identity or form of ownership of an entity.** The exemption applies to transfers of real property when the grantor and grantee are the same.” [Bold in original]

17. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK¹²

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

The Examiner is charged with hearing timely appeals of Notices of Violation. [MICC 6.10.090(B)] The Examiner holds an open record hearing after which he issues a written decision. The Examiner’s Decision is a final decision for the City subject to the right of reconsideration and appeal to a court of competent jurisdiction. [MICC 6.10.090(D); MICC 3.40.110]

Review Criteria

1. Following review of the evidence submitted, if the examiner finds that no violation has occurred, the hearing examiner shall uphold the appeal and reverse the notice of violation or stop order. If the hearing examiner finds that a violation has occurred, the hearing examiner shall issue an order to the person responsible for the violation which includes the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - b. The required corrective action;
 - c. The date by which the correction must be completed; and
 - d. The civil penalties assessed based on the provisions of this chapter and the fee resolution;
2. If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner’s knowledge or consent, such property owner shall be responsible only for abatement of the violation.

[MICC 6.10.090(C)]

¹¹ [https://blue.kingcounty.com/Assessor/eRealProperty/Detail.aspx?ParcelNbr=2581900210, last visited April 26, 2021]

¹² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

The City has adopted local regulations governing vesting of land use applications.

Complete applications for land use review of Type I land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department’s issuance of a letter of completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[MICC 19.15.170(B)]

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [MICC 19.15.130(C)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. “[T]he issue of credibility is for the trier of fact to decide. The trial court, in a bench trial, evaluates the credibility of witnesses.” [*Thor v. McDearmid*, 63 Wn. App. 193, 817 P.2d 1380 (1991)] The Examiner sits in the position of the trial judge in a bench trial when hearing cases; the Examiner must make credibility decisions.

The Examiner has serious reservations about the credibility of portions of Nadia’s, Bogdan’s, and Erik’s testimony. Nadia testified that she has had nothing at all to do with Barcelo Homes since the end of 2019. But Exhibit 24 shows that she acted as Barcelo Homes’ agent in completing the business’ 2020 Annual Report for the SOS. And she executed that report under penalty of perjury. She and Bogdan both testified that the work at 7223 93rd which gave rise to the 2018 Notice of Violation occurred years after Barcelo Homes had sold that property, strongly implying that they could not have had anything to do with that situation. But on cross examination, Nadia finally testified that Barcelo Homes had been required by a court decision to correct errors made during initial construction. It was, in fact, Barcelo Homes which was doing the work in 2018. Erik testified that when he dumped materials on 7216 93rd he was doing a favor to his mother, that he couldn’t

remember where he picked up the materials, and that he didn't know who owned the trucks he was driving. Erik testified that he stapled the SWO back on its stick after talking with Nadia. But the video taken that day does not support that statement: There is no SWO visible when the truck drives out.¹³ If he had taken such a picture, it could have easily been produced as evidence. Erik's testimony is simply not terribly credible. Nadia testified that the white truck used to belong to Barcelo Homes, Premium Homes currently owned it, but she couldn't remember when its title was transferred. A simple copy of the vehicle's title would have provided that information.

Nadia testified that she formed Premium Homes in 2014, but never obtained a business license until 2018, and had no employees in 2020. Yet she testified that they had been dumping waste materials from construction jobs at 7216 93rd for some time. If Premium Homes had no employees in 2020, who is one to assume did all the dumping?

The Maksimchuks' testimony was evasive when it came to transactions between Barcelo Homes and Premium Homes and Nadia's involvement with Barcelo Homes. Frankly, it seemed that they were trying to distance Barcelo Homes from any responsibility for the actions which led to issuance of the Notice.

The Maksimchuks' labored to prove that Barcelo Homes and Premium Homes are two separate and legally distinct entities. Yet when it came time to transfer ownership of 7216 93rd from Barcelo Homes to Premium Homes they used a form of property transfer that allowed them to avoid paying any excise tax: They claimed the two entities were one and the same. They can't have it both ways.

2. Was the MICC violated as charged? The fundamental charge from which all others derive is grading without a permit. (Exhibit 15, PDF 2) "No person shall do any grading without first obtaining a grading permit from the building official." [MICC 17.04.010 (Second 105.1.2)¹⁴] Exceptions to the grading permit requirement are listed in Second Section 105.2:

105.2 Work exempt from permit. ...

Permits shall not be required for the following:

¹³ As the white truck pulls out of the yard through the gate on October 9, 2020, a clear glimpse of the fence on the north side of the gate is visible between the truck and the trailer. The SWO stake, without the SWO, is visible behind the fence; there is no other stake anywhere in that area; there is no SWO visible on a stake. (At 2:54 - 2:55 in the Exhibit 7 video) When Erik exits the truck cab near the end of the video, presumably to close the gate, he is not carrying the SWO or a stapler. (At 3:09 - 3:13 in the Exhibit 7 video) The record contains no evidence to support his version of events.

¹⁴ The citation in the Notice contains one scrivener's error and one potentially misleading element. The scrivener's error occurs in the MICC reference which is written "MICC 17.04.10." The leading zero in the section number was omitted. The potentially misleading element occurs in the code section reference: There are two sections numbered "105.1.2". The first one pertains to electrical permit requirements, the second one pertains to grading permit requirements. Why the section numbers duplicate is not known to the Examiner. To avoid confusion, the Examiner will refer to the grading provisions as "Second 105.1.2."

Grading.

1. An excavation below existing finished grade for basements and footings of an existing building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any excavation having an unsupported height greater than 5 feet.
2. An excavation of less than 50 cubic yards of materials which:
 - a. Is less than 2 feet in depth and/or
 - b. Does not create a cut slope of a ratio steeper than two horizontal to one vertical.
3. A fill of less than 50 cubic yards of material which is less than 1 foot in depth and placed on natural terrain with a slope flatter than five horizontal to one vertical.

[Emphasis added] Thus, grading includes both excavating and filling. Any fill of over 50 cubic yards which is deeper than 1 foot requires a grading permit.

It is obvious from Exhibits 3, 4, 7, 9, and 10 that there were more than enough piles of earthen materials which are more than 1 foot in height to exceed the 50 cubic yard threshold. Those piles of earthen materials were fill. There were at least 15 – 20 separate piles of earth (within which was intermingled a whole host of construction waste) that were dumped at 7216 93rd, all of which were more than 1 foot deep. There is no dispute that no permit was obtained for any of that dumping. MICC 17.04.010 was violated as charged.

3. It is questionable whether MICC 19.10.020 was violated. Section 19.10.020, quoted in full in Exhibit 15 at PDF p. 2, requires a permit “prior to removing any tree”. No tree was cut down. Subsection 3 says that “tree removal includes the cutting or removing directly or indirectly through site grading of any tree, or root destruction that will result in a tree ultimately becoming a hazardous tree.” Arguably piling earthen materials above a tree’s roots within the tree’s drip line could eventually lead to the death of the tree. And a dead tree could become a hazardous tree. This charge presumes future events for which no expert supporting evidence exists in the record.
4. The evidence clearly shows violation of MICC 8.24.020(A), (G), and (I)(6) as charged. Among the materials dumped at 7216 93rd were large slabs of concrete, CMU blocks, bricks, plastic plumbing pipe, torn tarps, and concrete pipe which collectively constitute an offensive accumulation of trash, refuse, and abandoned materials in violation of MICC 8.24.020 as charged.
5. The preponderance of the evidence leads to the conclusion that the October 7th SWO was deliberately removed on or about October 9th and not replaced. Erik’s testimony to the contrary is belied by the video evidence and testimony of Forest and McKay. Removal of the SWO was a

deliberate violation of MICC 6.10.070(D). The SWO was on a standard, red City form which clearly stated the right of appeal and provided information about filing an appeal. None of the charged responsible persons sought to appeal the SWO.

6. The evidence clearly shows violation of MICC 6.10.070(B). The first SWO was posted on October 7th. Video from October 9th shows Erik dumping another load of material at 7216 93rd. The second SWO was posted on October 19th. A site visit by Henderson on January 28th found a new pile of gravel dumped on the property.

It matters not why the gravel was dumped. The fact is that it was dumped without any prior authorization and while the second SWO was still in effect. Whether additional materials were dumped between October 19, 2020, and January 28, 2021, is irrelevant.

7. Was Premium Homes a “responsible person”? The term “person responsible” is very broadly defined in the MICC:

“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.

[MICC 6.10.110, emphasis added] Premium Homes owns 7216 93rd. Premium Homes is a person responsible for the activity at 7216 93rd.

8. Was Barcelo Homes a “responsible person?” Barcelo Homes owns (or at least owned at the times of interest in this appeal) the red trailer which was used on at least one occasion to dump material at 7216 93rd. Barcelo Homes may or may not have owned the two pick-up trucks that towed the trailers to 7216 93rd to dump materials: Nobody seemed to want to clearly indicate who owned those trucks. Nadia testified that materials from jobs had been dumped at 7216 93rd for years. But Premium Homes, according to Nadia, didn’t conduct any business until 2019. And Barcelo Homes owned 7216 93rd prior to Premium Homes’ ownership. The violation for dumping without a grading permit and creating a nuisance is not based solely on the few loads observed being dumped on and after October 9th. It is also based on all the dumping that occurred prior to the posting of the first SWO on

October 6th. It is entirely possible that Barcelo Homes owned 7216 93rd during the period when some loads were dumped. And if Nadia is to be believed that Premium Homes was not active until 2019, it is equally possible that Barcelo Homes had construction waste to dispose of. Finally, Barcelo Homes and Premium Homes claimed that they were one and the same – family companies – when it came time to transfer ownership of 7216 93rd from one to the other. They can't claim that for one purpose and deny it for another.

Based on the preponderance of the evidence,¹⁵ Barcelo Homes is a person responsible.

9. Was Nadia a “responsible person?” Nadia admitted in testimony that she ordered dumping at 7216 93rd. Nadia and Erik both testified that Nadia told him to dump the black trailer load of earthen material on October 9th.¹⁶ The question here is whether she is protected from individual liability by her LLC.

She is not because she was the “person who created, caused, participated in, or has allowed a violation to occur.”

10. Was Bogdan a “responsible person?” Circumstantial evidence indicates that Barcelo Homes was responsible for much of the dumping at 7216 93rd. Is Bogdan, as sole owner of the corporation, also individually liable? Since there is no evidence that Bogdan personally ordered anything to be done, the Examiner declines to name him as a person responsible.
11. Were the required corrective actions appropriate? The corrective actions listed on PDF 6 of Exhibit 15 are eminently appropriate. They require complete removal of the illegally dumped materials coupled with subsequent mitigation of any damage that has occurred to the trees on the site. Nothing more or less would be reasonable.
12. Was the “priority violation” penalty justified? Five types of violations are classified as “priority violations” by MICC 6.10.050(D)(2): Damage or removal of trees; ecological damage; stormwater

¹⁵ “Proof ... by a preponderance of the evidence merely means the greater weight of the evidence. *State v. Harris*, 74 Wash. 60, 64, 132 P. 735 (1913).” [*City of Spokane v. Beck*, 130 Wn. App. 481, 486 (2005)] The preponderance test merely requires that a fact at issue be shown by evidence to be more probably true than not. [*Presnell v. Safeway Stores, Inc.*, 60 Wn.2d 671, 374 P.2d 939 (1962)] “Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).” [*State v. Quintanilla*, __ Wn. App. __, __ P.3d __ (2013, Div. III; Slip Opinion at 4)]

¹⁶ Erik was not named in the Notice. (Probably because at that time Henderson did know who had driven the white truck or the black truck when they dumped loads at 7216 93rd.) Had his identity been known, he could have been charged as the person actually doing the dumping. And if, as he testified, he was doing it solely as a favor to Nadia and not as an employee of either Barcelo Homes or Premium Homes, the concept of corporate protection would not be a consideration at all.

control violation; discharge of grease, etc.; and violation of an SWO. Assessment of additional penalties under this provision was justified if only for one reason: The multiple violations of the SWOs. The penalty for that priority violation may range up to \$10,000. Subsection 6.10.050(D)(2) MICC lists three factors to be considered when determining the appropriate amount of the penalty within the range. The Notice assesses only 25% of the maximum allowed priority violation penalty. The analysis in the Notice adequately justifies a 25% priority violation penalty.

13. Was the “repeat violation” multiplier justified? A “repeat violation” may be on the same property or elsewhere in the City. It does not have to be the same type of violation as the current violation. However, to count as a “repeat violation,” a violation must have been subject to a voluntary compliance agreement or enforcement action; if enforcement action, it must not have been appealed or the appeal must have been dismissed. [MICC 6.10.110, quoted in Finding of Fact 13.C, above]

Dismissal usually means that a case was “tossed out” on some technicality with no decision on the merits ever rendered. If an appeal were “dismissed” in that sense, it would mean that the appellant was never found guilty of the charged violation. It would be illogical in that case to count such a violation as a repeat violation. Thus, the Examiner believes the intent here is that the appellant must have been found guilty after an appeal.

14. Three of the five cases cited as the basis for application of the repeat violation multiplier qualify as repeat violations. All five of the repeat violations occurred within the last 36-months. Therefore, the 5-times multiplier is required by the MICC.
- A. CE20-0057, 7216 93rd. This is a repeat violation. Enforcement action was initiated against Barcelo alone and Barcelo timely appealed. The City withdrew that Notice of Violation, an action that is tantamount to traditional dismissal. However, the first SWO was not appealed and it was violated. That would be counted as a repeat violation.
 - B. CE18-0140, 7223 93rd Avenue SE. This qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO) which was not appealed. Barcelo Homes was the responsible person.
 - C. CE19-0007, 9104 SE 50th Street. This also qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO followed by a Notice of Violation for failure to comply with the SWO) which was not appealed. Barcelo Homes was the responsible person.
 - D. CE19-0023, 9104 SE 50th Street. This second case at 9104 SE 50th also qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO) which was not appealed. Barcelo Homes was the responsible person.

E. CE20-0017, 4719 90th Avenue SE. This would also qualify as a repeat violation if Barcelo Homes was the contractor or if Bogdan was an owner. The property was subject of enforcement action (issuance of an SWO) which was not appealed. The after-the-fact building permit application lists Barcelo Homes as the contractor, but both Nadia and Bogdan denied doing any work at this residence. The record contains essentially no evidence to refute their denials.

Although Bogdan claims not to be an owner of this property, the fact is the recorded SWD lists him as an owner and the recorded deed was to be returned to his residence. By MICC definition, a person who is an owner of property where a code violation has occurred is a responsible person. Bogdan was a responsible person.

15. Was the “deliberate violation” multiplier justified? Yes, the first SWO was deliberately violated (and removed from the site) on October 9th and the second SWO was violated sometime before January 28th. Both were deliberate actions. The 2-times multiplier was required by the MICC.
16. The Notice incorrectly states that the civil penalties are due within 14 days of service of the Notice. (Exhibit 15, PDF 8) That requirement in the Notice is directly in conflict with MICC 6.10.050(D)(1) which states that the civil penalties accrue “for every day after the compliance date listed in the notice of violation.” The ultimate compliance date listed is May 6, 2021. However, the Notice includes intermediate compliance dates for specific actions.

Chapter 6.10 MICC is structured to encourage compliance with City codes, not to raise money. “The purpose of [the City’s code enforcement regulations] is to ensure compliance with the city’s adopted building, land development, land use, nuisance and related codes” [MICC 6.10.010(A)] “Failure to correct the code violation in the manner prescribed in the notice of violation subjects the person responsible to any of the following compliance remedies: a. Civil penalties and costs” [MICC 6.10.050(B)(3)] Penalties for code violations are not due until after a compliance period has passed without compliance. Penalties then start to accrue and become increasingly onerous the longer a situation goes without compliance.

As applied here, no penalties are yet due. The Notice must be amended to reflect the provisions of the MICC regarding the penalties due date. Where, as here, the required corrective actions include intermediate compliance dates for certain actions, failure to meet any one of those intermediate compliance dates would automatically make all the penalties due and the basic civil penalty would start accruing daily as required by the MICC.

Also the compliance dates need to be adjusted to compensate for the time involved in the appeal process. The Notice was issued on February 5, 2021. Eighteen days of the compliance period had expired when the appeal was filed on February 23, 2021. Compliance Action 1 (Fill Removal) required acquisition of the required grading permit by February 19, 2021, 14 days after issuance of the Notice. That period had expired four days before the appeal was filed. It will be re-set for May

11, 2021, five working days after this Decision is issued to allow a reasonable period to complete the permit paperwork. Compliance Actions 1 (removal of material) and 4 (mitigation implementation) were to be completed by May 6, 2021, 90 days after issuance of the Notice. Seventy-two days remained when the appeal was filed. That compliance date will be changed to July 15, 2021. Compliance Action 2 is dependent upon completion of the fill removal. No change to that compliance paragraph is required. Compliance Action 3 (Arborist Report and Mitigation Plan) was to be completed by March 4, 2021, 27 days after issuance of the Notice. Nine of those days remain. A new compliance date will be set nine days from the date of this Decision. Compliance Action 5 (written affirmation) was to be completed within seven days of issuance of the Notice. That compliance period expired before the appeal was filed. It will be reset to Friday, May 7, 2021, three days after this Decision is issued. (Three working days is plenty of time to submit an affirmation that the violators will abide by the SWO and will not do any more dumping on 7216 93rd without written authorization from the City.)

17. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION and ORDER

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner herewith issues the following Decision and Order:

- A. The Notice of Violation & Civil Penalty issued on February 5, 2021, under City Compliance Case No. CE20-0057 is **SUSTAINED with CORRECTIONS** as listed in Paragraphs B – E, below.
- B. The responsible persons list in the Notice of Violation & Civil Penalty issued on February 5, 2021, under City Compliance Case No. CE20-0057 is **REVISED** by the deletion of Bogdan Maksimchuk.
- C. Required corrective actions are **SUSTAINED** as set forth in the Notice of Violation & Civil Penalty issued on February 5, 2021, under City Compliance Case No. CE20-0057.
- D. The dates by which the required corrective actions must be completed as set forth in the Notice of Violation & Civil Penalty issued on February 5, 2021, under City Compliance Case No. CE20-0057 are **CHANGED** as follows:
 - i. Compliance Action 1 is changed to May 11, 2021 (acquisition of grading permit) and July 15, 2021 (removal of materials).
 - ii. Compliance Action 2 (Arborist Inspection) is unchanged.
 - iii. Compliance Action 3 (Arborist Report and Mitigation Plan) is changed to May 13, 2021.

HEARING EXAMINER DECISION

RE: APL21-002 (Barcelo Homes *et al.*)

(Ref. Code Compliance Case CE20-0057)

(Barcelo Homes 2021 I)

May 4, 2021

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- iv. Compliance Action 4 (mitigation implementation) is changed to July 15, 2021.
 - v. Compliance Action 5 (written affirmation) is changed to May 7, 2021.
- E. Civil penalties set forth in the Notice of Violation & Civil Penalty issued on February 5, 2021, under City Compliance Case No. CE20-0057 are due and payable if the required corrective actions have not be completed by the dates stated in D, above, or by July 15, 2021, for corrective actions for which there is no specified date; the basic civil penalty begins to accrue the next day.

HEARING EXAMINER DECISION
RE: APL21-002 (Barcelo Homes *et al.*)
(Ref. Code Compliance Case CE20-0057)
(Barcelo Homes 2021 I)
May 4, 2021
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Decision and Order issued May 4, 2021.

|s| *John E. Galt*

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁷

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Nadezhda Maksimchuk
Bogdan Maksimchuk

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Department of Community Planning & Development a written request for reconsideration within ten calendar days following the issuance of this Decision in accordance with the procedures of MICC 3.40.110. Any request for reconsideration must allege one or more of the following errors: “1. The decision was based in whole or in part on erroneous facts or information; 2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or 3. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the decision.” [MICC 3.40.110(A)] See MICC 3.40.110 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

“Any judicial appeal of the hearing examiner’s decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (‘LUPA’). The land use petition must be filed within 21 days of the issuance of the hearing examiner’s decision.” [MICC 3.40.100, ¶ 2]

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”
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¹⁷ The official Parties of Record register is maintained by the City’s Hearing Clerk.