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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. APL21-003

(Ref. No. CE20-0058)

CITY OF MERCER ISLAND’S  
CLOSING ARGUMENT

I. INTRODUCTION

The City of Mercer Island (“City”) respectfully requests the Hearing Examiner uphold the City’s February 11, 2021 Notice of Violation & Civil Penalties associated with the unpermitted demolition and construction at 2906 74<sup>th</sup> Avenue SE, or in the alternative, to set civil penalties sufficient to deter future code violations. Appellant Nadia Maksimchuk is well known to the City and has a history of involvement with code violations by multiple corporate entities, including work performed despite stop work orders. This case follows that pattern and the City seeks penalties consistent with deterring future code violations.

II. VIOLATIONS

A. Unpermitted Demolition

In investigating the source of construction debris and dirt being illegally dumped at 7216 93<sup>rd</sup> Avenue SE, City Staff determined that Premium Homes of Mercer Island, LLC

1 owned another property on Mercer Island, address of 2906 74<sup>th</sup> Avenue SE. Direct Testimony  
2 of David Henderson, morning of April 15, 2021. Code Compliance Officer David Henderson  
3 visited the subject property on October 12, 2020. *Id.* In attempting to find and knock on the  
4 front door, he observed that an interior chimney had been demolished, and that dry wall  
5 interior to the home had been removed, exposing electrical work. *Id.*, Exhibit 1, pages 1-3, 7,  
6 9. Mr. Henderson confirmed that no permit had been issued for this work. Direct Testimony  
7 of David Henderson, morning of April 15, 2021.

8 Mr. Henderson stapled a red stop work order to the carport on the property on that  
9 same date: October 12, 2020. Exhibit 1, pages 7, 12.

10 B. Continued Unpermitted Work In Violation of Stop Work Order

11 Building Official Don Cole met with Premium Homes of Mercer Island owner Nadia  
12 Maksimchuk on site at 2906 74<sup>th</sup> Ave SE on November 13, 2020, to observe the property and  
13 discuss permitting requirements. Direct Testimony of Don Cole, Morning of April 15, 2021.  
14 While incomplete permit application materials were later submitted to the City, only a re-  
15 roof permit had been issued for the property for the dates in question. Exhibit 20. That re-  
16 roof permit limited the work to “[r]eplace existing Wood Shingle.”

17 Mr. Henderson again visited the property on January 14, 2021 after receiving a  
18 complaint about framing for a “significant extension.” Exhibit 2. Mr. Henderson observed  
19 the erection of a new roof structure and erection of plywood either over existing structure or  
20 over framing for new structure. Exhibits 3-4.<sup>1</sup>

21 Mr. Henderson returned to the property for continued monitoring on January 27, 2021  
22 and noticed even more work had been performed at the property without permits. He  
23 observed the installation of a new window, additional plywood either over existing structure  
24 or around new structure, and the change in roof slope from gabled to flat. Direct Testimony  
25 of David Henderson, morning of April 15, 2021 and Exhibit 6.

26 <sup>1</sup> The City reiterates that page one of exhibit 3, is mislabeled and was taken on January 27, 2021, not January  
12, as explained at the hearing.

1 Finally, in March of 2021, the City received another complaint about a new  
2 roof/structure “looming” over the neighboring property at 7421 SE 29<sup>th</sup> Avenue SE. Exhibit  
3 8; Direct Testimony of Bryan Caditz, Morning of April 15, 2021. The photos taken in March  
4 better showed what Mr. Henderson observed in January of 2021, including the additional  
5 plywood, the new flat roof structure, the new window, etc. It also shows the roof structure  
6 observed by Mr. Henderson on January 14, 2021. Exhibit 9, pages 4-5.

7 At hearing, testimony by Ms. Nadia Maksimchuk admitted that a gabled roof structure  
8 was changed to a flat roof structure, a glass roof structure was removed and replaced by a  
9 new roof structure covered by wood shingles, that siding was replaced, that new foundation  
10 posts were installed, that part of an existing deck was demolished and an additional roof  
11 structure was constructed over the deck. Examination by Hearing Examiner of Nadia  
12 Maksimchuk, Afternoon of April 15, 2021. None of this work was done with the appropriate  
13 permits.

## 14 II. PENALTIES

### 15 1. Deliberate Violations

16 Appellants’ suggestion that the penalties should be \$4444 is preposterous because the  
17 violations at issue were deliberate and continued even after the posting of a stop work order.  
18 MICC 6.10.050(D)(4). MICC 6.10.050 provides for additional penalties for priority  
19 violations, such as the violation of the stop work order here. Further, based on the testimony  
20 of Code Compliance Officer Henderson, based on the criteria at MICC 6.10.050(D)(2), Staff  
21 set the penalties lower than they would if now asked to re-draft the notice of violation. (Mr.  
22 Henderson testified that based on the difficulty and time involved in resolving the violation,  
23 he would now set the penalty higher).

24 Appellants argue that they have taken a big risk by admittedly performing work  
25 without permits, because there is the possibility they will have to re-do the work. This does  
26 not relieve them of their responsibility to procure the appropriate permits *before* performing

1 the work. Additionally, the converse of this argument is that if the work passes inspection,  
2 the Appellants have avoided the added time and work associated with procuring the  
3 appropriate permits from the City plan review and inspection process to verify work is in  
4 accordance with land use and safety codes, allowing Appellants a competitive advantage over  
5 those who follow the City's code and procure the appropriate permits. MICC  
6 6.10.050(D)(2)(c).

7 2. Responsible Persons

8 One of the biggest questions before the Hearing Examiner is just who is responsible  
9 for the code violations occurring at the subject property. Out of an abundance of caution, the  
10 City listed all potentially responsible persons on the Notice of Violation & Civil Penalties in  
11 order to avoid an argument that the City had omitted a responsible person and that the City's  
12 Notice of Violation was therefore faulty. The City is not attempting to pierce the corporate  
13 veil pursuant to RCW 25.15.061, as Appellants allege.<sup>2</sup> Instead, as has been readily apparent  
14 throughout this proceeding, it has been extremely difficult for City Staff to determine when  
15 Ms. Maksimchuk was acting as agent for Barcelo, or for Premium Homes of Mercer Island,  
16 or even in her personal capacity.

17 When determining potentially responsible parties, the City considered the expansive  
18 definition in MICC 6.10.110 of "person responsible" for a violation:

19 'Person responsible for the violation' or 'person responsible' or 'violation'  
20 means any of the following: the person doing the work; a person who has  
21 titled ownership or legal control of the property or structure that is subject to  
22 the violation; an occupant or other person in control of the property or  
23 structure that is subject to the violation; a developer, builder, business  
24 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

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26 <sup>2</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. Mr. Bogdan  
Makisumchuk was included out of this abundance of caution. The City wished to avoid the situation at hearing  
where blame for a violation was placed upon a party not present to defend themselves.

1 the property is transferred to a third party; a mortgagee of property that is  
2 subject to the violation and has not been occupied by the owner, the owner's  
3 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.

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

11 The code provides that "any person who created, caused, participated in, or has  
12 allowed a violation to occur" is responsible for code violations, as well as the property owner.  
13 Nadia Maksimchuk is a common thread between many code violations in the City and  
14 qualifies as a responsible party that "created, caused, participated in, or has allowed a  
15 violation to occur." MICC 6.10.110. As discussed further below, Ms. Maksimchuk is the  
16 previous permitting contact for Barcelo Homes, she admitted to following up on prior Barcelo  
17 Homes projects with the City even after her claim of ceasing work for Barcelo Homes, she  
18 also admitted to acting as an agent on behalf of a family member for a project subject to code  
19 enforcement (including listing Barcelo Homes on the application for that project), and is the  
20 sole owner of Premium Homes of Mercer Island, LLC.

21 Nadia Maksimchuk frequently acts as representative for Barcelo Homes with respect  
22 to interactions with the City. For example, City Staff testified that they frequently  
23 communicate with Nadia Maksimchuk regarding Barcelo matters. Direct Testimony of David  
24 Henderson, Morning of April 8, 2021. Additionally, Exhibit 27 admitted at hearing shows an  
25 application made on behalf of Barcelo Homes, Inc. (as owner and contractor) and listing  
26 Bogdan Maksimchuk as the email contact for the owner and contractor for 7216 93<sup>rd</sup> Avenue



1 SE, which all parties agree is owned by Premium Homes of Mercer Island, LLC.  
2 Additionally, one of Appellants' own exhibits shows Ms. Maksimchuk initiating an email to  
3 the City about a permit application for the property in question from her Barcelo Homes  
4 email. Exhibit 1001 at page 2. This is contrary to Ms. Maksimchuk's testimony that City Staff  
5 only email her at her Barcelo Homes email and that she uses a separate email for Premium  
6 Homes of Mercer Island. Finally, Ms. Maksimchuk applied for permits under the Barcelo  
7 Homes name for family members owning 4719 90<sup>th</sup> Avenue SE. Exhibit 23; Direct  
8 Testimony and Cross Examination of Nadia Maksimchuk, Afternoon of April 15, 2021.

9 With respect to the violations associated with CE 20-0057 at 7216 93<sup>rd</sup> Avenue SE, it  
10 is undisputed that the original stop work order associated with that address (dated October 7,  
11 2020), was not appealed. Cross Examination of Nadia Maksimchuk, afternoon of April 15,  
12 2021. Additionally, it is undisputed that Premium Homes of Mercer Island, LLC owns 7216  
13 93<sup>rd</sup> Avenue SE and is a person responsible for code violations taking place there. While this  
14 past violation alone would not support a quintuple penalty multiplier for a third time  
15 violation, it could support a double penalty multiplier. MICC 6.10.050(D)(3).

16 If the Examiner finds Ms. Maksimchuk personally responsible, the multiple violations  
17 associated with 9104 SE 50<sup>th</sup> Street are instructive. With respect to 9104 SE 50<sup>th</sup> Street, Nadia  
18 Maksimchuk was involved in the code enforcement at that property as a representative of  
19 Barcelo. Exhibit 21, page 2; MICC 6.10.110. Further, contrary to Appellants' assertions, the  
20 agenda from the special meeting with Nadia Maksimchuk about code enforcement issues  
21 proves there were continued issues *before* 9104 SE 50<sup>th</sup> Street. *See, e.g.* Exhibit 24 ("Work  
22 must be in accordance with the approved plans and follow adopted codes. Occurred on  
23 multiple projects.") Indeed, the violations occurring at 9104 SE 50<sup>th</sup> Street share similarities  
24 with the violations at issue in this proceeding—namely continuing work in violation of a  
25 posted stop work order. Exhibit 21, detailing continuance of work in violation of stop work  
26 order, Exhibit 22, detailing noncompliance with stop work order.

1 While Appellants continue to allege Barcelo was purportedly informed by an  
2 unnamed city employee that they could not appeal the notices of violation associated with  
3 9104 SE 50<sup>th</sup> Street, Appellants do not cite to any evidence to support that allegation. Indeed,  
4 it is belied by the plain language of the notices of violation for that property, which  
5 expressly inform the responsible parties of their right to appeal. Exhibit 21, page 3; Exhibit  
6 22, page 2.

7 If the Hearing Examiner agrees with Appellants that only Premium Homes of Mercer  
8 Island, LLC is the person responsible for the code violations in this case, a multiplier would  
9 still be appropriate due to the deliberate, overt, and ongoing nature of the violations per MICC  
10 6.10.050(D)(4). In that event, only the repeat violation multiplier for code violations  
11 occurring at properties not owned by Premium Homes of Mercer Island, LLC (such as 9104  
12 SE 50<sup>th</sup> Street) would be inapplicable.

#### 13 IV. CONCLUSION

14 That code violations that occurred in this proceeding are not seriously disputed. The  
15 disputes are rather over the amounts of penalties that are appropriate and who should be  
16 responsible for paying those penalties. The City requests the Hearing Examiner uphold its  
17 Notice of Violation and Civil Penalties or in the alternative, uphold penalties consistent with  
18 the deliberate nature of the violations and sufficient to deter future code violations.

19 DATED this 30th day of April, 2021.

20 MADRONA LAW GROUP, PLLC

21  
22 By: /s/ Eileen M. Keiffer  
Eileen M. Keiffer, WSBA No. 51598

23 *Attorneys for the City of Mercer Island*  
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**DECLARATION OF SERVICE**

I, Tori Harris, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 30th day of April, 2021, I served a true copy of the foregoing City of Mercer Island’s Closing Argument on the following counsel of record using the method of service indicated below:

Dianne K. Conway, WSBA No. 28542 Gordon Thomas Honeywell LLP 1201 Pacific Avenue, Suite 2100 Tacoma, WA 98402  Counsel for Petitioner	<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
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 30th day of April, 2021, at Seattle, Washington.

**MADRONA LAW GROUP, PLLC**

  
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Tori Harris