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CITY OF MERCER ISLAND  
HEARING EXAMINER

The Carol Ann Cook Revocable Living Trust		No. APL21-004 (Ref. No. CAO 20-004)
v.	Appellant	Appellant's Response to Respondent's Motion to Exclude Certain Exhibits
City of Mercer Island	Respondent	HEARING EXAMINER JOHN E. GALT

COMES NOW, the Appellant the Carol Ann Cook Revocable Living Trust ("Appellant") by and through their attorney, Kristen C. Reid of Belcher Swanson Law Firm, PLLC and provides this response to the Respondent City of Mercer Island's ("City") Motion to Exclude Certain Exhibits.

**I. Introduction**

The City has filed a motion to exclude certain exhibits, namely exhibits 1004, 1005, 1006, 1007, and 1008 (herein referred to as "Exhibits") filed by the Appellant. The basis for the motion is the City argues the Exhibits are not relevant pursuant to the Washington Rules of Evidence ("ER") 401 and Hearing Examiner Rule ("ROP") 316(b) and are prejudicial to the City. For the reasons explained below, the Exhibits are properly before the Hearing Examiner and should not be excluded. The motion should be denied.

1 **II. Analysis**

2 A. Open Record Hearing. The hearing scheduled for April 28, 2021 is an  
3 open record hearing. *Mercer Island City Code ("MICC") 19.15.140*. By definition, an  
4 open record public hearing allows for a much broader range of testimony and  
5 evidence than a closed record hearing. This includes comment and testimony from the  
6 general public. *MICC 19.15.130.F*.

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8 B. Right to a Fair Hearing. ROP 312(a) entitles the Appellant to "all rights  
9 essential to a fair hearing." Certainly, this would include allowing the Appellant to  
10 submit exhibits directly relevant to the issues before the Hearing Examiner.

11 C. Technical Rules of Evidence and Procedure generally inapplicable.

12 Finally, ROP 316(b) states the hearing:

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14 ...generally will not be conducted according to technical rules  
15 relating to evidence and procedure. *Any relevant evidence shall be*  
16 *admitted if it is the type that possesses probative value commonly*  
*accepted by reasonably prudent people in the conduct of their*  
*affairs.* (emphasis added)

17 The language above regarding relevant evidence is a different standard than  
18 the one found in ER 401. For this reason, the hearing is not to be conducted in strict  
19 adherence to ER 401.

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21 In this case, Exhibits are prejudicial to the City as they show the City's delay in  
22 addressing this issue but they are also relevant. The Exhibits are relevant because  
23 they show the City's knowledge and the Appellant's efforts to resolve this issue as  
24 quickly as possible. Rather than engaging in direct communication, the City put the  
25 Appellant through futile processes by initially requesting a pre-application meeting for  
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1 the code interpretation and then waiving it (Exhibit 1008), then declined altogether the  
2 request for a code interpretation and in the same letter, suggested a Critical Area  
3 Review, 1 (Exhibit 1004). This forms the basis for why the hearing is needed at all.  
4 The City was the one that suggested the Appellant apply for a Critical Area Review, 1.  
5 This qualifies as evidence that “possesses probative value commonly accepted by  
6 reasonably prudent people in the conduct of their affairs.” Certainly, the Appellant  
7 could testify as to these facts but in the interest of efficiency and economy the  
8 documents were submitted as exhibits.  
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10 Similarly, exhibits 1005, 1006, 1007 show the City’s process in imposing fees  
11 and costs which are contrary to the plain language of the fee schedule. *Exhibit 1006*.  
12 The “peer review fee” charged is entirely unreasonable given the fact that a site visit  
13 was not even conducted yet over 25 hours of work was charged. *Exhibit 1005 and*  
14 *1007*. MICC 19.15.130 gives the Hearing Examiner the authority to reverse, remand,  
15 or modify the decision of the City. Therefore, these Exhibits are relevant and are  
16 properly before the Hearing Examiner for consideration.  
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### 18 III. Conclusion

19 For the foregoing reasons, the Appellant respectfully requests the motion to  
20 exclude the Exhibits be DENIED.  
21

22 Respectfully submitted this 27<sup>th</sup> day of April, 2021.

23 BELCHER SWANSON LAW FIRM, PLLC

24 */s/ Kristen C. Reid*

25 KRISTEN C. REID, WSBA# 38723

26 Attorney for Appellant

The Carol Ann Cook Revocable Living Trust

