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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

JEFFREY T. HALEY,

Petitioner,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL22-001

CITY OF MERCER ISLAND’S
MOTION TO DISMISS WITH
PREJUDICE

I. INTRODUCTION

The City of Mercer Island (“City”) respectfully requests the Hearing Examiner dismiss this proceeding pursuant to Hearing Examiner Rule of Procedure 228(a) and MICC 3.40.050. The challenged Storm Water Permit application 2111-230 was denied by the City on January 21, 2022. The appeal of the permit denial was not submitted to the City Clerk within the requisite appeal period, and the appeal fee was not timely paid. For these reasons, the appeal must be dismissed per Hearing Examiner Rule of Procedure 228(a) and MICC 3.40.050.

II. RELEVANT FACTS

Jeffery T. Haley (“Haley”) submitted a Storm Water Permit application on November 22, 2021, which was assigned permit application number 2111-230. Declaration of Ruji Ding

1 In Support of City of Mercer Island’s Motion to Dismiss (“Ding Decl.”), Ex. A. On January
2 21, 2022, the City issued a denial letter regarding permit application 2111-230. *Id.* at Ex. B.

3 On February 4, 2022, Mr. Haley emailed Ms. Ding and Bill Vandewater, submitting
4 an appeal of the City’s January 21, 2022 denial letter. *Id.* at Ex. C. Mr. Haley did not copy
5 this email to the City Clerk, but instead, requested Ms. Ding and/or Mr. Vandewater forward
6 the appeal to the City Clerk. *Id.* at Ex. C; Declaration of Andrea Larson In Support of City of
7 Mercer Island’s Motion to Dismiss (“Larson Decl.”), pp. 1-2, ¶¶ 4-5 and Ex. A. Additionally,
8 Mr. Haley did not file the associated appeal fee on or before February 4, 2022. Larson Decl.
9 at p. 2, ¶ 6 and Ex. B.

10 Mr. Haley subsequently forwarded his appeal to City Clerk Andrea Larson on
11 February 18, 2022. *Id.* at Ex. A. Further, Mr. Haley did not pay his appeal fee until February
12 18, 2022. *Id.* at Ex. B.

13 III. ISSUES PRESENTED

14 1. Should the Hearing Examiner dismiss the appeal because it was not timely filed
15 with the City Clerk as required by MICC 19.15.130(B)? Yes.

16 2. Should the Hearing Examiner dismiss the appeal because the appeal fee was not
17 timely paid as part of a complete appeal application as required by MICC 19.15.130(D)(6)?
18 Yes.

19 IV. ARGUMENT

20 1. The Appeal Was Not Timely Filed with The City Clerk as Required by the MICC
21 And Therefore Must Be Dismissed.

22 The Hearing Examiner lacks jurisdiction to hear this appeal because the appeal was
23 not timely filed with the City Clerk as required by the Mercer Island City Code (MICC).
24 Under the City of Mercer Island’s Hearing Examiner Rules of Procedure (“RoP”) 228(a), any
25 party may request dismissal on the grounds that the appeal was untimely filed (among other
26

1 grounds). MICC 3.40.050 further provides that parties to appeal may move for the hearing
2 examiner to dismiss an appeal for untimeliness.

3 Mr. Haley is appealing a storm water permit application denied by the City on January
4 21, 2022. Decisions on storm water permits are appealable to the City Hearing Examiner
5 following the process contained in MICC 19.15.130. MICC 15.09.090. MICC 19.15.130(B)
6 provides that “[a]dministrative appeals shall be filed with the city clerk within 14 days after
7 the notice of decision is made available to the public and applicant pursuant to
8 MICC 19.15.120, if a notice of decision is required, or after the effective date of the decision
9 subject to appeal if no notice of decision is required.”¹ Pursuant to that section, appeal of
10 the January 21, 2022 stormwater permit denial was due to the City Clerk on or before
11 February 4, 2022.

12 Mr. Haley did not submit his appeal to the City Clerk within the prescribed 14-day
13 period. Instead, he emailed an incomplete appeal (see discussion *infra*) to Ms. Ding and Mr.
14 Vandewater, asking them to forward to the City Clerk. Ding Decl. at Ex. C. The MICC does
15 not provide for an alternative method of filing an appeal, such as emailing other City staff
16 members, which is what Mr. Haley did. While Mr. Haley eventually emailed the City Clerk
17 and forwarded on his appeal, he did not do so until February 18, 2022—two weeks past the
18 deadline to do so. Larson Decl. at Ex. A.

19 Because Mr. Haley failed to make his appeal to the City Clerk as required by the
20 plain language of MICC 19.15.130(B), the Hearing Examiner lacks jurisdiction to hear this
21 appeal.

22 **2. The Appeal Was Not Accompanied by the Requisite Appeal Fee As Required by**
the MICC and Therefore, Must Be Dismissed.

23 Additionally, the Hearing Examiner lacks jurisdiction because the appeal application
24 was incomplete as of the appeal deadline. Put differently, Mr. Haley failed to timely pay the
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26 ¹ No notice of decision is required per MICC Ch. 19.15 for stormwater permit applications.

1 requisite appeal fee. Per MICC 19.15.130(D)(6), written appeals “shall include” payment
2 of the appeals fee.

3 Mr. Haley did not pay the appeal fee on or before February 4, 2022. Larson Decl. at
4 p. 2, ¶ 6. Instead, payment was not received until February 18, 2022. *Id.* at Ex. B. Therefore,
5 Mr. Haley’s appeal was incomplete when incorrectly submitted on February 4, 2022 and
6 accordingly, the Hearing Examiner lacks jurisdiction over this appeal.

7 V. CONCLUSION

8 The stormwater permit application at issue was denied on January 21, 2022. This
9 began the 14-day deadline to institute an appeal to the hearing examiner. That period expired
10 February 4, 2022. Appellant did not file this appeal with the correct person (the City Clerk)
11 nor did Appellant timely file the appeal fee on or before February 4, 2022. Indeed, Appellant
12 did not even attempt to rectify either of these errors until two weeks past the deadline to do
13 so—on February 18, 2022. The appeal is thus untimely. The hearing examiner must dismiss
14 this proceeding as untimely according to RoP 228(a) and MICC 3.40.050.

15 DATED this 4th day of March, 2022.

16 MADRONA LAW GROUP, PLLC

17
18 By: /s/ Eileen M. Keiffer
19 Eileen M. Keiffer, WSBA No. 51598

20 **CITY OF MERCER ISLAND**
21 **OFFICE OF THE CITY ATTORNEY**

22
23 By: /s/ Bio Park
24 Bio Park, WSBA No. 36994

25 *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 4th day of March, 2022, I served a true copy of the foregoing City of Mercer Island’s Motion to Dismiss With Prejudice on the following using the method of service indicated below:

Jeffery T. Haley 5220 Butterworth Road Mercer Island, WA 98040 <i>Pro Se Petitioner</i>	<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: jeff@haley.net <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 4th day of March, 2022, at Seattle, Washington.



 Tori Harris