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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeals by  
STROUM JEWISH COMMUNITY CENTER,  
ET AL.,  
of an Interpretation by the Community Planning  
& Development Department

Hearing Examiner File:  
APL22-004

NOTICE OF WITHDRAWAL

On January 17, 2023, Appellants filed a request for delay in the appeal hearing, which was strenuously opposed by the City of Mercer Island (“City”), due in part to the City’s concern for the “broad public interest” in an administrative matter. Appellants filed the request for delay to pursue more understanding of the City’s statements in its Pre-Hearing Brief. The City stated several times that the Hearing Examiner, in a future variance proceeding, would not be bound by the City’s interpretation of its own code, and that the Interpretation was merely made to direct staff in their recommendations to the Hearing Examiner:

...the Code Official initiated the code interpretation, to provide instructions to City Staff as to how they will prepare recommendations to the Hearing Examiner with respect to certain types of variance applications. Ex. 1 at 0001. Under the MICC, City Staff do not grant or deny variances; rather, that power lies solely with the Hearing Examiner. MICC 19.15.130, Tables A and B. As such, DCI 22-004 does not and cannot bind the Hearing Examiner as to any particular outcome in a future variance decision.

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2 (emphasis added), City Brief, p. 6. The City reasserts this statement again on page 11 of its brief:

3 It bears repeating that DCI 22-004 does not prohibit applicants from applying for variances  
4 and does not prohibit the Hearing Examiner from granting variances. It merely provides the  
5 Code Official's opinions that City Staff should oppose certain variance requests in their  
6 recommendation to the Hearing Examiner, based on DCI 22-004, which includes a plain  
7 reading of the applicable code language.

8 And again on page 13:

9 It bears repeating that DCI 22-004 binds City Staff, but does not bind the Hearing Examiner,  
10 who makes the ultimate decision on a grant or denial of a variance application at the City  
11 approval level. MICC 19.15.030.

12 While Appellants are somewhat confused as to how a formal Director's code interpretation  
13 would not be binding on a Hearing Examiner, when MICC 19.15.010.4.a gives the Director the sole  
14 authority to interpret its code, we take the City at its word that it would permit Appellants, and any  
15 other community organization, to apply for a variance notwithstanding DCI 22-004. We also take  
16 the City at its word that it interprets its code that DCI 22-004 is not binding upon a Hearing  
17 Examiner, and that the Hearing Examiner could grant a variance to non-residential structures that is  
18 not consistent with the City's determination in DCI 22-004.

19 The City also makes clear in its brief that it believes that to enable the Staff to make a  
20 recommendation that a variance is the proper route to take, the City Council must act through a Code  
21 Amendment: "If the City Council or its constituents wish to correct an unintended, but rational,  
22 consequence of past legislation, they must take action to amend the MICC." City Brief, p. 11.

23 Because we do not believe a granting or denial of the appeal in this case gives the Appellants  
24 any more certainty in process, which is what they have spent over five years and extensive funds  
25 seeking, and we would like to preserve the Appellants' and the City's resources in this matter, we  
26 hereby withdraw this appeal according to HER 620(a)(1).

1 We appreciate the Examiner's time and attention in this matter.

2 Dated this 23<sup>rd</sup> of January, 2023.

3 Respectfully submitted,

4 s/Jessica M. Clawson, WSBA #36901

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