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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

No. APL23-002

CUSHMAN & WAKEFIELD

MOTION FOR CONTINUANCE

Appellant,

v.

CITY OF MERCER ISLAND, a Washington
State Municipality,

Respondent.

TO: HEARING EXAMINER GALT

AND TO: EILEEN M. KEIFFER and BIO PARK

MOTION

I. Introduction

Appellant, Cushman & Wakefield formally request to continue the hearing on the Notice of Violation Appeal by 30 days, schedules permitting. This motion is made pursuant to and supported by City of Mercer Island, Rule of Procedure (“RoP”) 204 and 412.

II. Relevant History

On February 28, 2023, the City of Mercer Island (“City”) issued a Notice of Violation to Cushman & Wakefield, citing multiple violations related to the failure to provide heat to residential apartments at the 77 Central Apartments, 2630 77th Ave. SE, Mercer Island, WA 98040. On March 13, 2023, Appellant filed an Appeal to the City’s Notice of Violation.

1 The Appeal was assigned to Examiner John E. Galt, who issued a scheduling letter on
2 March 22, 2023. A hearing was scheduled for April 26, 2023. Appellant had not retained legal
3 counsel when it agreed to the hearing date.

4 On April 3, 2023, Appellant consulted with attorney William Edgar, with Andor Law
5 about representing them at the hearing. Also on April 3, 2023, Mr. Edgar emailed Eileen
6 Keiffer, attorney for the City seeking a stipulation to a 30-day continuance. Ms. Keiffer
7 responded the following day, stating an intent to object to a continuance request for reasons
8 related to confusion and hardship to the members of the public and also due to the length of time
9 for the unresolved issues.

10 Appellant now files this formal request for a 30-day continuance as stated herein.

11 **III. Analysis and Arguments Supporting Appellant's Continuance Request**

12 RoP 412(a) provides Appellant with the right to seek a continuance. Pursuant to the RoP
13 412, it appears the Examiner has broad discretion to grant a postponement request. Reasons to
14 deny a continuance under RoP 412, subsections (b), (d) or (e) are not applicable to this request.
15 No other section of RoP 412 bars a continuance under the circumstances present here.

16 While Appellant agreed to hold the hearing on April 26, they did so without consulting
17 counsel, without adequate understanding of the necessary preparation for the hearing and without
18 a knowledge of the appeal process. It is understood that Appellant has not previously been
19 through the City of Mercer Island's appeal procedure.

20 The continuance is requested solely so that Appellant has sufficient time to adequately
21 prepare for the hearing and be allowed the opportunity for a fair and equitable hearing. It is not
22 intended to cause unnecessary delay or burden any party.

23 Further, the hearing is still 20 days from the date of this motion. Sufficient time exists to
24 notify the public of a date change. Additionally, postponement would not violate any State or
25 City procedural timeline.

1 A short continuance in this matter is objectively reasonable. The City may object to the
2 continuance request, however the City's expressed reasons to date are not sufficient to deny
3 Appellant's request. Absent some irreparable harm the City would experience by a 30-day
4 continuance, Appellant's request should be granted for the reasons stated above.

5 Dated: April 6, 2023

6 ANDOR LAW, PC

7
8 By: s/ William Edgar

9 William J. Edgar, WSB No. 46301

10 PO Box 8441

11 Portland, OR 97207

12 william.edgar@andor-law.com

13 Phone: 971-380-5604

14 *Attorneys for Appellant*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have served a true copy of the foregoing Motion for Continuance upon the
3 following:

4 Eileen M. Keiffer
5 14205 SE 36th Street
6 Suite 100, PMB 440
7 Bellevue, WA 98006
8 Eileen@madronalaw.com

Bio Park
9611 SE 36th Street
Mercer Island, WA 98040
bio.park@mercerisland.gov

7 on the date set forth below by:

8 **mailing** to said person a complete and correct copy thereof, contained in a sealed
9 envelope, addressed as set forth above and deposited in the United States mail in Portland, Oregon, with
10 postage thereon prepaid, on said day.

11 **hand delivering** to said attorneys a complete and correct copy thereof, contained in a
12 sealed envelope, at the address set forth above, on said day, and leaving it with the attorneys' clerk, or
13 person apparently in charge of the office, or in a conspicuous place therein if no one was apparently in
14 charge of the office.

15 **emailing** to said person a complete and correct copy thereof, on said day, and either:

16 the other party has consented to service by e-mail; or

17 I received confirmation of receipt of the email.

18 service by **electronic means** through electronic filing system

19 DATED: April 6, 2023

20 ANDOR LAW

21
22 By: s/ William Edgar
23 William Edgar, WSB #46301
24 *Attorneys for Appellant*