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June 28, 2023

4634 E Mercer Way Trust/Julio Rodriguez
C/o Dan Walk
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Puyallup, WA 98371
dwalk@nelsonallenlaw.com
SERVICE BY E-MAIL (First class mail service if requested)

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4624 E Mercer Way
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City of Mercer Island
Community Planning & Development Department
C/o Bio F. Park, City Attorney
9611 SE 36th Street
Mercer Island, WA 98040
bio.park@mercergov.org
SERVICE BY E-MAIL (First class mail service if requested)

Subject: Scheduling Guidance for Type I - III Administrative Appeal: APL23-003

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner (“Examiner”).

On June 27, 2023, I received the appeal which Dan Walk of Nelson & Allen, P.S. (“Walk”), filed on June 26, 2023, on behalf of 4634 E Mercer Way Trust/Julio Rodriguez (“Rodriguez”) with the City of Mercer Island, *in re* the approval of Kristen DeRose/Gerald Yuen’s (“DeRose/Yuen”) Critical Area Review 2 application CAO23-004 issued by the City on or about June 12, 2023. Decisions made on Critical Area Review 2 permit applications are Type III land use actions which are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(E), Tables A and B]

The MICC provides for a 14 calendar day appeal period from date of issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for Type I - III appeals are set forth in MICC 19.15.130(D). It would appear that the Rodriguez appeal was timely when filed.

All proceedings in the foreseeable future in this appeal will be either remote or hybrid (remote and in-person attendance available). Mercer Island uses the “Zoom” platform for its remote proceedings. The hearing type will be determined before a hearing date is selected.

The MICC contains basic regulations for Type I - III appeals and the open record hearings associated therewith. [MICC 19.15.130] Those regulations refer to rules that may be adopted by the Hearing Examiner. [MICC 19.15.130(G)] I promulgated Rules of Procedure (“RoP”) on December 2, 2019, pursuant to MICC 3.40.080(B). Please note that the current RoP are different from those of my predecessor. I have more recently promulgated an Emergency Rule addressing electronic filing of documents. (I have attached a copy of both the new RoP and the Emergency Rule to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.)

Subsection 19.15.130(F) MICC requires the City to give notice of the open record appeal hearing not less than 30 days before the open record hearing in the manner required by MICC 19.15.100. To ensure fairness to all principal parties, I set the hearing date in consultation with the principal parties; the City issues the required hearing notices. RoP 224 requires a pre-hearing document pre-filing process in appeal cases. The pre-filing process starts not less than 14 days before the hearing date. RoP 225 provides a shortened version of the RoP 224 process. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings. I will determine which pre-filing process to use later.

The RoP provide for prehearing conferences. [RoP 208] The Examiner has sole discretion to convene prehearing conferences. [RoP 208(a)] Any principal party may request that the Examiner convene a prehearing conference; the Examiner may call for a prehearing conference on his own initiative. [RoP 208(c)] Unless waived by the principal parties, I am required to give not less than seven days notice of a prehearing conference. [RoP 208(c)] **At this time I do not believe that a prehearing conference is necessary in this appeal.** However, I will fairly consider any request for a prehearing conference.

Allowing five work days for the parties to advise me of their date preferences, five work days after that for the City to prepare and issue the required hearing notices, and the required 30-day period between notice issuance and hearing date, the earliest that we could convene the hearing will be Monday, August 14, 2023. **I suggest that the hearing in this matter be held not later than Friday, September 1, 2023. I am presently available on every work day during that period EXCEPT August 16 and 23, 2023.** If I had my druthers, I would prefer to not hold the hearing on a Monday or Friday. (I schedule hearings on a first-come-first-served basis, so the longer it takes us to choose a date, the greater the likelihood that another jurisdiction may have reserved my services. Time is of the essence.)

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Please communicate your availability and date preference(s) directly to me by E-mail by Thursday, July 6, 2023, at the latest. My E-mail address is “jegalt755@gmail.com”. The City’s response must consider the availability of an appropriate hearing room (if the hearing will use the hybrid format) as well as the availability of needed staff. I will select a date and time based upon timely received responses.

Please be aware that *ex parte* communication with me is strictly limited. (See RoP 120.) You may communicate with me only on scheduling or other procedural matters. Whenever you communicate with me on such matters, you must cross-copy your communication to all other parties.

Last but by no means least, two procedural items: 1) If you are willing to continue to accept e-mail service from me in this case, please so advise when you communicate your date preferences; and 2) If you have key associates or assistants that I should include in e-mail service to you, please provide their names and e-mail addresses in your e-mail.

Sincerely,

\s\ *John E. Galt*

John E. Galt

City of Mercer Island Hearing Examiner