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December 2, 2019

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SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island  
Anthony Myers, Code Compliance Officer  
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Mercer Island, WA 98040  
bio.park@mercergov.org  
SERVICE BY E-MAIL (Signed copy by first class mail for official file)

Subject: Scheduling Guidance for Notice of Violation & Order to Correct Appeal: APL19-002

Dear Principal Parties:

I write in my capacity as the City of Mercer Island Hearing Examiner (“Examiner”). I wish to initially explain the unusually long delay between my receipt of the above-entitled appeal and this letter. I was recently appointed as the City’s new Examiner. My first order of business was to develop a new set of Rules of Procedure (“RoP”). I wanted to have those RoP in place before processing this appeal. I am issuing the new RoP today.

On November 8, 2019, I received the appeal which Shane Miller (“Miller”) filed on November 4, 2019, with the City of Mercer Island *in re* the Notice of Violation & Order to Correct issued by the City’s Code Compliance Officer on October 21, 2019. Mercer Island City Code (“MICC”) provides for a 14 calendar day appeal period from date of service. [MICC 6.10.050(B)(5); 6.10.090(A)] “The notice of appeal shall be made in writing using the appropriate city form, clearly explaining the basis for the appeal, and shall include the applicable appeal fee as established in a fee schedule adopted by the Mercer Island city council.” [MICC 6.10.090(A)] It would appear that Miller’s appeal was timely and complete when filed.

“Upon receipt of the appeal, the city shall schedule an appeal hearing before the hearing examiner. The hearing shall be conducted in accordance with the procedures set forth in Chapter 3.40 MICC and the rules of procedure of the hearing examiner.” [MICC 6.10.090(B)(1)] 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 attached a copy of the new RoP to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.) RoP 224 requires a pre-hearing document pre-filing process. The pre-filing process starts not less than 14 days before the hearing date. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings.

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. Public notice requirements for Notice of Violation appeals are set forth at MICC 3.40.080(D) (cross-referenced from MICC 6.10.090(B)(1)). The notice must be published and mailed to parties of record not less than 15 calendar days prior to the scheduled hearing date.

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)] **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. Unless waived by the principal parties, I am required to give not less than seven days notice of a prehearing conference. [RoP 208(c)]

Because of the hearing notice publication requirements, the earliest that a hearing could be held would be December 23, 2019. **I suggest that we avoid the Christmas and New Years weeks and try to hold the hearing in this matter during the week of January 6 or 13, 2020. I am presently available on January 8, 9 (afternoon only), 10 (afternoon only), 14, 15 (afternoon only) 16, and 17 (afternoon only).** (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.)

**Please communicate your availability and date preference(s) directly to me by E-mail by December 9, 2019, at the latest.** My E-mail address is “jegalt755@gmail.com”. The City’s response must consider the availability of an appropriate hearing room 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, if you are willing to continue to accept e-mail service from me in this case, please so advise by sending me an e-mail at jegalt755@gmail.com. If you have key associates or assistants

Shane Miller v. City of Mercer Island

APL19-002

December 2, 2019

Page 3 of 3

that I should include in e-mail service to you, please provide their names and e-mail addresses in your e-mail.

Sincerely,

John E. Galt,  
City of Mercer Island Hearing Examiner