



CITY OF MERCER ISLAND

9611 SE 36th Street • Mercer Island, WA 98040-3732
 (206) 275-7605 • FAX (206) 275-7726
 www.mercergov.org

STAFF REPORT

APL21-002 – APPEAL OF NOTICE OF VIOLATION (CE20-0057)

March 29, 2021

I. APPEAL SUMMARY

File Nos.:	APL21-002 CE21-0057 Code Enforcement Notice of Violation & Civil Penalties
Location:	7216 93 rd Avenue SE, Mercer Island WA 98040; Identified by King County Assessor tax parcel number 2581900210
Appellants:	Premium Homes of Mercer Island LLC, Barcelo Homes Inc., Nadezhda (Nadia) Maksimchuk, Bogdan Maksimchuk
Responsible Person or Persons:	<p>Premium Homes of Mercer Island LLC PO BOX 1639, MERCER ISLAND, WA, 98040-1639 1414 E YESLER WAY, SEATTLE, WA, 98122-5953</p> <p>Nadezhda (Nadia) Maksimchuk 1414 E YESLER WAY, SEATTLE, WA, 98122-5953 PO BOX 1639, MERCER ISLAND, WA, 98040-1639</p> <p>Barcelo Homes Inc. 1900 S PUGET DR #206, RENTON, WA, 98055 1414 E YESLER WAY UNIT A, SEATTLE, WA, 98122 PO BOX 1639, MERCER ISLAND, WA, 98040-1639</p> <p>Bogdan Maksimchuk 1900 S PUGET DR #206, RENTON, WA, 98055 1414 E YESLER WAY UNIT A, SEATTLE, WA, 98122 PO BOX 1639, MERCER ISLAND, WA, 98040-1639</p>
Description:	<p>The City has issued a Notice of Violation & Civil Penalties (CE21-0057) related to the unlawful dumping of soil and construction debris at the subject property, the removal of a stop work order, and unlawful continuance of work in direct violation of a stop work order.</p> <p>The appellant has appealed the Notice of Violation & Civil Penalties. The appeal is based upon alleged errors in determining the responsible person(s) and dispute of specific facts.</p>
Recommendation:	Affirm the City’s Notice of Violation & Civil Penalties and issue a final order to make corrective actions and pay civil penalties.

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II. Introduction

This staff report is in response to an appeal of a Notice of Violation & Civil Penalties issued in response to flagrant, deliberate, and repeat violation of city ordinances. The Appellants unlawfully dumped soil and construction debris at the subject property, including within the dripline of regulated and/or exceptional trees, without the requisite permits from the City. Appellants removed the City's posted October 7, 2020 stop work order and continued dumping and removing the stop work order. The City posted a second stop work order. The City seeks corrective action and penalties sufficient to both remedy the violations and to deter further code violations by the Appellants.

III. FACTUAL BACKGROUND

1. On October 6, 2020, the City received two complaints that trailers loaded with construction demolition debris and soil had been dumped onto 7216 93rd Ave SE, Mercer Island WA 98040 ("Subject Property"). Exhibits 1 & 2.
2. On October 6, 2020, the City Code Compliance Officer, David Henderson, performed a site investigation at the Subject Property and confirmed soil mixed with broken concrete, broken asphalt pavement, bricks, block, asbestos concrete tile, plastic material, broken hand tools, and similar refuse/construction debris, had been dumped onto the subject property in multiple piles ranging 2 feet to 4 feet in height and that several piles were located within the drip lines of several regulated and/or exceptional trees. Exhibit 3.
3. On October 7, 2020, pursuant to MICC 6.10.070(A)(1), the City Code Compliance Officer, David Henderson, posted a stop work order at the subject property to cease dumping waste fill material, and to stop grading, including ceasing grading/dumping of material within the dripline of regulated trees. Mr. Henderson secured the stop work order by stapling it at (top and bottom) to a wooden stake that he then hammered into the ground. Exhibit 4.
4. On October 11, 2020, the City received a complaint that the stop work order had been removed and that trailers continued to dump material in violation of the stop work order. Exhibit 5.
5. On October 12, 2020, the City received an additional complaint that that the stop work order had been removed at the Subject Property and trailers continued to dump loads of soil and construction debris onto the Subject Property in violation of the posted stop work order. Exhibits 6-7. A video of the continued dumping was provided to the City. Exhibit 7.
6. On October 13, 2020, the City Building Official, Don Cole, called Nadia Maksimchuk¹ to discuss the unauthorized removal of the stop work order and unlawful continuance of work in violation of a stop work order. Ms. Maksimchuk confirmed removal of the stop work order and the continued dumping, stating her belief that only dumping within the drip line of the trees was prohibited. Mr. Cole emphasized that all work must stop and Ms. Maksimchuk agreed to comply. Exhibit 8.
7. On October 14, 2020, Mr. Henderson also spoke with Nadia Maksimchuk. During this phone conversation, Ms. Maksimchuk stated that they had dumped the soil mixed with construction debris at the subject property, which was prohibited by a stop work order. She stated they had removed the stop work order because they were continuing to dump material away from the trees and that they felt this was allowed. Mr. Henderson informed her that the order was for grading or dumping anywhere on the property and that removal of the order was a violation. She also stated that they

¹ Nadia Maksimchuk is agent for Barcelo Homes, Inc. and is the principal of Premium Homes Mercer Island. Her roles with these entities is discussed further below.

had been using the property to dump materials hauled from several of their other projects located in Seattle over a period of years.

8. On October 19, 2020, Mr. Henderson performed an additional site investigation and confirmed the stop work order had been removed and confirmed additional dumping evidenced by the presence of additional loads of soil mixed with broken concrete, broken asphalt pavement, bricks, block, asbestos concrete tile, plastic material, broken hand tools, and similar refuse/construction debris Exhibits 9-10.
9. On October 19, 2020, Mr. Henderson also posted a second stop work order to replace the original order removed by the responsible party. Exhibit 9, Page 3.
10. On January 27th, 2021, City staff received a request from a neighboring property owner to investigate another occurrence of additional grading and dumping of soil with construction debris on the property. Exhibit 11.
11. On January 27, 2021, Mr. Cole emailed both Nadia and Bogdan Maksimchuk² regarding report of continuing work in violation of second stop work order. Exhibit 12.
12. On January 28th, 2021, Mr. Henderson visited the subject address and determined that additional material had been placed at the subject address. Exhibits 13, 14.
13. On February 8, 2021, Mr. Henderson issued a Notice of Violation & Civil Penalties via U.S. mail. Mr. Henderson also emailed a courtesy copy of the Notice of Violation on February 8, 2021. Exhibit 15.
14. On February 23, 2021, the City received an appeal of the Notice of Violation. Exhibit 16.
15. Barcelo Homes, Inc. and/or the Maksimchuks have a history of code violations with the City of Mercer Island:
 - a. CE19-0007, 01/30/2019, 9104 SE 50th Street, Unauthorized removal of a stop work order. Unlawful Continuance of work in violation of stop work order. NOV issued and civil penalty fee paid. (Exhibit 17)
 - b. CE19-0023, 04/01/2019, 9104 SE 50th Street, Violation of Voluntary Compliance Agreement, driving machinery within the drip lines of protected trees, NOV issued and civil penalty, priority violation, fees paid, monitoring tree survival for 5 years. (Exhibit 18)
 - c. CE20-0017, 02/13/2020, 4719 90th Ave SE, Interior remodel, and addition without permit. stop work posted. Unauthorized removal of a stop work order. Unlawful Continuance of work in violation of stop work order. (Exhibit 19)

IV. CODE VIOLATIONS

a. Failure to Obtain Grading Permit

Grading permits are required pursuant to MICC 17.14.010 (105.1.2): "Grading permit required. No person shall do any grading without first obtaining a grading permit from the building official." Appellants did not obtain a grading permit for grading at the subject property before conducting grading on the property. Exhibits 3, 4, 6, 7, 8, 9. Appellants' failure to obtain a grading permit before performing grading activities at the subject site therefore violates MICC 17.14.010 (105.1.2).

b. Failure to Obtain Tree Permit

Tree permits are required prior to performing any work that could indirectly result in a tree ultimately becoming a hazardous tree, including site grading. MICC 19.10.020. The Appellants' failure to obtain a tree permit before dumping construction material within the drip line of regulated and/or

² Bogdan Maksimchuk is the principal/owner for Barcelo Homes, Inc. Exhibit 22, page 3.

exceptional trees on the subject property violates MICC 19.10.020. Exhibits 3, 4, and 9 clearly show fill material piled up adjacent to the trunks of the trees on the Subject Property.

c. Dumping of Construction Debris

Appellants' dumping of construction debris on the Subject Property violates MICC 8.24.020, which prohibits "[t]he dumping or otherwise unlawful depositing of refuse, sawdust or any other material without a permit." Indeed, MICC 8.24.020 provides that such illegal dumping is a public nuisance. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 clearly show initial and continuing dumping of fill material/construction debris on the subject property, even despite orders from the City to cease.

d. Removal of Stop Work Order

The removal of the October 7, 2020 stop work order violates MICC 6.10.070(D). "When a stop work order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city...is unlawful and a violation. The October 7, 2020 stop work order was hammered into the ground using a wooden stake. Exhibit 4. Further, the stop work order was stapled securely to such wooden stake at the top and the bottom of the stop work order. Exhibit 4, page 1.

While Appellants allege the stop work order "blew over," this is belied by the evidence. First, Mr. Henderson's securing of the stop work order by use of a staple gun and hammering the stake into the ground makes that theory spurious on its face. Further, Mr. Sipiora reported to the City that the Appellants removed the stop work order. Exhibit 5. This was confirmed by Mr. Henderson's site visit on October 19, 2020, which clearly showed the stake on the ground/leaning against the fence, and that the stop work order had been cleanly and entirely removed from that stake, rather than simply "blown over." Exhibits 9-10.

e. Continuance of Work In Violation of Stop Work Order

The Mercer Island City Code prohibits continued work in violation of stop work orders. "When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful to conduct the activity or perform the work covered by the order, even if the order has been appealed, until the director has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed. Any violation of a stop work order is hereby declared to be a nuisance and the director is authorized to enjoin or abate such nuisance by any legal or equitable means available." MICC 6.10.070 (B).

Appellants continually and blatantly continued work in violation of both stop work orders posted by the City. Exhibits 5, 6, 7, 8, 9, 10, 11, 13. Ms. Maksimchuk confirmed in phone conversations to both Mr. Cole and Mr. Henderson that Appellants continued dumping fill on the property. Exhibit 8. Additionally, Mr. Henderson's October 19, 2020 site visit confirmed the continuation of work on the property. Exhibits 9-10.

V. CORRECTIVE ACTIONS/PENALTIES

The City's Notice of Violation required several reasonable corrective actions, such as fill/debris removal, arborist inspection, and an arborist report and mitigation plan. Exhibit 15.

The City also calculated civil penalties based upon the provisions of MICC Ch. 6.10. Because the Appellants have a long history of unappealed code enforcement actions with the City, application of the escalator in MICC 6.10.050(D)(3) is appropriate. Exhibits 17, 18, 19. Further, the Appellants violated the first stop work order on the Subject Property in the context of this code enforcement action, and Appellants did not appeal such stop work order. See MICC 6.10.110, "Repeat violation."

Further, the removal of the stop work order and continuance of work were deliberate violations, made with blatant disregard for the direction from the City. The City posted not one, but two stop work orders and had multiple points of contact with Ms. Maksimchuk. Exhibits 8, 12. Accordingly, the escalator in MICC 6.10.050(D)(4) is appropriate.

VI. RESPONSE TO APPEAL

a. The Appellants assert that:

“The City is improperly assigning responsibility to each of the alleged violations against four different ‘responsible parties.’ The only ‘responsible party’ affiliated with the Property is the owner, Premium Homes of Mercer Island, LLC.”

Staff Response:

Appellants are incorrect that only the property owner can be a responsible person under the MICC. The definition of “‘Person responsible for the violation’ or ‘person responsible’ or ‘violation’” contained in MICC 6.10.110 is extremely broad. Responsible person(s) include:

any of the following: the person doing the work; a person who has titled ownership or legal control of the property or structure that is subject to the violation; an occupant or other person in control of the property or structure that is subject to the violation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the violation; a mortgagee that has filed an action in foreclosure on the property that is subject to the violation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the violation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

Premium Homes is a responsible person because it is the owner of the subject property and is therefore “a person who has titled ownership or legal control of the property...that is subject to the violation.” Exhibit 20.

Barcelo Homes is a person responsible because it is a person doing the work. City of Mercer Island Code Enforcement staff observed the Barcelo Homes trailer dumping fill onto the subject property. Exhibits 13, 14.

Nadia Maksimchuk is a responsible person as the governor of Premium Homes of Mercer Island, LLC, pursuant to the records on file with the Washington Secretary of State. Exhibit 21. Nadia Maksimchuk has represented herself to staff as a primary contact for both Barcelo Homes and Premium Homes on numerous permit applications, permit correspondence, and other city correspondence. See Exhibit 22, Exhibit 23, page 2. Through her business organizations, she is also a “person who created, caused, participated in, or has allowed a violation to occur.”

Bogdan Maksimchuck is a responsible person because he is the owner of Barcelo Homes, Inc. Exhibits 22, 23, 24. Through his business organization, he is also a “person who created, caused, participated in, or has allowed a violation to occur.”

b. The Appellants also assert that:

“The City is improperly seeking to increase the penalties for the alleged violations based on unrelated prior violations issued to different parties.”

Staff Response:

First, the continuation of the work in violation of the first stop work order meets the definition of “repeat violation” contained in MICC 6.10.110, as a violation that has occurred on the same property, and Appellants did not timely appeal either stop work order. Therefore, even if Premium Homes of Mercer Island is held to be the only responsible person in this appeal, a penalty escalator is appropriate because the violations occurred multiple times on the subject property between October 2020 and January 2021 and the stop work order issued by the City was not timely appealed.

Further, Appellants appear to be attempting to shift responsibility between legal entities owned and controlled by the same individuals—the Maksimchuks. Ms. and Mr. Maksimchuk are well aware of the requirements of the Mercer Island City Code, considering that Barcelo Homes, Inc. has a history of code enforcement violations, including violations of stop work orders. Exhibits 17, 18, 19, 25. Appellant Barcelo Homes, Inc is responsible for at least two prior code violations within the past 36-month period. Exhibits 17-18. It was also the contractor responsible for the code violations described in Exhibit 19 and Mr. Maksimchuk was a property owner of that property. Therefore, pursuant to MICC 6.10.110, "...the violation has been committed by the same person responsible elsewhere within the city..." The City notes the code does not require that violations be the same violation as prior violations to be a "repeat violation."

Finally, the City notes that it named Nadia and Bogdan Maksimchuk as Appellants due to their roles and ownership of Premium Homes of Mercer Island and Barcelo Homes, Inc. Exhibits 21-24. City Code enforcement frequently encounters and attempts to work with Ms. Maksimchuk in particular with respect to the prior code enforcement actions with the City. Despite Ms. Maksimchuk's familiarity with the Mercer Island City Code, and specifically, the code enforcement process, entities owned by Ms. Maksimchuk or for which she is an agent, continue to deliberately violate City Code. The Hearing Examiner should disregard Appellants' attempt at a shell game to shift liability between special purpose entities. MICC 6.10.110 includes a very broad definition of "responsible person(s)" and Appellants constitute responsible persons under the plain language of that definition.

Appellants' reading of the code would allow them to establish new special purpose legal entities for each new project, in order to evade the City Code's provision for enhanced penalties for repeat offenders. This would circumvent the purpose of the Code and would be detrimental to public health and safety, given the prolific nature of the code offenses by the Maksimchuks, their companies, and agents.

c. The Appellants assert that:

"None of the alleged "responsible persons" removed or otherwise tampered with any signage posted by the City. Indeed, the signage remains on the property, though it was blown over at some point due to wind or other unknown cause...."

Staff Response: This is demonstrably false. Mr. Sipiora reported to the City that the October 7, 2020 stop work order had been removed. Exhibit 5. This was confirmed by Mr. Henderson's October 19, 2020 site visit, which shows the stake pulled out of the ground and the stop work order completely removed from the stake. Exhibits 9-10. Further, in separate phone conversations with both Mr. Cole and Mr. Henderson, Nadia Maksimchuk admitted removal of the stop work order and the continuance of work. Exhibit 8. The appeal contends that *"the signage remains on the property..."*, which is a misleading statement because to the extent the signage remains on the property, it is the second stop work order.

d. The Appellants assert that:

"No "responsible party" brought debris or fill to the Property after posting of the Notice of Violation.

Debris piles, which have since been removed with the City's permission, were not within dripline of trees.

Staff Response: The evidence establishes that this assertion is false. Additional soil with construction debris was dumped after posting of the initial stop work order. Exhibits 5, 6, 7, 8, 9, and 10.

Further, the evidence clearly shows the fill within the drip line of the trees. Indeed, the photos show the debris piled up against the trunks of the trees in question. Exhibits 3, 4, 9, 10.

Finally, Ms. Maksimchuk admitted to removal of the stop work order and continuance of the work. Exhibit 8.

VII. CONCLUSION

The City respectfully requests the Hearing Examiner uphold the issuance of the Notice of Violation & Civil Penalties and issue a final order for corrective actions and payment of civil penalties.



David Henderson
Code Compliance Officer/Building Inspector/Plans Examiner
City of Mercer Island
