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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

BARCELO HOMES, INC., et al.,

Petitioners,

VS.

CITY OF MERCER ISLAND,

Respondent.

NO. APL21-002

(Ref. CE20-0057)

PETITIONERS' RESPONSE TO CITY OF MERCER ISLAND'S REQUEST FOR RECONSIDERATION

Pursuant to the briefing schedule set by the Hearing Examiner, Petitioners submit this response to the City of Mercer Island's Request for Reconsideration of the Hearing Examiner's Decision and Order dated May 4, 2021.

RESPONSE

Petitioners have no objection regarding the City's request to modify the Decision's discussion of who observed Erik Maksimchuk on or about October 9, 2020 (Finding of Fact 5(E)).

Petitioners have no objection regarding the City's request for clarification of the boilerplate language regarding the vested rights doctrine, and Petitioners agree that the decision should be clear that the burden of proof in this appeal was on the City.

Petitioners object to the City's contentions regarding the penalty calculations to the extent the City seeks to justify increasing the penalties imposed on Petitioners. Petitioners

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also reject the City's contention that the Hearing Examiner's decision is inaccurate given the clear language of the City Code regarding civil penalties; if the City thought the language was confusing or inaccurate or against public policy, it had ample opportunity to revise it before the new language was adopted. Moreover, giving alleged violators of MICC 6.10.050(D)(1) an opportunity to correct their violations before incurring additional penalties under MICC 6.10.050(D)(2) is a completely appropriate measure from a public policy standpoint. And, contrary to the City's somewhat odd allegations, such violators will still have to pay potentially significant penalties. Simply put, the Hearing Examiner's decision does not enable alleged violators to "skirt" penalties.

DATED this 25th day of May 2021.

GORDON THOMAS HONEYWELL LLP

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