



CITY OF MERCER ISLAND
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STAFF REPORT
APL21-003 – APPEAL OF NOTICE OF VIOLATION (CE20-0058)

March 29, 2021

I. APPEAL SUMMARY

File Nos.:	APL21-003 CE20-0058 Code Enforcement Notice of Violation & Civil Penalties
Location:	2906 74 th Avenue SE, Mercer Island WA 98040; King County Assessor tax parcel number 531510-0836
Appellants:	Premium Homes of Mercer Island LLC, Barcelo Homes Inc., Nadezhda (Nadia) Maksimchuk, Bogdan Maksimchuk
Responsible Person or Persons:	Premium Homes of Mercer Island LLC. PO BOX 1639, MERCER ISLAND, WA, 98040-1639 1414 E YESLER WAY, SEATTLE, WA, 98122-5953 Nadezhda (Nadia) Maksimchuk 1414 E YESLER WAY, SEATTLE, WA, 98122-5953 PO BOX 1639, MERCER ISLAND, WA, 98040-1639 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 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
Description:	The City has issued a Notice of Violation & Civil Penalties (CE20-0058) related to work commenced without required permits at the subject property and unlawful continuance of work in direct violation of a stop work order. The appellants have appealed the Notice of Violation & Civil Penalties. The appeal is based upon alleged errors in determining the responsible person(s) and a dispute of specific facts.
Recommendation:	Affirm the City’s Notice of Violation & Civil Penalties and issue a final order to make corrective actions and pay civil penalties.

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 violations of city ordinances. The Appellants performed work at the subject property without the requisite permits, including interior demolition, complete replacement of roof structures (rafters and beams), and construction of a new roof structure over an existing second story deck. Further, Appellants deliberately carried out the work despite a stop work order and other instruction from the City. 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 12th, 2020, city code compliance officer David Henderson, visited the subject address, a private property owned by Premium Homes of Mercer Island, LLC, to identify the possible source of the refuse and construction debris being unlawfully dumped at site address 7216 93rd Ave SE, which is also an active code enforcement case (CE20-0057) involving the Appellants. Mr. Henderson observed the demolition of a wood burning brick chimney in the process of demolition and noted no permit was issued for this work. Exhibit 1.¹
2. Mr. Henderson observed debris from the chimney demotion being thrown into a red trailer on the site, clearly labeled "Barcelo Homes." Exhibit 1, pages 5-7.
3. Mr. Henderson posted a stop work order by stapling it securely (top, middle, and twice at the bottom) to the car port on the subject property. Exhibit 1, page 12.
4. On November 13, 2020, City Building Official, Don Cole, made a site visit to the subject property to discuss permit requirements with Nadia Maksimchuk.²
5. On January 8th, 2021, the City's online Code Compliance Request portal received a written compliance request to investigate work being done to the residence on the subject property. The request alleged that "the construction crew put up a significant amount of fencing/barricades/signs of surveillance cameras which appear to be to hide their work. In the last few days, framing has gone up for a significant extension off the back of the home....They have also gutted the home from what I can see." Exhibit 2.
6. In response to the compliance request, Mr. Henderson performed a site investigation at the subject address on January 12th, 2021 and confirmed that a new roof had been constructed over a second story deck in violation of the posted stop work order requiring Appellants to obtain a building permit. Exhibits 3-4.
7. On January 14, 2021, Mr. Henderson notified Ms. Maksimchuk that work was continuing in violation of the posted stop work order. Exhibit 5.
8. On January 27th, 2021, Mr. Henderson performed another site visit to monitor the subject property for adherence to the stop work order. On this date, Mr. Henderson observed a main floor addition that had been constructed without a building permit in violation of the posted stop work order, which required Appellants to obtain a building permit prior to proceeding with construction. Exhibit 6.

¹ Staff notes Exhibit 1 contains a typo, and is inadvertently labelled "10/12/21 Site Visit Photos." The Exhibit should instead be labelled "10/12/20 Site Visit Photos," which is the same date of the stop work order shown on Exhibit 1, page 12.

² Nadia Maksimchuk is agent for Barcelo Homes, Inc. and is the governor of Premium Homes Mercer Island. Her roles with these entities is discussed further below.

9. The City's Building Official, Don Cole, sent an email to Nadia Maksimchuk and Bodgan Maksimchuk³ that work was continuing in violation of the stop work order. Exhibit 7.
10. On February 11, 2021, the Code Compliance Officer, David Henderson, issued a Notice of Violation & Civil Penalties. Exhibit 10.
11. On February 25, 2021, the appellants appealed the Notice of Violation. Exhibit 11.
12. On March 23, 2021, in response to a complaint received the same day from the property owner of a neighboring property, Mr. Henderson took additional photos of the work on the subject property. These photos also show the unpermitted work prohibited by the stop work order, including the new roof over the second story deck. Exhibits 8-9.
13. Premium Homes of Mercer Island LLC owns the subject property. Exhibit 15.
14. Barcelo Homes, Inc. and/or the Maksimchuks have a history of code violations with the City of Mercer Island:
 - a. CE19-0007, 3/4/2019, 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 21)
 - b. CE19-0023, 04/02/2019, 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 22)
 - c. CE20-0017, 4/16/2020, 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 23)

IV. CODE VIOLATIONS

a. Failure to Obtain Demolition and Building Permits

The interior demolition, construction of a new roofing structure over the second story deck, and additional roof structural framing work require a permit under the Mercer Island City Code. "Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure..." MICC 17.14.010 (105.1). Appellants did not obtain the requisite permits of the City prior to performing the work and indeed, work continued even after posting of the stop work order. Exhibits 1 and 3. Additional evidence of the unpermitted work is apparent when reviewing the March 2020 aerial photo of the property and comparing that to what Mr. Henderson and Mr. Cole observed on the property (Exhibits 1, 12, and 14). Further, the framing plan submitted for the yet unfinalized permits shows matching the condition of the property observed by Mr. Henderson and Mr. Cole on his various site visits. Exhibit 13. To date, the permit application for the work already performed has not been finalized.

b. Continuation of Work In Violation of Stop Work Order

Despite the posted stop work order and the City informing the Appellants that permits were required, work continued on the property. Exhibits 2, 3, 4, 6, and 7. MICC 6.10.070(B) provides that "[w]hen 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..."

V. CORRECTIVE ACTIONS/PENALTIES

The City's Notice of Violation required several reasonable corrective actions, such as providing written affirmation that the Appellants would obtain appropriate permits, providing right of entry to inspect the work done without permits, and obtaining and paying for all required permits. Exhibit 10.

³ Bodgan Maksimchuk is the principal/owner of Barcelo Homes, Inc. Exhibit 19, page 3.

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 stop work order on the Subject Property in the context of this code enforcement action, and Appellants did not appeal such stop work order. Exhibits 2-3. See MICC 6.10.110, "Repeat violation."

Further, continuance of work in violation of the stop work order was a deliberate violation, made with blatant disregard for the direction from the City. Exhibits 2, 3, 4, 5, 6, 7. Despite these efforts by the City, the work continued on the subject property unabated. Exhibits 2, 3, 4, 6. Accordingly, application of the escalator in MICC 6.10.050(D)(4) is appropriate.

VI. RESPONSE TO APPEAL

- a. The Appellants allege that:

"The City is improperly assessing responsibility on 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. The terms mean:

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 15.

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 in the driveway, receiving construction debris from the chimney demolition. Exhibit 1.

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 16. 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. Exhibit 19. 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 17, 18, 19. He is also a "person who created, caused, participated in, or has allowed a violation to occur."

- b. The Appellants allege that 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 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 the 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 after the stop work order issued by the City.

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 21, 22, 23, 24. Appellant Barcelo Homes, Inc. is responsible for at least two prior code violations within the past 36-month period. Exhibits 21-22. Barcelo Homes, Inc. was also the contractor responsible for the code violations set forth in Exhibit 23, and Mr. Maksimchuk was a part owner of the 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 16, 17, 18, 19. 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 allege that:

“A roofing permit was obtained.”

Staff Response: The appellant is correct that replacement of the roof covering was permitted at the request of Nadia Maksimchuk to minimize damage associated with the poor condition of the previous roof covering. However, the issued reroof permit is limited to the replacement of the roof covering; it does not permit the total replacement of structural framing systems for significant portions of the dwelling and or permit Appellants to add new roof structures. Exhibit 20.

- d. The Appellants allege that:

“There has been no main floor addition as alleged in the Notice of Violation, nor are there any plans to do one.”

Staff Response: This assertion is demonstrably false. A covered deck addition was constructed and the submitted plans clearly demonstrate an addition to connect the dwelling to the carport. Exhibits 1, 3, 4, 6, 9, 14.

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
