

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
(425) 259-3144
Voice: (425) 259-3144
E-mail: jegalt755@gmail.com

February 26, 2021

Barcelo Homes, Inc.
Premium Homes of Mercer Island, LLC
Bogdan Maksimchuk
Nadezhda Maksimchuk
C/o Dianne K. Conway
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402
dconway@gth-law.com
SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island
C/o Bio F. Park, Interim 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 Notice of Violation & Civil Penalties: APL21-003 (Reference File Number CE20-0058; Barcelo 2021 II)

Dear Principal Parties:

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

Today I received the appeal which Dianne K. Conway filed on behalf of Barcelo Homes, Inc., Premium Homes of Mercer Island, LLC, Bogdan Maksimchuk, and Nadezhda Maksimchuk (“Barcelo Homes *et al.*”) on February 25, 2021, with the City of Mercer Island *in re* the Notice of Violation & Civil Penalties issued by the City of Mercer Island Code Compliance Officer on February 11, 2021. 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 Barcelo Homes *et al.*’s appeal was timely and complete when filed.

Because of restrictions attendant to the current COVID-19 pandemic, all proceedings in the foreseeable future in this appeal will have to be conducted remotely. Mercer Island uses the “Zoom” platform for its remote proceedings.

“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 and an Emergency Rule regarding electronic filing of documents 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)]

I note that the parties to this appeal are the same as those in APL21-002 (which I will refer to as Barcelo 2021 I) for which I issued a scheduling guidance letter yesterday. I suggest that, in the interest of efficiency for both parties (and me), that we schedule the hearings for both appeals for the same day/time. I am not suggesting that they be consolidated for decision-making, just for hearing. I am suggesting that separate files be maintained for each appeal, that they be heard sequentially on the same day, and that separate decisions be issued. On that basis the following two paragraphs contain the same dates as I provided in my letter to you of yesterday regarding Appeal APL21-002 (Barcelo 2021 I).

I suggest that the hearing in this matter be held not sooner than March 30, 2021, (to allow for selecting a date and publishing notice) nor later than April 9, 2021 (providing a two-week window). I am presently available on March 30 and April 1, 2, 5, 6, 7, 8, and 9. (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, March 4, 2021, at the latest. My E-mail address is “jegalt755@gmail.com”. The City’s response must consider 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 by sending me an e-mail at jegalt755@gmail.com; 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