

**BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND**

DECISION and ORDER

FILE NUMBER: APL21-003
(Ref. Code Compliance Case CE20-0058)

APPELLANT: Barcelo Homes, Inc.
Premium Homes of Mercer Island, LLC
Bogdan Maksimchuk
Nadezhda Maksimchuk
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RESPONDENT: City of Mercer Island
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TYPE OF CASE: Appeal from a Notice of Violation & Civil Penalties

EXAMINER DECISION: SUSTAIN with changes

DATE OF DECISION: May 4, 2021

INTRODUCTION¹

Barcelo Homes, Inc. (“Barcelo Homes”), Premium Homes of Mercer Island, LLC (“Premium Homes”), Bogdan Maksimchuk (“Bogdan”²), and Nadezhda Maksimchuk (“Nadia”), collectively “Barcelo Homes *et al.*,” appeal from a Notice of Violation & Civil Penalties (“Notice”) issued by the City of Mercer Island

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Where persons involved in this case have the same surname, the Examiner will use given names to refer to them. No disrespect is intended.

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(“City”) Department of Planning & Development’s (“Department’s”) Code Compliance Officer (“CCO”) on February 11, 2021. (Exhibit 10³)

Barcelo Homes *et al.* filed the appeal on February 26, 2021. (Exhibit 11)

The property which is the subject of the Notice is located at 2906 74th Avenue SE, Mercer island, Washington. (“2906 74th”) Its Assessor’s Parcel Number is 531510-0836. (Exhibit 10)

The Hearing Examiner (“Examiner”) held an open record hearing on April 15, 2021.⁴ The hearing was conducted remotely using the “Zoom” program due to assembly restrictions attendant to the current COVID-19 pandemic. Notice of the hearing was given as required by the Mercer Island City Code (“MICC”).⁵ (Exhibit 26)

Pursuant to Hearing Examiner Rule of Procedure (“RoP”) 224(c), the Examiner entered the following administrative exhibits into the hearing record:

- Exhibit 9001: Letter, Hearing Examiner to Principal Parties, February 26, 2021 (Scheduling guidance)
- Exhibit 9002: Appellants’ Request for Continuance, filed March 25, 2021
- Exhibit 9003: City’s Opposition to Appellants’ Request for Continuance, filed March 26, 2021
- Exhibit 9004: Interlocutory Order Denying Motion, issued March 26, 2021
- Exhibit 9005: Corrected Petitioners’ Request for Admission of Additional Exhibits, filed April 20, 2021

Pursuant to RoP 224(d), Respondent Department pre-filed Exhibits 1 - 25 and provided an index listing of those exhibits. Respondent Department also pre-filed an un-listed Staff Report which the Examiner marked as Exhibit No. 26. Appellants Barcelo Homes *et al.* did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i), during the hearing the Examiner accepted additional exhibits from the Respondent as follows:

- Exhibit 27: Permit Application for 7216 93rd Avenue SE (Lot 1); Building, demolition, and grading; dated April 4, 2021, processed April 12, 2021; Property Owner: Barcelo

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

⁴ On March 25, 2021, Barcelo Homes *et al.* requested that the hearing be postponed for at least one month. (Exhibit 9002) Respondent Department opposed the request. (Exhibit 9003) On March 26, 2021, the Examiner entered an Interlocutory Order denying the postponement request. (Exhibit 9004)

⁵ The Hearing was scheduled and noticed for April 8, 2021, to follow the hearing in APL21-002. By the time that hearing ended, there was no time left to hear this case. Therefore, after an on the record consultation with the principal parties, the Examiner announced on the record that the remote hearing in APL21-003 was postponed to April 15th. Since the date, time, and manner of the postponement was announced on the record, no further public notice was required or given.

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Homes; Contractor: Barcelo Homes; Applicant Contact: Matt Glaser,
McCullough Architects

Pursuant to RoP 224(e), Appellants Barcelo Homes *et al.* pre-filed Exhibits 1001 - 1005 and provided an index listing of those exhibits. Respondent Department did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

On April 20, 2021, Appellants Barcelo Homes *et al.* filed a Corrected Request for Admission of Additional Exhibits. (Exhibit 9005) Respondent City advised the Examiner by e-mail later on April 20th that it had no objection to admission of the two additional documents. As a result of the above, the Examiner enters the following documents into the record:

Exhibit 1006: Premium Homes of Mercer Island, LLC Spousal Consent signed by Bogdan Maksimchuk on April 9, 2021, filed April 20, 2021
Exhibit 1007: Barcelo Homes, Inc. Spousal Consent signed by Nadezha Maksimchuk on April 9, 2021, filed April 20, 2021

At the close of the hearing the principal parties elected to present their closing statements in writing and agreed on a schedule to do so. The following documents are entered into the record pursuant to that agreement:

Exhibit 9006: Appellants Barcelo Homes *et al.* Closing Statement, filed April 26, 2021
Exhibit 9007: Respondent City's Closing Argument, filed April 30, 2021

The hearing record closed with receipt of Exhibit 9007 on April 30, 2021. The City has the record copy of the exhibits and the exhibit index lists.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Barcelo Homes is registered with the Washington Secretary of State ("SOS") as a Washington profit corporation. The corporation was formed on September 11, 2013. Its principal office street address is 1900 S Puget Drive #206 in Renton; its mailing address is 1414 E Yesler Way Unit A, Seattle. The nature of its business is construction. Bogdan is the corporation's registered agent and only governor. His mailing address is P.O. Box 1639, Mercer Island. (Exhibit 17)

Barcelo Homes' latest Annual Report, received by the SOS on October 13, 2020, lists the business's office e-mail address as "nadia@barcelohomes.com." The Annual Report stated that as of October

13, 2020, Barcelo Homes owned no real property in Washington State. Nadia completed the 2020 Annual Report for Barcelo Homes which she executed as its “Authorized Person” under penalty of perjury. (Exhibit 18) Henderson testified that City staff is under the impression that Nadia is still “working with, working for” Barcelo Homes.

2. Premium Homes is registered with the Washington SOS as a Washington Limited Liability Company (“LLC”). The LLC was formed September 25, 2014. Its principal office street address is 1414 E Yesler Way, Seattle; its mailing address is P.O. Box 1639, Mercer Island. The nature of its business is real estate. Nadia is the LLC’s registered agent and only governor. Her mailing address is P.O. Box 1639, Mercer Island. (Exhibit 16) Nadia testified that Premium Homes has only one “on-call” employee. (Nadia testimony)
3. Bogdan and Nadia are married to one another. (Nadia testimony)

Exhibit 1006 is a “Form of Spousal Consent” signed by Bogdan as Nadia’s spouse. Essentially, the Form gives any community property interest in Premium Homes that Bogdan may have or acquire to Nadia. Exhibit 1007 is a mirror image with respect to Barcelo Homes signed by Nadia. The signatures on both Forms are dated April 4, 2021.⁶

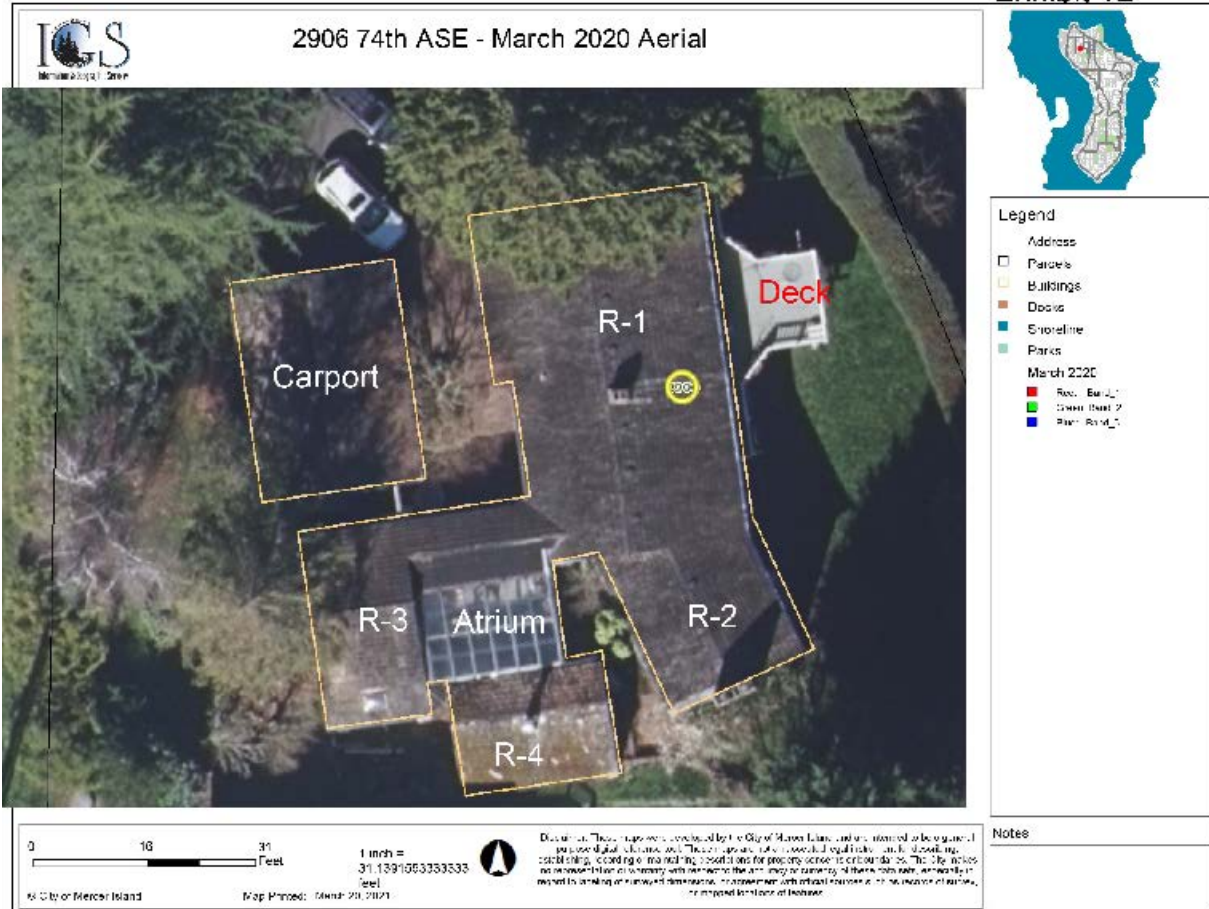
4. 2906 74th is owned by Premium Homes. The 2,920 square foot, five bedroom house on the lot was built in 1948 and has an assessed value for 2020 of \$50,000. The combined assessed value for 2020 of the house and lot is \$1,300,000. (Exhibit 15) Nadia testified that Premium Homes purchased 2906 74th in August, 2020, with the intent to remodel the house and sell it.

The house exhibits a highly unusual footprint, making it difficult to describe solely in words. To assist the reader and hopefully improve clarity, the Examiner has annotated the aerial photograph in Exhibit 12 and reproduced it below:

[The remainder of this page intentionally left blank.]

⁶ During the April 15, 2021, hearing Nadia testified that she was not aware that Washington State is a community property state, but said that she and Bogdan had signed spousal consent forms. (Nadia testimony) Bogdan testified that he never signed any such form and that he had no idea what a spousal consent form was all about. (Bogdan testimony)

Exhibit 12



Prior to the events described in the following paragraphs, the residence at 2906 74th was a daylight basement structure with its primary entry (into section R-1) from the upper yard grade on the west side of the structure. The roof of sections R-1 – R-4 was wood shingles. The main house had a jog, the two segments of which are labeled R-1 and R-2 on the figure. A small chimney protruded through the center of section R-1; a larger chimney was attached to the outside of the south wall of Section R-2.⁷ A gable-roofed breezeway connected section R-1 to gable-roofed section R-3. Section R-4 was an apparent free-standing, gable-roofed rectangular structure with a small chimney near its center. A clear, shed-roofed atrium covered the area between the breezeway, section R-3, and section R-4. Sections R-1, R-2, R-3, and R-4 exhibited gray painted, wide-exposure, horizontal lap siding. A uniquely-shaped second floor, uncovered deck was attached to the east side of section R-1 near its

⁷ That it was a chimney can be determined from the shadow it casts on the roof; that it was external to the foundation wall is apparent in the photograph; that it was a multi-flue chimney can be determined from the visible details of the top of the chimney. The gable ends of the roofs have virtually no overhang, so there was no noticeable chimney penetration through the roof.

northeast corner. A detached two-bay carport stood just to the west and north of the main structure. (Exhibits 1, PDF 6 – 10; 12; 13, PDF 1 – 3)

5. The fundamental facts which led to issuance of the Notice are relatively straight forward and undisputed.

A. Construction activities at 2906 74th began almost immediately after Premium Homes acquired the property in August 2020. (Caditz testimony)

B. In the Fall of 2020, CCO David Henderson (“Henderson”) was trying to identify the source of materials being illegally dumped at 7216 93rd Avenue SE (“7216 93rd”). He found evidence linking Barcelo Homes to the dumping. Through further investigation he found that the utility bill for 2906 74th was in Barcelo Homes’ name. (Exhibit 10, PDF 2; Henderson testimony)

C. On October 12, 2020, Henderson visited 2906 74th Street. There he observed the brick chimney in section R-1 in the process of being demolished: Bricks were strewn about a portion of section R-1’s roof; bricks and chimney flue tiles were piled on the first floor inside the front door (which was glass, providing a clear view of the interior). He also observed that some sheet rock had been removed from interior wall studs near the interior brick pile. (Exhibit 1, PDF 1 – 3, 6, 7, & 9; Henderson testimony) Henderson also observed a red waste-hauling trailer with the Barcelo Homes URL painted on its side situated in the paved driveway area between section R-1 and the carport. (Exhibit 1, PDF 5 – 7, 9, & 11)

D. Because the demolition that he observed required a permit from the City and he knew that no demolition permit had been issued, Henderson posted a Stop Work Order (“SWO”) on the northeast corner post of the adjacent carport while at the site on October 12, 2020. The SWO was issued for

Failure to obtain a demolition and building permit prior to beginning work.

Resolution shall be to obtain all required permits prior to resuming construction.

(Exhibit 1, PDF 12) The SWO was a standard, red, City form which included a warning against removal of the SWO and a paragraph explaining that the SWO could be appealed within 14 days of the service (posting) of the SWO. (Exhibit 1, PDF 12) The SWO was not appealed. (Henderson testimony)

E. On or before November 16, 2020, Nadia made an on-line application for a re-roof permit for 2906 74th. The City issued the requested permit on November 16, 2020. The re-roof permit listed Premium Homes as the owner with Nadia as the contact person. The re-roof permit

was issued for “Roofing Only” to “Replace existing wood shingle” roof. (Exhibit 20, PDF 1; Henderson testimony)

A re-roof permit authorizes only replacing or recovering the roofing membrane. It does not authorize any structural alterations to the roof, re-framing of the structure, or removal or addition of windows. (Henderson testimony)

- F. On November 13, 2020, Don Cole (“Cole”), City Building Official, visited 2906 74th accompanied by Nadia. He wanted to see what had already been done in order to facilitate proper permitting of Nadia’s proposed remodel. He and Nadia walked through the residence. Demolition of the section R-1 chimney and associated sheetrock removal was the only work that he observed at that time. There was no covered deck on the east side of the residence. The atrium was still present as was the chimney through the roof of section R-4. There was no flat roof section present nor any bare exterior wall sheathing. (Cole testimony)
- G. Construction of a new deck on the east side of the residence began in or around November, 2020. (Caditz testimony) The roof for that deck is visible in Exhibit 9 at PDF 6. The roof is located just north of the juncture of sections R-1 and R-2.
- H. On January 8, 2021, Henderson received a complaint from a nearby resident alleging continuing work at 2906 74th. The complainant stated that “framing for a significant extension off of the back of the home” had been erected in recent days. (Exhibit 2)
- I. On January 12, 2021, Henderson re-visited 2906 74th. Henderson was not able to go onto the site, so he observed conditions from adjoining streets/properties. On that visit he observed roofing materials staged on the ridge of section R-1, section R-2 re-roofed with new fascia on the south gable, the chimney gone from the south end of section R-2, no siding on the south wall of section R-2, a vertical panel of unpainted OSB⁸ sheathing where the chimney had been, and the eastern tip of a new gable roof extending to the east from section R-1.⁹ Section R-3 was still a gable roof with old wood shingles. (Exhibits 3, PDF 2; 4; Henderson testimony)
- J. On January 14, 2021, Henderson sent an e-mail to Nadia advising her that the new deck roof structure he had observed during his January 12th site visit was not covered by the re-roof permit and was in violation of the SWO. (Exhibit 5)

⁸ The sheathing could be plywood, but the texture pattern visible in the photograph appears more consistent with OSB (oriented strand board) sheathing.

⁹ At the time, Henderson thought the new roof that he could see part of east of the house was over the existing second story deck. (Henderson testimony) Currently available imagery proves that the new roof was not over the then-existing deck, but over the location where an entirely new second story deck was to be or has been built. (Exhibits 9, PDF 5 & 6; 13, PDF 5, 7, & 11 - 13)

- K. On January 27, 2021, Henderson again visited 2906 74th. During that visit Henderson observed (from off-site) that the clear roof over the atrium and the gable roof of section R-4 had been converted to a flat roof. The visible external walls of section R-4 were unpainted OSB sheathing. The chimney through that roof was gone. The new flat roof appeared to have a significantly higher wall plate than the old structure.¹⁰ A new window was visible in this wall. Roofing materials were still staged on the roof of section R-1; re-roofing was underway on section R-3. (Exhibit 6; Henderson testimony)
- L. On January 27, 2021, Building Official Don Cole (“Cole”) was advised by Henderson that three SWOs posted on three different Barcelo Homes/Premium Homes jobs had been violated. Cole sent an e-mail to Nadia and Bogdan telling them that they had to stop work on those projects until the violations which gave rise to the SWOs had been corrected. Cole informed them that “[a] Notice of Violation and Civil Penalties will be issued for continued work at each property.” One of the three properties was 2906 74th. He invited them to visit the three properties with him two days later to discuss the permitting problems at each. (Exhibit 7)
- M. That trip apparently took place on January 29, 2021. (See Exhibit 7.) 2906 74th was to be their third and final site visit of the trip. But after they had completed the second visit, Nadia told Cole that they could not go to 2906 74th. (Cole testimony) Nadia testified that she had other commitments and that there was simply insufficient time to visit 2906 74th. (Nadia Testimony)
- N. On February 11, 2021, the Notice which is the subject of this appeal was issued. (Exhibit 10) The appeal followed on February 26, 2021. (Exhibit 11)
- O. On March 23, 2021, Henderson received another complaint of continuing construction at 2906 74th. (Exhibit 8) Henderson returned to the property on March 23, 2021, and observed it from the neighbor’s property to the east. He observed a substantial gabled deck roof off the south end of the east side of section R-1. (Exhibit 9) He also observed that the SWO had been removed. He saw two trailers, the red Barcelo Homes trailer he had seen on October 12, 2020, and a black trailer, next to the house filled with construction debris not consistent with re-roof debris. (Exhibit 9; Henderson testimony)

Not mentioned by Henderson in his testimony but clearly visible in the Exhibit 9 photographs are other construction activities that had occurred subsequent to issuance of the SWO in October, 2020. Several windows in the west wall and the lone window in the north

¹⁰ The elevations submitted with the remodel plans indicate that the roof in this area is to remain gabled. (Exhibit 13, PDF 7) The roof framing plan calls for a new gabled roof where the atrium and breezeway used to be. It is not entirely clear to the Examiner whether the roof framing plan for section R-4 south of the atrium calls for a flat, shed, or gabled roof. The plans include a gable roof section but no flat roof section. (Exhibit 13, PDF 11 & 12) If the current flat roof as photographed in Exhibit 6 is to be permanent, it is not entirely consistent with the submitted plans.

wall of section R-1 had been removed and in-filled with solid wall as is proposed to occur on the unapproved remodel plans. The entire original house had been sided with narrow exposure lap siding and primed yellow (with grayish corner boards).¹¹ The new siding on the south wall of section R-2 is an unbroken plane from east to west; no chimney is present.¹² (Exhibits 9, PDF 6 – 8; 13, PDF 5)

6. Exhibit 13 is a set of plans that was submitted on or about January 4, 2021, to the City by Premium Homes for an after-the-fact building permit to remodel 2906 74th. On January 11, 2021, Nadia asked the City for the status of the application; the City replied that it was incomplete and listed the items needed to complete the application. On January 14, 2021, the City was awaiting the additional materials. The City has not yet issued any permit to undertake the extensive alterations depicted on Exhibit 13. (Exhibit 1003; Henderson testimony)

Exhibit 13 shows the outline and location of both the old and new second floor deck on the east side of the house. (Exhibit 13, PDF 2 & 3) It also shows removal of the old deck and the location, foundation plan, and framing plan for the entirely new, covered second story deck. (Exhibit 13, PDF 4 – 7, 9 – 11, and 12 {Section 1}) The new roof structure on the east side of the residence visible in Exhibits 3, 4, and 9 is located where the plans show the new covered deck to be; its visible framing matches the framing plan on Exhibit 13, PDF 11 & 12 {Section 1}. None of the pictures in the record are able to show any part of the new structure below the roof system.¹³ Even a cursory comparison of the old deck's location with the plans for and structure of the new deck reveals that they are not at all in the same location and that at least one of the new deck's supporting posts would pass right through the old deck were the old deck's flooring not removed first. (Exhibit 13, PDF 3 & 9) It is unclear from the record whether the old deck has been demolished and whether the new covered deck or only its roof structure has been fully completed.

7. Nadia testified that she used to work for Barcelo Homes but had not done so since the end of 2019. She acknowledged that she still has and uses a Barcelo Homes e-mail address. She testified that she formed Premium Homes in 2014, but never got a business license until 2018, and did no projects

¹¹ It will be remembered (See Finding of Fact 4, above.) that on October 12, 2020, the house was sided with wide exposure, gray lap siding with woven/mitered corners (no corner boards). (Exhibit 1, PDF 7, 9, & 10) No building permit is required for simply re-siding a structure. [https://www.mercerisland.gov/sites/default/files/fileattachments/planning/page/1741/tip_sheet_0_permits_required_0.pdf; last visited April 29, 2021]

¹² The floor plans for the remodel depict the addition of a gas fireplace on the upper level inside the outer footprint of the house centered on the south end wall of section R-2. No chimney is depicted on the floor plans. (Exhibit 13, PDF 5) The elevations submitted as part of the plan set depict a brick (or pseudo-brick) chimney external to the house running through a wider-than-actual roof overhang and extending above the roof. (Exhibit 13, PDF 6 & 7) The submitted plans are internally inconsistent and do not reflect the work that has been done so far. From the Examiner's construction experience (of decades ago) it appears that the fireplace (or fireplaces if there is also to be one in the basement) will direct-vent to the outside through the south wall of section R-2.

¹³ The ground slopes down to the east; a dense, tall hedge along the east property line blocks view of the east side yard area. Henderson has not been able to gain access to 2906 74th since his first visit to look at the east side from within the yard. (Henderson testimony)

under the LLC until 2019. She testified that Premium Homes was in the business of buying, remodeling, and then selling homes. She testified that Premium Homes has one “on-call” employee: Victor Nickich (“Victor”). She testified that she didn’t think she needed a permit just to re-roof an existing house. She said the chimney that was torn down in section R-1 was not functional so she wanted it removed before re-roofing. She testified that Victor did the demolition work. She said that YNS Roofing did the roof re-framing and re-roofing; a contractor named Jorge (She could not remember his last name.) did framing on the house for Premium Homes.

Nadia testified that she rented the red trailer from Barcelo Homes for a five-month period to haul materials for multiple jobs, She submitted Exhibit 1001 in support of that testimony. Exhibit 1001 appears to be an invoice from Barcelo Homes to Premium Homes for rent of a dump trailer for an unspecified five-month period. The invoice is dated January 10, 2021. Nadia could not remember when the rental began, but she thought it was two to three months prior to the invoice date. (Nadia testimony) The Barcelo Homes red trailer was at 2906 74th on October 12, 2020, (Exhibit 1, PDF 5 & 6) and again on March 23, 2021 (Exhibit 9, PDF 8). More than five months passed between its first documented presence and its last documented presence at 2906 74th.

Nadia testified that she had a new cover built over the old deck off the east side of the residence. She said that she left the old deck for the time being, removing only its railings. The photographic evidence demonstrates that the new roof is not located over the location of the old (or former) deck.

Nadia testified that the roof over section R-4 was rotten, so she decided to have it replaced with a flat roof. She said that she had the clear roof over the atrium replaced with a solid roof, but kept the old rafters. She said that she had the old rotten siding from section R-4 removed and replaced with new sheathing to strengthen it. Nadia testified that she did no work on 2906 74th after meeting with Cole on January 27, 2021.

Nadia testified that she never saw Exhibit 27 before it was filed with the City. (See Finding of Fact 11, below.)

8. Bogdan testified that neither he nor any of Barcelo Homes’ employees ever did any work at 2906 74th. He said that he was on-site once before Premium Homes purchased the property, but never since. Bogdan testified that Nadia left Barcelo Homes’ employ in November, 2019, when Premium Homes became owner of 7216 93rd. He testified that he never did any work at 4719 90th nor was he doing any work at 7223 93rd in 2018 when the SWO was posted. (See Finding of Fact 10, below.)
9. The Notice charges Barcelo Homes, Premium Homes, and Nadia and Bogdan as individuals with four separate code violations. Two of the violations are for repeat and deliberate violations. (Exhibit 10, PDF 2 & 3)

The Notice imposes “Corrective Actions.” The corrective actions include: Cease further work immediately; agree to comply with all future SWOs; agree to obtain required permits; allow right of

entry to inspect unpermitted work; pay for and obtain required permits. The compliance date for completion of some of the required corrections was 14 days from the date of the Notice; the compliance date for the remainder was March 19, 2021, 36 days after issuance of the Notice. (Exhibit 10, PDF 4)

The Notice assesses a civil penalty, a priority violation penalty, a repeat violation multiplier, and a deliberate violation multiplier.

- A. Civil penalty. The MICC provides that “[e]ach day during which a code violation is committed, occurs or continues shall be considered a separate offense for purposes of civil infractions or notices of violation.” [MICC 6.10.050, ¶ 2]

A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or voluntary correction agreement shall be imposed at the rate of \$100 per day for each violation, accruing for every day after the compliance date listed in the notice of violation. Thirty days after the compliance date, the penalty will increase to a rate of \$250 per day for each violation. Sixty days after the compliance date, the penalty will increase to a rate of \$500 per day for each violation, up to a maximum total penalty of \$50,000 for each violation.

[MICC 6.10.050(D)(1), emphasis added] The Notice assesses a civil penalty in the amount of \$100.00. 10, PDF 4) In one place the Notice states that the penalty “shall begin to accrue if Corrective Actions are not completed and the violations are not abated by the compliance date established above.” (Exhibit 10, PDF 4) Further in the Notice it says the civil penalties are “**Due 14 days from the Service of this Notice.**” (Exhibit 10, PDF 6; bold in original) The \$100 civil penalty was omitted (presumably inadvertently) from the penalty summary in the Notice. (Exhibit 10, PDF 6)

- B. Priority violation penalty. “In addition to the penalties described in subsection (D)(1) of this section, any person that is responsible for a violation of the provisions of the following regulations will be subject to additional penalties. These penalties for priority violations, as described below, will be assessed one time and will not accrue daily.” [MICC 6.10.050(D)(2), emphasis added] Continuing to work in violation of an SWO is a listed priority violation with a penalty of up to \$10,000. [MICC 6.10.050(D)(2)] Subsections 6.10.050(D)(2)(a) – (c) MICC set forth three criteria to be used in determining the amount of the priority violation penalty to be assessed in each case. Here the City set the priority violation penalty at \$4,444. (Exhibit 10, PDF 5)
- C. Repeat violation penalty.

A repeat violation is a violation that has occurred on the same property, or that has been committed by the same person responsible elsewhere within the city, for which voluntary compliance previously has been agreed to or any enforcement action taken that was not timely appealed or, if appealed, the appeal was dismissed, within the previous 36-month period. (For purposes of this subsection, repeat violation does not include each day in violation being counted as a separate violation.) To constitute a repeat violation, the violation need not be the same violation as the prior violation. Violation of a written order of the hearing examiner that has been served as provided in this chapter shall also constitute a repeat violation. Repeat violations will incur double the civil penalties set forth in subsections (D)(1) and (2) of this section. If violations are repeated a third or subsequent time within a 36-month period, the penalties will be five times those set forth above. The city also has authority to suspend or revoke a business license when a responsible party is repeatedly doing work in violation of city regulations (Chapter 5.01 MICC).

[MICC 6.10.050(D)(3), emphasis added] The City found five repeat violations. It thus applied a five-times multiplier. (Exhibit 10, PDF 6)

- D. Deliberate violation penalty. “If a violation was deliberate, the result of blatant disregard for direction from the city or knowingly false information submitted by the property owner, agent or their contractor, civil penalties will be incurred at double those set forth above in subsections (D)(1) through (3) of this section.” [MICC 6.10.050(D)(4)]

The City found that the violation was deliberate: “The continuance of work after the posting of the Stop Work Order was a blatant disregard for city direction that the stop work order was to remain in place until the required corrective actions were taken.” The City applied the two-times multiplier. (Exhibit 10, PDF 6)

- E. The Notice states that the total civil penalty is \$44,440. The Notice states that “**[p]ayment of the Civil Penalties is Due 14 days from the Service of this Notice.**” (Exhibit 10, PDF 6, bold in original)

10. The five cases cited in the Notice as repeat violations (Exhibit 10, PDF 3 & 5) are (listed in chronological order):

- A. CE18-0140, 7223 93rd (“7223 93rd”) Avenue SE. Barcelo Homes purchased this property in April, 2014, and sold it to its current owners in November 2015. Permits to demolish and rebuild the residence were issued in May, 2015. (Exhibit 1004) This SWO was issued to Barcelo Homes on November 21, 2018, for construction of retaining walls within the drip lines of trees and within the public right-of-way without required permits. (Exhibit 10, PDF 5; Cole and Nadia testimony)

Nadia testified that the purchasers sued Barcelo Homes for work defects and that the case is still pending before the court.¹⁴ Barcelo Homes or someone working for Barcelo Homes was actually doing work when the SWO was issued.

Henderson testified that the building permit for the residence at 7223 93rd expired prior to any final inspection or issuance of a Certificate of Occupancy.

- B. CE19-0007, 9104 SE 50th (“9104 50th”) Street. 9104 50th is Nadia and Bogdan’s personal residence. An SWO was issued on January 30, 2019, for work not in compliance with approved permits. Subsequent inspections indicated that work had continued after issuance of the SWO. On February 14 and 15 the City sent e-mails to Nadia advising her of the continuing violations and the need for corrective actions. A site inspection on February 19 found that additional work had been undertaken in violation of the SWO. On March 4, 2019, a Notice of Violation was issued to Barcelo Homes for violation of the SWO. (Exhibit 21) The assessed civil penalties were paid. (Exhibit 10, PDF 5)
- C. CE19-0023, 9104 50th. This Notice of Violation was issued to Barcelo Homes on April 2, 2019, for violating an SWO. The SWO had been posted for failure to follow plans approved for correction of the prior Notice of Violation. (Exhibit 22) Assessed civil penalties were paid. (Exhibit 10, PDF 5)
- D. CE20-0017, 4719 90th Avenue SE (“4719 90th”). This Notice of Violation was issued to Radimir and Ella Mandzyuk (“the Mandzyuks”) on April 16, 2020. An SWO was posted on February 13, 2020, when a City inspector found that all interior sheet rock had been removed without benefit of a permit. A permit for an interior remodel was issued on February 19, 2020. The permit listed Ella Mandzyuk as the owner and Barcelo Homes as the applicant/contractor. The building permit was applied for by Nadia. A second SWO was issued on March 24, 2020, when it was discovered that work outside the scope of the approved permit was occurring. The second SWO was removed and further work was done. The Notice of Violation followed. (Exhibit 23; Henderson testimony)

The Mandzyuks are relatives of Nadia and Bogdan. Nadia testified that neither she, Bogdan, Premium Homes, nor Barcelo Homes own 4719 90th. Nadia testified that she applied for the building permit because Ella was in California and pregnant and could not easily return home due to the COVID pandemic. She also testified that neither Premium Homes nor Barcelo Homes ever did any work on the residence; Bogdan testified that he had done no work at 4719 90th. On January 9, 2020, a Statutory Warranty Deed (“SWD”) was recorded

¹⁴ Nadia testified to different facts regarding CE18-0140 in the recent APL21-002 hearing. In that hearing she testified that the case had concluded, the court had ordered Barcelo Homes to make corrections, and the corrections were underway when the SWO was issued. [Official notice]

transferring ownership of the property from a prior owner jointly to the Mandzyuks, Aleksander Dyneka, and Bogdan. After recording, the SWD was to be returned to 9104 SE 50th Street, Bogdan and Nadia's address. Bogdan testified in the APL21-002 hearing on April 8, 2021, that his name was not supposed to be on the SWD, but he could not explain why it was. There is no evidence in either this record or the APL21-002 record that he has done anything in the past year to remove his name from the title to 4719 90th. Bogdan also testified in the APL21-002 hearing that the Mandzyuks operate a business that buys and remodels homes. (Nadia, Bogdan, and Henderson testimony; Official notice of evidence and testimony entered into the April 8, 2021, hearing on APL21-002)

- E. CE20-0057, 7216 93rd Avenue SE ("7216 93rd"). An SWO was posted on October 7, 2020. The SWO was not appealed. Work continued. The SWO was taken down. A Notice of Violation was issued against Barcelo Homes but later rescinded. (Henderson testimony) A second SWO was issued. Work again continued. A second Notice of Violation was issued against the same four parties as are charged in this case. An appeal was filed (APL21-002). A Decision on that appeal is being issued concurrently with this Decision. [Official notice]
11. At some time between April 6 and April 12, 2021, Matt Glaser of McCullough Architects filed a building, demolition, and grading permit application for 7216 93rd on behalf of Barcelo Homes which was listed as property owner and contractor. (Premium Homes is actually the current owner.) The proposal is to demolish the buildings on the site and replace them with a 5,445 square foot ("SF") single family home with a 683 SF attached garage. (Exhibit 27) The City began processing that application on April 12, 2021.
12. Because of the obvious conflict between Exhibit 27 and the testimony of Nadia and Bogdan, the Examiner elected to look outside the record at the King County Assessor's public on-line property record documents. Those public records show that Barcelo Homes Quit Claim Deeded 7216 93rd to Premium Homes on November 6, 2019, as a "mere change in identity or form".¹⁵ (Recording Number 20191211000760) The recording number of the associated Excise Tax form is E3024935. King County on-line excise tax records show that Barcelo Homes and Premium Homes claimed an exception to excise tax payment on the transfer under WAC 458-461A-211(6).¹⁶ WAC 458-461A-211 is entitled "Mere change in identity or form – Family corporations and partnerships." Subsection (6) reads: "(6) **Transfers when there is not a change in identity or form of ownership of an entity.** The exemption applies to transfers of real property when the grantor and grantee are the same." [Bold in original]
13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

¹⁵ [<https://blue.kingcounty.com/Assessor/eRealProperty/Detail.aspx?ParcelNbr=2581900210>, last visited April 26, 2021]

¹⁶ [<https://blue.kingcounty.com/Assessor/eRealProperty/Detail.aspx?ParcelNbr=2581900210>, last visited April 26, 2021]

LEGAL FRAMEWORK ¹⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

The Examiner is charged with hearing timely appeals of Notices of Violation. [MICC 6.10.090(B)] The Examiner holds an open record hearing after which he issues a written decision. The Examiner's Decision is a final decision for the City subject to the right of reconsideration and appeal to a court of competent jurisdiction. [MICC 6.10.090(D); MICC 3.40.110]

Review Criteria

1. Following review of the evidence submitted, if the examiner finds that no violation has occurred, the hearing examiner shall uphold the appeal and reverse the notice of violation or stop order. If the hearing examiner finds that a violation has occurred, the hearing examiner shall issue an order to the person responsible for the violation which includes the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - b. The required corrective action;
 - c. The date by which the correction must be completed; and
 - d. The civil penalties assessed based on the provisions of this chapter and the fee resolution;
2. If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, such property owner shall be responsible only for abatement of the violation.

[MICC 6.10.090(C)]

Vested Rights

"Vesting" serves to "fix" the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

The City has adopted local regulations governing vesting of land use applications.

Complete applications for land use review of Type I land use reviews, building permits, conditional use permits, design review, short subdivisions and long subdivisions, shall vest on the date a complete application is filed. The department's issuance of a letter of

¹⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

completion for Type III and IV land use decisions, as provided in this chapter, or the failure of the department to provide such a letter as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[MICC 19.15.170(B)]

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [MICC 19.15.130(C)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. “[T]he issue of credibility is for the trier of fact to decide. The trial court, in a bench trial, evaluates the credibility of witnesses.” [*Thor v. McDearmid*, 63 Wn. App. 193, 817 P.2d 1380 (1991)] The Examiner sits in the position of the trial judge in a bench trial when hearing cases; the Examiner must make credibility decisions.

The Examiner has serious reservations about the credibility of portions of Nadia’s and Bogdan’s testimony. Nadia testified that she has had nothing at all to do with Barcelo Homes since the end of 2019. But Exhibit 18 shows that she acted as Barcelo Homes’ agent in completing the business’ 2020 Annual Report for the SOS. And she completed that report under penalty of perjury. She and Bogdan both testified that the work at 7223 93rd which gave rise to the 2018 Notice of Violation occurred years after Barcelo Homes had sold that property, strongly implying that they could not have had anything to do with that situation. But Nadia also testified that there was a pending law suit over the earlier work. In the APL21-002 hearing she testified that Barcelo Homes had been required by a court decision to correct errors made during initial construction. Nadia testified that she formed Premium Homes in 2014, but never obtained a business license until 2018, and had only one on-call employee. She said that Jorge did the framing work, but she couldn’t remember the surname of her subcontractor.

Bogdan insisted that he had nothing to do with 2906 74th, but Barcelo Homes is the utility bill payer of record for that property.

Nadia claimed that she didn’t know Washington was a community property state, but she submitted a Form of Spousal Consent that would not be needed were Washington not a community property state. Bogdan testified that he had never signed any Form of Spousal Consent, yet he submitted just such a form bearing (ostensibly) his signature. The Spousal Consent Forms were ostensibly executed

on April 9, 2021, one day after the APL21-002 hearing (where they were asked about spousal consent and both denied any knowledge of the topic) and six days before the hearing in this appeal, but they waited until April 20th (five days after this appeal hearing) to ask leave to submit them after close of the hearing. Neither Spousal Consent Form has been recorded. Frankly, it makes one wonder exactly when their signatures were affixed to the documents and what will be done with the signed forms.

The Maksimchuks' labored to prove that Barcelo Homes and Premium Homes are two separate and legally distinct entities. Yet when it came time to transfer ownership of 7216 93rd from Barcelo Homes to Premium Homes they used a form of property transfer that allowed them to avoid paying any excise tax: They claimed the two entities were one and the same. They can't have it both ways.

2. Was the MICC violated as charged? The fundamental charges are removal of the SWO and continuation of work requiring a permit without any permit for the work having been issued. Those violations have been proven to not just a preponderance of the evidence standard, but also to a beyond a reasonable doubt standard. On October 12, 2020, the chimney in section R-1 was being demolished; no permit had been obtained for that work. The SWO was posted that date. Premium Homes obtained a re-roof permit in November, 2020. But between October 12, 2020, and January 12, 2021, the atrium and section R-4 roofs were demolished and totally rebuilt as a flat roof, section R-4 was re-sheathed with OSB, the chimney on the south end of section R-2 was demolished and replaced with a sheet of OSB, and a new roof (at least) for the new deck on the east side of section R-1 was constructed. And before March 23, 2021, former windows were removed and filled in with framing, sheathing, and siding.

Removal of the SWO was a violation. The restructuring of the atrium and section R-4 roof was a violation. Construction of the new deck roof was a violation. Demolition of the section R-2 chimney was a violation. Filling in the windows was a violation.

3. Was Premium Homes a "responsible person"? The term "person responsible" is very broadly defined in the MICC:

"Person responsible for the violation" or "person responsible" or "violation" means 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.

[MICC 6.10.110, emphasis added] Premium Homes owns 2906 74th. Premium Homes is a person responsible for the activity at 2906 74th if for no other reason than that. But Nadia also testified that she, as sole Governor of Premium Homes LLC, made decisions to demolish the R-1 chimney and restructure the atrium and R-4 roof.

4. Was Barcelo Homes a “responsible person?” Barcelo Homes owns (or at least owned at the times of interest in this appeal) the red trailer which was used on at least two occasions. Exhibit 1001 attempts to insulate Barcelo Homes from liability for the work by showing that Premium Homes was renting the red trailer from Barcelo Homes. If that is true, then Barcelo Homes would no more be a person responsible than would be an equipment rental business.

But Barcelo Homes is (or at least was when the SWO was issued) the utility bill payor of record. Barcelo Homes had more than a passing interest in 2906 74th. And the trailer rental story is questionable. Exhibit 1001 says the rental period was five months without stating what five months. That in itself would be highly unusual for an arms length transaction between two independent businesses. But the time from October 12, 2020, to March 23, 2021, is more than five months. The rental argument is not reliable.

Based on the preponderance of the evidence,¹⁸ Barcelo Homes is a person responsible.

5. Was Nadia a “responsible person?” Nadia ordered the work done. The definition of “person responsible” includes “any person who created, caused, participated in, or has allowed a violation to occur”. Nadia is covered by both of the underlined verbs. Nadia is a person responsible.
6. Was Bogdan a “responsible person?” Is Bogdan, as sole owner of Barcelo Homes, also individually liable for actions of the corporation? Since there is no evidence that Bogdan personally ordered anything to be done, the Examiner declines to name him as a person responsible.
7. Were the required corrective actions appropriate? The corrective actions listed on PDF p. 4 of Exhibit 10 are eminently appropriate: Stop the unpermitted work immediately, agree to comply,

¹⁸ “Proof ... by a preponderance of the evidence merely means the greater weight of the evidence. *State v. Harris*, 74 Wash. 60, 64, 132 P. 735 (1913).” [*City of Spokane v. Beck*, 130 Wn. App. 481, 486 (2005)] The preponderance test merely requires that a fact at issue be shown by evidence to be more probably true than not. [*Presnell v. Safeway Stores, Inc.*, 60 Wn.2d 671, 374 P.2d 939 (1962)] “Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).” [*State v. Quintanilla*, ___ Wn. App. ___, ___ P.3d ___ (2013, Div. III; Slip Opinion at 4)]

allow City employees to enter the property to inspect work already done, and obtain the required permits. Nothing more or less would be reasonable. The March 19, 2021, date for completion was also reasonable unless issuance of the demolition/building permit was held up due to inaccuracies or deficiencies in the submitted plan set or delay on the City's end due to work disruptions associated with the current COVID-19 pandemic. The persons responsible should not be penalized for delays beyond their personal control.

8. Was the "priority violation" penalty justified? Five types of violations are classified as "priority violations" by MICC 6.10.050(D)(2): Damage or removal of trees; ecological damage; stormwater control violation; discharge of grease, etc.; and violation of an SWO. Assessment of additional penalties under this provision was justified if only for one reason: The multiple violations of the SWOs. The penalty for that priority violation may range up to \$10,000. Subsection 6.10.050(D)(2) MICC lists three factors to be considered when determining the appropriate amount of the penalty within the range. The Notice assesses slightly less than half of the maximum allowed priority violation penalty. The analysis in the Notice adequately justifies the priority violation penalty.
9. Was the "repeat violation" multiplier justified? A "repeat violation" may be on the same property or elsewhere in the City. It does not have to be the same type of violation as the current violation. However, to count as a "repeat violation," a violation must have been subject to a voluntary compliance agreement or enforcement action; if enforcement action, it must not have been appealed or the appeal must have been dismissed. [MICC 6.10.110, quoted in Finding of Fact 9.C, above]

Dismissal usually means that a case was "tossed out" on some technicality with no decision on the merits ever rendered. If an appeal were "dismissed" in that sense, it would mean that the appellant was never found guilty of the charged violation. It would be illogical in that case to count such a violation as a repeat violation. Thus, the Examiner believes the intent here is that the appellant must have been found guilty after an appeal.

10. All five of the five cases cited as the basis for application of the repeat violation multiplier qualify as repeat violations.¹⁹ All five of the repeat violations occurred within the last 36-months. Therefore, the 5-times multiplier is required by the MICC.
 - A. CE18-0140, 7223 93rd Avenue SE. This qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO) which was not appealed. Barcelo Homes was the responsible person.
 - B. CE19-0007, 9104 SE 50th Street. This also qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO followed by a Notice of Violation for failure to comply with the SWO) which was not appealed. Barcelo Homes was the responsible person.

¹⁹ It must be remembered that Barcelo Homes and Premium Homes made a property transfer in which they claimed a unity of identity.

- C. CE19-0023, 9104 SE 50th Street. This second case at 9104 SE 50th also qualifies as a repeat violation. It was subject of enforcement action (issuance of an SWO) which was not appealed. Barcelo Homes was the responsible person.
- D. CE20-0017, 4719 90th Avenue SE. This would also qualify as a repeat violation if Barcelo Homes was the contractor. The property was subject of enforcement action (issuance of an SWO) which was not appealed. The after-the-fact building permit application lists Barcelo Homes as the contractor, but both Nadia and Bogdan denied doing any work that this residence. The record contains essentially no evidence to refute their denials.

Although Bogdan claims not to be an owner of this property, the fact is the recorded SWD lists him as an owner and the recorded deed was to be returned to his residence. By MICC definition, a person who is an owner of property where a code violation has occurred is a responsible person. Bogdan is a responsible person.

- E. CE20-0057, 7216 93rd. This is a repeat violation if the word “dismissed” in MICC 6.10.110 means “denied.” Enforcement action was initiated and Barcelo Homes timely appealed. The City withdrew that Notice of Violation and reissued it charging not only Barcelo Homes, but also Premium Homes, and Nadia and Bogdan individually. The second Notice of Violation has been sustained against Barcelo Homes, Premium Homes, and Nadia in the Decision issued this date in APL21-002.

- 11. Was the “deliberate violation” multiplier justified? Yes, the t SWO was deliberately and blatantly violated and eventually removed from the site. Both were deliberate actions. The 2-times multiplier was required by the MICC.
- 12. The Notice incorrectly states that the civil penalties are due within 14 days of service of the Notice. (Exhibit 10, PDF 6) That requirement in the Notice is directly in conflict with MICC 6.10.050(D)(1) which states that the civil penalties accrue “for every day after the compliance date listed in the notice of violation.” The ultimate compliance date listed is March 19, 2021. However, the Notice includes intermediate compliance dates for specific actions.

Chapter 6.10 MICC is structured to encourage compliance with City codes, not to raise money. Penalties for code violations are not due until after a compliance period has passed without compliance. Penalties then start to accrue and become increasingly onerous the longer a situation goes without compliance.

As applied here, no penalties are yet due. The Notice must be amended to reflect the provisions of the MICC regarding the penalties due date. Where, as here, the required corrective actions include intermediate compliance dates for certain actions, failure to meet any one of those intermediate

compliance dates would automatically make all the penalties due and the basic civil penalty would start accruing daily as required by the MICC.

The Notice must be amended to reflect the provisions of the MICC regarding the penalties due date. Also the compliance dates need to be adjusted to compensate for the time involved in the appeal process. The Notice was issued on February 11, 2021. Fourteen days of the compliance period had expired when the appeal was filed on February 25, 2021. Compliance Action 1 took effect “immediately.” It will return into effect the day after this Decision is issued. Compliance Actions 2 and 3 were to be completed within 14 days of issuance of the Notice. The 14th day was February 25, 2021. The 14-day secondary compliance period expired on the day the appeal was filed. It will be reset to Friday, May 7, 2021, three days after this Decision is issued. (Three working days is plenty of time to submit an affirmation that the violators will abide by the SWO and provide a right of entry to the City.) Compliance Action 4 was to be completed by March 19, 2021, 46 days after issuance of the Notice. Thirty-two days remain. A new compliance date will be set 32 days from the date of this Decision.²⁰

13. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION and ORDER

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner herewith issues the following Decision and Order:

- A. The Notice of Violation & Civil Penalty issued on February 11, 2021, under City Compliance Case No. CE20-0058 is **SUSTAINED with CORRECTIONS** as listed in Paragraphs B – E, below.
- B. The responsible persons list in the Notice of Violation & Civil Penalty issued on February 11, 2021, under City Compliance Case No. CE20-0057 is **REVISED** by the deletion of Bogdan Maksimchuk.
- C. Required corrective actions are **SUSTAINED** as set forth in the Notice of Violation & Civil Penalty issued on February 11, 2021, under City Compliance Case No. CE20-0058.
- D. The dates by which the required corrective actions must be completed as set forth in the Notice of Violation & Civil Penalty issued on February 11, 2021, under City Compliance Case No. CE20-0058 are **CHANGED** as follows:
 - i. Compliance Action 1 is May 5, 2021.

²⁰ The 32nd day will fall on Saturday, June 5, 2021. Therefore, the effective 32nd day will be Monday, June 7, 2021. [MICC 1.04.010(B)]

- ii. Compliance Action 2 is changed to May 7, 2021.
 - iii. Compliance Action 3 is changed to May 7, 2021.
 - iv. Compliance Action 4 is changed to June 7, 2021; PROVIDED, that if the City has not approved the permits required by code by June 7, 2021, the date for compliance with Action 4 shall automatically be extended to five (5) business days after the date of the City's approval of said plans; and PROVIDED FURTHER, that under no circumstance shall the Compliance Action 4 date be later than July 7, 2021.
- E. Civil penalties set forth in the Notice of Violation & Civil Penalty issued on February 11, 2021, under City Compliance Case No. CE20-0058 are due and payable if the required corrective actions have not be completed by the dates stated in D, above, or by June 7, 2021, for corrective actions for which there is no specified date; the basic civil penalty begins to accrue the next day.

Decision and Order issued May 4, 2021.

/s/ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ²¹

Eileen Keiffer, unsworn counsel
David Henderson
Nadezhda Maksimchuk

Dianne K. Conway, unsworn counsel
Don Cole
Bogdan Maksimchuk

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Department of Community Planning & Development a written request for reconsideration within ten calendar days following the issuance of this Decision in accordance with the procedures of MICC 3.40.110. Any request for reconsideration must allege one or more of the following errors: "1. The decision was based in whole or in part on erroneous facts or information; 2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or 3. An error of procedure occurred that prevented consideration of the

²¹ The official Parties of Record register is maintained by the City's Hearing Clerk.

HEARING EXAMINER DECISION
RE: APL21-003 (Barcelo Homes *et al.*)
(Ref. Code Compliance Case CE20-0058)
(Barcelo Homes 2021 II)
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interests of persons directly affected by the decision.” [MICC 3.40.110(A)] See MICC 3.40.110 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

“Any judicial appeal of the hearing examiner’s decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (‘LUPA’). The land use petition must be filed within 21 days of the issuance of the hearing examiner’s decision.” [MICC 3.40.100, ¶ 2]

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”