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March 5, 2021

The Carol Ann Cook Revocable Living Trust  
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kristen@belcherswanson.com  
SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island  
C/o Bio F. Park, City Attorney  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040  
bio.park@mercergov.org  
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Subject: Scheduling Guidance for Type I – III Administrative Appeals: APL21-004

Dear Principal Parties:

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

On March 5, 2021, I received the appeal which Kristen Belcher filed on behalf of The Carol Ann Cook Revocable Living Trust (“The Cook Trust”) on March 4, 2021, with the City of Mercer Island *in re* Critical Area Review 1 No. CAO20-004 issued by the City on or about February 19, 2021. Critical Area Review 1 applications are classified as Type 1 land use actions. [Mercer Island City Code (“MICC”) 19.15.030(E), Table A] Decisions made on Type I – III permit applications are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(E), Table B] The MICC provides for a 14 calendar day appeal period from date of service/issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for an appeal from a Type I – III permit decision are set forth in MICC 19.15.130(D). It would appear that The Cook Trust 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.

The MICC contains basic regulations for appeals of Type I – III decisions [MICC 19.15.130] and the open record hearings associated therewith [MICC 19.15.140]. Those regulations refer to rules that may be adopted

by the Hearing Examiner. 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 more recently promulgated an Emergency Rule addressing electronic filing of documents. (I have attached a copy of both the new RoP and the Emergency Rule to the e-mail version of this letter. The City also maintains copies of the RoP which it can provide to appellants.)

Subsection 19.15.130(F) MICC requires that notice of the open record hearing on a Type I – III administrative appeal must be given as required by MICC 19.15.100 which requires that notice be mailed to specified persons, published, and posted not less than 30 days before the open record hearing. 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. RoP 224 requires a pre-hearing document pre-filing process in appeal cases. 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.

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)]

Allowing five work days for the parties to advise me of their date preferences and five work days after that for the City to prepare and issue the required hearing notices, the earliest that we could convene the hearing will be Monday, April 19, 2021. **I suggest that the hearing in this matter be held not later than Friday, April 30, 2021. I am presently available for a remote hearing on all work days during the weeks of April 19 and 26, 2021.** (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.)

**Please communicate your availability and date preference(s) directly to me by E-mail by next Friday, March 12, 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 when you communicate your date preferences; 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.

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Sincerely,

\s/ *John E. Galt*

John E. Galt  
City of Mercer Island Hearing Examiner