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July 28, 2021

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Subject: Scheduling Guidance for Construction Code Administrative Appeals: APL21-006

Dear Principal Parties:

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

On July 28, 2021, I received the appeal which Cassidy Ingram filed on July 26, 2021, determined to be complete as of July 27, 2021, upon payment of the appeal filing fee, on behalf of Steve and Sophy Yang (the "Yangs") with the City of Mercer Island, *in re* Fire Protection permit No. 2105-227 issued by the City on or about July 15, 2021, to Christopher Niederman. Decisions made on International Fire Code permit applications are subject to the right of administrative appeal to the Examiner. [MICC 17.07.020(L) and 17.14.020]

The MICC provides for a 14 calendar day appeal period from date of issuance of the decision being appealed. [MICC 17.14.020(C)] The content requirements for a Construction Code appeal are set forth in MICC 17.14.020(D). It would appear that the Yangs' 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 Construction Code appeals and the open record hearings associated therewith [MICC 17.14.020]. Those regulations refer to rules that may be adopted by the Hearing Examiner. [MICC 17.14.020(A)(1), referring to MICC 3.40.080(B)] 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 17.14.020(E) MICC requires the Building Official to give notice of the open record hearing to the appellant not less than 15 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 Building Official issues the required hearing notice. 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. RoP 225 provides a shortened version of the RoP 224 process. I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings.

We will use the shortened pre-filing process in this appeal. Further, because the proceedings are being handled remotely, all documents will be pre-filed/filed electronically following the procedures of Emergency Rule 218.

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 notice, the earliest that we could convene the hearing will be August 26, 2021. **I suggest that the hearing in this matter be held not later than September 17, 2021. I am presently available on September 1, 9 (afternoon only), 10, 14, 15, and 16.** (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 August 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 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.

Sincerely,

\s\ *John E. Galt*

John E. Galt
City of Mercer Island Hearing Examiner