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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

STEPHEN STRONG AND LORRI  
FALTERMAN,

Appellants,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL22-002

CITY OF MERCER ISLAND’S  
MOTION TO DISMISS WITH  
PREJUDICE

I. INTRODUCTION

The City of Mercer Island (“City”) respectfully requests the Hearing Examiner dismiss this proceeding pursuant to Hearing Examiner Rule of Procedure (“RoP”) 228(a) and Mercer Island City Code (“MICC”) 3.40.050. The challenged building permit application 2110-247 was approved by the City on June 7, 2022, and such approval was communicated to the applicant and party of record, Appellant Stephen Strong, on June 10, 2022. The appeal of the permit approval was not timely submitted within the requisite appeal period of 14 days, was not submitted to the City Clerk as required by the MICC, and the appeal fee was not timely paid. For these reasons, the appeal must be dismissed per Hearing Examiner RoP 228(a) and MICC 3.40.050.

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II. RELEVANT FACTS

The facts presented are only those relevant to this Motion. Karen Kline, as authorized agent for property owner Carly Bird-Vogel (“Bird-Vogel” or “Applicant”), submitted a building permit application on October 26, 2021. Declaration of Linda Pineau In Support of City of Mercer Island’s Motion to Dismiss (“Pineau Decl.”), at Ex. A and at pp. 1-2, ¶ 4. This application was assigned permit application number 2110-247. *Id.* at Ex. B. On June 7, 2022, City staff approved the building permit and the City Permit Supervisor notified the authorized agent for the Applicant that the permit was approved on June 10, 2022. *Id.* at p. 2, ¶¶ 5-6 and Exs. B-C. The City also submitted a notice of decision via email to the only party of record, Appellant Stephen Strong. *Id.* at p. 2, ¶ 7 and Ex. D.

Approximately one month later, on July 11, 2022, Mr. Strong twice emailed Ms. Pineau, submitting an appeal of the City’s approval of the permit. *Id.* at p. 2, ¶ 8 and Exs. E-F. Mr. Strong did not copy this email to the City Clerk, nor did he separately submit his appeal to the City Clerk. *Id.* at Exs. E-F; Declaration of Andrea Larson In Support of City of Mercer Island’s Motion to Dismiss (“Larson Decl.”), pp. 1-2, ¶ 4. Additionally, Appellants did not file the associated appeal fee on or before June 24, 2022 and did not do so until July 18, 2022. Larson Decl. at p. 2, ¶¶ 5-6 and Ex. A.

III. ISSUES PRESENTED

1. Should the Hearing Examiner dismiss the appeal because it was not timely filed? Yes.
  2. Should the Hearing Examiner dismiss the appeal because it was not properly filed with the City Clerk? Yes.
  3. Should the Hearing Examiner dismiss the appeal because the appeal fee was not timely paid as part of a complete appeal application? Yes.
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1 IV. ARGUMENT

2 1. The Appeal Was Not Timely Filed and Therefore, Must Be Dismissed

3 Appellants’ appeal was untimely filed. MICC 3.40.050 provides that parties to appeal  
4 may move for the hearing examiner to dismiss an appeal for untimeliness. Similarly, RoP  
5 228(a), any party may request dismissal on the grounds that an appeal is untimely.  
6

7 The MICC provides a 14-day appeal period of appeals of building permits. MICC  
8 19.15.130(B) provides that “[a]dministrative appeals shall be filed with the city clerk within  
9 14 days after the notice of decision is made available to the public and applicant pursuant to  
10 MICC 19.15.120, if a notice of decision is required, or after the effective date of the decision  
11 subject to appeal if no notice of decision is required.” For major single-family dwelling  
12 permits, notices of decision are provided only to parties of record. MICC 19.15.030, Table  
13 A, fn. 5. Further, to the extent that Appellants are appealing the decision or determination  
14 of the building or fire code official pursuant to MICC 17.14.020, that section too provides  
15 that such appeal must be made “within 14 days of the date of the decision of the building or  
16 fire code official.”  
17

18 Here, both the authorized agent for the Applicant and Appellant Stephen Strong as  
19 the party of record were provided notices of decision on June 10, 2022. Pineau Decl. at p.  
20 2, ¶¶ 6-7 and Exs. C-D. Therefore, pursuant to MICC 19.15.130(B) and/or MICC 17.14.020,  
21 appeal of the permit approval was due to the City Clerk on or before June 24, 2022.  
22 Appellants did not make their appeal until July 11, 2022, well outside of the 14-day appeal  
23 period expiring June 24, 2022. Pineau Decl. at p. 2, ¶ 8 and Exs. E-F.<sup>1</sup> The appeal is thus  
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25 \_\_\_\_\_  
26 <sup>1</sup> To the extent Appellants take the position that their appeal was mailed on July 8, 2022, this argument would  
also fail, because that date is also well beyond the 14-day appeal period, which expired June 24, 2022.

1 untimely, and the Hearing Examiner lacks jurisdiction over the appeal pursuant to both RoP  
2 228(a) and MICC 3.40.050.

3 2. The Appeal Was Not Filed with The City Clerk as Required by the MICC And  
4 Therefore Must Be Dismissed.

5 The Hearing Examiner also lacks jurisdiction to hear this appeal because the appeal  
6 was not filed with the City Clerk as required by the Mercer Island City Code (MICC).

7 Appellants are appealing a building permit approval made available to the applicant  
8 and parties of record on June 10, 2022. Decisions on major single-family dwelling building  
9 permits are appealable to the City Hearing Examiner following the processes contained in  
10 MICC 19.15.130. MICC 19.15.130(B) provides that “[a]dministrative appeals shall be filed  
11 with the city clerk...” Further, to the extent that Appellants are appealing the decision or  
12 determination of the building or fire code official pursuant to MICC 17.14.020, that section  
13 too provides that such appeal must be filed “with the city clerk.”

14 Appellants did not submit their appeal to the City Clerk as required by MICC  
15 19.15.130. Instead, Appellants emailed an incomplete appeal (see discussion *infra*) to Linda  
16 Pineau, who serves as the City’s Permit Center Supervisor. Pineau Decl. at p. 1, ¶ 2 and  
17 Exs. E-F. The City Clerk, Andrea Larson, did not receive any appeals from Appellants  
18 relating to building permit no. 2110-247. Larson Decl. at pp. 1-2, ¶ 4. The MICC does not  
19 provide for an alternative method of filing such appeal, such as emailing other City staff  
20 members, which is what Appellants did in the instant case.

21 Because Appellants failed to make their appeal to the City Clerk as required by the  
22 plain language of the MICC, the Hearing Examiner lacks jurisdiction to hear this appeal.

23 3. The Appeal Was Not Accompanied by the Requisite Appeal Fee As Required by  
24 the MICC and Therefore, Must Be Dismissed.

25 Finally, the Hearing Examiner lacks jurisdiction over the instant appeal because  
26 Appellant also did not timely pay the appeal fee. Per MICC 19.15.130(D)(6), written appeals

1 “shall include” payment of the appeals fee. This plain language therein indicates that appeal  
2 fees are a necessary component of a complete appeal package and must also be submitted  
3 on the date an appeal is filed. Further, to the extent that Appellants are appealing the decision  
4 or determination of the building or fire code official pursuant to MICC 17.14.020, that  
5 section is even more clear, providing “[f]ailure to timely file the appeal or pay the appeal  
6 fee shall result in dismissal of the appeal.”

7 Appellants did not pay the appeal fee within 14 days of receiving the notice of  
8 decision that the building permit had been approved. *See* Larson Decl. at p. 2, ¶ 5-6. Instead,  
9 payment was not received until July 18, 2022, a week after submission of the appeal itself,  
10 which was also untimely, as discussed *supra*. *Id.* at Ex. A. Therefore, the appeal was  
11 incomplete when incorrectly and untimely submitted on July 11, 2022 and accordingly, this  
12 appeal must be dismissed.

13 V. CONCLUSION

14 Appellants’ appeal was untimely submitted. Further, Appellants did not file their  
15 appeal with the City Clerk, as clearly required by the MICC. Finally, Appellants did not  
16 perfect their appeal by timely submitting their appeal fee. For any and all of the reasons  
17 enumerated above, the hearing examiner must dismiss this proceeding for lack of jurisdiction  
18 according to RoP 228(a) and MICC 3.40.050.

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DATED this \_\_\_\_ day of August, 2022.

MADRONA LAW GROUP, PLLC

By: /s/ Eileen M. Keiffer  
Eileen M. Keiffer, WSBA No. 51598

**CITY OF MERCER ISLAND**  
**OFFICE OF THE CITY ATTORNEY**

By: /s/ Bio Park  
Bio Park, WSBA No. 36994

*Attorneys for the City of Mercer Island*

1 **DECLARATION OF SERVICE**

2 I, Tori Harris, declare and state:

3 1. I am a citizen of the State of Washington, over the age of eighteen years, not a party  
4 to this action, and competent to be a witness herein.

5 2. On the 10th day of August, 2022, I served a true copy of the foregoing City of  
6 Mercer Island’s Motion to Dismiss With Prejudice on the following using the method of  
7 service indicated below:  
8

<p>9 David A. Bricklin, WSBA No. 7583 Audrey Clungeon, WSBA No. 55133 Bricklin &amp; Newman, LLP 123 NW 36<sup>th</sup> Street, Suite 205 Seattle, WA 98107</p> <p>10 11 12 <i>Attorneys for Appellants</i></p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: bricklin@bnd-law.com clungeon@bnd-law.com <input type="checkbox"/> EService pursuant to LGR</p>
<p>13 Dean Williams, WSBA No. 52901 Johns Monroe Mitsunaga Koloušková PLLC 11201 SE 8th Street, Suite 120 Bellevue, WA 98004</p> <p>14 15 16 <i>Attorney for Applicant</i></p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: williams@jmmklaw.com <input type="checkbox"/> EService pursuant to LGR</p>

17 I declare under penalty of perjury under the laws of the State of Washington that the  
18 foregoing is true and correct.

19 DATED this 10th day of August, 2022, at Kihei, Hawaii.

20  
21 /s/ Tori Harris  
22 Tori Harris