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March 22, 2023

Cushman & Wakefield  
ATTN: Misty Cozzitorto  
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Bellevue, WA 98004  
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SERVICE BY E-MAIL (First class mail service if requested)

City of Mercer Island  
ATTN: Don Cole, Building Official  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040  
don.cole@mercergov.org  
SERVICE BY E-MAIL (First class mail service if requested)

Subject: Scheduling Guidance for Notice of Violation Appeal: APL23-002

Dear Principal Parties:

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

On March 17, 2023, I received the appeal which Misty Cozzitorto (“Cozzitorto”) filed on behalf of Cushman & Wakefield (“Cushman & Wakefield”) on March 14, 2023, with the City of Mercer Island *in re* the Revised Notice of Violation (“Revised NOV”) issued by Don Cole (“Cole”), the Community Planning & Development Code Building Official, on March 3, 2023.<sup>1</sup>

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)] The City has advised me that the appeal fee was paid on March 17, 2023. It would appear that Cushman & Wakefield’s appeal was timely and complete when filed.

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1 Cole had issued an initial NOV against Cushman & Wakefield *et al.* on February 28, 2023, a copy of which Cozzitorto had attached to her Appeal. On March 3, 2023, Cole replaced the February 28, 2023, NOV with a Revised NOV. On March 16, 2023, Cole and Cozzitorto exchanged emails in which Cole asked if Cozzitorto intended to appeal the Revised NOV and Cozzitorto replied in the affirmative. Therefore, the initial NOV is moot and will be ignored in this proceeding.

I anticipate that all proceedings in the foreseeable future in this appeal will 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 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)]

Allowing five work days for the parties to advise me of their date preferences, five work days after that for the City to prepare its initial documents for filing under RoP 224 and prepare the required hearing notice, and the 15-day notice period before the hearing, the earliest that we could convene the hearing would be Thursday, April 20, 2023. **For starters, I am presently available on April 20, 21, 26, 27, and 28.** (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 email by March 29, 2023, 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.

Cushman & Wakefield v. City of Mercer Island  
APL23-002  
March 22, 2023  
Page 3 of 3

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