

**From:** [William Edgar](#)  
**To:** [Eileen Keiffer](#); [John Galt](#)  
**Cc:** [Jeff Thomas](#); [Don Cole](#); [Mary Swan](#); [Tori Harris](#); [Bio Park](#); [Deb Estrada](#)  
**Subject:** Re: APL23-002  
**Date:** Thursday, April 6, 2023 4:09:14 PM  
**Attachments:** [image003.png](#)  
[image001.png](#)

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Hearing Examiner Galt,

In response to the City's objections, Appellant Cushman & Wakefield request a pre-hearing conference on the issue. First, this is not an "*ex parte*" request requiring "extraordinary circumstances." RoP 108(g) defines "*ex parte*" as "communication with the Examiner by one party outside the presence of other parties." The City was included in all communications with Examiner Galt and no *ex parte* communication has occurred by the filing of this motion.

However, even if so, the extraordinary circumstance and good cause that exists for this continuance is so that each party may have the opportunity for a fair hearing, decided on the merits. Appellant has no prior experience with the City's Appeal process and had no knowledge of any of procedures. Including, the requirement to submit the hearing memoranda and all exhibits and documents by April 12, 14 days in advance of the hearing. Appellant's lack of experience, familiarity or knowledge of the City's process is the sole reason the hearing came to be scheduled for April 26.

The City's objections are noted. However, none of the objections are sufficient enough that they should trump Appellant's right to prepare and have the appeal fairly heard and a decision issued on the merits.

Finally, it should be noted that this is Appellant's first request for a continuance. Thank you for your consideration.

Bill Edgar

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**From:** Eileen Keiffer <eileen@madronalaw.com>

**Date:** Thursday, April 6, 2023 at 2:12 PM

**To:** John Galt <jegalt755@gmail.com>

**Cc:** Jeff Thomas <jeff.thomas@mercerisland.gov>, Don Cole <Don.Cole@mercergov.org>, Mary Swan <mary.swan@mercerisland.gov>, Tori Harris <tharris@madronalaw.com>, William Edgar <bill.edgar@andor-law.com>, Bio Park <Bio.Park@mercergov.org>, Deb Estrada <Deborah.Estrada@mercerisland.gov>

**Subject:** RE: APL23-002

Hearing Examiner Galt,

In the interest of expediency, the City requests the Examiner consider this email the City's official opposition to Appellant's Motion for Continuance ("Motion"). The City opposes Appellant's Motion for several reasons.

First, the Hearing Examiner's Rules of Procedure ("RoP") do not appear to allow one sided requests for continuance except in "extraordinary circumstances." RoP 412(d), *see also* RoP 412(b) and (c). Appellant has not established extraordinary circumstances sufficient to warrant a continuance over the objection of the City per the RoP(d). To the contrary, as Appellant's counsel notes in the Motion, Appellant's representative, Ms. Cozzitorto, agreed to the hearing date in question. While the Motion cites failure to consult with counsel on the hearing date, this is not an extraordinary circumstance warranting an ex parte request for a continuance.

Second, a postponement is likely to cause confusion among the public. There is likely to be public interest in this appeal (indeed, among the tenants of 77 Central). Re-noticing the hearing will likely cause confusion among members of the community who may be planning to attend the hearing.

Third, a postponement would cause unnecessary expenditure of City Staff time and resources. Postponement of the hearing will require the City to issue notice cancellations and reissue notice of the rescheduled hearing date. The City notes that public notice in these types of appeal proceedings must be issued 15 days prior to the hearing date and notice must be provided through publication, posting, and by mail. Again, such notice of cancellation and rescheduling may cause unwarranted confusion to members of the public.

Fourth, the City notes the length of time that the code violations have been occurring. The appealed

NOV lays out that the code enforcement issues relating to lack of heat in the residential units have been occurring since at least November of last year without resolution.

Therefore, for the reasons stated above, the City opposes Appellant's request for postponement and would request the hearing proceed as scheduled.

Eileen M. Keiffer, Member



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**From:** Deb Estrada <Deborah.Estrada@mercerisland.gov>

**Sent:** Thursday, April 6, 2023 2:04 PM

**To:** John Galt <jegalt755@gmail.com>; bill.edgar@andor-law.com; Eileen Keiffer <eileen@madronalaw.com>; Bio Park <Bio.Park@mercergov.org>

**Cc:** Jeff Thomas <jeff.thomas@mercerisland.gov>; Don Cole <Don.Cole@mercergov.org>; Mary Swan <mary.swan@mercerisland.gov>; Tori Harris <tharris@madronalaw.com>

**Subject:** FW: APL23-002

Hearing Examiner Galt and Principal Parties –

The attached Notice of Appearance and Motion for Continuance were received today from the counsel for Appellant and are available on the MlePlan site.

<https://mieplan.mercergov.org/public/APL23-002/>

Respectfully,

*Deb*

[Deborah Estrada, MMC](#)

Administrative Coordinator/Deputy City Clerk

City of Mercer Island - Community Planning & Development

City Hall Operating Hours: Tuesday – Wednesday – Thursday, 9 AM to 4 PM

206-275-7791 | 206-858-3150 | [mercerisland.gov/CPD](http://mercerisland.gov/CPD)

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**From:** Caley Wood <[caley.wood@andor-law.com](mailto:caley.wood@andor-law.com)>  
**Sent:** Thursday, April 6, 2023 11:48 AM  
**To:** Deb Estrada <[Deborah.Estrada@mercerisland.gov](mailto:Deborah.Estrada@mercerisland.gov)>  
**Cc:** William Edgar <[bill.edgar@andor-law.com](mailto:bill.edgar@andor-law.com)>; Eileen Keiffer <[Eileen@madronalaw.com](mailto:Eileen@madronalaw.com)>; Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>  
**Subject:** APL23-002

Good morning,

Please find attached for filing in Case No. APL23-002 by counsel for Appellant:

1. Notice of Appearance; and
2. Motion for Continuance.

In accordance with Rule 204 I am e-mailing the attached filings to the City and to all principal parties involved. I want to confirm you will be sending to Examiner Galt. If you would like me to send the attached to Examiner Galt directly, please do let me know. We want to make sure we are in compliance with the Rules.

If you need anything further or have trouble accessing the attached pleadings, please let me know.

Thank you,

**AndorLaw**  
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**\*\*\*Please note my office hours are 7:00AM to 1:00PM.\*\*\***

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