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March 8, 2024

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Subject: Scheduling Guidance for Construction Code Administrative Appeal: APL24-002 (Grove II),  
Ref. File No. 2207-019

Dear Principal Parties:

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

On March 6, 2024, I received the appeal which Daniel Grove (“Grove”) filed on March 5, 2024, with the City of Mercer Island, *in re* building permit No. 2207-019 issued by the City on or about February 20, 2024. Decisions made on building permit applications are subject to the right of administrative appeal to the Examiner. [MICC 17.14.020]

In order to distinguish this appeal from the appeal which Grove filed in 2023 (Appeal APL23-009), I am denominating this appeal as “Grove II” for reference purposes.

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 Grove II appeal was timely and complete when filed.

All proceedings in the foreseeable future in this appeal will 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. **We will use the RoP 224 pre-filing process for this appeal.** I urge both parties to familiarize themselves with the RoP, especially those specifically pertaining to appeals and hearings. I will determine which pre-filing process to use later.

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 and issue the required hearing notices, and the 15-day notice period, the earliest that we could convene the hearing will be Tuesday, April 2, 2024. **I am presently available on April 4, 5, 10, 11, 12, 18, and 19** (for starters). (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 March 15, 2024, at the latest.** My E-mail address is “jegalt755@gmail.com”. The City’s response must consider the availability of an appropriate hearing room as well as 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