From: John Galt
To: shane miller
Cc: Mary Swan, Allison Van Ginop, Jeff Thomas, Tori Harris, Andrea Larson, Eileen Keiffer, Bio Park
Subject: Re: Appeal number APL19-002 Input
Date: Friday, November 12, 2021 12:08:00 PM

Mr. Miller:

I'm sorry that you can't seem to understand what the Rules say and how they intervenate.

I have nothing further to say.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (205) 259-5144

From: shane miller [mailto:shane_miller_usa@yahoo.com]
Sent: Friday, November 12, 2021 11:29 PM
To: John Galt
Cc: Mary Swan, Allison Van Ginop, Jeff Thomas, Tori Harris, Andrea Larson, Eileen Keiffer, Bio Park
Subject: Re: Appeal number APL19-002 Input

Mr. Galt,

I've read and re-read 224 incl. 224.d and that is simply not what it says.

If this is your interpretation, then I strongly suggest that you change the rules language to reflect this interpretation.

It is also patently unfair. I'm not asking for sanctions; rather, I'm only asking for time to review, analyze and rework drafting.

See below purple highlighted text. So close are these rules. I see no room for interpretation. The words are perfectly clear.

I'm not going to email you again. But your rules are not being applied here.

Sincerely,
Shane Miller

d) Not less than 14 days prior to the scheduled hearing, the respondent department shall assemble and file the original or a clear and complete copy of all items within the application/appeal file which it believes in its professional judgment will have probative value in the open record hearing process and/or which will be necessary for preparation of a properly and fully considered decision. The original application and/or appeal, documentation of application completeness, current site plan(s), documentation of compliance with the procedural requirements of the State Environmental Policy Act (SEPA), required public notices, any documents specifically requested by the Applicant to be included as an Exhibit, and all substantive letters from citizens regarding the application/appeal shall be included. (Duplication of items filed under Rule 224(c) is strongly discouraged.)

Sent from my iPhone

On Nov 12, 2021, at 11:56 AM, John Galt <jegalt755@gmail.com> wrote:

Mr. Miller:

I have told you before: Public comment letters and materials are NOT subject to any of the pre-filing requirements. Public comments may be submitted on the day of the hearing.

You are frankly wasting your time asking me over and over to essentially rule on something that I have already ruled on.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (205) 259-5144

From: Shane Miller [mailto:shane_miller_usa@yahoo.com]
Sent: Friday, November 12, 2021 11:30 AM
To: John Galt
Cc: Mary Swan, Allison Van Ginop, Jeff Thomas, Tori Harris, Andrea Larson, Eileen Keiffer, Bio Park
Subject: Re: Appeal number APL19-002 Input

Dear Mr. Hearing Examiner:

I was unaware of the email address being incorrect until this morning. I recognize this information appears to defeat my concern re: ex parte.

However, I continue to believe the 9/21/2020 public comment letter needed to be disclosed to me 14 days in advance per 224.d,

"all substantive letters from citizens regarding the application/appeal shall be included."

I do appreciate and recognize that had the letter not been available to anyone at the 14 day advance date of November 5th, then it would not have needed to be provided and in fact could not have been provided at the 14 day advance date of November 5th. However, this is simply on the case with this letter, i.e. this letter was available very far in advance of the 14 day advance date of November 5th.

From a practical standpoint, the 14 days advance disclosure would have caused the letter to be made available to me during last weekend, while I was structuring, preparing and drafting my case. However, I did not have it at that time. It was a "surprise" to me when I first saw it on November 9. I should not have to re-prepare my case due to the letter not having been provided timely including the 14 days advance notice requirement per 224.d. The rules for 14 days disclosure per 224.d are breached.

Mr. Park having no objection to my introducing the letter as an exhibit at the hearing assumes that I still have time to review the letter and draft the relevant contents of the letter into my appeal declaration, which is an incorrect assumption. I'm away all weekend and my declaration is due without sufficient time to complete what Mr. Park suggests. This is why 224.d and the 14 days exists.

Had it been produced 14 days in advance on Nov 5 instead of Nov 9 as 224.d requires per citation above, only then would it have been able to be included in my declaration and as an exhibit, which I had structured, prepared and drafted during last weekend, i.e. the weekend of Nov 5-7. The fact that the weekend of Nov 5-7 constituted my available to time to work on this means it needed to have been produced on Nov 5th –not Nov 9th.

I look forward to your response per above and below (less the ex parte issue, which appears to have been defeated by the email incorrect issue). Thank you in advance for your consideration.

Sincerely,
Shane Miller

On Nov 12, 2021, at 11:08 AM, Bio Park <Bio.Park@myrtlebeach.gov>, wrote:

Mr. Examiner,

It should be noted that the 9/21/2020 email with the letter that appellant is alleging to be an ex-parte communication likely never reached you, because it was sent to jegalt755@gmail.com instead of jegalt755@gmail.com. Furthermore, the City has no objection if appellant chooses to introduce the letter as an exhibit at the hearing.

As for the other issues being raised by appellant for a continuance, they are the same type of arguments appellant has previously raised, which the City has already addressed. The City's position on these remains unchanged, and respectfully asks the Examiner to again deny appellant's latest request for a hearing continuance. Thank you.

Bio Park
City Attorney
City of Myrtle Island
(843-279-7953 | bpark@myrtleisland.gov
Notice: Email communications with the City of Myrtle Island are subject to disclosure pursuant to the Public Records Act (Chapter 42, SC Code).

From: shane miller <shane_miller_usa@yahoo.com>
Sent: Friday, November 12, 2021 9:07 AM
To: John Galt <jegalt755@gmail.com>
Cc: Bio Park <Bio.Park@myrtleisland.gov>; Mary Swan <Mary.Swan@myrtleisland.gov>; Allison Van Ginop <allison.vanginop@myrtleisland.gov>; Jeff Thomas <Jeff.Thomas@myrtleisland.gov>; Tori Harris <Tori.Harris@myrtleisland.gov>; Andrea Larson <Andrea.Larson@myrtleisland.gov>; Eileen Keiffer <eileen@keiffermediation.com>;
Subject: Re: Appeal number APL19-002 Input

Mr. Hearing Examiner,

I believe the September 21, 2020 letter addressed to City Staff including the City Attorney and to you directly may also be a breach of the rules re: ex parte communication. That is, the City and Hearing Examiner were able to exchange substantive information without my knowledge or presence until such time on November 9, 20301 and by happenstance that the September 21, 2020 letter was attached to the November 9, 2021 letter. I believe this must be improper and a violation of multiple rules including both disclosure, disclosure timing incl. 14 days, and ex parte rules. Please see attached in blue-highlight rectangle.

Sincerely,
Shane Miller
<image003.jpg>

Sent from my iPhone

On Nov 10, 2021, at 7:13 PM, shane miller <shane_miller_usa@yahoo.com>, wrote:

Dear Mr. Hearing Examiner:

In Reply to Ms. Keiffer's email, I wish to point out the following:

1) the September 21, 2020 is clearly related to the Appeal as evidenced by the letter being addressed in part directly to Mr. Hearing Examiner:

"*Mr. John Galt (jegalt755@gmail.com)*
Hearing Examiner / Office Mediator"

Please see attached screenshot purple highlighted text.

2) the fact that the City was not planning on introducing this document is not relevant because it ignores the fact that I may wish to introduce this document at hearing. To do so, I needed the document in advance when it was supposed to be produced 14 days before the hearing. It was not. The rules were breached.

3) Appellants need to be able to rely on the rules of document disclosure to provide possible relevant exculpatory evidence, such as this letter.

4) The need for the appeal hearing rules to apply is made even more important due to the established fact that the public records request process cannot be relied upon (as evidenced by the findings made at the last two preconference hearings that public records requests are separate and unenforceable and able to be withheld by City Staff for 5+ months and ongoing). That is, **neither** the rules of disclosure nor the public records request process can be relied upon by Appellants.

5) receiving documents on Tuesday of a holiday week (Thursday is a City Holiday; Veterans Day) and Rules requiring an entire case response by Friday of the same week while also having to work full time and care for dependent family members during the evenings shows the Rules are not setup for Citizens of Mercer Island to be able to succeed at Hearing; rather, the Rules are setup for the City Staff of Mercer Island to succeed at Hearing.

6) Fair disclosure, right to due process and reasonable notice periods are core tenets of a fair legal system. Without them is akin to announcing a fair boxing match that also requires one boxer to have both hands tied behind the back. The death-stinged boxer will lose every time and irrespective of all merits.

Sincerely,
Shane Miller
<image0.jpeg>

Sent from my iPhone

On Nov 10, 2021, at 6:25 PM, Eileen Keiffer <eileen@keiffermediation.com> wrote:

Good evening Mr. Galt,

By way of explanation, the City did not include Mr. Garlt's 2020 letter in the file produced per rule 224(d) because on its face it did not purport to relate to appeal proceeding APL 19-002. Please see attached email from 9/2020. Additionally, to clarify, the City does not intend to introduce this letter at hearing.

Thank you,

Eileen M. Keiffer, Mediator

<image002.png>
14205 SE 36th Street
Suite 100, PMB 443
Bellevue, Washington 98006
Tel: (425) 295-1012, Ext. 1
Eileen@KeiffermediationLLC.com
www.KeiffermediationLLC.com

From: shane miller <shane_miller_usa@yahoo.com>
Sent: Wednesday, November 10, 2021 6:22 PM
To: John Galt <jegalt755@gmail.com>
Cc: Bio Park <Bio.Park@myrtleisland.gov>; Eileen Keiffer <eileen@keiffermediation.com>; Mary Swan <Mary.Swan@myrtleisland.gov>; Allison Van Ginop <allison.vanginop@myrtleisland.gov>; Jeff Thomas <Jeff.Thomas@myrtleisland.gov>; Andrea Larson <Andrea.Larson@myrtleisland.gov>;
Subject: Re: Appeal number APL19-002 Input

Dear Mr. Galt,

With all due respect,

1) I'm not referring herein to any way, shape or form to the staff report; and

2) the City had in its possession 1 or more of the Citizen Comment Letters in advance of the 14 day deadline. This is evidenced by the picture attached which shows IN RED CIRCLE HIGHLIGHT THIS CITIZEN COMMENT LETTER WAS PROVIDED TO THE CITY ON SEPTEMBER 21 AND THEREFORE OBVIOUSLY COULD AND SHOULD HAVE BEEN MADE AVAILABLE TO ME AT OF BEFORE THE 14 DAY DEADLINE. THEREFORE, THIS IS NOT A CASE OF THE LETTER HAVING COME IN AFTER THE 14 DAY DEADLINE; RATHER, THIS CITIZEN LETTER CAME IN TO THE CITY WELL BEFORE THE DEADLINE.

I sincerely hope this at least clarifies my concern and position, which I believe is very different than the responsive language received per below.

Sincerely,
Shane Miller

<image001.jpg>

Sent from my iPhone

On Nov 10, 2021, at 1:45 PM, John Galt <jegalt755@gmail.com>, wrote:

Mr. Miller:

You are wrong about RoP 224(d). First, it does not cover the staff report whose submittal is regulated under RoP 224(g).

Second, the Respondent's requirement to include citizen comments in its 14-day before hearing pre-filing obviously cannot cover public comments that are received after that pre-filing has occurred. It is intended to require that all substantive public comments received before the pre-filing are included, that none are left out. If I interpreted the RoP as you want, no public comments could be entered less that 14 days before the hearing. That is patently not the way the RoP or City Code read.

To the extent your e-mail seeks a continuance, it is DENIED.

Respectfully,

John E. Galt
Hearing Examiner/Officer
Mediator
Voice: (205) 259-5144

From: Shane Miller [mailto:shane_miller_usa@yahoo.com]
Sent: Wednesday, November 10, 2021 12:38 PM
To: John Galt
Cc: Bio Park; Eileen Keiffer; Mary Swan; Allison Van Ginop; Jeff Thomas; Andrea Larson
Subject: Re: Appeal number APL19-002 Input

Dear Mr. Hearing Examiner

I believe that Rule 224.d) states:

"**Not less than 14 days prior to the scheduled hearing**, the respondent department shall assemble and file the original or a clear and complete copy of all items within the application/appeal file which it believes in its professional judgment will have probative value in the open record hearing process and/or which will be necessary for preparation of a properly and fully considered decision. The original application and/or appeal, documentation of application completeness, current site plan(s), documentation of compliance with the procedural requirements of the State Environmental Policy Act (SEPA), required public notices, any documents specifically requested by the Applicant to be included as an Exhibit, **and all substantive letters from citizens regarding the application/appeal shall be included.** (Duplication of items filed under Rule 224(c) is strongly discouraged.)"

To summarize:

"Not less than 14 days prior to the scheduled hearing…all substantive letters from citizens regarding the application/appeal shall be included"

(note: underline/bold/italic emphasis added in mine)

That is, the letter from Mr. Garst was first received by me on November 9th. 14 days prior to the hearing set for November 19th is November 5th. Therefore, the receipt date for the letter of November 9th is untimely vs. the deadline per above of November 5th.

Worse yet, the more substantive of the two letters from Mr. Garst is dated September 21st, which means it could have (or should have) been provided by November 5th - or earlier. That is, there was no reason for the deadline of November 5th to have been missed and first shared on November given the city had the letter in its possession months in advance.

I believe it is clear the rules incl. 224.d) re: timing of evidence submitted have not been met. As a consequence of above, I believe that 224.d) is also not met.

Please give consideration to the above and consider my request herein to have the hearing postponed to a later date. There will be no adverse consequences to anyone from postponing the hearing date, but there will be adverse consequences to me from having to try and prepare without the time needed and afforded by the Rules to properly prepare and defend myself as I would like to be able to do.

Please also note that tomorrow is a Holiday (Veterans Day), which makes this situation all the more unreasonable receiving substantive 10+ page documents on Tuesday that per 224.d) were supposed to be received prior to last weekend, and which now requires me to turnaround during a Public Holiday timeframe while working full time and meeting numerous family obligations x 4 children ages 5-13 including a basketball tournament in Bothel this weekend.

Thank you in advance for your consideration.

Sincerely,
Shane Miller

Sent from my iPhone

Begin forwarded message:

From: John Dall <jeanne@dallpllc.com>
Date: November 9, 2021 at 4:03:11 PM PST
To: shane miller <shane.miller@mercerisland.com>
Cc: Bio Park <bio.park@mercerisland.com>, Eileen Keller <eileen@mercerisland.com>, Mary Swan <Mary.Swan@mercerisland.com>, Alison Van Gorp <alison.vangorp@mercerisland.com>, Jeff Thomas <jeff.thomas@mercerisland.com>, Andrea Larson <Andrea.larson@mercerisland.com>
Subject: RE: Appeal number APL19-002 Input

Mr. Miller:

Evidence prefiling requirements apply to "Principal Parties." [Hearing Examiner Rule of Procedure 210] "'Principal Parties' means and is limited to the applicant(s), the appellant(s), and the respondent(s) to any given application/appeal." [MCP 19.00(I)] Mr. Gartz is neither the applicant, nor the appellant, nor the respondent. The prefiling rules do not apply to him anymore than to any other member of the public.

That not withstanding, I herewith extend your filing date to 5:00 p.m., Monday, November 15, 2021.

Respectfully,

John E. Dall
Hearing Examiner/Officer
Mediator
Voice: (425) 269-3116

From: shane miller [mailto:shane.miller@yahoo.com]
Sent: Tuesday, November 09, 2021 3:35 PM
To: John Dall
Cc: Bio Park; Eileen Keller; Mary Swan; Alison Van Gorp; Jeff Thomas; Andrea Larson
Subject: Re: Appeal number APL19-002 Input

Mr. Dall,

I believe this new submission is untimely and in violation of the rules for submission timing.

As a result, may you please provide an extension of time for me to submit my materials?

Note I work full time and have children on the evenings. I don't believe it will be possible to review this +12 pages of content between now and this Friday when my submission is due. I have commitments in the evening to take my children to swim lessons.

I believe this new submission getting filed late and after the deadline for me to review it is another example of unfairness against me.

Please let me know about an extension of time for me to submit materials.

Thank you,
Shane
(206) 919-6663

Sent from my iPhone

On Nov 9, 2021, at 10:43 AM, Andrea Larson <andrea.larson@mercerisland.gov> wrote:

Good Morning,

I am forwarding to the Hearing Examiner and the parties an email received by the City on APL19-002.

Kind Regards,

Andrea Larson
City Clerk
City of Mercer Island
206.275.7793 | www.mercerisland.gov

Due to the regional COVID-19 outbreak, many City of Mercer Island staff are now working remotely. Responses to emails and phone calls may take additional time as we have modified our operations. Thank you for your patience.

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW)

From: William Gartz <william.gartz@global.com>
Sent: Tuesday, November 9, 2021 9:31 AM
To: Alison Van Gorp <alison.vangorp@mercerisland.gov>; Dan Cole <dan.cole@mercerisland.gov>; Gareth Reeve <gareth.reeve@mercerisland.gov>; Bio Park <bio.park@mercerisland.gov>; andrea.larson@mercerisland.com
Subject: Appeal number APL19-002 Input

Greetings,

Please see attached letter dated November 9, 2021 and supporting material dated September 21, 2020 requesting denial of Mr. Miller's appeal of Code Enforcement Notice C018-0017 at 7709 W Mercer Way, Mercer Island, WA.

Please confirm receipt. Thank you.

William F. Gartz, AIA | NCARB
President | Managing Director

Global Design Strategies
2005 W Mercer Way
Mercer Island, WA 98040
C | 1-206-388-0755
T | www.globaldesignstrategies.com

<Lic. MI re Miller appeal 110921.pdf>
<Lic. MI re Miller resolution09152020.pdf>

<vcmw-attachment>
<Mail Attachment.eml>