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April 2, 2025

Herzi-Ner Tamid Conservative Congregation
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Subject: APL25-002: Herzi-Ner Tamid Conservative Congregation SEPA appeal

Dear Principal Parties:

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

On April 1, 2025, I received the appeal which Josh Friedmann filed on March 31, 2025, on behalf of Herzi-Ner Tamid Conservative Congregation, determined to be complete as of March 31, 2025, upon payment of the appeal filing fee, *in re* the State Environmental Policy Act ("SEPA") threshold Mitigated Determination of Nonsignificance ("MDNS") under file No. SEP24-003, issued by the City on or about March 17, 2025.

SEPA threshold determinations are Type III land use actions which are subject to the right of administrative appeal to the Examiner. [MICC 19.15.030(H), Table C]

The MICC provides for a 14 calendar day appeal period from date of issuance of the decision being appealed. [MICC 19.15.130(B)] The content requirements for Type I - III appeals are set forth in MICC 19.15.130(D). It would appear that the Herzi-Ner Tamid Conservative Congregation SEPA appeal was timely and complete when filed.

A SEPA "appeal must be consolidated with any appeal that is filed on the proposal or action, and must conform to the requirements of MICC 19.15.130(B), Permit review procedures." [MICC 19.21.200(B)] The MDNS indicates that the threshold determination at issue is associated with a Conditional Use Permit ("CUP") which is required for at least part of the project. According to MICC 19.15.030(H), Table D, a CUP is a Type IV land use application which requires a predecision hearing before the Hearing Examiner.

"Mitigation measures and conditions that are required as part of a determination of nonsignificance" are, according to MICC 19.21.200(A)(2), appealable to the hearing Examiner.

The above provisions appear, at least at first blush, to be at least somewhat contradictory. MDNS mitigation measures are appealable to the Examiner but must be consolidated with a related appeal on an underlying application. But since the Examiner is the decision maker on a CUP, the Examiner would not hear an appeal from his own decision. Any appeal from a CUP decision would be to Superior Court. [1] So, then, would not the SEPA appeal have to await the CUP decision before the appeal could be consolidated and heard in court?

I would appreciate a brief analysis from both parties on this seeming jurisdictional issue before we proceed further. Please provide your responses not later than April 9, 2025.

I look forward to your comments.

Sincerely,

\s\ John E. Galt

John E. Galt
City of Mercer Island Hearing Examiner

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[1] Interestingly, I noted tonight for the first time that MICC 19.15.030(H), Table D, lists the Hearing Examiner as both the decision maker and the appeal authority for all Type IV applications within the Examiner's jurisdiction and the Design Commission as both the decision maker and the appeal authority for all Type IV applications within its jurisdiction. I presume those are scrivener's errors.