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Subject: APL25-003: 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 22, 2025, I received the appeal which Josh Friedmann filed on April 18, 2025, on behalf of Herzi-Ner Tamid Conservative Congregation ("Appellant"), determined subsequently to be complete upon payment of the appeal filing fee, *in re* the State Environmental Policy Act ("SEPA") threshold Revised

Mitigated Determination of Nonsignificance ("MDNS") under file No. SEP24-003, issued by the City on April 7, 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 Appellant's SEPA appeal was timely and complete when filed.

I am sure that all listed addressees are aware that this is essentially a "follow-on" appeal: An MDNS was issued and timely appealed by Appellant under file number APL25-002; that MDNS was withdrawn on April 7, 2025, due to a procedural irregularity; the Examiner advised the principal parties by email on April 7, 2025, that withdrawal of the MDNS effectively closed the appeal; the City's Responsible Official issued a Revised MDNS on April 7, 2025; and Appellant filed a new appeal on April 18, 2025, under file number APL25-003.

On April 2, 2025, the Examiner sent a letter to the Principal Parties in APL25-002 raising a jurisdictional/timing concern. Neither principal party had responded to that letter before the original MDNS was withdrawn. I believe the issue remains and needs to be resolved before we proceed further. Therefore, I present the issue again in the following three paragraphs (with an additional sentence at the end of the third paragraph).

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

[1] Interestingly, when preparing the April 7th letter I noted 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.

court? Or, would not the SEPA appeal have to be consolidated with the required CUP hearing in order to provide not more than one open record hearing on a project permit application?

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 30, 2025.

I look forward to your comments.

Sincerely,

\s\ John E. Galt

John E. Galt
City of Mercer Island Hearing Examiner