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May 22, 2023

Molly McGuire  
City of Mercer Island  
9611 SE 36th St.  
Mercer Island, WA 98040

Re: Permit Appl. No. 2207-019 -- 6950 Maker St., Mercer Island, WA 98040

Dear Ms. McGuire:

Your applicant, Dorothy Strand, under the above-referenced permit application file number, is in receipt of your letter of May 3, 2023. Your letter begins by stating that the City has requested services of third-party reviewer Bush Reid & Hitchings. Your letter requests that Ms. Strand to (a) agree with the City's decision to request third-party services, and (b) agree to pay the charges associated with those services. Your letter says that this request has been made following Ms. Strand's "failure to produce sufficient information to satisfy the City's request on March 29, 2023".

With due respect, Ms. Strand strenuously disagrees with the conclusion you have drawn about her response to the City's March 29, 2023 request, as it pertains to "existing grade". We perceive the City's decision to engage the services of a third-party reviewer to be unprecedented, and in error.

There appears to be no disagreement that MICC 19.16.010 defines the term "existing grade" for construction of residential improvements, and that approval of certain physical dimensions of a proposed structure will be determined based on a determination of "existing grade". You are in possession of the applicant's "Existing Grade Interpretation Memo" dated April 6, 2023, which is a direct and pointed response to the City's request of March 29, 2023. In that memo, Mr. Almeter refers to your March 29, 2023 telephone conference call, during which neighbor opposition to the application was discussed, including determination of the "existing grade" of the site, upon which to base various measurements and calculations.

Mr. Almeter's April 6 memo included a close and careful analysis of the submissions from the applicant's neighbors, noting that none of those submissions included any surveys depicting the "original condition" of Ms. Stand's lot. Mr. Almeter explained in detail why the 1989 D.R. Strong survey and the 2004 M.W. Marshall survey are not reliable resources for the City's consideration of this application. The D.R. Strong survey references a parcel located to the west of 72<sup>nd</sup> Avenue SE, but does not state exactly where, along 72<sup>nd</sup> Avenue, the site depicted is situated. The existing structure on the Strand lot is very old and was standing at the time of the D.R. Strong survey, but is not reflected on the sketch. This, clearly suggests that the D.R. Strong survey describes topography of a different parcel in the vicinity. The M.W. Marshall survey from 2004 references 72<sup>nd</sup> Avenue SE, and SE Maker Street. But the lot depicted on the sketch is very clearly located to the **south** of Maker Street. Ms. Strand's property is located to the north of Maker

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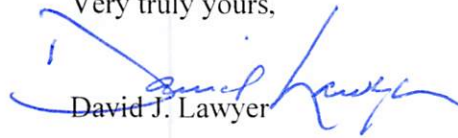
Street. The topographical information shown in the Marshall survey is emphatically not a representation of the topography of the Strand lot at any point in history. The submissions from Dan Grove and Jim Mattison should be excluded from the City's consideration altogether. Their "homemade" work product includes freehand lines drawn across copies of Ms. Strand's site plan, represented to be "contour interpolations" that represent the topography of Ms. Strand's lot at some unspecified date in history.

Anyone reviewing these historical documents will conclude that we lack a survey of the original condition of the Strand property. It is therefore impossible to scientifically determine the degree of "alteration" that may have occurred in history (recognize, too, that the existing residence on the Strand lot predates incorporation of the City of Mercer Island and, of course, adoption of the Mercer Island City Code). Mercer Island's Development Services Group recognized challenges of exactly this kind, and adopted Administrative Interpretation #04-04 in August of 2004. The interpretation states, "without concrete evidence or verification from a previous survey document, as determined by the City Building Official, *the existing grade of an existing structure or its various wall segments on a site will be used as the elevation for measuring average building elevation 'prior to any development'*". This interpretation has never been repealed or modified in the intervening years. To the contrary, in 2013, the Director of the Development Services Group reiterated in Administrative Interpretation DCI12-004 that, "without concrete evidence or verification from a previous survey document, as accepted by the City code Official, *the existing grade underlying the existing structure will be used as the elevation for the proposed development.*" Here again, Mercer Island has never withdrawn or modified its 2013 Administrative Interpretation DCI12-004. And this Interpretation allows *an applicant* to establish existing grade by interpolation from existing elevations outside of a proposed footprint, through use of a "current survey document" prepared by a Washington registered civil engineer or land official, which is accepted by the City Code Official. Upon application, Ms. Strand submitted and referred to her own commissioned current survey document (the Terrane 2021 survey). The interpolation of elevations shown in that "current survey" fall within the City's 2013 Administrative Interpretation.

We have done some research of other permit applications within the City in recent years, and cannot find any example in which the City has required engagement of a third-party reviewer under circumstances at all similar to the present situation. There are many, many examples of the City accepting existing elevations prior to development activities as a proper and reasonable application of the City Code, and its administrative interpretations. We are at a loss to understand the City's contradictory decision making in this case.

Please take note of the significant pressures upon Ms. Strand in getting her permit approved and her construction underway (which has now been significantly delayed). Her weather window for demolition and site preparation will close in the fall, and could either postpone her project for another year, or force her to incur significant expense to manage the site during the wet period of the year. Please review the contents of this letter with your colleagues, and let me know that the City will withdraw its request to engage a third-party reviewer. If it will not do so, please provide an explanation that justifies the City's position in this particular case.

Very truly yours,

  
David J. Lawyer

DJL:djl

cc: City Attorney, Bio Park  
Ryan Harriman, Planning Manager  
Client