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Hearing Examiner Galt

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

SHANE MILLER,
Petitioner

vs.

CITY OF MERCER ISLAND,
Respondent

No. APL 19-002

PETITIONER'S PLEADING
(VOL. 2 OF 2)

NOTE: THIS DOCUMENT IS A CONTINUATION OF THE DOCUMENT TITLED
"2021 - 11.15.2021 - APPL - 19-002 - PLEADING V.FIN.DOCX"

208. The 1982 Site Plan shows bottom and top elevation of 25' and 100', respectively. Furthermore, the Site Plan shows horizontal run of 210'. Therefore, the slope calculation is change in elevation of 75' / 210' horizontal run = 35.7% slope. SEE EXHIBIT 1039.

209. The 1982 Site Plan SOUTH BOUNDARY shows bottom and top elevation of 25' and 90', respectively. Furthermore, the Site Plan shows horizontal run of 225.61'. Therefore, the slope calculation is change in elevation of 65' / 225.61' horizontal run = 28.8% slope. SEE EXHIBIT 1040.

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1 210. The 1982 Site Plan NORTH BOUNDARY shows bottom and top elevation of 25' and
2 115', respectively. Furthermore, the Site Plan shows horizontal run of 234'. Therefore,
3 the slope calculation is change in elevation of 90' / 234' horizontal run = 38.5% slope.
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5 SEE EXHIBIT 1041.
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9 211. The Group 4 Survey shown as City Exhibit No. 34 shows the SOUTH BOUNDARY is
10 201.28' horizontal run. The elevations handwritten by the City on City Exhibit No. 26
11 shows bottom elevation and top elevation of 25' and 100', respectively. Therefore, the
12 slope calculation is change in elevation of 75' / 201.28 horizontal run = 37.3% slope. SEE
13 EXHIBIT 1042.
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18 212. The Group 4 Survey shown as City Exhibit No. 34 shows the SOUTH BOUNDARY is
19 201.28' horizontal run. The elevations change per contour lines on City Exhibit No. 26
20 1983 Site Plan show bottom and top elevation of 25' and 90', respectively. Therefore, the
21 slope calculation is change in elevation of 65' / 201.28 horizontal run = 32.3%. SEE
22 EXHIBIT 1043.
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213. The Appeal dated [X] and shown as City Exhibit No. [x] shows the south property
boundary is 319.59'. This is an error. The error mistakenly includes the boundary
measurement for Parcel D. Correction to this error requires changing 319.59' to instead
read 201.28'. As a result, the slope calculation changes from 57' elevation change /
319.59' horizontal run = 17.9% slope to 57' elevation change / 201.28' horizontal run per
Group 4 Survey Exhibit No. 34 = 28.4% slope. SEE EXHIBIT 1044.

214. The plans approved by the City during ~2002 are shown as Exhibit 1028 and illustrate
elevation change and horizontal run distances at the subject area. Specifically, the plans
show 27' elevation at the top of the bulkhead and 52' elevation at the foundation, or change
in elevation = 25'. The horizontal run is from 10' to 84', or 74'. Therefore, per plans
approved by the City the slope is 25' elevation change / 74' horizontal run = 33.7%. SEE
EXHIBIT 1045.

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3 215. Washington State Case Law including at the State Supreme Court cites statute of
4 limitations requiring actions for penalties to be brought within two years.
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8 *“The Supreme Court, Utter, J., held that: the statute of limitations requiring actions*
9 *for penalties to be brought within two years was not impliedly repealed...”*
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13 SEE EXHIBIT 1046.

14 216. Washington State Legislature enacted into law RCW 4.16.100 Actions limited to two
15 years:
16

17 *“Within two years:*

18 *(1) An action for libel, slander, assault and battery, or false imprisonment.*

19 *(2) An action upon a statute for a forfeiture or penalty to the state.”*
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23 SEE EXHIBIT 1047.
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217. Council for the City raised questions as to the licensing stamp of Licensed Surveyor, Mr.
Bob Winters. The question that Council for the City raised is posed to Mr. Winters, and
the response from Mr. Winters follows:

*“A few years ago the requirement for an expiration date on the stamp was
eliminated. However, I did retire my license last year and therefore my license
falls under “retired” status. I can renew it at any time by paying my licensing fee
retroactively. Our company now operates under my son’s license. In my
opinion, my level of professional knowledge and experience has not been
invalidated because of my retired status. I would expect to still be considered an
expert witness during court proceedings.”*

- Mr. Bob Winters, December 2, 2021

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2 SEE EXHIBIT NO. 1048.
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5 218. Plans documents show the name Coson. This is because Mr. Coson is the former
6
7 owner of the home prior to my having purchased. An exhibit shows Mr. Coson on the
8
9 recorded Statutory Warranty Deed. SEE EXHIBIT 1049.

10 219. Geotech engineering plans from 2001 show a cross-section of the west section of the
11
12 property, which is also the portion of the property which includes the subject area. The
13
14 slope shown by the drawing is 30 feet elevation change / 92' horizontal run = 32.6%
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16 slope. SEE EXHIBIT NO. 1050.
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18 220. Mr. Coson hired Ms. Crystal Kolke Code Specialist to explain to Mr. Paul Skidmore
19
20 Building Plans Examiner that the work meets applicable codes. SEE EXHIBIT NO. 1051.
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22 221. Mr. Paul Skidmore is the same building plans examiner giving me grief at this time, and
23
24 therefore should personally know the area meets code per the letter. SEE EXHIBIT NO.
25 1051.

222. Ms. Kolke's letter also attributes the cause "a pipe broke" in relation to a water main
break having caused soil movement. SEE EXHIBIT NO. 1051

223. City Staff including Ms. Mary Swan (paralegal), Ms. Jesse Bon (City Manager) and Mr.
Bio Park (City Attorney) emailed re: "Email Search Approval #21-300" on June 16, 2021.
The body of the email is redacted; however, the records were not produced until after
many escalations by me including to Mr. Hearing Examiner and not until ~5 months
later on November 2, 2021. It is my allegation that the City abused its power and
obstructed justice by refusing to produce the records timely in accordance with law and
did so to unfairly seek advantage in the appeal hearing, which the unfair advantage did
result. SEE EXHIBIT NO. 1052.

1 224. Mr. Hearing Examiner had requested a full set of the City Approved Plans that were
2 shared previously as excerpted portions of the plans. SEE EX. 1052 PP 1-4 - MORE
3 COMPLETE SET OF PLAN PAGES INCL. FIGURES 1-4.
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6 225. During the last live hearing, Mr. Hearing Examiner requested a site plan drawing from
7 approximately ~2001 which shows a wood wall had existed previously. During the live
8 hearing, Ex. 1054 was emailed to Ms. Andrea Larson and added to the MIEPLAN share
9 drive as Exhibit 1054. The site plan has a scantron bar which the City adds to records
10 received and processed. I obtained this site plan from the a City records request. The
11 bottom of the site plan shows the subject area wood wall,
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17 *"EX. WOOD BULKHEAD TO BE REMOVED & REPLACED BY KEYSTONE RETAINING*
18 *WALL TYP 3 LOCATIONS."*
19

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21 SEE EXHIBIT 1054.
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23 226. During the last live hearing, Mr. Hearing Examiner asked about the provenance of Exhibit 1054.
24 To that question, an additional more detailed drawing includes City of Mercer Island APPROVED
25 PLANS stamp with date September 5, 1989. The blueprint drawing shows date August 24, 1989.
The Owner is shown Mr. Boon Ho Woo. Mr. Woo is the former owner previous to Mr. Coson.
SEE EXHIBIT 1055.

227. City records include a document titled "Landscaping Plan of Lewis Home dated October 26, 1983.
The Plan approved includes "terracing of the land into 4 plateaus" using cut slopes. The letter
also mentions grass and plants, which exist the same currently. Therefore, the approved plans
of October 26, 1983 remain in effect for the subject area. SEE EXHIBIT 1056.

SEE EXHIBIT 1056.

ALSO, SEE LETTER FROM MR. GEORGE LEWIS EXHIBIT NO. 28

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1 228. A photograph of the home following implementation of the approved landscape plan is provided
2 illustrating the approved cut slope terraced landscaping per the October 26, 1983 letter. SEE
3 EXHIBIT 1057.
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7 229. The left side of the photo is the property at 7703 W. Mercer Way and shows MASSIVE EROSION
8 INTO THE LAKE ONGOING FOR LONG PERIODS. SEE EXHIBIT NO. 1057.
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12 230. The photograph also shows the bulkhead including how the bulkhead connects and curves
13 around to include the south property boundary. This bulkhead cost \$20,000 circa 1975 and
14 represents the TRUE BASE OF THE STEEP SLOPE. City Staff have ignored the fact this rockery
15 represents the TRUE BASE OF THE STEEP SLOPE by instead trying to represent aesthetic-based
16 landscaping above as the base of the steep slope. The City's assertions on this are incorrect. SEE
17 EXHIBIT NO. 1057.
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21 231. Many of the fixtures seen in the photo remain at grade through to this date. For example, the
22 manhole at the north boundary, timber wall, concrete pathway, driveway, foundation footings
23 and stem wall, bulkhead rockery incl. south boundary, etc.
24
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SEE EXHIBIT NO. 1057.

ALSO, SEE LETTER FROM MR. GEORGE LEWIS EXHIBIT NO. 28

232. Email from Mr. Don Cole to Mr. Tim McHarg, Ms. Alison Van Gorp and Ms. Holly Mercier indicates
City Staff attempting to claim the project cost is greater than \$7,000 in order to try and justify
triggering the threshold for a substantial development permit requirement. Mr. Cole responds,

*It will be difficult to value. The rock sizes are smaller than typical rockeries of the same
height, and therefore, less costly. Also, the wall appears to be built more like facing for
weathering (erosion), which would be cheaper than an interlocking rockery wall. For sure
a standard built rocker of this same would exceed \$7000, but a rock facing could be cheap.*

If their Geotech approves this facing wall as constructed, their approval would likely

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1 consider this only a weather facing over competent underlying soils. It would be hard for
2 us to argue the cost [sic] this installation but we could ask for their contractor invoice.”
3
4
5

6 The rock is just facing, as I have also been saying. The rock is not structural. Is for aesthetics.
7 Geotech Mr. Phil Haberman has already reviewed and approved. Mr. Cole suggests the rocks
8 provide erosion control.
9

10 Mr. Cole is correct that the project cost does not reach anywhere near the \$7,000 threshold. In
11 fact, the actual project cost is \$1,000. Therefore, it's not even close to the \$7,000 threshold the
12 City is aiming to trigger in order to harm me.
13
14
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16 SEE EXHIBIT 1058.
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18 233. Ms. Holly Mercier emailed Ms. Kelsey Salvo on December 10, 2021 to say,
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20 “i [sic] think APL19-002 is the only older one that has been dragged out”

21 This email shows City Staff knows that the Case IS UNTIMELY.
22

23 SEE EXHIBIT 1059.
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234. The City has remained unable or unwilling to produce records timely. A request #21-770 was
entered on December 11, 2021 and was not produced fully until more than 3 months thereafter
on March 17, 2022 and most importantly NOT IN TIME to be reviewed in advance of this hearing
on March 29, 2022. Worse yet, the City Attorney Mr. Park seems to think there is justification for
continue failing to produce timely the records needed for to defend my appeal case at hearing.
For this reason, I allege this hearing has been obstructed through abuse of power withholding
needed records.

SEE EXHIBIT 1060

235. City of Mercer Island Code definition of Erosion hazard areas follows:

*Erosion hazard areas: Those areas greater than 15 percent slope and subject to a severe
risk of erosion due to wind, rain, water, slope and other natural agents including those soil
types and/or areas identified by the U.S. Department of Agriculture's Natural Resources
Conservation Service as having a "severe" or "very severe" rill and inter-rill erosion hazard.*

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3 The above requirements for Erosion hazard area is not met for the subject area or parcel.
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6 SEE EXHIBIT 1061

7 236. The subject area has not undergone an Enhancement:

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10 *"Enhancement or enhance: Actions performed to increase the functions of critical areas"*

11 SEE EXHIBIT 1062

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13 237. Mr. Hearing examiner raised the prospect of a philosophical question as to whether a critical area
14 or steep slope can be changed to no longer be a critical area or steep slope. The example given
15 involved a slope that is greater than 40% being developed to become less than 40% and whether
16 doing so triggers a change in the critical area steep slope status. The code appears to allow for
17 this, as follows:
18
19

20
21 *Notices on title may be removed or amended, whichever is applicable, at a property*
22 *owner's request, after approval by the city if it is documented that the information*
23 *contained in an existing notice is no longer accurate because a critical area has changed,*
24 *for example, in its type or location, or if the notice is proposed to be replaced with a notice*
25 *containing updated information. (Ord. 19C-05 1 (Exh. A))*

SEE EXHIBIT 1063

238. City Code says as it relates to the City's GIS Maps,

"These maps are to be used a reference only"

SEE EXHIBIT 1064

239. Advance notice was provided to Ms. Van Gorp's manager Mr. Jeff Thomas (with cc: to Ms. Van
Gorp and Mr. Bio Park) of the fact that Mr. Meyring had found the slope to be 37%.

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1 SEE EXHIBIT 1065
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4 240. City Code 19.07.060 says that critical area maps and inventories per GIS must be evaluated and
5 mapped by a qualified professional.
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8 SEE EXHIBIT 1067
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11 241. Landslide hazard areas are defined.
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13 SEE EXHIBIT 1068
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15 242. Geologically hazardous areas are defined.
16

17 SEE EXHIBIT 1069
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19 243. Letter from Washington State Licensed Professional Engineer Mr. Bruce Blyton referencing
20 "Geoweb®" geogrid fabric installed in the soils,
21

22
23 *"The Geoweb® wall is a stable, gravity wall that is not relying upon the timber wall or the anchor*
24 *rods."*
25

And

*"The site has been re-landscaped by the Highridge Corporation including erosion control, netting,
bark mulch, and ground cover plantings. The site is ready for final inspection."*

This means the landscaping was permitted and approved legally in 2005 to include signed and stamped approval by the Licensed Professional Engineer.

SEE EXHIBIT 1070 PP 1-3

244. See letter dated June 7, 2004 from Washington State Licensed Professional Engineer MR. Bruce Blyton also referencing the Geoweb® installation, tiered deadman anchors installation, and treated timber wall.

SEE EXHIBIT 1071 PP 1-2

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1 245. The City's Shoreline Master Program has an exemption per WAC 173-27-040. The exemption lists

- 2 a) projects <\$5,000 are exempt; and
3
4 b) repair of existing is exempt
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7 Specifically, the language states:
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9 WAC 173-27-040 Developments exempt from substantial development permit requirement.
10

11 (2) The following developments shall not require substantial development permits:
12

13 (a) Any development of which the total cost or fair market value, whichever is higher, does not
14 exceed five thousand dollars, if such development does not materially interfere with the normal
15 public use of the water or shorelines of the state. The dollar threshold established in this
16 subsection must be adjusted for inflation by the office of financial management every five years,
17 beginning July 1, 2007, based upon changes in the consumer price index during that time period.
18 "Consumer price index" means, for any calendar year, that year's annual average consumer price
19 index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled
20 by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial
21 management must calculate the new dollar threshold and transmit it to the office of the code
22 reviser for publication in the Washington State Register at least one month before the new dollar
23 threshold is to take effect. For purposes of determining whether or not a permit is required, the
24 total cost or fair market value shall be based on the value of development that is occurring on
25 shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of
the development shall include the fair market value of any donated, contributed or found labor,
equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by
accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline,
lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a
development to a state comparable to its original condition, including but not limited to its size,
shape, configuration, location and external appearance, within a reasonable period after decay or
partial destruction, except where repair causes substantial adverse effects to shoreline resource or
environment. Replacement of a structure or development may be authorized as repair where such
replacement is the common method of repair for the type of structure or development and the
replacement structure or development is comparable to the original structure or development
including but not limited to its size, shape, configuration, location and external appearance and
the replacement does not cause substantial adverse effects to shoreline resources or environment;

SEE EXHIBIT NO. 1072

SEE EXHIBIT NO. 1073 PP 1-7

246. Shoreline master program exceptions incl. WAC 173-27

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1 SEE EXHIBIT NO. 1074
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4 247. The Honorable Catherine Shaffer of Superior Court of Washington for King County recently
5 on December 21, 2021 entered written findings of "bewildering" and "obstructionist" with regard
6 to the City of Mercer Island. The findings of Ms. Shaffer are identical to my own experience.
7
8

9 *THE COURT: "No. Ms. Eaton, I will be frank with you and tell you that I found much of
10 the City's briefing bewildering..."*
11

12 *THE COURT: "...That should've been the end of the story; instead, the City reverted back
13 to its obstructionist behavior and breached the settlement agreement in multiple ways. I
14 think that is all dead on..."*
15

16 *THE COURT: "...I can't imagine a more clear violation of the City's own agreement"*
17

18 SEE EXHIBIT 1075 - PP 1 - 55
19

20 248. AFFADAVIT OF GEORGE LEWIS
21

22 SEE EXHIBIT NO. 1076 - PP 1-5
23
24

25 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _Mercer Island_____, [City] ___WA___ [State] on __ March 28,
2022_____ [Date].

Shane Miller

Shane Miller

(printed name) Signature