BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In re the Appeal of the Notice of Deeision, File No. 2207-019: DANIEL GROVE, Appellant, vs. CITY OF MERCER ISLAND, Respondent.	NO. APL24-002 APPLICANT DOROTHY STRAND'S WRITTEN CLOSING ARGUMENT

The Applicant, Dorothy Strand, respectfully submits this closing argument, following the close of evidence from the Land Use Appeal Hearing conducted on May 9, 2024.

In the hearing, all of the proposed exhibits submitted by the Appellant Grove, the City of Mercer Island, and the Applicant, Dorothy Strand were admitted into evidence. You heard oral testimony from Appellant Daniel Grove, followed by Molly McGuire, of the City, and by Dorothy Strand and architect Jeffrey Almeter, for the Applicant. No members of the public in attendance, when asked, desired to add testimony.

At the beginning of the hearing, you summarized Appellant's appeal as consisting of five discrete challenges to the issuance of a building permit: (1) the determination of "existing grade"

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for purposes of various measurements and calculations; (2) calculation of the basement area exclusion (and the consequent calculation of maximum gross floor area of the proposed structure); (3) application of a 7.5-foot side yard setback to the east of the proposed structure; (4) determination that the rooftop railing of the proposed structure is within the maximum height restriction under the City Code; and (5) determination that the proposed soldier pile shoring wall in the side yard west of the proposed structure complies with the maximum height for retaining walls under the Code.

The Appellant bears the burden of proving that one or more errors were made by the City in reviewing and approving the application and issuing the building permit. RoP 316(a). Appellant has failed to carry his burden and the appeal should be denied. Appellant admitted in his testimony on cross-examination that he attempted unsuccessfully to negotiate a view easement from Ms. Strand's predecessor owner, and then attempted unsuccessfully to purchase the Strand lot himself. This is not wrongful behavior, by any means, but exposes Appellant's strained and unreasonable interpretations of the City Code, and the Administrative Interpretations, precisely because he is motivated to prevent the proposed project.

1. Determination of "Existing Grade"

Ms. Strand continues to assert that most of the measurements and calculations challenged in this appeal begin with something that has already been determined with finality, in Appellant's appeal of the Critical Area Review 2 permit ("Grove I"). To begin, the term "grade" (not defined in the City Code) is a conceptual topic; not a physical point in space. Merriam Webster refers to the term grade as "a datum or reference level". In the context of this proceeding, grade is an elevation, expressed as a certain number of feet and inches above sea

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level, measured or calculated at a particular set of coordinates. Because the surface of the earth is not perfectly flat (or, to be more accurate, perfectly spherical), a grade changes from one location on the earth to the next. An elevation relative to sea level can be measured and determined at any particular location on the ground. When multiple elevations, at various locations on the ground are measured, we can compile data and illustrate contour lines, and depict graphically the sloping or undulating surface of an area of ground, to produce what we recognize as a "grade" within that area.

For purposes of calculating building heights, wall façade heights, and maximum gross floor areas of structures, the Mercer Island City Code guides us to the concept known as "Existing Grade". That term is defined under MICC 19.16.010 as "the surface level at any point on the lot prior to alteration of the ground surface". "Alteration" is further defined under MICC 19.16.010 as "any human-induced action which impacts the existing condition of the area..."

It must not be ignored that Appellant began the campaign to stop Ms. Strand's project by arguing energetically that we should seek to determine the topography of the Strand lot at some ancient time, before any human activity altered its contours. Appellant argued in Grove I that, by resort to previous surveys of properties located to the north and to the south of the Strand lot, an approximation of an historical grade on the Strand lot could be estimated by a set of hand-drawn amateur contour lines "connecting" these off-site surveys. Appellant's goal in taking that approach was to argue for a conclusion that the "Existing Grade" on the Strand lot is something much lower in elevation than the surface of soil presently on the lot. Appellant hoped to force Ms. Strand to seek approval to remove and replace large quantities of fill placed on her lot

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multiple decades ago, before the City could properly issue a critical area review permit. That effort failed.

Appellant's approach was rejected in Grove I, because situations exactly like this one have been addressed through the City's adoption of Administrative Interpretations 04-04 and 12-004. These administrative interpretations both contain introductory comments about the dilemma presented by situations where some level of human activity occurred many years ago, and in some cases, prior to the City's incorporation, and under circumstances in which pre-development records are scarce or nonexistent. In 2004, the City directed its attention to "Average Building Elevation", which is the starting point for determining the maximum height of a residential structure. The interpretation states:

> Determination of existing grade prior to any development becomes critical when an existing structure is demolished for replacement with a new structure, and the existing grade must be established for measuring the newly allowed height of the new structure....
>
> Thus, the City will interpret the existing code language and definitions to mean that, 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".

(Emphasis added). Exhibit 89. Notably, Appellant testified that he does not quarrel with Ms. Strand's and the City's determination of "average building elevation" for this project. Conceptually, existing grade at any particular point is immutable. Existing grade at a specific location is not one measurement for one purpose and a different measurement for another purpose.

Eight years after the adoption of Administrative Interpretation 04-04, the City adopted Administrative Interpretation 12-004. Exhibit 90. This more recent Administrative

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Interpretation was directed to the specific process of calculating basement area exclusions, which follow a methodology set forth in Appendix B of the Land Development Code. But just like the challenge in determining "average building elevation", calculating the percentage of a basement that sits below grade requires that we start with a determination of "existing grade". Although the calculations in Appendix B mandate using the lower of existing or finished grade, a determination of "existing grade" must be made in order to compare, and to determine the lower of the two. Just as Administrative Interpretation 04-04 does, Administrative Interpretation 12-004 walks through the "problematic" circumstances of determining a grade "prior to alteration" as defined in the Code. So, for clarity and for uniform interpretation across the city, and across permit applications for new construction, the City adopted several "conclusions", stating:

> 1. 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.
>
> 2. Existing grade, for the purpose of calculating basement area exclusion without a survey of the pre-development conditions, shall be interpreted as the elevation of a point on the surface of the earth immediately adjacent to or touching a point on the exterior wall of a proposed structure.
>
> 3. If a current survey document is available, ***the applicant may establish existing grade by interpolating elevations within the proposed footprint from existing elevations outside the proposed footprint.*** The survey document must be prepared by either a Washington registered civil engineer or land surveyor. And must be accepted by the City Code Official.

(emphasis added). It would be strained and illogical to conclude that "existing grade" is intended to mean different things under these two Administrative Interpretations. Both interpretations address the same dilemma: where activity upon a lot occurred decades ago, and there are no reliable documents to determine with precision what a lot's contours were prior to any past

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development activity. In this situation, we look at the ground ***as it is***, and ***not as it may have been***, at some point in history.

To that end, Appellant unapologetically argues that we must seek to know the precise elevations of points on the ground beneath (i.e., "underlying") the existing structure. He offered into evidence some photographs allegedly taken by the parent of a living person who was not in attendance to testify, suggesting that the photographs reveal the elevations of soil on the lot before construction of the existing structure, back in the 1950s. But these photos were admittedly altered by Appellant himself, who is not an engineer or land surveyor. Appellant obviously had neither the professional credentials nor the opportunity to use technical equipment to shoot elevations during construction activity that took place before Appellant was even born. The alterations of those photos reflect Appellant's lay ***opinions*** of past elevations on the Strand lot. Mr. Grove is unquestionably intelligent, and articulate, but he is not an expert who can offer technical opinion evidence on such a subject. Moreover, none of the testifying witnesses has any testimonial knowledge of the degree to which the soil on the Strand lot was excavated prior to pouring concrete and placing cinder blocks to form the foundation of the existing structure. In other words, the record is devoid of any reliable evidence of what the surface of the soil was prior to construction of the existing structure. These facts place us precisely under the circumstances for which the City's two Administrative Interpretations were adopted.

We do not have an ***ancient*** survey that shows us what the grade of the Strand lot was before construction of the existing residence. For that reason, we look at "the existing grade of an existing structure or its wall segments" to determine average building elevation, and we look to "the elevation[s] of point[s] on the surface of the earth immediately adjacent to or touching

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point[s] on the exterior walls of a proposed structure" to determine existing grade for purposes of calculating the basement area exclusion.

Administrative Interpretation 12-004 is reasonably read to mean that existing grade (for basement area exclusion calculation) is the elevation of a point on the surface of the earth immediately adjacent to or touching a point on the exterior wall of a proposed structure.

The existing grade dilemma is exacerbated by the fact that the footprint of the proposed structure is, along the east façade, inside the footprint of the existing structure. See Exhibit 6, page 9 of 24. Appellant seeks to exploit this detail, suggesting that the Applicant must find a way to determine the surface of the earth elevations of one or more points within a standing residential structure. Appellant was cynically unapologetic about the practical difficulties of taking such a measurement. But we actually know the topographical contours of the Strand Lot ***surrounding*** the existing structure. Elevation contours are shown on the Terrane Survey dated November 8, 2022, which is incorporated into the Final Plan Set. See Exhibit 6, page 4 of 24. And the testimony of both Appellant and Jeffrey Almeter was consistent in explaining that the Strand lot slopes downward from east to west and from north to south. The elevation of the ground at the northeast corner of the existing structure is 237.45' and the elevation of the southwest corner is 231.2', showing a difference of 6.25' in elevation from the highest corner to the lowest.

It would not be unreasonable to read Administrative Interpretation 12-004 to say that in a situation like this one, where the proposed structure will have exterior walls within the footprint of an existing structure, an applicant can use elevations of the ground surrounding an ***existing*** structure, in those locations closest to the exterior walls of a ***proposed*** structure. If Ms. Strand

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had used this approach, the determination of "existing grade" would have been even slightly **higher** than the data that was submitted.

What Mr. Almeter actually did was to apply simple Euclidian geometry to estimate fairly precisely the ground elevation "touching" the exterior walls of the proposed structure by projecting a line from known contour elevation lines shown in the Terrane survey, surrounding the **existing** structure to points along the exterior walls of the **proposed** structure, yielding an average building elevation of 231.62 ft. See Exhibit 6, pages 2 and 9 of 24.

Although he testified that he does not disagree with or challenge the Applicant's representation of average building elevation, Appellant describes this process as "interpolation" and claims that it is forbidden under Administrative Interpretation 12-004. Appellant is incorrect. The language of Administrative Interpretation 12-004 specifically addresses this circumstance for exactly this purpose – calculating basement area exclusion. The ***applicant*** may establish existing grade by interpolating elevations within the proposed footprint from existing elevations outside of the proposed footprint. This approach is allowed when a current survey document is available, provided the survey was prepared by a registered engineer or land surveyor, and was accepted by the City Code Official. All of the conditions are met here. The Terrane Survey is "current", as it was prepared immediately prior to the application, and for the application. See Exhibit 6, page 4 of 24. It was prepared by professional land surveyor Jacob Miller. Because the Plan set was stamped as accepted, and because the permit was in fact granted, the Terrane Survey was "accepted by the City Code Official". Molly McGuire testified that to the extent the Applicant's methodology is properly described as "interpolation" it was properly allowed under the factual circumstances presented in this application.

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Appellant went on a tangent, arguing that a letter authored by James Harper dated August 14, 2023 "rejected" the Terrane survey. This is not an accurate reading of Harper's letter. To start, Harper's letter was very clearly aimed at determining whether any existing survey – current or ancient – can be properly used for "formulaic determinations of any *past original grade*." See Exhibit 82, page 1 of 2 (emphasis original). In other words, Harper confirmed that, in this circumstance, for this project, we should resort to the Administrative Interpretations, and that we cannot use any known existing survey to tell us what the historical grade of the Strand lot was prior to any development or alteration.

But Harper's letter does **not** rule out application of Conclusion 3, in Administrative Interpretation 12-004. Harper is a private land surveyor employed by Bush, Roed & Hitchings. He is not the City Code Official, so his conclusions do not determine whether or not the Terrane survey has been accepted by the City Code Official. The definition of the Code Official in MICC 19.16.010 says it is "the director of the community planning and development department for the city of Mercer Island or a duly authorized designee". Molly McGuire is the official within the community planning and development department who was placed in charge of processing Applicant's application. In other words, Molly McGuire, as the planner assigned to the Strand application, is the designee serving as the City Code Official for purposes of this determination. And Ms. McGuire testified that Jeffrey Almeter's approach to calculating the surface elevations along the exterior walls of the proposed structure by interpolation was appropriate under Administrative Interpretation 12-004.

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2. Calculation of Basement Area Exclusion.

The basement area exclusion calculations are shown on Sheet A1.0 of the Final Plan Set (Exhibit 6, page 2 of 24), resulting in a calculated 672.5 sq. ft. of below grade, excluded basement area. Jeffrey Almeter testified to his adherence to the methodology set forth in Appendix B of the Development Code for making this calculation, using the lower of existing or finished grade along each of the four wall facades. Appendix B says that "where existing or finished grade contours are complex, an averaging system shall be used", and then refers to an illustration, showing a sloping grade adjacent to a proposed wall. Mr. Almeter testified that this is exactly the process he used.

To begin, Appellant argues that the entire measurement of existing grade should commence at some set of elevations as much as seven feet lower than is shown on the plan set. He bases this argument on the erroneous and intellectually dishonest conclusion that we must divine a set of soil elevations "beneath" the existing structure, and then offers his inadmissible opinion evidence about what he thinks is a subterranean grade. As set forth above, that reading of Administrative Interpretation 12-004 is strained and unreasonable, and should be rejected.

Accepting existing grade according to the Applicant's application, and as for the basement area exclusion calculation, Appellant does not challenge the Applicant's arithmetic. Instead, and in an outcome-oriented approach, Appellant argues that the west (downhill) wall façade of the proposed structure should be divided into five separate segments and that each segment of a single, straight wall should be separately measured to determine new averages of above or below grade portions of what is a single, straight, proposed west wall. Appellant's approach does not follow the methodology set out in Appendix B. He seeks to take advantage

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of the proposed construction of stairways (features that are not part of the proposed residence structure), to carve up a single wall segment into pieces, purely to achieve a different arithmetic outcome. Both Jeffrey Almeter and Molly McGuire agreed that Appellant followed the methodology set forth in Appendix B. The basement area exclusion set forth in the application is correct, and Appellant's challenge to it should be rejected.

3. Confirmation of 7.5-foot Side Yard Setback.

Comparatively speaking, this challenge is much more easily and quickly dealt with than the first two. The participants all agree that, under the code, a 7.5-foot side yard setback applies if the façade of the structure facing the adjoining property is 25 feet in height or less. MICC 19.02.020(C)(3)(a)(1). If the applicable wall height is more than 25 feet in height, a 10-foot setback is required.

The approved application shows a wall height of 24 feet 11 ½ inches. Under that calculation, the 7.5-foot setback applies. The applicable code section states that the 7.5-foot setback applies in situations where "nongabled roof end buildings, the height is more than 15 feet measured from existing or finished grade, whichever is lower, to the top of the exterior wall façade adjoining the side yard." This means, first, we are concerned about the east façade of the proposed structure. The elevation illustrations are shown on Exhibit 6, page 16 of 24. The east elevation shows the not-quite-parallel grade lines for existing and finished grades. The finished grade is slightly lower than existing grade, indicating that a small amount of excavation will be done, to avoid soil coming into direct contact with the exterior siding of the proposed structure. Mr. Almeter testified that he used the finished grade (the lower of the two) for purposes of this calculation. The vertical measurement to the top of the façade is

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shown on the **south** elevation drawing, located essentially at the southeast corner of the proposed structure. You have to zoom in on the illustration to get a clear view of the measurement, but the drawing shows a vertical measurement from the elevation of finished grade on the **east** facade upward to the elevation of the top of the proposed rooftop railing (the highest point of the structure). The measurement comes in just under the 25-foot height.

In the hearing, Appellant tried to argue that we should calculate the east wall façade by starting the vertical measurement at an elevation on the **south** side of the proposed structure, essentially coextensive with bottom of the garage floor and basement entry. Those elements of the proposed structure (garage door and basement entry) will be entirely below grade, when grade is viewed looking west at the proposed structure, facing the east façade of the structure. Appellant's argument is simply not persuasive. It is not consistent with the Code, and was not accepted by the City in its internal review and permit approval. With a 24' 11.5" east wall height, the side yard setback is 7.5 feet.

4. The Rooftop Railing is Within the Maximum Height Limit of the Main Structure.

Like the setback argument, the question of the application's compliance with the code with respect to the vertical measurement to the top of the rooftop railing is relatively simple, and purely a matter of Code interpretation.

MICC 19.02.020(E) governs building heights. The maximum building height is set forth in MICC 19.02.020(E)(1). The limit is 30 feet, measured from the average building elevation to the highest point of the roof. Once again, Appellant testified that he does not quarrel with the calculated average building elevation. All four of the elevation views show the maximum building height at an elevation of 261.62 feet (Exhibit 6 at page 16 of 24), which is exactly 30

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feet above the uncontested average building elevation of 231.62 feet (Exhibit 6 at page 2 of 24). The illustrations on the elevations page of the plan set show that the three-foot rooftop railing is actually the highest protrusion of any part of the proposed construction, and is comfortably below the maximum allowed height.

MICC 19.02.020(E)(3) sets forth a list of examples of appurtenances that will be allowed to protrude as much as five feet above the height allowed for the "main structure". Mr. Almeter testified about how vents, plumbing stacks and chimneys may require some clearance from roof surfaces for safety or functionality, which helps to put these exceptions in context. But rooftop railings are specifically called out under MICC 19.02.020(E)(3)(b), where the code says such railings "may not extend above the maximum allowed height for the main structure".

The only logical reading of MICC 19.02.020(E) as an integrated whole is to conclude that subsection .020(E)(1), which makes reference to the highest point on the roof is a determination of the height of the "main structure". Appellant refers to subsection .020(E)(2), which defines the vertical height limit of a downhill wall façade. Although the maximum downhill wall façade height is also 30 feet, the measurement begins not from the average building elevation, but from the furthest downhill extent of a downhill side of a structure, up to the "plate", or the location where the exterior wall façade connects to the supporting roof framing, rafters, trusses, etc. Appellant urges an illogical interpretation. For one thing, a rooftop railing will always sit above the point where a wall façade meets a roof structure, because any such railing will sit above the roof structure itself. Appellant's interpretation would limit the height of a downhill wall façade to 30 feet, **minus** the vertical dimension of any roof framing, **minus** the vertical height of any rooftop railing.

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A simple reading of subsection .020(E)(2) from start to finish is that it limits the exposed vertical wall elements of a structure (excluding roof architecture) on its downhill side; probably for aesthetic reasons on steeply sloped lots, where there can be quite a difference between average building elevation, and the lowest point of exposure on the downhill side of the structure. Imposing such a limit tends to reduce the apparent size and bulk of a residence when viewed from the downhill side, even where the "main structure" could be built taller, and remain within the 30-foot height limit set forth in subsection .020(E)(1). Appellant's argument to apply the rooftop railing limitation to subsection .020(E)(2) is unreasonable and illogical, as applied to the proposed structure in this case. The reference in subsection .020(E)(3)(b) to the maximum allowed height for the "main structure" should be interpreted to mean the height allowed under subsection .020(E)(1). The proposed rooftop railing height is compliant with the code.

5. The Shoring Wall is Within the Maximum Height for Retaining Walls

Appellant is forced to concede that existing rockeries on the Strand lot are not "retaining walls/rockeries" under the code. That was one of the determinations made in Grove I. See Exhibit 2002 at page 5 of 7 ("... the rocks covering the western slope were placed on the slope as it existed in 1955. The rocks may well be protecting the slope from erosion, but they are not retaining the slope in the normal sense of a typical, near-vertical retaining wall; they are not a wall.").

Appellant's appeal pertains only to new and proposed retaining walls/rockeries. In the course of the City's review of Applicant's application, the City required the Applicant to engage engineers to design a soldier pile shoring wall, for the purpose of stabilizing the slope to the west of the proposed new residence. The Applicant complied, just as she has with every other

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requirement or condition imposed by the City, resulting in a detailed geotechnical report that was reviewed and approved by the City. See Exhibit 2006, pages 15-17 and 27 of 42. These design recommendations were incorporated into the final plan set. See Exhibit 6 at pages 6-10 of 24. During the hearing, a great deal of time was devoted to witnesses examining and testifying about the cross section of the shoring wall that will be exposed upon excavation of the upper rockery. The exposed wall will be only 2 feet in height for most of its length, with an absolute maximum proposed vertical exposure of 6 feet (the maximum allowed vertical height of a retaining wall under the Code).

Appellant made the peculiar argument at the hearing that the Applicant and the City are incorrectly measuring vertical height. Appellant says that the "correct" measurement is to start at an elevation at the bottom of the lower rocks (which have been determined not to constitute a rockery or retaining wall for code purposes), and then to measure vertically up to the elevation of the top of the exposed soldier piles of the proposed shoring wall. Appellant calculates that this approach will result in a vertical measurement of as much as 15 feet – vastly in excess of the 6-foot code limit. See Exhibit 1012 at pages 13-14 of 24.

Appellant's challenge actually does fall within the scope of Grove I, because the design for the installation of the soldier piles was a mandated feature to Applicant's previously approved Critical Area Review 2 permit. The soldier pile installation was elaborately described and explained in the March 21, 2022 geotechnical report that the city reviewed and approved. Exhibit 2006.

Appellant did not leave any viable argument untested in Grove I. But while he complained about fill depth in excess of 72" located east of the rocks that are not a wall or

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rockery, and claimed that the depth of fill was a code violation, he did not offer any credentialed criticism of the portion of the geotechnical report describing the soldier piles and the shoring wall. *Res judicata* precludes relitigation of any issue that was ***or could have been*** litigated in a prior adversarial proceeding between the same two parties. The generic term "res judicata" may include both res judicata or claim preclusion ***and*** collateral estoppel or issue preclusion. Because "res judicata" is a general term, a court may look to both claim and issue preclusion to determine whether there is an "identity" of the actions. See Applicant's prehearing memorandum; Exhibit 2001 at pages 9-10 of 13.

Leaving aside *res judicata* arguments, Appellant's challenge here is unpersuasive anyway. The lower set of rocks is not a retaining wall. The rocks are not immediately below the proposed shoring wall, vertically, but located anywhere from a foot to multiple feet to the west and the south of the proposed shoring wall. Mr. Almeter testified that there will be no physical or mechanical "connection" between the soldier pile shoring wall and the lower rocks. The bank that will be "retained" will be only the soil lying upslope of the exposed shoring wall. You should find that the proposed shoring wall is code compliant.

Conclusion

The appeal should be denied and dismissed. The project is fully compliant. Ms. Strand testified that the application went through as many as seven iterations, to address corrections or additional requirements imposed by the City. Ms. McGuire corroborated that number of revisions.

For all of his energy and determination, Mr. Grove, a computer engineer by profession, is not a surveyor, land use planner, engineer, architect or building official. He could have

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engaged credentialed professionals to pursue each and all of his many challenges and code interpretations, but elected instead to rely on his own observations and his non-credentialed interpretations.

Mr. Almeter, who is a licensed architect and who oversaw work product of subcontracted surveyors, geotechnical engineers and structural engineers, testified that Mercer Island has a reputation for diligence and exactitude in permit processing and review. Ms. McGuire commented that this particular application spanned a lengthier period of review and feedback than is typical. Whether the time span was typical or not, Ms. McGuire testified that the process was just like every other building permit application, where the substance of the completed application was reviewed against applicable provisions of the Code.

Ms. McGuire confirmed that Applicant's representations of such things as average building elevation, and comparisons of existing or finished grade were cross checked by staff, and calculations such as the basement area exclusion and the gross fioor area were checked against the representations in the application. Ms. McGuire, on behalf of the City, agreed with the code interpretations argued above, in resistance to Appellant's various challenges, including the determination of "existing grade" and calculation of average building elevation, the use of interpolation for determining the basement exclusion area, the methodology used under Appendix B to calculate the basement area exclusion, the calculation of vertical height of the east façade of the proposed structure to confirm application of the 7.5-foot setback, the application of MICC 19.02.020(E)(1) to the maximum allowed elevation of a rooftop railing, and the application of the 72" maximum height of a retaining wall to the exposed portion of the proposed shoring wall.

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The City put the Applicant through her paces, carefully reviewing everything that was submitted and meticulously requiring adherence to every applicable section of the code. Although designed to take advantage of code maximums, the Application does not cut any corners or propose to "get away" with any departures from code requirements. And the Applicant never fought with the City over any feedback that required corrections, or new work product, even when such decisions forced the Applicant to endure delay and to incur added expense.

The Appellant has fully exercised his due process right to challenge the issuance of the permit, but he has not carried his burden of proof. The appeal should be denied.

DATED this 17th day of May, 2024.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By _____

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DECLARATION OF SERVICE

I, David Lawyer, hereby declare under penalty of perjury under the laws of the State of Washington, that on May 17, 2024, I caused to be served true and correct copies of the foregoing on the following parties and/or counsel of record named below in the specific manner indicated:

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