BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

IN RE: NOTICE OF DECISION: FILE NO. 2207-019 DANIEL GROVE, Appellant, v. CITY OF MERCER ISLAND, Respondent.	Case No. APL24-002 APPELLANT DANIEL GROVE'S MOTION FOR RECONSIDERATION

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I. RELIEF REQUESTED

Appellant Mr. Daniel Grove ("Mr. Grove") agrees with the Hearing Examiner's ("Examiner") Decision issued on June 10, 2024 (the "Decision") to remand the Building Permit 2207-019 (the "Project") to the City of Mercer Island ("City") for correction. He respectfully disagrees, however, with the conclusion that the Project should not be remanded to also fix the Project's incorrect calculations of Gross Floor Area and Basement Exclusion Area. Allowing the Project to proceed without correcting these errors (1) contravenes the City's 2017 code amendments, (2) creates a dangerous precedent for future developers to leverage the City's inconsistent application of the relevant building standards, and (3) negatively contributes to the "rapidly changing character" of the City's neighborhoods that the relevant code amendments were specifically enacted to address. Mr. Grove respectfully asks the Hearing Examiner ("Examiner") to reconsider portions of the Decision on those issues under Section 3.40.110 of the Mercer Island City Code ("MICC"), and City of Mercer Island Hearing Examiner Rules of Procedure ("ROP") 504.

II. LEGAL AUTHORITY

MICC 3.40.110 and ROP 504 authorize the Examiner to reconsider a final decision when a motion requesting the same is filed within 10 days of the date of the final decision. Reconsideration is appropriate when the final decision (1) was based in whole or in part on erroneous facts or information, (2) the decision failed to comply with existing laws or regulations, or (3) there was an error in procedure. MICC 3.40.110.A. Mr. Grove respectfully requests reconsideration of the Decision pursuant to the first and second prongs: erroneous facts and information and failing to comply with existing laws and regulations.

III. SUMMARY OF RELEVANT FACTS

A. Appeal Background & Procedural Posture

On March 6, 2024, Mr. Grove appealed the Project for the demolition and rebuild of Applicant Ms. Dorothy Strand's ("Ms. Strand") home located at 6950 SE Maker Street, in the City

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of Mercer Island, Washington. As the Examiner has agreed, the Project was incorrectly approved and violates the text of the MICC. On June 10, 2024, following a public hearing on May 9, 2024 and the parties' submitted closing statements, the Examiner rendered a Decision and remanded two out of the five issues on appeal back to the City for correction.[1] While Mr. Grove agrees with the Decision to remand the Building Permit to the City, he respectfully requests that it also be remanded on Issues 1 and 2 in the appeal, which are:

1. that the existing grade for the Project's proposed structure is determined incorrectly, which results in a larger-than-permitted basement exclusion area (and hence a house with greater square footage) ("Issue 1"); and

2. that the finished grade for the Project's western basement wall is determined incorrectly, which also results in a larger-than-permitted basement exclusion area (and hence a larger than permitted house) ("Issue 2").

B. Background Pertaining to New Evidence

On October 3, 2023, Mr. Grove filed a request under Washington's Public Records Act (#23-697) for all records created after June 1, 2023, and relevant to Building Permit 2207-019 and/or the subject property. Declaration of Daniel Grove ("Grove Declaration" or Grove Decl.") ¶ 8. The City returned roughly a few dozen documents and closed the request on October 4, 2023. On March 25, 2024, Mr. Grove filed a broader request (#24-260) for documents pertaining to the property's façades. Id.

From April 22 to May 3, 2024, the City returned roughly 1,000 documents, including 504 documents returned just six days before the May 9, 2024 hearing in this matter. Id. Within these productions were documents responsive to Mr. Grove's October 3, 2023 request (and, as further detailed below, directly relevant to these issues in this appeal) but previously not produced to Mr. Grove. Id. Given the volume and timing of the latter production, Mr. Grove did not reasonably have sufficient time to review and include relevant documents in the exhibits for the May 9, 2024

[1] After remand, it is anticipated that the City will correct the Project's errors and, as necessary, the Examiner may evaluate whether the City's corrections are sufficient. Pursuant to MICC's regular procedures, the applicant will need to seek approval on any revised plans and participate in the ordinary approval process (including public notification). Upon its approval of any revisions, the City will file an appealable public notice of decision.

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hearing. Id. Mr. Grove only discovered the contents of these documents after the hearing had passed. Id.

IV. STATEMENT OF ISSUES

1. Should the Examiner reconsider Issue 1 because the Decision did not correctly apply the conclusion of a controlling administrative interpretation? *Yes.*

2. Should the Examiner reconsider Issue 2 because the Decision used the wrong grade to determine the Project's west basement wall grade and did not measure the external stairwells as separate portions for basement ground coverage calculations? *Yes.*

V. EVIDENCE RELIED UPON

Mr. Grove relies on the Grove Declaration, attached to this motion, along with the accompanying exhibits attached and other evidence already admitted in this matter.[2] The Grove Declaration includes the following exhibits that are not yet part of the record, which Mr. Grove now submits as additional evidence to aid the Examiner's reconsideration of Issues 1 and 2:

1. Site plans for other building permits, Grove Decl. Exs. A–D.

2. 2022 City planner email exchange on the inadequacy of Ms. Strand's submitted information in support of the Project, Grove Decl. Ex. F.

Washington courts have held that city and municipal decision-making bodies like the Examiner, which have proceedings similar to judicial proceedings, are quasi-judicial bodies. See Raynes v. City of Leavenworth, 118 Wn.2d 237, 243, 821 P.2d 1204 (1992). Washington courts have also found that quasi-judicial bodies may reference Washington court rules, including the Washington civil rules, in their proceedings. See, e.g., Crosby v. Cnty. of Spokane, 137 Wn.2d 296, 308, 971 P.2d 32 (1999) (referencing civil rules in a quasi-judicial planning board decision).

Here, Washington Civil Rule ("CR") 59, which pertains to motions for reconsideration, is instructive to the Examiner on considering new evidence at this posture. Specifically, CR 59 states,

[2] Citations to "Ex." and "Exs." refer to exhibits admitted by the Examiner at hearing. Perkins Coie, LLP transcribed the video recording of the May 9, 2024 open record hearing, and attached that unofficial transcription as Appendix A to Mr. Grove's written Closing Argument and referenced in the Decision. Citations to that transcript are designated as "TR."

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"Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial." See also Martini v. Post, 178 Wn. App. 153, 162, 313 P.3d 473 (2013) (quoting Chen v. State, 86 Wn. App. 183, 192, 937 P.2d 612 (1997) (overturned on other grounds)) ("Generally, nothing in CR 59 prohibits the submission of new or additional materials on reconsideration").

The additional evidence that Mr. Grove now submits could not have been identified via reasonable diligence at the May 9, 2024 hearing for two reasons. First, the 2022 email (Ex. F to the Grove Decl.) was a part of a substantial and belatedly produced batch of documents from the City that Mr. Grove could not reasonably review, identify, and attach as an exhibit in time for the May 9, 2024 hearing. See Grove Decl. ¶ 8. A cursory review of this belatedly produced document shows that Ms. Strand was consistently failing to provide the City with "information to sufficiently determine existing grade as required to determine Gross Floor Area basement exemptions and maximum downhill façade height". In fact, in June 2023, just four days before the City was set to review her application per MICC 19.15.100(D), the City contemplated whether to close the application altogether in view of the missing information. Grove Decl., Ex. F (June 12, 2023 Email on Insufficient Information). Stated differently, this document flatly contradicts the City planner's sworn testimony, under oath, that Ms. Strand was "fairly cooperative with the city's requests and compliant with the city's requirements." TR at 70. This email was not submitted as an exhibit for the May 9 hearing, and its exclusion has bearing on the Decision for Issues 1 and 2 and independently is grounds for reconsideration.

Second, the Decision introduced the novel idea that external window wells should not be calculated as separate portions for determining basement area exclusion—an argument that was not presented at the May 9, 2024 hearing. The site plan exhibits (Ex. A–D to the Grove Decl.) are examples of City building permits that **did** calculate window wells as separate portions and contradict the Decision's finding. For these reasons, the Examiner should accept and consider the additional evidence in reconsidering Issues 1 and 2.

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VI. POINTS FOR RECONSIDERATION

Reconsideration is appropriate when the final decision (1) was based in whole or in part on erroneous facts or information, (2) failed to comply with existing laws or regulations, or (3) there was an error in procedure. MICC 3.40.110.A. Each of these grounds alone—and certainly together—support reconsideration in this case.

A. Grounds for Reconsidering Issue 1

1. The Examiner Substituted His Judgment for the Expert's on Several Material Issues

The City retained Mr. James Harper ("Harper") as an expert to evaluate Building Permit 2207-019 and review three available surveys and public comments to determine how to calculate existing grade. The Examiner should not have contravened Harper's expert opinion that the Terrane survey is not a basis for interpolation. The Examiner should have found that administrative interpretation from the Development Services Group ("DSG"), #DCI12-004 ("12-004") Conclusions 1 and 2 were applicable. And, for those same reasons, the Examiner should not have applied 12-004 Conclusion 3 (which permits interpolation in some cases, but, per Harper, not in this one).

2. 12-004 Must Be Read as an Integrated Whole, with Each of Its Conclusions Playing Distinct, but Interdependent Roles

All parties agree that administrative interpretation 12-004 is dispositive. That interpretation provides guidance on how "to establish existing grade, which is the grade before development[,]" for purposes of determining Basement Exclusion Area. See Ex. 90 at 1. 12-004 came to four conclusions, three of which are relevant to this motion:

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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 of 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.

See id. at 2 (emphasis added).

3. The Decision on Issue 1 Erred in at Least Five Ways.

The Examiner agrees that there is not a pre-existing survey for the Project, and that Ms. Strand commissioned the Terrane survey for this Project. Decision at 19. Despite this, the Decision erred in the following five ways in determining Issue 1:

a. The Examiner Permitted the Terrane Survey to be Used as a Basis for Interpolation but Should Have Followed the Expert's Conclusion Regarding the Terrane Survey.

The Decision contradicts Harper's expert conclusion and appears to rely on facts not in the record. In finding that the Project **can** use the Terrane survey's spot elevations and site contours to calculate existing elevations, the Decision did not consider Harper's guidance that the Terrane survey **cannot** be used for such purposes. Further, the Decision provides no rationale for deviating from Harper's determination—particularly in light of the record's uniform consensus that Harper's decision should guide the City's analysis of existing grade. McGuire Testimony, TR at 48. The Examiner should reconsider Issue 1 in light of Harper's conclusion that the Terrane survey cannot be applied to speculatively calculate—that is, to interpolate—the Project's existing elevations.

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b. The Examiner Should Have Followed the Expert's Opinion and Applied Conclusion 2 to Determine Existing Grade for Calculating the Basement Exclusion Area.

The Decision erred by not applying Harper's expert conclusion on the very issue for which the City hired him. It cannot be overemphasized that the City retained Harper to specifically provide guidance on how to evaluate existing grade **for this project**. See Ex. 83. Harper not only reviewed the three surveys applicable to the Project, but also reviewed the controlling administrative interpretation, 12-004. Harper unambiguously explained that Conclusion 2 applied to determining existing grade on this site and in opining that the interpolation described in Conclusion 3 was inapplicable here. Nothing in the record supports the Decision's conclusion that the City's **own expert's findings** cannot be applied here.

In fact, in Mr. Grove's appeal on the Project's Critical Area Review 2 decision, dated October 3, 2023 ("Grove I"), the City itself adopted these very conclusions, specifically, Harper's determination that 12-004 Conclusion 2 should be used on the site: "Existing Grade on the site has been determined to be the current grade on site after review by a qualified expert, and in accord with prior practice of the City and two prior Administrative Interpretations." Ex. 82; Ex. 1002 at 6; 8. Indeed, the City succeeded in bringing this exact argument in Grove I to win summary dismissal. The City cannot argue both ways, especially after the Hearing Examiner in Grove I endorsed the City's views. See Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538, 160 P.3d 13 (2007) (judicial estoppel "precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position"); State v. Dupard, 93 Wn.2d 268, 274, 609 P.2d 961 (1980) (judicial estoppel and res judicata apply to quasi-judicial bodies). Because the Examiner did not apply 12-004 Conclusion 2 to the Project, Mr. Grove respectfully asks that this issue be reconsidered.

c. The Examiner Erred in Contravening the Expert's Opinion that Conclusion 2 Should Be Used (Rather Than Interpolation as Specified in Conclusion 3).

Harper was retained to review Conclusion 3 in 12-004 and, significantly, "**[p]rovide a**

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determination of the existing grade for the Project, as defined in MICC 19.16.010." See Ex. 83 (emphasis added). In other words, the City relied on Mr. Harper to decide on the correct existing grade that should be used in calculating Basement Exclusion Area.

In Harper's report to the City's planner for Community Planning & Development, Ms. Molly McGuire ("Ms. McGuire"), he determined that the three surveys he reviewed "do not serve as a 'snapshot' of original grade conditions and cannot be relied on for interpolation or other such formulaic determinations of any *past, original grade*." Ex. 82 at 1 (emphasis in original). Harper then concluded that "*existing* grade, for the purposes of permitting considerations, should be the surface elevation immediately adjacent to, or touching a point on the exterior wall of a proposed structure, in accordance with Conclusion 2 of Administrative Interpretation 12-004". Id. at 2 (emphasis in original). In other words, Harper determined that "*existing* grade" should be determined using Conclusion 2 of 12-004, as opposed to Conclusion 3, since interpolation is not appropriate given the lack of evidence of any original grade:

> Therefore, considering the lack of concrete evidence of any original grade which may have preceded the current existing conditions, it is my opinion that *existing* grade, for the purposes of permitting considerations, should be the surface elevation immediately adjacent to, or touching a point on the exterior wall of a proposed structure, in accord with Conclusion 2 of Administrative Interpretation 12-004.
>
> Thank you,
>
> BUSH, ROED & HITCHINGS, INC.
>
> 
>
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Id. (highlighting added). To conclude otherwise is a blatant error.

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d. Notwithstanding 12-004 and Harper's Determination, the Examiner Used Interpolation to Determine Existing Grade and Declined to Follow Conclusion 2.

The Decision found that the ground elevation beneath an existing basement/ground floor concrete slab is "not relevant; it does not represent a site's grade." Decision at 18. The Decision also asserted that Mr. Grove "mis-applied" Harper's position on interpolation, as Harper surveyed "parcels to the north and south of a parcel had been surveyed, but the subject parcel had not been surveyed" and that because there is a "detailed, current survey of the site by a licensed professional (the 2022 Terrane survey, Exhibit 6r, PDF 4) with many spot elevations around the walls of the existing structure provided," that using "those spot elevations and site contours to determine existing elevations of the grade around the perimeter of a new structure on that site is eminently reasonable." Id. at 18–19. Because Harper determined that 12-004 Conclusion 2 applies to situations like this, the Decision erred by using interpolation, and should be reconsidered on that additional basis.

e. The Examiner Erred by Treating 12-004 Conclusions 1 and 2 as Independent of Each Other.

The Decision proceeds as though that 12-004 Conclusions 1 and 2 are independent. Yet, they are indisputably interlinked: Conclusion 1 lists a rule to produce an output based on an unknown: it instructs how to determine elevation (by using the existing grade underlying the existing structure as elevation). Conclusion 2 then lists another rule to produce a different output based on a different unknown—it instructs how to determine existing grade to compute basement exclusion area (by using the elevation of the surface of the earth immediately adjacent to the proposed structure). Both of these conclusions operate when a definitive prior survey or other material evidence is unavailable. Importantly, Conclusion 2 builds on Conclusion 1 insofar as the "elevation" to be used as an "input" in Conclusion 2's calculus is generated by the instruction of

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Conclusion 1.[3] Conclusion 3 operates only in cases in which a current survey exists. However, the interpolation at the core of Conclusion 3 cannot be used here, as the City's own expert, Harper, directly concluded. See Ex. 82 at 1 (current surveys "do not serve as a 'snapshot' of original grade conditions and cannot be relied on for interpolation or other such formulaic determinations of any *past, original grade*." (emphasis in original)).

Specifically, 12-004 Conclusion 1 defines the **elevation** of the existing grade when there is an existing structure (i.e., the grade **underlying** the existing structure), and 12-004 Conclusion 2 then **uses that elevation** to provide the grades where the surface of the earth touches the proposed structure. In other words, 12-004 Conclusion 2 must be read together with 12-004 Conclusion 1 to make sense: the output of Conclusion 1 serves as an input for Conclusion 2. The parts must be read together in order to give them their full effect. See JP Morgan Chase Bank, NA v. Unknown Heirs of Porter, 16 Wn. App. 2d 591, 597, 481 P.3d 1114 (2021) (a statute's interpretation "must construe the statute as a whole, giving effect to all of the language used and interpreting provisions in relation to one another"); Colby v. Yakima Cnty., 133 Wn. App. 386, 389–390, 136 P.3d 131 (2006) (when interpreting a statute, "the statute must be read as a whole, giving effect to all its terms and harmonizing related provisions wherever possible."); see also Wiggers v. Skagit Cnty., 23 Wn. App. 207, 212, 596 P.2d 1345 (1979) (interpretations of zoning ordinances "are to be construed as a whole and any unreasonable construction must be rejected.").

Thus, the Decision's finding that 12-004 Conclusion 1 is an "outlier" (which is not supported by any analysis, explanation, or evidence) glosses over the clear connection between 12-004's two conclusions, and 12-004 Conclusion 2's necessary dependence on 12-004 Conclusion 1. The Examiner should therefore reconsider Issue 1 to correctly read Conclusions 1 and 2 in a manner that properly addresses their interconnectedness and provides meaning to each of the respective provisions.

[3] The terminology in 12-004 is confusing, but conceptually referring to "existing grade" in Conclusion 1 as "underlying grade" makes the distinction between the two Conclusions clearer.

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B. Grounds for Reconsidering Issue 2

1. MICC Requires Using Points Along the Wall Line to Determine Surface Grade.

No party disputes that Issue 2 pertains to determining the wall segment coverage of the Project's west basement wall. Decision at 18. The MICC defines "Wall Segment Coverage" as "**the portion of an exterior wall** below existing or finished grade, whichever is lower. It is expressed as a percentage." Id. (emphasis added). MICC 19.16.010 defines "existing grade" as "the surface level at any point on the lot prior to alteration of the ground surface" and "finished grade" as "the surface level at any point on the lot at the conclusion of development." Because Wall Segment Coverage is the "portion of the exterior wall below finished or existing grade[,]" it refers to the portion of the wall below the lower of the two grades at every point along the wall. This is the mean portion of the wall below the lower of the grades.

2. Notwithstanding the MICC and Relevant Evidence, the Examiner Used the Yard's Grade to Determine Finished Grade and Declined to Treat the Stairwells as Separate Portions for Basement Ground Coverage Calculations.

The Decision found that the "only part of the [basement floor area] exclusion in dispute is the depth that the basement wall is buried along the west wall of the proposed structure," and that Mr. Grove is incorrect in asserting that the Project's two exterior stairwells must be treated as separate basement wall portions. Decision at 19. The Decision then used the grade of the west side of the yard to determine the finished grade and stated that, "[i]f exterior stairwells were treated as separate segments for basement ground coverage calculations, then one would logically have to also treat exterior window wells as separate segments, even if the grade never changed as it passed them. Such an interpretation is unreasonable." Id.

3. Evidence in the Record Demonstrates that Exterior Elements Like Stairwells and Window Wells Must be Treated as Separate Portions.

The Decision does not consider the evidence showing that the City's practice **precisely** requires what the Decision characterized as an "unreasonable" treatment of exterior window wells,

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as memorialized by Ms. McGuire's September 27, 2022 email. Ex. 1013 at 1. The Examiner should not substitute his view on treating exterior structures (like stairwells or window wells) for the City's.

4. The Decision on Issue 2 Erred in At Least Three Ways.

a. The Decision Ignores the Averaging Calculation Required in Title 19, Appendix B.

First, the Decision ignores Mr. Grove's principal argument on Issue 2: the City used a median elevation instead of the **mean** elevation, which is the result of the averaging system that MICC 19.B requires. Grove Decl., Ex. E (Mr. Grove's Closing Argument) at 12–14. The Decision commits legal error by failing to properly apply the "averaging system" that "shall be used" in instances such as this one "where the existing or finished grade contours are complex[.]" Id. The record evidence plainly establishes that the City did not utilize any averaging system in calculating Wall Segment Coverage, and its failure to do so warrants remand and correction. See Ex. 1012 at 8; Ex. 6 at 2; Grove Testimony, TR at 9. Simply put, the median and the mean are not the same in this case. Grove Decl., Ex. E at 14.

b. The Yard's Grade Should Not be Used to Determine the West Basement Wall's Grade.

Second, the Decision's use of the yard's grade to determine finished grade misapplies the law. MICC 19.16.010's definition of "existing grade" and "finished grade" both use the "surface level **at any point on the lot**" (emphasis added) and the Mercer Island Development Code's definition of "Wall Segment Coverage" specifically refers to the "portion of an exterior wall" below the existing or finished grade. These definitions do not allow any choice of where the surface level is measured—it **must** be measured at all points **along the wall line**, rather than at points several feet away. MICC 19.B; Decision at 18. Allowing points several feet away from the wall to be used to determine grade could theoretically lead to an outcome where an exposed basement encircled with a walkway could still have a 100% basement exclusion area—an outcome

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that MICC 19.B surely did not anticipate. Mr. Grove respectfully asks the Examiner to reconsider Issue 2 and determine grade by using points measured along the wall line, rather than points several feet away from the wall.

c. Exterior Elements Like Stairwells and Window Wells Should be Treated as Separate Portions.

Third, the Decision erred by not considering evidence showing that the City has a course of treating external elements as separate portions, particularly because the evidence is material to the Decision's finding on Issue 2. In fact, the evidence on record and additional evidence both show that the City **requires** building permit applicants to treat these external elements as separate portions, directly contradicting the Decision's finding on Issue 2. For example, the City's communications about a separate site reflect its requirement that applicants factor in window wells (included in the record as Exhibit 1013). In an email from Ms. McGuire dated September 27, 2022 regarding Building Permit 2205-096, the City states: "I have also confirmed that if the window well creates a lower finished grade than the existing grade, we would take the basement exclusion calculations from this grade where the bottom of the wall meets the ground. Meaning that if 0% of the basement is below grade at the window well, there would not be any exclusion for that portion of the basement." Ex. 1013 at 1. This evidence also cuts against Ms. McGuire's credibility, as Ms. McGuire reviewed and approved the Project and proffered the very testimony the Decision apparently relied upon. TR at 61. This credibility issue is an independent reason to reconsider Issue 2 since Ms. McGuire's testimony should not be used to refute Mr. Grove's prima facie evidence on this issue.

Additional evidence from Building Permit 2205-096 shows that in a site plan that predated Ms. McGuire's email (Site Plan for 2205-096, May 4, 2022, p. 5), Wall "C" did not include the window well in assessing grade. Declaration of Mr. Grove ("Grove Decl."), Ex. A (2205-096 May 4, 2022 Site Plan) at 5. By comparison, the revised site plan dated October 19, 2022 (after Ms. McGuire's email) reflected a change in the finished grade of Wall "C" to account for the lower

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finished grade of the window well, resulting in a lower square footage of basement exclusion area. Grove Decl., Ex. B (2205-096 October 19, 2022 Revised Site Plan) at 5. This exchange between the City and an applicant reflects the process working properly, and the wall segment coverage being correctly computed. Mr. Grove has identified several other building permits that similarly accounted for the window well's lower finished grade in the basement exclusion calculation. See Grove Decl., Ex. C (2210-198 Site Plan) at 8; 11; Ex. D (2210-120 Site Plan) at 18.

In sum, the evidence shows that the site plan for 2205-096 was changed **specifically** to reflect the different grade for exterior window wells and the site plans for available for building permits 2210-120 and 2210-198 also show that the City routinely calculates a different grade for exterior window wells. Given this evidence, wall segment coverage must be measured along the basement wall, using an averaging system as defined in MICC 19.B because, like window wells, the two external stairwells at issue must be included in basement wall segment coverage calculations. The practice has clearly been to account for window wells and similar elements rather than ignoring them as the Decision suggested was more reasonable. Decision at 19. Mr. Grove requests the Examiner review this evidence and reconsider the determination made as to Issue 2.

VII. CONCLUSION

Mr. Grove respectfully requests the Examiner reconsider its June 10, 2024 Decision as to Issues 1 and 2.

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Respectfully submitted: June 20, 2024

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By: */s/Zachary E. Davison*

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CERTIFICATE OF SERVICE

On June 20, 2024, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

David J. Lawyer Inslee Best Doezie & Ryder, P.S. 10900 NE 4th Street, Suite 1500 Bellevue, WA 98004 dlawyer@insleebest.com *Attorneys for Applicant Dorothy Strand*	___ Via hand delivery ___ Via U.S. Mail, 1st Class, Postage Prepaid ___ Via Overnight Delivery ___ Via Facsimile X Via Email
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington, on June 20, 2024.

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