

EX. 1116  
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Hearing Examiner Galt

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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. 3 OF 3)**

NOTE: THIS DOCUMENT IS A CONTINUATION OF THE DOCUMENTS TITLED

- "2021 - 11.15.2021 - APPL - 19-002 - PLEADING V.FIN.DOCX"
- ;AND
- "EX. 1077 - PETITIONER MR. SHANE MILLER PLEADING OUTLINE VOLUME 2 OF 2"

I. Section 1 - Legacy timber landscaping

249. See Ex. 1078 - legacy timber landscaping

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1 250. See Ex. 1079 – new rockery facing landscaping  
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4 251. See Ex. 1080 – Before and after, side-by-side comparison legacy timber landscaping and  
5 new rockery facing landscaping  
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8 252. From Exhibits 1078 and 1080 it is observed the legacy timber is creosote-soaked, which  
9 is not ideal at or near the sensitive marine environment. Removal made sense.  
10  
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13 253. From Exhibits 1078 and 1080, it is also observed that the small rock facing is not greater  
14 mass than the legacy timber facing. As a result, there cannot be a net increase in surcharge of  
15 the bulkhead wall, which is the base of the slope. Also, the bulkhead wall is comprised of  
16 approx. 4-man stones weighing approx.. 5,000 pounds each. It is incorrect that the subject  
17 rocks could cause an increase in surcharge of the bulkhead and cause its failure. Impossible.  
18 Not even close.  
19  
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23 254. From Exhibits 1078 and 1080, it is observed the rockery landscaping is in the same  
24 location and the same size, shape and mass of the predecessor, legacy timber landscaping  
25

252. See Ex. 1081 – “TOPOGRAPHIC SURVEY – LOT B – GEORGE LEWIS SP” dated  
October 11, 2001. Shows legacy timber landscaping on the survey.

253. See Ex. 1082 – same as Ex. 1081 but with handwriting added. Shows legacy timber  
landscaping on the survey and says specifically “4’ RET WALL” at the location.

254. Records like this one are the reason that Ms. Nicole Guadette wrote to Ms. Norine  
Allerdice on December 5, 2019 saying,

*“However, upon review of the [sic] their code enforcement file, I learned that they are  
grandfathered because they previously had a retaining wall in the same location. So,  
please route the project for review”*

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1 See Exhibit 1033 – Email Ms. Guadette to Ms. Allerdice re: “GRANDFATHERED”  
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5 Section II. Legacy “alcove”  
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9 254. City Staff have alleged there was not previously an “alcove”; however, this is incorrect.

10 For example evidence:  
11

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13 255. See Exhibit 1083 timber shown at 90-degree angle where forms an alcove.  
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16 256. See Ex. 1084 with tree drawn and marked “LAUREL” inside the 90-degree angle area  
17 that forms the alcove around the tree location. It is likely the 90-degree angle that forms the  
18 alcove was originally shaped in order to form around this laurel tree location forming a partial  
19 planter box around the south and east sides of the tree location.  
20  
21

22  
23 256. See Exhibit 1085 photo with kayak “cantilever” over the “alcove”  
24

25  
257. See Exhibit 1086 topo survey drawing, which shows the original contour bending into the  
“alcove” location

258. See Exhibit 1087 topo survey, which shows a tree at the “alcove” location and the tree  
location “24 ALP” with the tree likely representing the original reason for the alcove shape

259. See Exhibit 1088 professional landscape plan prepared by Washington State Licensed  
Architect Mr. Michael Lee. Drawing is from ~2015 and therefore predates February 2018  
timeframe, which also illustrates the alcove location, shape and size at that time ~2015.

III. Dirt in Lake

260. See Exhibit 1089 photo from City Records dated 2/2/2018 12:01. This picture is taken  
by Ms. Jimmi Serfling at the time she posted the Stop Work Order. The picture is intended to

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1 suggest that Alliance Landscape Services was working at my property. However, this is  
2 incorrect. Alliance is the contractor that was doing trenchless drilling into the lake in order to  
3 install an illegal septic system that poured wastewater into the lake for approx. 4 years. This  
4 was needed for 7703 and 7701 WMW because Mr. Gartz damaged the sewer lines when pile  
5 driving at or near the sewer line location. The photo shows PVC pipe on the roof rack of the  
6 truck. This pvc pipe was being installed underground and into the lake for discharge of the  
7 septic system waste water. This drilling into the lake is likely what caused the soil in the lake.  
8 I did not put "two and two together" until now because I just now saw this photo which made  
9 me realize Alliance's truck was there that day and seeing the PVC pipe and knowing that is  
10 the timing of the septic system install by Alliance. I have never hired Alliance for anything;  
11 only Mr. Gartz has hired Alliance.  
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19 From my experience living next to Mr. Gartz for Approx. 16 years from 2006 to 2021, it is  
20 precisely the M.O. of Mr. Gartz to drill a bunch of dirt into the lake and blame it on me. For  
21 example, see Ex's 1001-1012.  
22  
23  
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This issue involving Mr. Gartz' lack of credibility is precisely why Exhibits 1001 - 1033 were  
originally offered to Mr. Hearing Examiner. It is beyond unfortunate that these Exhibits were  
denied admission and done so before Mr. Hearing Examiner had begun review of the 1<sup>st</sup> of 3  
pleading summary declarations submitted, which explained in detail the strong relevance of  
Exhibits 1001 - 1033. These Exhibits would have helped Mr. Hearing Examiner understand  
the pattern of similar behavior by Mr. Gartz.

In fact, Exhibit 1010 shows Ms. Van Gorp making the written finding that Mr. Gartz is not  
credible in her view,

*"My experience in the last few months is that Miller tends to be truthful/correct and Gartz  
does not....but that is anecdotal"*

*- Ms. Alison Van Gorp email to Mr. David Henderson, Code Enforcement Officer  
(July 8, 2020 9:25 a.m.)*

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4 IV. Slope  
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7 260. See Exhibit 1090 - March 6, 1984 letter from Mr. George Lewis to Mr. Robert Rohrback.  
8 The issue of the slope being less than 40% is well-litigated in City Records, likely up to and  
9 including Superior Court litigation, and yet the City cannot accept that the slope is less than  
10 40% despite the prior litigation. Note the last sentence, *"I hope this ends this foolishness"*.  
11 (note: it did not end, including after 38 years on through to the year 2022 and ongoing...)  
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16 V. 2005 As-built Plans  
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19 261. During Mr. Don Cole's oral testimony on March 29, 2022 during open hearing, Mr. Cole  
20 claimed to have not reviewed or been involved in the as-built, engineered plans review that  
21 were revised by AMEC and AES. However, this is incorrect. See Exhibit 1091 - January 24,  
22 2005 letter from Mr. Alan D. Foltz of Waterfront Construction. Especially the 5<sup>th</sup> paragraph,  
23 which reads:  
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*"Please note that the revised drawings and reports had been submitted to Mercer Island  
and reviewed by Don Cole, as noted on the July 16<sup>th</sup> report attachment."*

262. See Exhibit 1092 – Email from Engineer Mr. Bruce Blyton of AES Geotechnical agreeing  
to provide the subject plans

263. See Exhibit 1093 – Email from Ms. Misty Green cc: to Mr. Bruce Blyton,

*"Attached are the plans and the archive of the documents we have on file."*

264. See Exhibit 1094 PP 1-3 – Plans per Mr. Bruce Blyton of AES Geotechnical

VI. Code-type Issues

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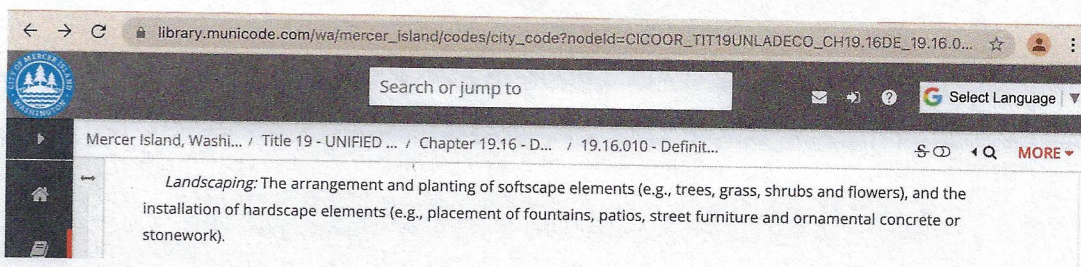
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3 265. During Mr. Gareth Reese’s oral testimony on March 29, 2022 during open hearing, Mr.  
4 Reese was asked by Ms. Keefer whether the work “ornamental” appears in the code. Mr.  
5 Reese’s response was, “no” indicating that “ornamental” does not appear in the code.  
6 However, this is incorrect.  
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10 266. See Exhibit 1095 - Text search of the city code online shows that the word “ornamental”  
11 appears in the code 14 times.  
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14 266b. In fact, the word “ornamental” appears in the City Code Definition of Landscaping, and  
15 is highly contextual to the current use case, “ornamental concrete or stonework”. That is, the  
16 subject matter hearing IS VIRTUALLY ENTIRELY TO DO WITH ornamental stonework.  
17  
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19  
20 See Exhibit 1096 – Code Definition of “Landscaping: “Landscaping: The arrangement and  
21 planting of softscape elements (e.g. trees, grass, shrubs and flowers), and the installation of  
22 hardscape elements (e.g., placement of fountains, patios, street furniture, and ornamental  
23 concrete or stonework)  
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Figure 1.0 – City Code Excerpt – Definition of Landscaping



266c. Mr. Reece also testified as to GIS Mapping and Disclaimers. See Exhibit 1097 - Mr. Bob Winters email dated November 3, 2021,

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1 "I can only comment on the steep slope function of the City's GIS. My experience is that  
2 the GIS data is derived from the best available information. However, if a steep slope  
3 determination is made without benefit of an accurate and current ground topographic  
4 survey, such determination can't be defended."  
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9 266d. Mr. Reese also argued re: Exhibit 1056 - letter dated October 26, 1983 titled, "RE:  
10 Landscaping Plan of Lewis Home" is somehow "not a Landscaping Plan". The document is  
11 titled Landscaping Plan and describes in detail a Landscaping Plan. There is no other  
12 Landscaping Plan in the record. That document is a Landscaping Plan and the Landscaping  
13 Plan.  
14

15 266e. See Exhibit 1098 PP 1-34 - emails from February 2018. (Note: for brevity, addition of  
16 comment re: Exhibit 1098 will be made orally during the open hearing and not in writing herein)  
17

18 267. Ms. Keefer questioned me about the recording of Mr. Bob Winters signed and stamped letter  
19 dated October 18, 2021. See Exhibit 1099 - Stewart Title Correspondence re: Stewart Title  
20 Recording the Winters Document  
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23 VII. PARTIAL LIST of Geotechnical Reports  
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268. - See Exhibit 1100 - Earth Consultants - August 26, 1977

269. - See Exhibit 1101 - Earth Consultants - August 3, 1983

270. See Exhibit 1102 - Cascade Geotechnical, Inc. - June 4, 1991

271. - See Exhibit 1103 - Creative Engineering Options, Inc. - Form - September 16, 1991

272. - See Exhibit 1104 - Creative Engineering Options, Inc. - Report - September 16, 1991

273. - See Exhibit 1105 - AMEC - June 22, 2001

274. - See Exhibit 39 - AMEC - January 14, 2002

275. - See Exhibit 1106 - Associated Earth Sciences, Inc. - Report 7703 WMW - April 17, 2007

276. - See Exhibit 1107 - Liu & Associates, Inc. - Report 7703 WMW - September 1, 2011

277. See Exhibit 1108 - Batterman Geotechnical Consulting, PLLC - Reoprt 7703 - January 11,  
2013

278. - See Exhibit 1109 - Shannon & Wilson, Inc. - Report 7703 WMW - March 25, 2015

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279. See Exhibit 10 – Cobolt Geotech Report – February 9, 2018

280. See Exhibit 1110 – Shannon & Wilson, Inc. – Report 7703 WMW – March 27, 2019

281. See Exhibit 1111 – Shannon & Wilson, Inc. – Report 7703 WMW – February 27, 2020

282. See Exhibit 1112 – Emails Ms. Van Gorp to Mr. Gartz. Mr. Gartz is pretending to be the owner of 7703 WMW. Mr. Gartz sold the property nearly 1 year ago during Jul or Aug of last year. It is improper of him impersonating acting as though he is the current owner to Ms. Van Gorp.

283 – See Exhibits 1113 and 1114 – Ms. Analisa Cartwright, saying about me,

*“shane miller is a pain in my ass”*

; and

*“shane miller is going to be a pain in my ass”*

on the public record is improper. This email is an example of the personal bias and vindictiveness against me that is shown to exist at all levels of City Hall staff. This is what this “code case” is all about...punishing shane miller.

284 – See Exhibit 1115 - MLS listing advertisement for sale of home w/ exterior photo ~1989 slopes and plateaus same as current in line w/ both Affidavits from Mr. George Lewis.

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 APRIL 13, 2022 [Date].

Shane Miller

*Shane Miller*

(printed name) Signature