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**STATE OF WASHINGTON  
COUNTY OF KING**

In re:

SHANE MILLER,

Appellant

vs.

CITY OF MERCER ISLAND,

Respondent

CASE: APL 19-002

REQUEST FOR CONTINUANCE /  
RESCHEDULING OF HEARING  
DATE

Dear Mr. Hearing Examiner:

I feel that I have no choice but to bring this Request for Continuance / Rescheduling of the October 28 Hearing Date due to:

1. Mercer Island City Manager, Ms. Jesse Bon, made a promises via email on August 23, 2021 that information would be provided to me “expedited” by City Attorney, Mr. Bio Park. As of today, October 18, 2021, I do not have most of that information. See Exhibit A.

*“I anticipate the City Attorney Bio Park will be contacting you soon regarding the anticipated timeline for a discussion on the voluntary compliance agreement and I’ve cc’d Mr. Park in my reply”*

1                    *“As for you [sic] code enforcement complaint, it remains under review by CBD*  
2                    *(pending legal review by the City Attorney’s Office). They will be expediting their*  
3                    *decision on whether to pursue an enforcement action at your request and notify you*  
4                    *of the outcome.”*

- 5                    2. On Friday October 15, 2021, I first received Voluntary Settlement w/ required response  
6                    date October 22, 2021. See Exhibit B
- 7                    3. My attorney is unavailable this week to review the proposed language from the Voluntary  
8                    Settlement Agreement. Therefore, it is not possible to properly review and respond.
- 9                    4. I believe there are material and issues in the Voluntary Settlement Agreement language  
10                   including Slopes data that are materially at odds with language shown from Licensed  
11                   Surveyors. For example, the City is saying the Slope is 43% whereas the Licensed  
12                   Surveyors are saying 37%. See Exhibit C and D. Note also I spoke today with a  
13                   Washington State licensed surveyor and he has confirmed over email the 37% is correct.  
14                   Also, there are many other potential issues observed in the VCA, which I need time to  
15                   explore before bringing to the Appeal Hearing.
- 16                   5. Public records requests have not been produced timely. I understood from the pre-  
17                   conference meeting on August 18, 2021 that Public Records requests are not a reason alone  
18                   to delay appeal proceedings. However, given the significance of the record found in  
19                   Exhibit D (i.e. Surveyor says slope is 37% vs. City claim of 43%), I feel it would be a  
20                   failure of Due Process and create significant information asymmetry among Parties to not  
21                   wait for Records Requests to be fulfilled. There is also little or no reason the City could  
22                   not have produced the records by this time, and in fact I believe the law requires production  
23                   within time allotted. See Exhibit E.
- 24                   6. One or more of the shared files containing the relevant documents was confirmed not  
25                   working. This caused me to lose being able work on the Appeal during this past weekend,  
                         which was my only available weekend for doing so between the records file links getting

1 disclosed and the hearing date of October 28. I understand the other link may have worked  
2 and may have contained all of the same documents as the first link, but there was no way  
3 of me knowing whether that is/was the case – or not. See Exhibits F and G.

4 7. Today is my wedding anniversary and I'm on vacation this weekend and working full time  
5 during all days and hours while not on vacation. You may recall that I had expressed this  
6 concern including as to my wedding anniversary timing during the pre-conference on  
7 August 18. In order to have made the timing work for the hearing on October 28, I needed  
8 the records per above to be available properly and timely, and they are/were not.

9 8. The City has waited for nearly 4 years on this matter. A delay of approximately just 1  
10 additional month would not result in any miscarriage of justice; however, a delay would  
11 make a massive difference in my ability to celebrate my anniversary, maintain my  
12 employment and properly prove my case while preventing getting overwhelmed from  
13 having to do so without adequate available time to properly review and prepare evidence  
14 exhibits.

15 9. Due to the discrepancy in slope percentages described above and first observed today via  
16 the Voluntary Settlement Agreement, I require time to work additionally with the licensed  
17 surveyor. I have started doing so, but I'm concerned this may not be completed by October  
18 28.

19 10. Ms. Alison Van Gorp did not ever show at the scheduled meeting to discuss resolution, and  
20 there has been no follow up since that time. For example, no "I will likely have more to  
21 share after that", etc. See Exhibit H.

22 CONCLUSION

23  
24 I do not believe it would be appropriate for me to try and prepare without the above  
25 information readily and fully available. I would be at risk of failing due to nothing other than  
forced pressure applied unfairly and in bad faith. Most likely I would need to withdraw the Appeal

1 altogether as a direct result of the City's actions as well as inaction should the hearing date not be  
2 rescheduled as per the points above. I can be reached at (206) 910-8443 should you have questions  
3 or to discuss.

4  
5 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is  
6 true and correct.

7 Signed at \_Mercer Island\_\_\_\_\_, [City] \_\_\_WA\_\_\_\_\_ [State] on \_\_October 18,  
8 2021 \_\_\_\_\_ [Date].

9  
10 Shane Miller

*Shane Miller*

11 (printed name) Signature  
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# Exhibit A



**Jessi Bon**

RE: Follow up

Inbox - Yahoo! August 23, 2021 at 9:31 AM

To: Shane yahoo email, Jeff Thomas, Alison Van Gorp, Cc: Holly Miller, Bio Park

[Details](#)

Mr. Miller,

Thank you for your email seeking a productive path to resolve outstanding issues between you and the City. I appreciate your patience as my delayed response was to allow time for me to discuss these matters with the City Attorney. Interim Community Planning Department (CPD) Director Jeff Thomas has also informed me that both he and Deputy Director Alison Van Gorp have been in touch with you to discuss your Notice of Violation, and the code enforcement complaint you submitted related to the roof intrusion on your neighbor's property (Gartz/Holt).

It is my understanding that the Notice of Violation issued to you has been appealed, and the appeal is pending before the Hearing Examiner. Consequently, the City Attorney's Office is handling the matter, and for this reason future discussions about resolving the appeal and Notice of Violation need to be conducted directly with City Attorney Bio Park.

Mr. Park will be reaching out to you with an offer for a voluntary compliance agreement to resolve issues related to the Notice of Violation should you agree to complete the permit process as required under the Mercer Island City Code. If no such agreement can be reached, then you have the opportunity to present your case to the Hearing Examiner. If the Hearing Examiner agrees with you, then he will uphold the appeal and reverse the Notice of Violation.

As for your code enforcement complaint, it remains under review by CPD (pending legal review by the City Attorney's Office). They will be expediting their decision on whether to pursue an enforcement action at your request and notify you of the outcome.

Finally, I wanted to address your earlier email where you indicated you would be filing a code of ethics complaint against the staff. Please be aware that the code of ethics adopted in chapter 2.60 MICC applies only to City Official(s). An Official is defined as, and includes "all members of the city council, the city's boards and commissions, and other council-appointed task groups or committees of the city of Mercer Island." The code does not apply to City employees.

Again, thank you for reaching out and I hope the information is helpful to you. I anticipate that City Attorney Bio Park will be contacting you soon regarding the anticipated timeline for a discussion on the voluntary compliance agreement and I've cc'd Mr. Park in my reply.

Jessi

**Jessi Bon**

City Manager

City of Mercer Island

206-275-7660 | [mercerisland.gov](http://mercerisland.gov)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

*Due to the COVID-19 outbreak, many City of Mercer Island staff are now working remotely. Responses to emails and phone calls may take additional time as we have modified our operations. Thank you for your patience.*

# Exhibit B



**Eileen Keiffer**

Inbox - Yahoo! October 15, 2021 at 2:39 PM

Proposed Voluntary Correction Agreement Regarding Mercer Island Code Enforcement Matter CE 18-0017

To: Shane yahoo email, Cc: Bio Park, Mary Swan

[Details](#)

Good afternoon Mr. Miller,

Per Mercer Island City Manager Bon's email to you on August 23, please find attached a Voluntary Correction Agreement for your review with respect to City of Mercer Island Code Enforcement Matter CE 18-0017. I note that City Attorney Mr. Park is out of the office until next week; however, I am available to address any questions you may have in Mr. Park's absence.

Thank you,

Eileen M. Keiffer, Member



14205 SE 36<sup>th</sup> Street  
Suite 100, PMB 440  
Bellevue, Washington 98006  
Tel: (425) 201-5111, Ext. 1  
[Eileen@MadronaLaw.com](mailto:Eileen@MadronaLaw.com)  
[www.MadronaLaw.com](http://www.MadronaLaw.com)



VCA Miller  
10.15.21.pdf

# Exhibit C

**MICC 17.14.010(105.1) Required.**

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the construction codes and the Construction Administrative Code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

The following actions were taken which violated the code sections listed above:

- The City and the Washington State Department of Ecology received complaints on February 2, 2018 alleging unpermitted construction on or of a retaining wall near the bulkhead of 7709 West Mercer Way, Mercer Island, WA 98040 (the Property) causing erosion into Lake Washington. The Department of Ecology complaint was forwarded to City staff, who conducted a site visit. City Staff confirmed construction work was being performed at the Property without any City permits, including but not limited to: building permits or any shoreline or critical area approvals. This work was to construct a new rock wall on the Property along the shore of Lake Washington, as well as new plantings. A stop work order was posted on the Property on February 2, 2018.
- The work took place within a steep slope area. A site plan from 1983 shows the original slope on the property was calculated at 43.8%. Per MICC 19.16.010,<sup>2</sup> "any slope of 40% or greater calculated by measuring the vertical rise over any 30-foot horizontal run" constitutes a steep slope, which in turn is considered a critical area per the MICC.
- The work took place within a geologic hazard area (including, but not limited to a landslide hazard area and an erosion hazard area). The MICC 19.16.010 at the initial time of violation further defined landslide hazard areas and erosion hazard areas as critical areas, and there are multiple prior landslide locations on the property, and the property has been classified as a landslide hazard.
- The work occurred in the designated shoreline area of Lake Washington.

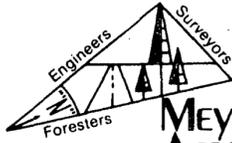
**The Person Responsible agrees to take the following corrective actions by the following compliance dates:**

- A. Withdraw his appeal in APL 19-002. **Must be completed no later than October 22, 2021.**
- B. Reapply for and receive approval for the building permit that is required to construct/reconstruct the retaining wall near the bulkhead, including compliance with the requirements of the City's geotechnical peer reviewer. **Must be completed no later than December 31, 2021.**
- C. Apply for and receive a shoreline approval (either exemption or substantial development). **Must be completed no later than December 31, 2021.**

<sup>2</sup> Again, this quotation reflects the relevant MICC provision at the time of the commencement of the code violation.

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# Exhibit D



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**MEYRING &  
ASSOCIATES, INC.**

23423 Highway 99

Edmonds, WA 98020

(206) 778-3101

P.O. Box 32

Lynnwood, WA 98036

March 5, 1984

Building Department  
City of Mercer Island  
Mercer Island, WA

Re: Site evaluation of Lot C - SP 81-2-02

At the request of Mr. George Lewis, an elevation study was carried out under my supervision to determine the difference in elevation between the highest and lowest points on the ground in accordance with Code 17.10.080. A precise level was used to measure the difference in elevation which was found to be equal to a 37% slope, between the NE corner and the South line intersect at the rip-rap along the West line, (a distance of 250 feet between the highest and lowest elevation).

Respectfully,

*M B Meyring*  
M. B. Meyring, P.L.S.

MBM:rl  
CC: George Lewis



# Exhibit E



**City of Mercer Island Public Records**

[Document Released] City of Mercer Island public records request #21-300

To: shanemillerus@gmail.com,

Reply-To: mercerisland\_21-300-requester-notes@inbound.nextrequest.com

Inbox - Google September 27, 2021 at 3:30 PM

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

## City of Mercer Island Public Records

**A document has been released for record request #21-300 along with the following message:**

Dear Mr. Miller,

The city has released a new installment of emails in response to your request. Due to workload considerations, the City requires an additional twenty five (25) business days from the date of this email to respond to your request pursuant to RCW 42.56.520. This is based upon the need to clarify the request (if necessary), to locate and assemble the information requested, to notify third persons or agencies affected by the request (if necessary), and to determine whether any of the information requested is exempt.

Sincerely,

**Mary Swan, Public Records Officer/Paralegal**

206.275.7651

- 21-300 7709 Emails Released 09.27.2021.pdf

[View Request 21-300](#)

<https://mercerisland.nextrequest.com/requests/21-300>

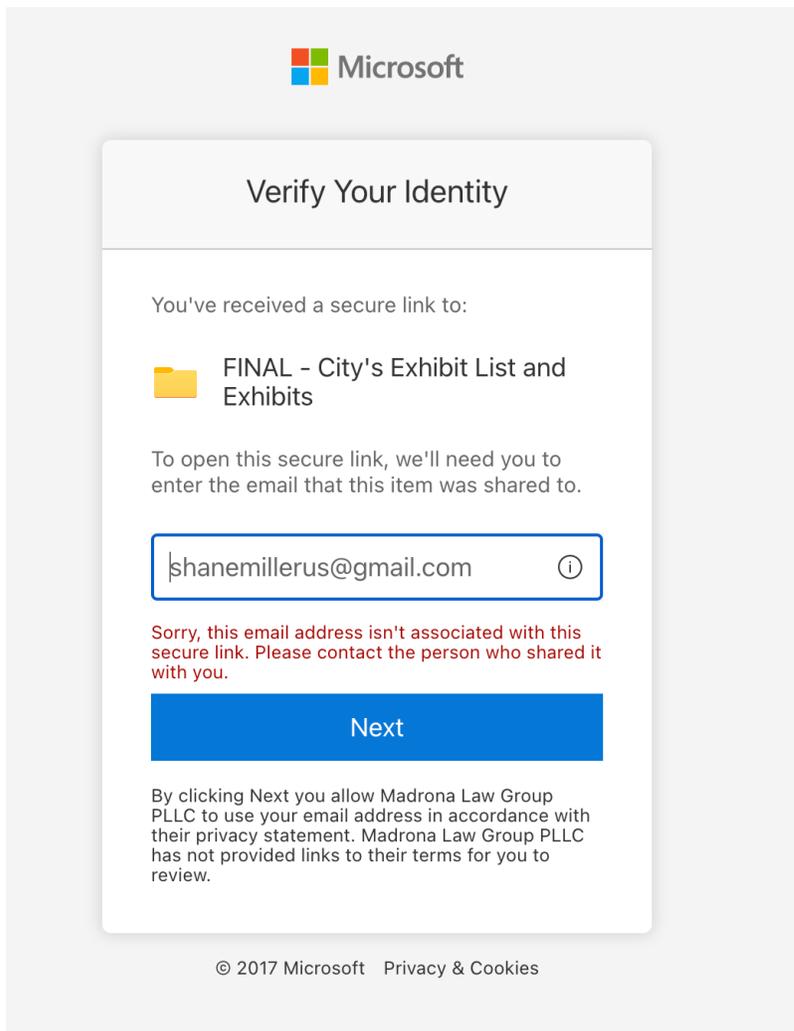
# Exhibit F



★ **Shane yahoo email** Sent - Yahoo! Yesterday at 2:39 PM  
Re: In Re: APL 19-002 - Shane Miller v. City of Mercer Island  
To: John Galt, Cc: Tori Harris, Bio Park, Andrea Larson, Mary Swan, Eileen Keiffer [Details](#)

I am unable to access the first link - see below the error message received. Note that I tried both my gmail and yahoo email addresses, and neither worked. The error in red font says,

***"Sorry, this email address isn't associated with this secure link. Please contact the persons who shared it with you."***



# Exhibit G



**Tori Harris**

Inbox - Yahoo! 8:33 AM

RE: In Re: APL 19-002 - Shane Miller v. City of Mercer Island

To: John Galt, Shane yahoo email, Cc: Bio Park, Andrea Larson, Mary Swan, Eileen Keiffer

[Details](#)

Good Morning,

I checked the setting and it says that you should have access but out of an abundance of caution I have created another link to the folder. Please see below:

[https://palladialaw.sharepoint.com/:f:/s/ClientFiles/EiEpNYa4AcIMIR9ziR3E1I8BRkPP\\_xOLtXttBg-7nYQ8iQ](https://palladialaw.sharepoint.com/:f:/s/ClientFiles/EiEpNYa4AcIMIR9ziR3E1I8BRkPP_xOLtXttBg-7nYQ8iQ)

Should you have any additional trouble, please do let me know.

Regards,



**Tori Harris**  
(206) 929-2700  
[tharris@360legalsupport.com](mailto:tharris@360legalsupport.com)  
[360legalsupport.com](http://360legalsupport.com)

This e-mail may contain confidential information that is legally privileged. The information is solely for the use of the addressee(s) named above. If you are not the intended recipient, any disclosure, copying, distribution or other use of the contents of this information is strictly prohibited. If you have received this e-mail in error, please notify us by return e-mail and delete this message. Thank you.

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**From:** John Galt <[jegalt755@gmail.com](mailto:jegalt755@gmail.com)>  
**Sent:** Sunday, October 17, 2021 3:33 PM  
**To:** Shane Miller <[shane\\_miller\\_usa@yahoo.com](mailto:shane_miller_usa@yahoo.com)>  
**Cc:** Tori Harris <[tharris@360legalsupport.com](mailto:tharris@360legalsupport.com)>; Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Andrea Larson <[andrea.larson@mercergov.org](mailto:andrea.larson@mercergov.org)>; Mary Swan <[mary.swan@mercergov.org](mailto:mary.swan@mercergov.org)>; Eileen Keiffer <[eileen@madronalaw.com](mailto:eileen@madronalaw.com)>  
**Subject:** Re: In Re: APL 19-002 - Shane Miller v. City of Mercer Island

Try the "mieplan" link - that's the link I always try to use.

On Sun, Oct 17, 2021, 2:39 PM Shane Miller <[shane\\_miller\\_usa@yahoo.com](mailto:shane_miller_usa@yahoo.com)> wrote:

I am unable to access the first link - see below the error message received. Note that I tried both my gmail and yahoo email addresses, and neither worked. The error in red font says,

***"Sorry, this email address isn't associated with this secure link. Please contact the persons who shared it with you."***

# Exhibit H



**Alison Van Gorp**

Inbox - Yahoo! July 30, 2021 at 12:23 PM

RE: Response Requested - Issues

[Details](#)

To: Shane yahoo email, Jeff Thomas, Cc: Bio Park

Hi Shane - I will give you a call shortly. I apologize for missing our appointment. I only have a small update to provide -- I will be meeting with Jeff and Bio next Tuesday to continue our internal discussion of this matter. I will likely have more to share after that. In the meantime, it would be good to hear if you have had a chance to review the comments on your permit application and if there's anything we need to discuss related to that. Talk to you in a few minutes.

-Alison

-----Original Message-----

From: Shane Miller <[shane\\_miller\\_usa@yahoo.com](mailto:shane_miller_usa@yahoo.com)>

Sent: Friday, July 30, 2021 12:10 PM

To: Jeff Thomas <[jeff.thomas@mercerisland.gov](mailto:jeff.thomas@mercerisland.gov)>

Cc: Alison Van Gorp <[alison.vangorp@mercergov.org](mailto:alison.vangorp@mercergov.org)>; Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>

Subject: Response Requested - Issues

Dear Mr. Thomas,

May I please ask that you respond on behalf of Ms. Van Gorp per below / attached. Note that I had a phone meeting scheduled with Ms. Van Gorp for this morning at 11:30 a.m., but Ms. Van Gorp did not answer her phone during the scheduled meeting time. Additionally, I had left a voicemail message and sent an email message during the scheduled meeting time, but I also did not receive a response to either. I hope that Ms. Van Gorp is okay. In the meantime, a response from you / your office is requested.

Thank you in advance,  
Shane Miller  
(206) 910-8443