

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

I. FACTUAL BACKGROUND

1. I am the owner of the residence at 7709 W. Mercer Way, which has been my primary residence for over 15 1/2 years since June of 2006 through to the present time.
2. Adjacent to my home at the North is the property at 7703 W. Mercer Way, which is owned by Mr. Scott Chancellor. Mr. Chancellor purchased 7703 WMW on or about August 3, 2021 from the Seller, Mr. William “Bill” Gartz, and his girlfriend, Ms. Robin Holt. Prior to Mr. Chancellor, Mr. Gartz had owned 7703 WMW for 15 years from September 2006 to August 2021.
3. Adjacent to 7703 W. Mercer Way at the North is the property at 7701 W. Mercer Way. Mr. George Lewis has owned 7701 WMW for the past approximately 45 years from 1975 to the present time.

1
2 See Exhibit 1001 – Mr. Chancellor Owner of 7703 WMW per Assessor Website

3
4 See Exhibit 1002 – Mr. Chancellor Purchase Date per King County Assessor Website

5 See Exhibit 1003 – Excise Tax Affidavit Sale of 7703 WMW from Mr. Gartz to Mr.
6 Chancellor

7
8 See Exhibit 1004 – Email from Mr. Gartz to City of Mercer Island Announcing Sale of His
Home effective August 3, 2021

9
10 See Exhibit 1005 – Emails from Mr. Gartz to City of Mercer Island Announcing
11 Forwarding Address to City of Seattle P.O. Box

12
13 **II. APPEAL ISSUES CAUSED BY SALE**

14
15 4. The August 3, 2021 Sale of 7703 W. Mercer Way from Mr. Gartz and Ms. Holt to Mr.
16 Chancellor gives rise to a number of likely issues:

17 a) Mr. Chancellor would now be considered the Aggrieved / Affected Party in the City's
18 Code Case, as he is now the Owner Party of the alleged Aggrieved Property Matter

19
20 b) It appears Mr. Chancellor was never served a copy of the Hearing Notice, which gives
21 rise to Improper Service.

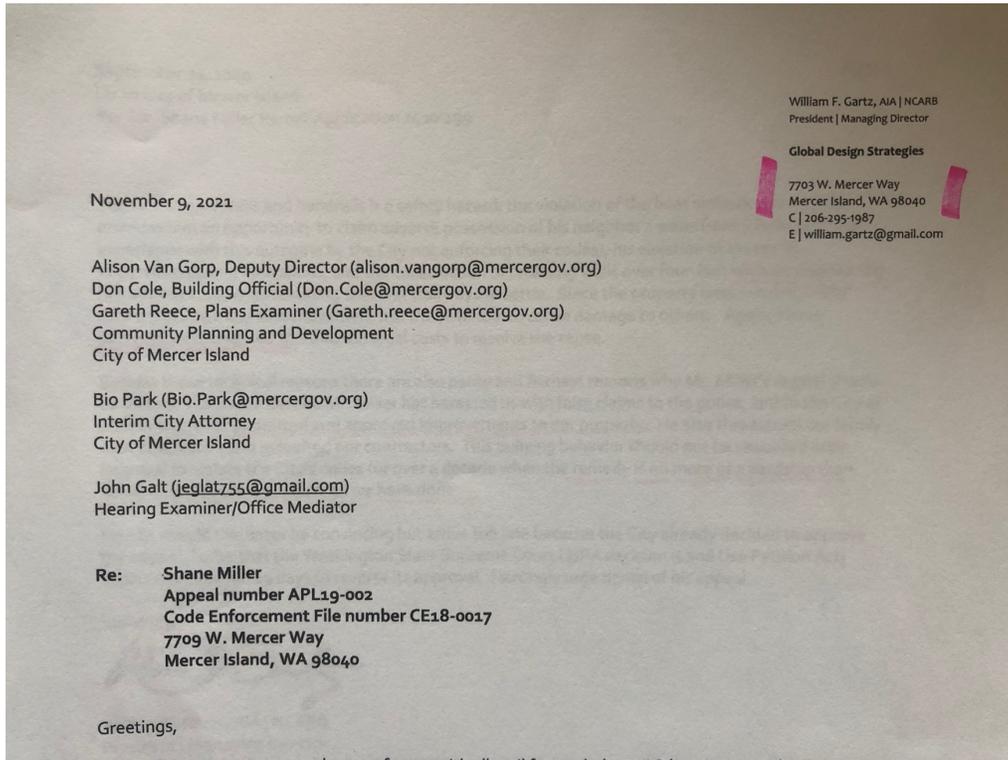
22 See Exhibit 33, Page 4 of 4, shows that Mr. Chancellor was not Served directly as only
23 Mr. Gartz received.

24
25 c) Mr. Gartz is no longer an Aggrieved Party and has no reasonable continuing interest in
this Code Case; therefore, Mr. Gartz should no longer be a Party. Mr. Gartz could

1 possibly be a Witness; however, Mr. Gartz is not shown on any Witness List. In order
2 for the Notices to have been noticed and served properly, Mr. Gartz' notice and service
3 would need transitioning to Mr. Chancellor.

4
5 d) It appears that Mr. Gartz was deceitful when he misused the "7703 W. Mercer Way"
6 mailing address at the Header of a November 9, 2021 letter to City Staff and Mr.
7 Hearing Examiner.

8 Figure 1.0 – Excerpt of Mr. Gartz November 9, 2021 Letter Showing Improper Use of Mr.
9 Chancellor's Mailing Address. Mr. Gartz Sold 7703 WMW more than three months
10 earlier.



26 See Exhibit 1006 - November 9, 2021 Letter Misuse of Mr. Chancellor's Address more
27 than 3 Months Following Mr. Gartz' Sale to Mr. Chancellor

1 e) RCW 46.20.205 Change of Address or Name says, “the person shall, within 10 days
2 thereafter, notify the department of the name or address change”

3
4 f) While this RCW appears to relate to identification cards such as a Driver’s License, it
5 should also relate to other Use Cases, including not misrepresenting your address 3 months
6 later to a Hearing Examiner in order to deceive the Examiner into believing you live there
and therefore are impacted greatly and directly.

7
8 a. See Exhibit 1007 – RCW 46.20.205 Change of Address or Name

9
10 g) City Staff were notified many times in writing by Mr. Gartz that he had sold his property
11 on August 3rd and that Mr. Gartz had moved outside City Limits; however, City Staff did
not disclose this fact in its Staff Report or any Exhibits.

12
13 a. See Exhibit 1008 – Mr. Gartz’ Emails to City Staff Announcing Sale of Home and
14 Move Date Timing of August 2, 2021

15
16 h) I asked Mr. Scott Chancellor if he had provided permission to Mr. Gartz to continue using
Mr. Chancellor’s address at 7703 W. Mercer Way, and Mr. Chancellor responded,

17
18 *“No, I have not.”*

19
20 See Exhibit 1009 – Text message from Mr. Chancellor saying Mr. Gartz does not have
permission to use the mailing address.

21
22 i) The November 19, 2021 Appeal Hearing needs to be properly Noticed and Served to the
23 current Affected/Impacted Parties. In the case of Mr. Gartz and/or Mr. Chancellor, it is/was
24 Not Properly Noticed and Served. Therefore, the Appeal Hearing needs to be Postponed
25 until such time Notice and Service by Mail requirements can be corrected and satisfied in
accordance with Rules and Procedures for Notice and Service.

1 See Exhibit 33 Page 4 of 4 – Declaration of Noticing includes Former Property Owner Mr.
2 Bill Gartz, but excludes Current Property Owner, Mr. Scott Chancellor

3
4 III. CHRONOLOGY REBUTTLE

5 February 1-2, 2018

6
7 5. Subject: Mr. Gartz' Emails to Ms. Jimmi Serfling – Exhibits 1 and 2

8
9 Issues:

10 6. I am alleging and strongly believe the photo attachment to the emails had been
11 “Photoshopped” by Mr. Gartz or Ms. Holt

12
13 7. Evidence of “photoshop”:

14 a. Everyone involved, including Ms. Serfling, persons from the Dept. of Ecology, Mr.
15 Phil Haberman of Cobalt GeoSciences, Mr. Mike Lee of Colvos Architects, Mr.
16 Mike Gomez, and many others had visited the site and each took their own
17 photographs and none of those photographs show dirt whatsoever in the lake

18 b. I also took photos, and none of my photographs show any dirt in the lake

19 c. Simply put, I strongly believe there was never any dirt that entered the lake

20
21 d. Mr. Gartz, and his girlfriend, Ms. Robin Holt, are both experienced Design
22 Architects and are capable of making a lake water photo appear as though the water
23 is cloudy, muddy, brown, etc

24 e. That is, Mr. Gartz and Ms. Holt do photo renderings of real property full time for a
25 living. They know precisely how to do so.

1 f. Mr. Gartz and Ms. Holt can filter the water color of an image instantly and with a
2 smart phone. This is called applying a filter and takes less than 1 second to do.

3 g. I can filter photographs, also. So can my wife, Holly. So can my children, ages 5,
4 11, 12 and 13.

5
6 Figure 2.0 – Example water image w/ and w/o filter applied



17 Figure 3.0 – Another example of water after warm filter applied.



Note in the photo how the grasses and leaves appear yellow, just like with Mr. Gartz' photo

1 8. I've been perfectly consistent in saying that Mr. Gartz photoshopped the images. For
2 example, Ms. Serfling documented that I had said this, which is shown on Exhibit 14,

3 ***“I understood that you believed the photo showing the work taking place on your***
4 ***property was filtered somehow”***

5 - Ms. Serfling, February 16 , 2021

6 - Exhibit 14, center of page

7
8 9. Mr. Gartz absolutely would undertake the task of “photoshopping” in order to cause
9 harassment against me. Doing so dovetails perfectly with Mr. Gartz’ Modus Operandi over
10 the past 15 years. Mr. Gartz has a lengthy history of committing improper harassment
11 against me, and against Mr. Lewis. It is perfectly within his nature, character, actual past
12 behavior consistently shown over the past 15 years, and his wheelhouse of experience as a
13 designer.

14 10. Ex 5 shows that dark green trees “appear” brown and yellow colored. A warm filter is
15 precisely what makes green trees appear yellow. That is, the filter job is not even well
16 done, i.e., it’s not localized to just the water areas he is aiming to filter. Mr. Gartz erred in
17 applying the filter to trees also. There are also angular line marks on the photo, which may
18 suggest a filter was applied unevenly.

19 11. Mr. Gartz also has a lengthy history of committing improper harassment against Mr.
20 George Lewis. For example, Mr. Gartz lost in court 3 times and settled out of court another
21 2 times, such that in total Mr. Gartz lost 5 unique lawsuits to Mr. Lewis.

22 12. Ms. Alison Van Gorp entered written findings that she had found *me* “truthful/correct” and
23 *Mr. Gartz* “not”,

24 - ***“My experience in the last few months is that [Shane] Miller tends to be***
25 ***truthful/correct and [Bill] Gartz does not... but that is anecdotal”***

- Ms. Alison Van Gorp
- July 8, 2020

See Exhibit 1010 – Email From Ms. Van Gorp Saying Miller tends to be truthful/correct and Gartz does not

13. In addition to Ms. Van Gorp having entered written findings that Mr. Gartz tends to be not truthful/correct, see additional examples evidencing that Mr. Gartz is not credible in exactly the ways suggested:

- a. False use of Mr. Chancellor’s mailing address this proceeding (per above/herein)
- b. Trespassed onto my property to cut down my trees, resulting in Notice of Violation and two different Cease & Desist Orders

See Ex. 1011 Notice of Correction Tree Topping by Mr. Gartz

See Ex. 1012 Cease & Desist 1 of 2 – Attorney Ms. Julie Fowler

See Ex. 1013 Cease & Desist 2 of 2 – Attorney Mr. Stuart Scarff

- c. Mr. Gartz sent emails to my ex-wife reporting his monitoring of me and my activities

See Ex. 1013 Pages 5 & 6, Stalker Emails from Bill Gartz to Carrie Miller

- d. Hired a surveyor to remove Survey Monuments

Mr. Dan Roupe, Former Licensed Land Surveyor and Owner of Group 4, Inc Surveying, wrote to Mr. Gartz’ Attorney, Mr. Greg Ursich,

1 ***“Greg, we have an issue. I [sic] speaking with Doug last night about***
2 ***going out to take the photos today, he told me that they in fact did remove***
3 ***the ESM corner by the lake. I have no idea why they did [sic] but they***
4 ***did. I am having it put back in the same hole it came out of. Needless to***
5 ***say I’m extremely upset about this. How do you want me to handle it as***
6 ***far as Lewis is concerned?”***

7 - Dan Roupe, Licensed Surveyor to Mr. Gartz’ Attorney

8 Removing a Survey Monument is a Misdemeanor Crime per RCW 58.04.015

9
10 Exhibit 1014 – Email from Mr. Dan Roupe to Mr. Greg Ursich

11
12 Exhibit 1015 – RCW 58.04.011 Disturbing a survey monument crime and
13 punishment

14 e. Physically removed survey monuments

15
16 I had paid \$4,095 for Group 4, Inc. to place survey monuments at all the corners
17 and elbows of my property, and Mr. Gartz removed the monuments shortly after

18 Exhibit 1016 – Email to Ms. Serfling re: incl photo of removed monument

19
20 f. Former Mercer Island City Attorney Ms. Katie Knight entered written findings
21 about how she was improperly propositioned by Mr. Gartz to make an improper
22 deal,

23 ***“I will add my concern that you inappropriately tried to make a “deal”***
24 ***with the City that your client would comply with the City Code if the City***
25 ***took action against Mr. Lewis, your client’s other neighbor. Your client***
 clearly understands that he needs to amend the issue of the

1 ***“architectural” gutters and has the ability to do so. In turn, you clearly***
2 ***understand that the City cannot make a backdoor “deal” in order to have***
3 ***Mr. Gartz behave in accordance with the Code, and that this was wholly***
4 ***inappropriate on your part to even suggest.”***

5 – Ms. Katie Knight, City of Mercer Island City Attorney

6
7 See Exhibit 1017 – Ms. Katie Knight Letter re: William Gartz

- 8 g. Former City of Mercer Island Assistant Attorney Ms. Christina Schuck also entered
9 written findings about how she was improperly propositioned by Mr. Gartz,

10
11 ***“In response, I unequivocally told you and your client, Mr. Gartz, (in the***
12 ***presence of Ms. Crick and Ms. Serfling) that the City would not agree to***
13 ***any “exchange” regarding Mr. Gartz’s code violations. To be clear, such***
14 ***an “exchange” is simply not conduct in which the City would engage”***

15 – Ms. Christina M. Schuck, City of Mercer Island Assistant City Attorney

16
17 See Exhibit 1018 – Ms. Schuck Letter RE: William Gartz

- 18 h. Mr. Don Cole documented that Mr. Gartz had provided “inaccurate information”
19 to the City in order to obtain a permit falsely

20
21 ***“An inspector will be posting a stop work order this afternoon because the***
22 ***submitted plans contain inaccurate information.”***

23 - Mr. Don Cole, City of Mercer Island Building Official

24 - June 26, 2020

25 See Exhibit 1019 – Mr. Cole Email to Mr. Gartz re: Inaccurate Information

1
2 The Stop Work Order says,

3 *“Submitted and approved plans contain inaccurate information;*
4 *specifically existing vs. proposed grades contain error(s) resulting in*
5 *different elevation changes. Per MICC 17.17 the plan approval has been*
6 *revoked until the discrepancies noted above are resolved.”*

7
8 See Exhibit 1020 – Stop Work Order photo from afar

9 See Exhibit 1021 – Stop Work Order photo upclose

- 10 i. Mr. Gartz, through his Attorney, admitted in writing having damaged the subject
11 area timber landscape wall, and had promised to make the necessary corrections to
12 return to pre-damaged condition; however, Mr. Gartz never made the promised
13 corrections.

14 *“Damage at Waterfront.*

15 *Finally, I understand that Mr. Miller is concerned about recent “damage” to his*
16 *property that occurred when Mr. Gartz and Ms. Holt relocated the stairs and*
17 *landing near the waterfront based on the new survey. I understand the old retaining*
18 *wall along the shoreline was finished with wood siding that spanned across the*
19 *property line. This siding was rotten, falling off, and unfinished for decades. When*
20 *Mr. Gartz removed some boards on his property to install the stairs, several fee of*
21 *these boards were inadvertently taken off Mr. Miller’s retaining wall in the process.*
22 *While these boards provide no structural or aesthetic benefit as they are covered*
23 *by Mr. Miller’s trees, Mr. Gartz is willing to replace those boards to restore the*
24 *area to its previous state.”*

25 - Mr. Greg Ursich, Attorney for Mr. Gartz

See Exhibit 1022, Page 5

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- j. In fact, the damaged section is still there currently unrepaired.

- k. King County Superior Court Judge, The Honorable Richard D. Eddie, ruled that Mr. Gartz and his Surveyor providing testimony on Mr. Gartz' behalf,

“The Court finds that Mr. Roupe’s survey fails to accurately depict the location of the property line...Mr. Roupe’s survey is not tied to the original plat staking or on-site staking documented in subsequently recorded surveys. Mr. Roupe’s survey also fails to accurately depict the location of the boat at moorage and the shape of the bow of the boat extending beyond the front of the canopy...”

- Judge Eddie

See Exhibit 1023 – Superior Court Findings against Mr. Gartz

Mr. Gartz had to pay Mr. Lewis’ Attorney Fees over \$36,000

See Exhibit 1023, Page 2

Another Judge called Mr. Roupe “not credible” in relation to Mr. Gartz’ case.

- l. Ms. Van Gorp wrote that Mr. Gartz should not have been taken at his word.

“the Code Compliance Offer and City Attorneys took you at your word and believed that the judge’s ruling eliminated the trespass and reduced the setback violation to a degree that it was no longer worth pursuing enforcement action. However, in my review of the court records and Mr. Myers’ analysis of the survey records, I believe the City’s decision in 2018 to close the case was made in error.”

- Alison Van Gorp Email to Mr. Bill Gartz, August 24, 2020

1
2 See Exhibit 1024 – Alison Van Gorp Email to Mr. Bill Gartz
3

4 14. In Summary: The Honorable Mr. Eddie, Ms. Katie Knight, Ms. Christina Shuck, Mr. Cole,
5 Ms. Van Gorp, Ms. Julie Fowler, Mr. Stuart Scarff, etc all have entered written findings
6 indicating Mr. Gartz is not credible. Therefore, alleged photoshopped images from Mr.
7 Gartz should also be deemed not credible.

8 15. This is also likely the reason that City Staff is not aiming to call Mr. Gartz as a Witness at
9 Hearing. That is, City Staff knows Mr. Gartz is not credible. If Mr. Gartz is the thrust of
10 their case and credible, he would surely appear as a Witness for the City.
11

12 February 2, 2018

13 16. Subject: Stop Work Order Posted
14

15 17. Language Incorrect: “You are doing unpermitted work at the base of a steep slope + in the
16 shoreline.”

17 18. Incorrect because:

18 a. Was not “doing unpermitted work”; and

19 b. The subject area is not a steep slope
20

21 c. The subject area is not at the base
22

23 Rebuttal Summary:

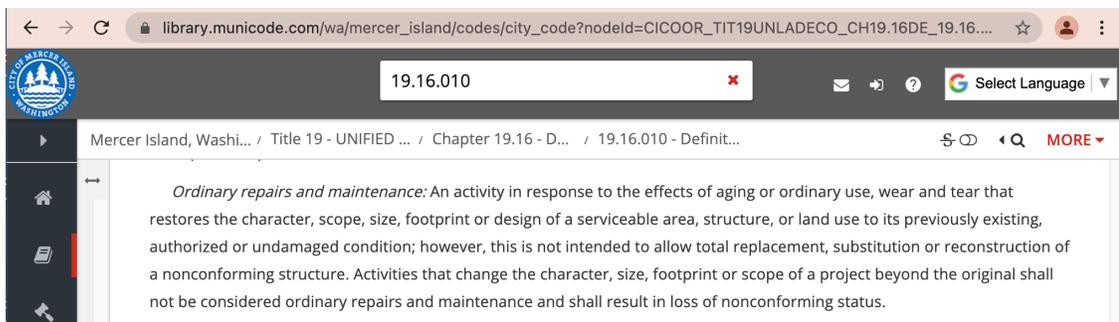
24
25 19. A homeowner does not need a permit to do landscaping maintenance of something
preexisting that was legally developed with permits previously both in 2001 and in 1984.

1
2 20. For example, the code in place at that time during 2018 and/or in place currently during
3 2021 allows for “ordinary repairs and maintenance”:

4
5 21. Ordinary repairs and maintenance:

6 *“Ordinary repairs and maintenance: An activity in response to the effects of aging or*
7 *ordinary use, wear and tear that restores the character, scope, size, footprint or design of*
8 *a serviceable area, structure, or land use to its previously existing, authorized or*
9 *undamaged condition; however, this is not intended to allow total replacement,*
10 *substitution or reconstruction of a nonconforming structure. Activities that change the*
11 *change the character, size, footprint or scope of a project beyond the original shall not be*
12 *considered ordinary repairs and maintenance and shall result in loss of nonconforming*
13 *status.”*

14 Figure 4.0 – Code language Ordinary repairs and maintenance:



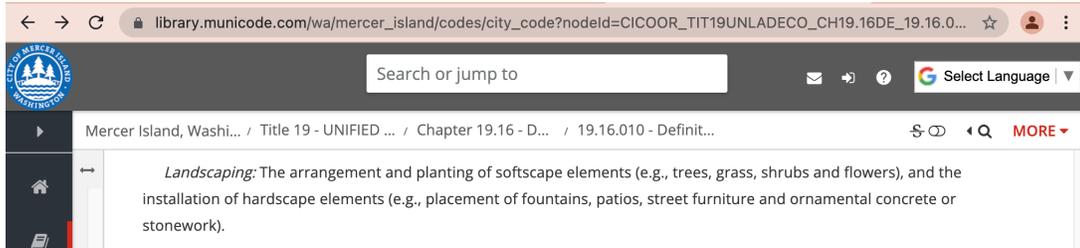
20 22. Note that the legacy landscaping remains in place currently in one or more locations, and
21 therefore “total replacement” had never occurred.

22 23. Yard repairs and maintenance is NOT development.

23
24 24. The code definition for “Landscaping” also suits and provides for “ornamental stonework”:
25

1 *“Landscaping: The arrangement and planting of softscape elements (e.g., trees, grass,*
2 *shrubs and flowers, and the installation of hardscape elements (e.g., placement of*
3 *fountains, patios, street furniture and **ornamental concrete or stonework**).”*

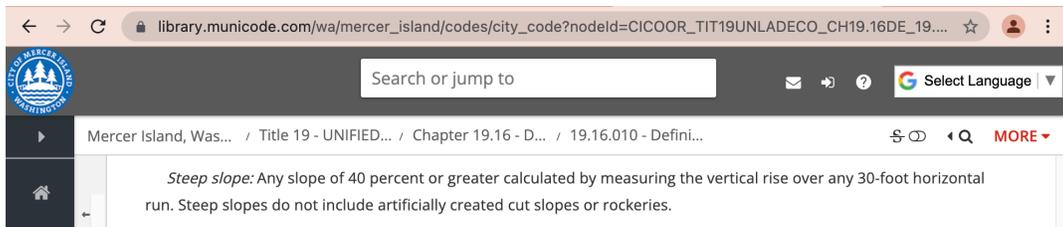
4 Figure 5.0 – Code definition of Landscaping



25. The slope is not a Steep Slope. The Definition of Steep Slope is:

12 *“Steep slope: Any slope of 40 percent or greater calculated by measuring the vertical rise*
13 *over any 30-foot horizontal run. Steep slopes do not include artificially created cut slopes*
14 *or rockeries”*

16 Figure 6.0 – Code definition of Steep Slope



26. It is especially important to note the last sentence, **“Steep slopes do not include artificially created cut slopes or rockeries”**

27. There are many reasons the slope at my property is NOT a “Steep slope” per the Code Definition:

1 28. The slope at my property is less than 40%. Specifically, the slope is 37%.

2
3 See Letter dated October 18, 2021 from Licensed Professional Land Surveyor, Mr.
4 Robert "Bob" H. Winters of Chadwick & Winters Land Surveying:

5 *"October 18, 2021*

6
7 *Mr. Shane Miller*
8 *7709 W. Mercer Way*
9 *Mercer Island, WA 98040*

10 *Shane,*

11
12 *Per your request, I have reviewed a topographic survey of your property performed by*
13 *Meriwether-Leachman Land Surveyors in 1983 and included within Mercer Island*
14 *building permit No. 83-350. In reliance upon the topographical information displayed*
15 *on said survey, I have created a cross-section that bisects the parcel, beginning at a*
16 *point on the east property line (elevation 95') and ending at the rockery along the lake*
17 *shore (elevation 20'). The scaled distance between those 2 points is 205 ft. Therefore,*
18 *the average grade = 37%, which is the change in elevation (75 ft) divided by the*
19 *horizontal distance (205').*

20 *Best Regards,*

21 *Robert H. Winters PLS (retired)*
22 *Chadwick & Winters Land Surveying"*

23 Note this letter is Recorded with the King County Auditor's Office, Instrument
24 Number: 20211026002342

25 Figure 7.0 - Bob Winters Letter Slope is 37% which is Less than 40%

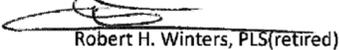
October 18, 2021

Mr. Shane Miller
7709 W. Mercer Way
Mercer Island, WA 98040

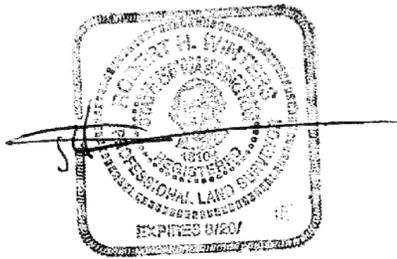
Shane,

Per your request, I have reviewed a topographic survey of your property performed by Meriwether-Leachman Land Surveyors in 1983 and included within Mercer Island building permit No. 83-350. In reliance upon the topographical information displayed on said survey, I have created a cross-section that bisects the parcel, beginning at a point on the east property line (elevation 95') and ending at the rockery along the lake shore (elevation 20'). The scaled distance between those 2 points is 205 ft. Therefore, the average grade = 37%, which is the change in elevation (75 ft) divided by the horizontal distance (205').

Best Regards,


Robert H. Winters, PLS(retired)

Chadwick & Winters Land Surveying
1422 NW 85th St.
Seattle, WA 98117
206-297-0996



See Exhibit 1025 – Bob Winters Letter Slope is 37% which is Less than 40% - KING COUNTY RECORDED

29. It should also be noted there is in City Records another example of a Washington State Licensed Surveyor's Letter w/ Signature and Stamp, which also says the Slope is 37%. I'm not sharing herein because duplicative with the more recent letter from Mr. Winters and because the letter from Mr. Winters is more recent/current and has been recorded with the King County Auditor Instrument # 20211026002342.

30. The Definition of "Steep Slope" says,

1
2 37. At the City's request to have a Geotechnical Engineer review the subject area, I had Mr.
3 Haberman PE, LG, LEG inspect the subject area and Mr. Haberman drafted a letter saying
4 in part,

5 *"the scope of work was limited to yard maintenance to repair decomposed wall*
6 *timbers, the new rock facing is consistent with a landscaping wall replacement.*

7
8 38. Note a "landscaping wall" is distinct and separate from a "retaining wall", i.e. a landscaping
9 wall is decorative/ornamental.

10 See Exhibit 10 - Letter from Mr. Haberman, PE, LG, LEG

11
12 February 12, 2018

13 39. Subject: Code Compliance Courtesy Notice

14
15 40. Says: "It appears that a retaining wall was altered and reconstructed within a shoreline area
16 and geologic hazard area"

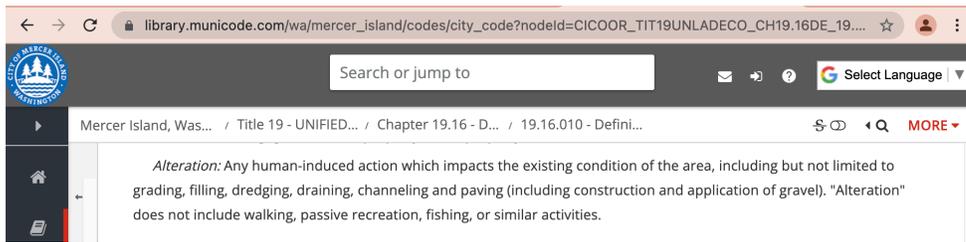
17 Issues:

18
19 41. There was not an alteration

20
21 The City Code definition of Alteration is:

22 *"Alteration: Any human-induced action which impacts the existing condition of the area,*
23 *including but not limited to grading, filling, dredging, draining, channeling and paving*
24 *(including construction and application of gravel). "Alteration" does not include walking,*
25 *passive recreation, fishing or similar activities"*

1 Figure 8.0 – City Code definition of Alteration



6 42. There was nothing done that impacts the existing condition of the area, including

7 specifically no grading, filling, dredging, draining, channeling or paving, or construction

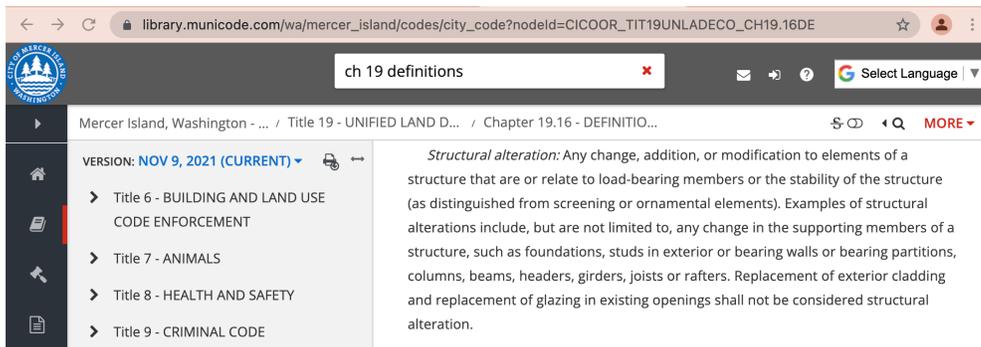
8 and application on gravel. Nothing done fits the City’s definition of Alteration or Altering

9 or a reasonable persons definition of Altering.

10 43. There is also a definition in the Ordinance Code for “Structural alteration”:

11

12 Figure 8.1 – City Code definition of Structural alteration



19 44. For the City to be requiring a permit like they are, there would need to be a structural

20 alteration issue. There is not.

21

22 45. There is not, and in fact the definition specifically calls out as exceptions, “as distinguished

23 from screening or ornamental elements”. The subject area is and always has been purely

24 ornamental at the surface where landscape maintenance was completed.

25

1 46. The statement, "I was not provided access to the work area" is incorrect. Ms. Serfling had
2 two means of accessing the work area, 1) walking down via my property; or 2) walking
3 down via Mr. Gartz' property. Ms. Serfling had asked for me to escort her, and I told her
4 that I could not because I was on a work conference call. I asked her to return in 30-60
5 minutes, and she did not.

6 47. The statement, "It appears that a retaining wall was altered and reconstructed within a
7 shoreline area and geologic hazard area and dirt/mud washed into Lake Washington during
8 construction and clean up" is incorrect.

9 48. No dirt/mud entered Lake Washington. The photos provided were photoshopped.

10
11 49. Not a geologic hazard area because less than 40% slope and engineering described herein
12 have mitigated the risk from geologic hazard.

13 50. There was never a retaining wall there to begin with. What was there was a cut slope with
14 ornamental facing, which is the same as today currently

15
16 51. Even Mr. Gartz, through his Attorney, wrote,

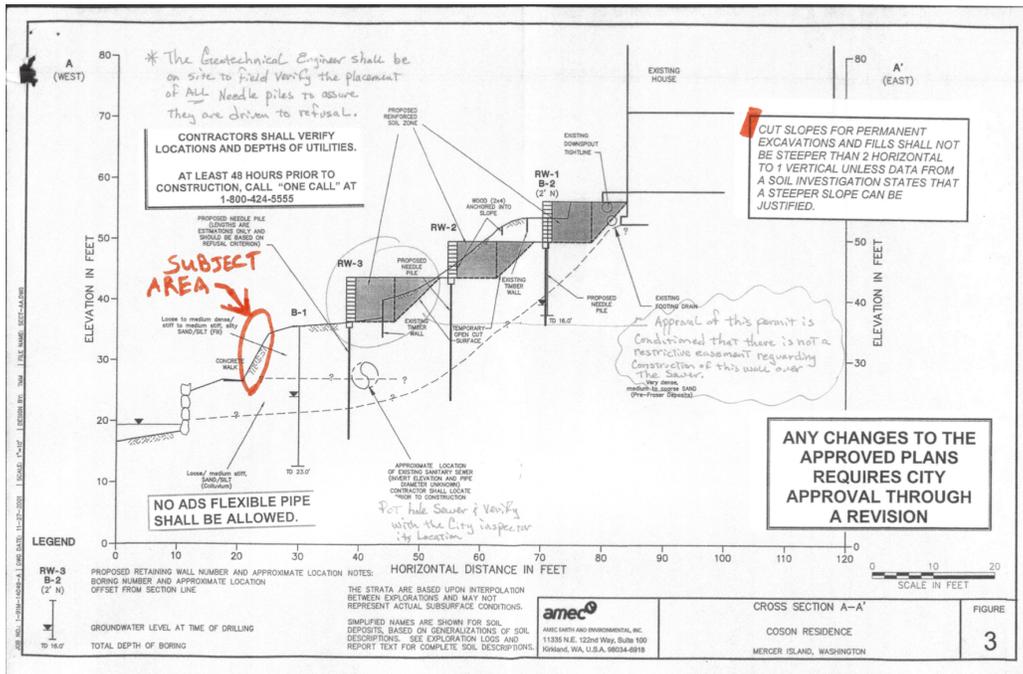
17 ***"these boards provide no structural or aesthetic benefit"***

18
19 ***-Mr. Gartz through his Attorney, Mr. Ursich***

20
21 See Exhibit 1018, Page 5 – Letter from Mr. Gartz through his Attorney

22 52. The entire area was approved for permits and inspected final during 2001 as a cut slope.
23 Therefore, it may remain as a cut slope.
24
25

Figure 9 – Approved Plans from 2001 w. Subject Area as Cut Slope Incl. Several Engineered Walls Upslope



See Exhibit 1026 – Approved Plans From 2001 w. Subject Area as Cut Slope incl. Several Engineered Walls Upslope

53. The orange marker shows the Subject Area was approved during 2001 as a cut slope without any retaining whatsoever

54. Note: It was Mr. Don Cole that approved these permits and inspected final during 2001.

55. Cut slopes can be left as-is, or they can be beautified with portable rocks.

56. If the City dislikes the beautified portable rocks, then I can certainly have them moved elsewhere. Doing so would not be a “construction development” project, however.

57. Moving the rocks would be a laborer landscaping project

1 58. The only changes that have been made since the 2001 permitted, engineered-approved and
2 inspected by Mr. Don Cole directly are non-structural and purely cosmetic. The Code
3 allows doing so, as illustrated above w. citations to actual code language.
4

5 February 14, 2021
6

7 59. Mr. Gareth Reece sends email suggestive of “playing musical chairs” with codes.
8

9 60. First, it was the Environmental Code, then the Shoreline Code and now Mr. Reece suggests
10 the Construction Code instead applies.

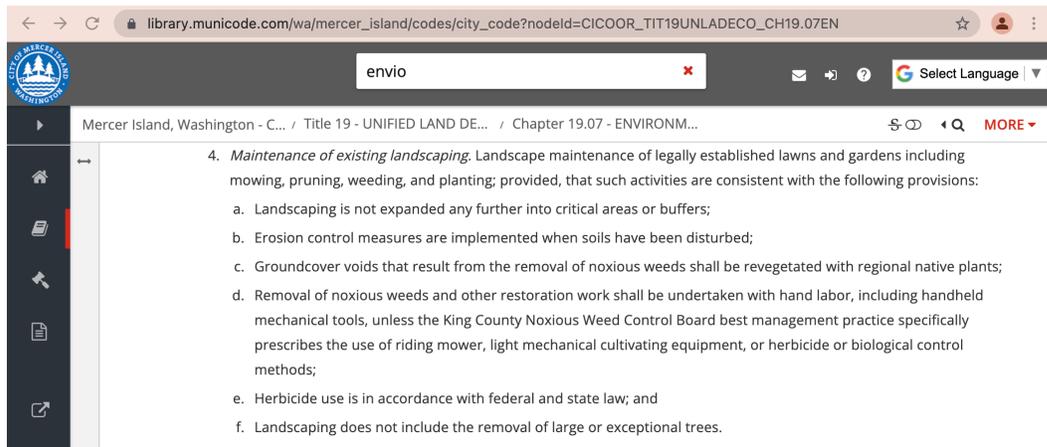
11 61. It doesn’t matter which Code gets applied because all the codes have reasonableness
12 parameters drafted into the ordinance language.
13

14 62. For example, I have reviewed all three codes (Environmental, Shoreline and Construction),
15 and each code has language that allows a homeowner to maintain, repair, landscape, etc
16 even in critical areas.

17 63. This is because City Council passed these Ordinances with the intent of providing
18 accommodations to homeowners needing to self-manage situations exactly like this one
19 without the extreme cost and time associated with City permitting.
20

21 64. Example of Environmental code exemption that applies: “Maintenance of existing
22 landscaping”:
23
24
25

1 Figure 10 – Chapter 19.07 Environmental exemptions: Maintenance of existing landscaping

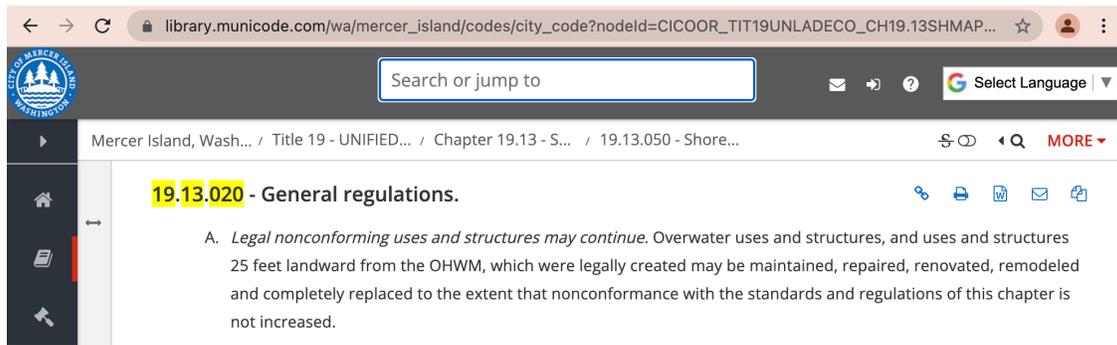


65. Example of Shoreline code exemption that applies: 19.03.020.A: “Legal nonconforming uses and structures may continue”

Specifically,

“Legal nonconforming uses and structures may continue: Overwater uses and structures, and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that nonconformance with the standards and regulations of this chapter is not increased”.

1 Figure 11 – 19.13.020.A Legal nonconforming uses and structures may continue



2
3
4
5
6
7
8 66. Mr. Cole’s statement that there are no exemptions in the Shoreline Code is incorrect, for
9 example Shoreline Code Section 19.13.010.D.1 says,

10
11 *“Exemptions and exceptions within in the shoreline jurisdiction are found in WAC 173-27-
12 040, 173-27-044, and 173-27-045*

13 February 16, 2018

14
15 67. Mr. Cole email saying “work” not allowed in critical areas

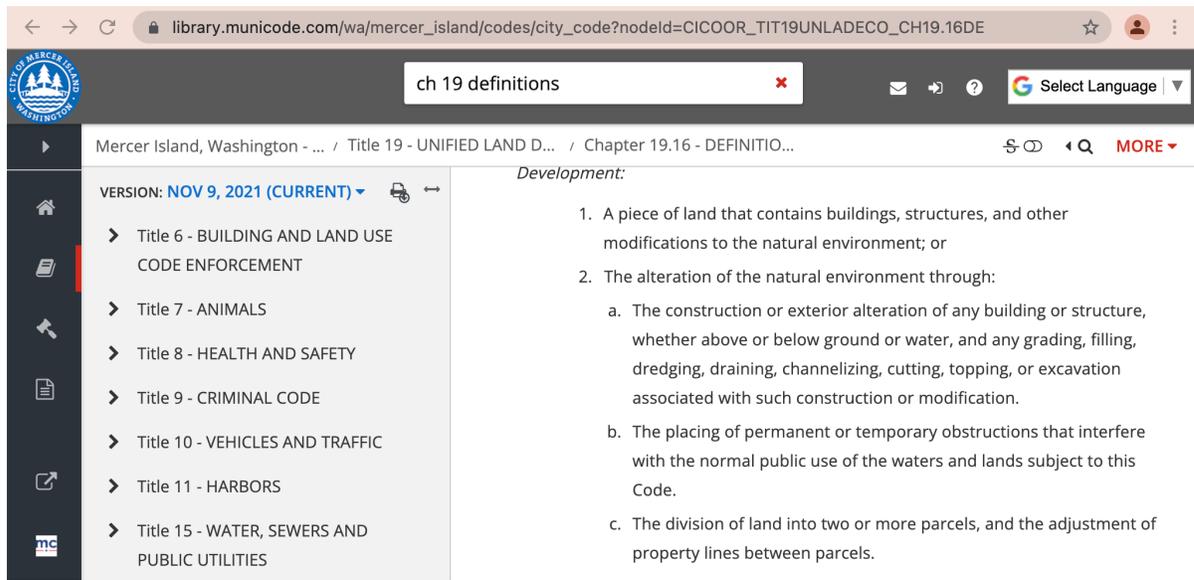
16
17 68. “work” is vague and unclear as to what is meant, but clearly work such as mowing grass
18 or planting a petunia is “work” that would still be allowed without a permit even in a critical
19 area

20
21 69. Also, that fact that Mr. Cole didn’t visit the site nor return my emails and voicemails means
22 that Mr. Cole may not know what “work” was done – or not

23
24 70. When Mr. Cole says “work” it appears the case that he shall be aiming to refer to
25 “development-type work”. There was not any development-type work occurring.

71. Development is defined as:

1 Figure 11.1 – Development definition



72. In fact, the subject area had already been developed - twice, in 1983 and 2001. Both times went through the process Mr. Cole prefers and included Mr. Cole’s involvement and inspection during 2001.

73. That is, development work was done w/ Mr. Cole inspecting the results during 2001. This has been shown previously. Mr. Cole approved and inspected engineering work during 2001 and Mr. Cole approved the subject area as a cut slope. It is not any different now than during 2001 when Mr. Cole approved and inspected.

1 Figure 11.1 – Photo of Actual Engineered Wall Taken TODAY – Facing North



11

12 Figure 11.2 – Photo of Actual Engineered Wall Taken TODAY – Facing South



22

23 74. The last thing my property needs is more engineered walls. I already have many.
Bulkhead, 2001 walls, south boundary, driveway rockery, north neighbor boundary, etc.

24

25 75. Mr. Cole says, “I would be happy to meet to discuss the permit process, applicable
regulations and other questions you may have”; however, this is untrue.

1
2 76. Specifically, I had emailed Mr. Cole on April 9, 2018 requesting a meeting and Mr. Cole
3 NEVER responded.

4
5 77. Also, during April 2018, I had called and left voicemail messages for Mr. Cole and he
6 never returned any of my phone calls or voicemail messages despite the messages asking
7 for a return phone call and meeting.

8 78. Mr. Cole's emails offering to meet with me were an additional example of an empty
9 promise made.

10
11 79. The conclusion that I drew at the time was that Mr. Cole no longer cares about this, which
12 seemed sensible to infer based on exhibited disinterest and unwillingness to repond to me
13 email or voicemails seeking to connect and discuss.

14 Exhibit 1027 – April 9, 2018 Email to Mr. Cole and NO RESPONSE EVER

15
16 80. MICC 17.14 Section 105.2 has to do with construction codes, which do not apply to minor
17 maintenance of existing approved landscaping.

18 81. The idea that "Permit exemptions shall not apply to Areas of Flood Hazard and City Land
19 Use Critical Areas does not apply because this assumes incorrectly there is new
20 construction development work proposed, which there is not.

21
22 82. Mr. Cole may not recall the fact that he had approved the permit and inspected the work
23 which allowed the subject area to be left as an approved Cut Slope following the 2001 site
24 development under Mr. Cole's supervision.

25 83. It's difficult to know whether or not this is the case because Mr. Cole would not email or
call me back when I tried reaching him.

1
2 84. However, Mr. Cole is quick to call Mr. Gartz back on Sundays, and even managed to issue
3 to Mr. Gartz a permit on a Sunday.

4
5 August 23, 2019

6 85. IT IS IMPORTANT TO NOTE THAT BETWEEN FEBRUARY 2018 AND AUGUST
7 2019, THERE WAS 1.5 YEARS HAVING PASSED WITHOUT ANY
8 CORRESPONDENCE WHATSOEVER.

9
10 86. Due to this, I had assumed the Code Case was closed as unfounded. In fact, I believe Ms.
11 Serfling had told me it was Closed, but I did not get in writing. In any event, after 18
12 months of not hearing anything a reasonable person would assume the case had been
13 Closed. And, Ms. Serfling had retired.

14 87. However, on August 23, 2019, completely out-of-the-blue, i.e. without a phone call or any
15 sort of notice, I received in the mail a Code Compliance Courtesy Notice.

16 88. I believe the main reason the City resurrected this case is because a) Mr. Gartz knows Mr.
17 Cole and asked for it to be resurrected; and/or b) Mr. Anthony Myers was hired as a near-
18 student with no experience to replace Ms. Serfling who had come to know Mr. Gartz and
19 the lack of credibility associated.

20 89. The Courtesy Notice includes many of the same issues; for example many incorrect
21 statements:

22
23 90. The Statement, “the replacement of a retaining wall near the bulkhead on your property”
24 is incorrect. There was NEVER a retaining wall there. The permits of 2001 show the area
25 was a CUT SLOPE ONLY and approved via permit and finalized inspection by Mr. Don
Cole. The City cannot seem to process this fact that this area was already approved as a
cut slope only with no engineered or even non-engineered retaining wall structure.

1
2 91. The Statement, “replace the retaining wall near the bulkhead” is not possible. There is
3 not, and has never been, a retaining wall there. It is approved as a CUT SLOPE.
4 Everything else is purely landscaping decoration of the CUT SLOPE using ornamental
5 stone work.

6 September 22, 2019

7
8 92. I responded to Mr. Myers with a basic 4 page letter and 2 pages of attachments, which is
9 Exhibit 17.

10 93. Also during September 2019, I had several times asked Mr. Myers for an in-person meeting
11 to discuss the Courtesy Notice, but Mr. Myers did not respond to me. I assumed he was
12 unwilling to meet with me just as Mr. Cole was unwilling to respond or meet.

13 October 21, 2019

14
15 94. I received in the mail a “Notice of Violation & Order to Correct. However, the document
16 is incorrect in many ways.

17 95. For example, says “Steep Slope: Any slope of 40 percent of greater calculated by
18 measuring the vertical rise over any 30-foot horizontal run”.

19
20 96. However, this definition of Steep Slope appears to be an abbreviated version of the City’s
21 Steep Slope definition thereby omitting the second sentence in the actual code language.

22
23 97. Specifically, the definition shown omits the second sentence in the Code Ordinance
24 Definition, which is
25

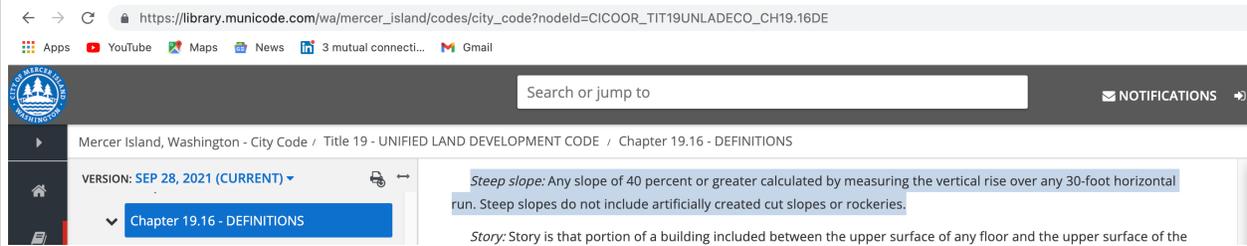
1 "STEEP SLOPES DO NOT INCLUDE ARTIFICIALLY CREATED CUT SLOPES
2 OR ROCKERIES"

3
4 FIGURE 12 – NOTICE OF VIOLATION DEFINITION OF STEEP SLOPE

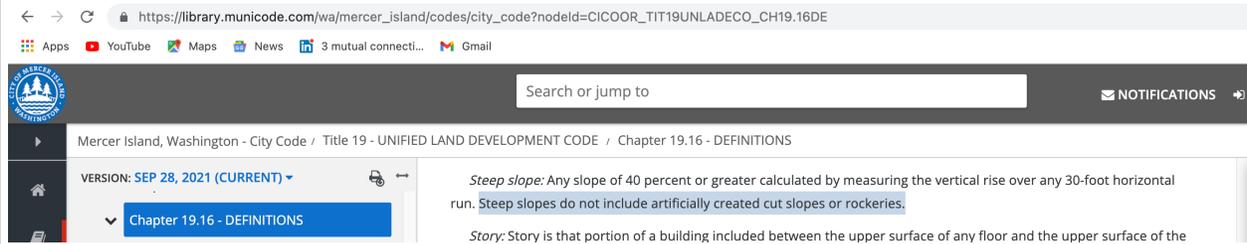
- 5 • MICC 19.16.010 *Definitions*. Critical Areas: Geologic hazard areas, water courses, wetlands, and wildlife habitat
6 conservation areas; Geologically Hazardous Areas: Areas susceptible to erosion, sliding, earthquake, or other
7 geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology,
8 vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas; Steep
9 Slope: Any slope of 40 percent or greater calculated by measuring the vertical rise over any 30-foot horizontal run.

Exhibit 19 - Page 2 of 2

9 FIGURE 13 – ACTUAL CITY CODE DEFINITION OF STEEP SLOPE (INCLUDES 2ND
10 SENTENCE)



15 FIGURE 14 – VARIANCE BETWEEN NOV AND ACTUAL CITY CODE DEFINITION OF
16 STEEP SLOPE (I.E. 2ND SENTENCE IS VARIANCE)



21 98. The City’s drafting of the Notice of Violation & Order to Correct by showing only the first
22 half of the definition of Steep Slope while omitting the second half of the actual Ordinance
23 definition of Steep Slope is incorrect.

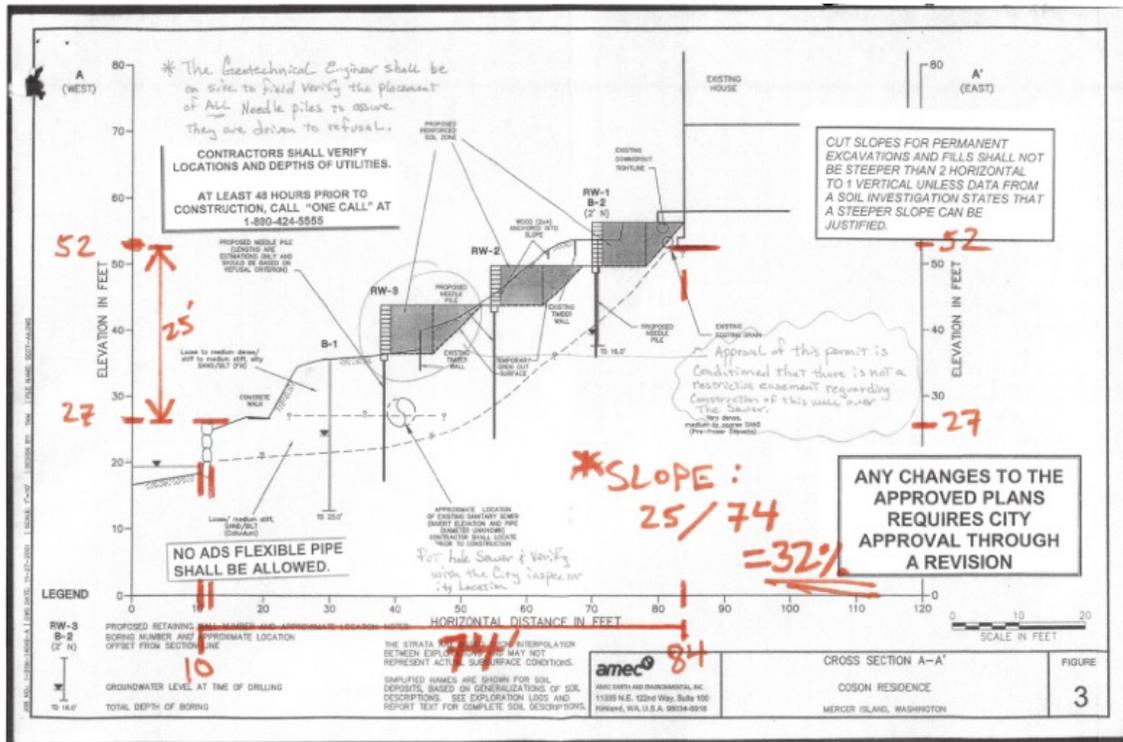
24 99. Issue #2: “A site plan from 1983 show the original slope on the property was calculated at
25 43.8%”

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100. This 43.8% is incorrect for many reasons:

- a) The slope is 37% currently per Washington State Licensed Surveyor, Mr. Bob Winters of Chadwick & Winters Land Surveying
- b) The slope is 37% per Washington State Licensed Surveyor, Mr. Max Meyring
- c) The slope calculation of 43.8% is based on intra-property points that are not at the highest and lowest elevation points, and therefore do not follow the Code Ordinance for how to compute slope
- d) The slope calculation per the 2001 approved plans for the subject area between the bulkhead and house foundation is $25 \text{ ft elevation (rise)} / 77 \text{ ft horizontal distance} = 32\%$.
- e) Note the 2001 approved plans were obtained from City Records and Mr. Don Cole had personally approved the plans and inspected the work.

Figure 15 – Slope Calculation per 2001 Plans Document



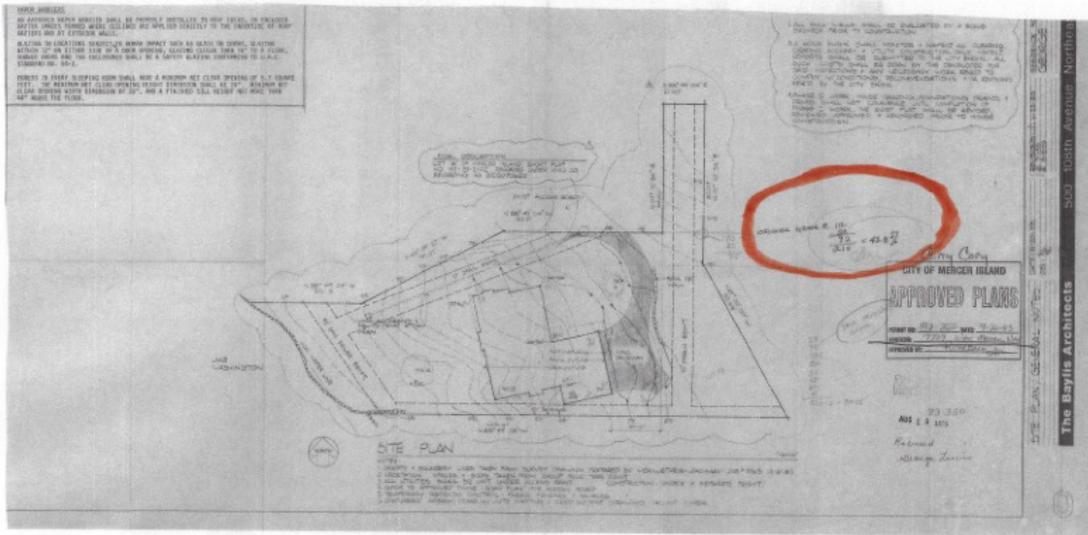
As can be seen from the Plans from the 2001 Permit with orange marker added, the elevation change or rise from the top of the bulkhead which is where the property ends to the house foundation is elevation 27 to 52, or a change in elevation totaling 25 ft. The horizontal run is from 10 ft at the bulkhead to 84 feet at the house foundation, which is 74 feet run. Rise / run = Slope; 25 / 74 = 32% slope.

See Exhibit 1028 – Slope Calculation per 2001 Plans Document

101. Also, note how there is not any 30’ horizontal run that does not intersect an engineered wall. Therefore, the City’s “any 30’ horizontal run” cannot apply to the subject area and surrounding area.

102. The “43.8%” is based on handwritten “chicken scratch” on the City’s Version of the Site Plan, with “GMM” or “GNN” initials. The surveyor at the time his name is Maxwell, with first initial “M” which does not match the “G”.

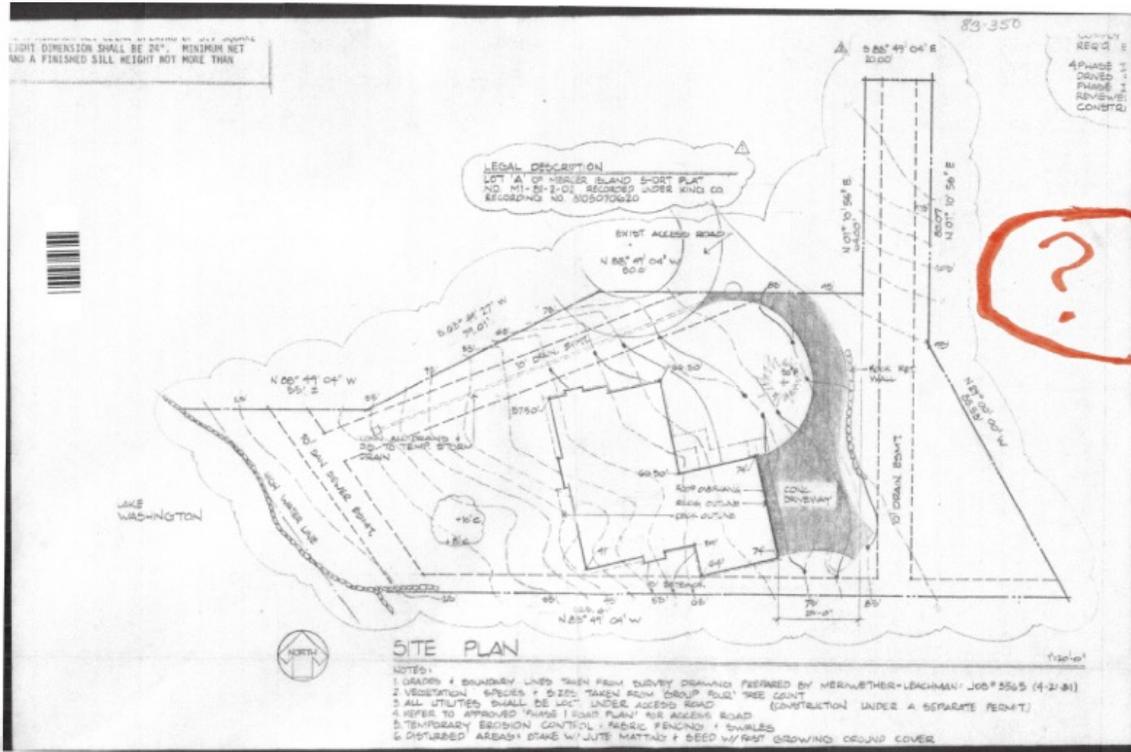
1
2 Figure 16 – 43.8% handwritten “chicken scratch” most likely by City Staff w/ initials
3 “GMM” or GNN”
4



13 See Exhibit 1029 – Site Plan WITH 43.8% Slope “chicken scratched” into the doc

14
15 103. The same file also received from the City EXCLUDES the handwritten “chicken
16 scratch” calculation
17
18
19
20
21
22
23
24
25

Figure 17 – Site Plan per City Records, but excludes handwritten chicken scratch 43.8%



See Exhibit 1030 or Site Plan WITHOUT 43.8% “chicken scratched in” to the doc

104. That is, there is a version WITH the 43.8% added (after the fact) and a version WITHOUT. Who added the 43.8%. Doesn't appear to have been a surveyor.

105. Note that BOTH of these site plan documents were provided to me by the City Department of Records

106. The contour lines shown on this site plan are based on a topo survey from before the property was developed, which is based on the site conditions prior to any development and would not accurately portray finished grade slope percentages following site development.

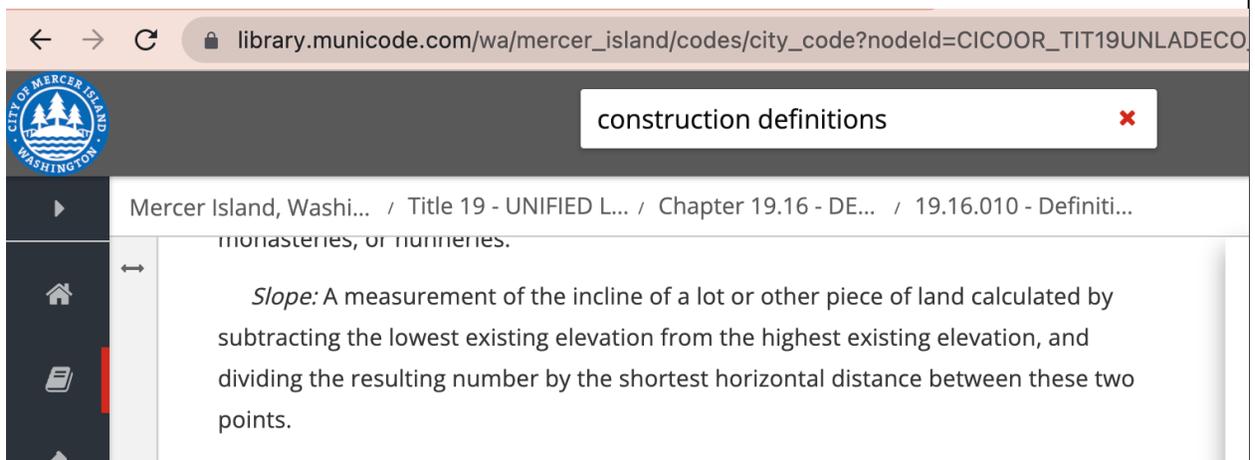
107. In other words, the 43.8% slope calculation is not based on finished grade.

1
2 108. The calculation also does not follow the Code Ordinance requirement for
3 calculating parcel slope, which defines calculation needing to use highest and lowest
4 elevation points on a parcel, which the 43.8% calculation patently does not do

5 109. For example, the City Ordinance says,

6
7 *Slope: A measurement of the incline of a lot or other piece of land calculated by*
8 *subtracting the lowest existing elevation, and dividing the resulting number by the*
9 *shortest horizontal distance between these two points*

10
11 Figure 18 – Code Ordinance for computing parcel slope percent



21 110. The 43.8% shows there is 10 feet of elevation at the flat part of the driveway. That
22 may have been true in ~1980 before excavation to open up the space for the driveway and
23 house, but changed to become opposite during ~1983 such that there is 0 elevation change
24 at that area currently (i.e. the driveway is flat and does not have a 10 foot elevation change).

1 111. During and after development, the peaks and valleys of native property get
2 smoothed out resulting in lesser highs and lows following completion of site development
3 work

4 112. Also, the fact there are engineered walls and rockeries and permit-approved cut
5 slopes on the property means the effective slope net of these engineered mitigations would
6 be even less than 37%.

7 113. The slope is highest at the top and lowest near the bottom. The subject area is near
8 the bottom, where the slope is less

9
10 114. The statement, “There are multiple prior landslide locations on the property and the
11 property has been classified as a landslide hazard” is incorrect. 20 years ago the 2 inch
12 water main supply line broke and due to underground firehose-like water volume and
13 pressure the surface planting soils were laterally blown by water force down the hill due to
14 water gushing laterally from the broken water line. This is not a “landslide”. And, there
15 have been no other “landslides”.

16 115. More importantly, this was due to a type of water supply line pipe that had been
17 recalled due to manufacturers defect and premature breaking. As a result, I obtained a
18 permit and installed a new modern poly line to prevent the possibility of future recurrence.

19 See Exhibit 1031 – water line replacement permit

20
21 116. The reference to “monetary penalties” in the NOV should not apply because fines
22 were newly added to the Code after February 2018 when this Case began. That is, due to
23 timing of fines introduction being after Feb 2018, the City should not be allowed to charge
24 and collect the new daily penalty fines at my expense. City Council passed the fines
25 ordinance language based on the intent of fines being assessed prospectively for future
code cases only, but not retroactively for past code cases as the City is improperly aiming
to do.

1
2 Review of City Exhibits 23 & 24

3
4 117. Exhibits 23 and 24 are patently incorrect because they disregard the fact there are
5 engineered walls already permit-approved by licensed engineers and inspected final across
6 and throughout the property. See above, including 2001 engineering development across
7 the subject area and upland.

8
9 118. Exhibit 23 would only be possibly somewhat usable if there were not any current
10 engineering already in place, and even then there would be qualifications that would
11 preclude from being used in isolation, as the City is aiming to do here.

12
13 119. Exhibit 24 includes language at the footer, which explains its many limitations,
14 which also would not apply to my parcel due to all the engineering already in place.

15
16 120. Specifically, the footnote says,

17
18 *“It provides a general assessment of known or suspect hazard areas for which the City will*
19 *require site and project specific evaluation by a Washington State licensed engineer,*
20 *geologist or engineering geologist prior to issue a site for development. All areas have not*
21 *specifically [sic] evaluated for hazards and there may be locations that are not correctly*
22 *represented on these maps. It is the responsibility of the property owners and map users*
23 *to evaluate risk associated with their proposed development. No site-specific assessment*
24 *of risk is implied or otherwise indicated by the City of Mercer Island by these maps.”*

25
26 121. The suggestions here re: site and project specific evaluation by a Washington State
27 licensed engineer, etc, has already occurred via the 2001 engineering development which
28 was inspected and finalled by Mr. Don Cole. All the assessment requirements, etc have
29 already been completed and passed. This was also done originally during 1984

1 122. Even the Hold Harmless Covenant, etc requirements of the Permit Process were all
2 completed and recorded during 2001

3
4 123. Exhibit 25 is incorrect and inappropriate. Every one of the Slope calculations
5 numbered 1-5 shows slope percentage calculations that do not meet the City Ordinance
6 definitions of Slope Calculation because in all cases there are engineered walls, which must
7 be excluded per the Code language and per City Council expressed intents.

8
9 124. The definition in 19.16.010 of “steep slope” says,

10 **“Steep slopes do not include artificially created cut slopes or rockeries”.**

11
12 125. Slope 1 begins below the bulkhead rockery which is an artificially cut slope and
13 engineered rockery and terminates upland above the engineered retaining wall approved
14 and inspected by Mr. Cole in 2001. Therefore, Slope 1 intersects 2 unique artificially
15 created cut slopes or rockeries

16 126. Slope 2 intersects 1 or more of the engineered retaining walls approved and
17 inspected by Mr. Cole in 2001, and therefore intersects 1 or more artificially created cut
18 slopes or rockeries

19 127. Slope 3 terminates on the top of the roof of a house, and therefore does not measure
20 a slope at all but rather measures how high is the roof of the house.

21
22 128. Slope 3 the horizontal line also runs parallel along the foundation stem wall, which
23 is clearly a cut slope and engineered for such when the excavation was performed and the
24 foundation was poured. This would be an improper line to characterize or assess as a steep
25 slope area. It’s more like assessing the slope of the house structure and foundation
structure.

1
2 129. Slopes 4-5 spans a huge rockery at the east end of the driveway. This rockery is
3 engineered and nearly 20 feet tall. Obviously it is inappropriate to measure this engineered
4 rockery as a slope. It makes zero sense.

5
6 130. Mr. Cole is very familiar with this rockery because he and I met in person and he
7 told me it was his second favorite rockery on the Mercer Island.

8 Figure 19 – Photo of engineered rockery at east of driveway that City is calculating as a
9 “Steep Slope”

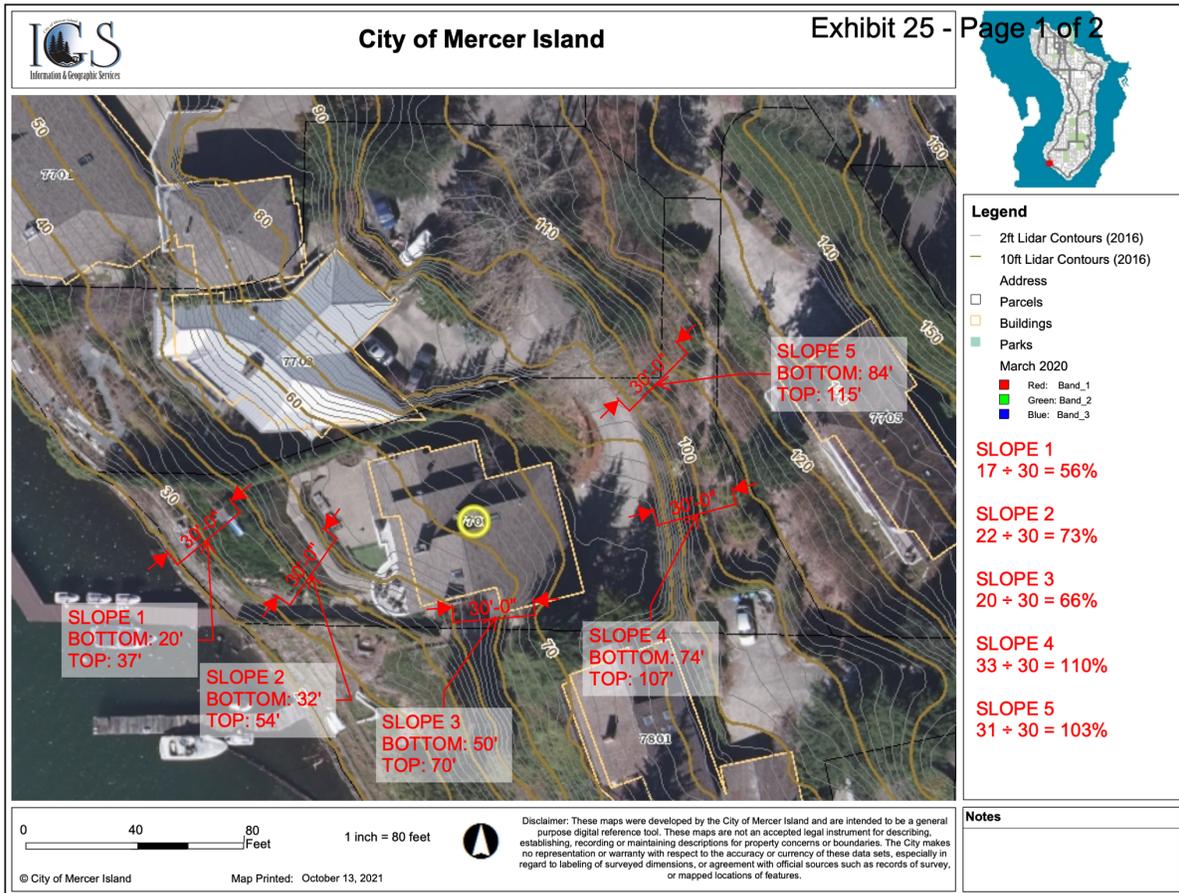


21 131. Suffice it to say, the graphic presented as Exhibit 25 is beyond improper. The slope
22 calculations clearly do not follow slope calculation definitions per ordinance and code and
23 the graphic is very misleading, at best.

24 132. Furthermore, the Code says, “These maps are to be used as a reference only”, but
25 that’s not how the maps are being used currently.” They are being used to prosecute.

133. For the avoidance of doubt, I'm referring to this graphic:

Figure 20 – City's Exhibit 25 Page 1 Graphic w/ Incorrect Slope Calcs



134. Furthermore, the City Council Planning Commission Passed the new Ordinance (2019, after the 2018 commencement of this code enforcement case) based on instructions,

“Update “Steep Slope” definition to only exclude “engineered slopes and rockeries”, and potentially areas of competent consolidated rock.”

135. However, City Staff is doing the exact opposite; that is, City Staff is refusing to adopt what was Passed or the intentions of City Council and City Planning Commission.

Figure 21 – Planning Commission Recommendation – May 21, 2019

City of Mercer Island CAO Update – Gap Analysis Matrix, Planning Commission Recommendation – May 21, 2019

Existing CAO Provision MICC Chapter / Section	Recommendation for Update	Reason For Lack of BAS Consistency	Suggested Change	Basis for Suggested Change	Direction from City	Code Update Tracking
<p>19.07.060 A Designation</p> <p>Definitions of Geologic Hazard Areas, Landslide Hazard Areas, Steep Slopes, Erosion Hazard Areas, and Seismic Hazard Areas included in MICC 19.36.010</p>	<input type="checkbox"/> Consistent w/ BAS <input checked="" type="checkbox"/> Inconsistent w/ BAS <input type="checkbox"/> Opportunity for improved BAS consistency <input type="checkbox"/> Clarity / Ease of use <input type="checkbox"/> Consistency of code sections	<p>Designation of Geologic Hazard Areas, and assessments by Troost and Wisler (2009) providing detailed inventory of potential hazard areas across the Island, are generally consistent with BAS.</p> <p>Landslide hazard area assessment does not integrate recent additional LIDAR data from 2018 Grimm study, or new BAS protocols for landslide mapping and landslide hazard area delineation.</p> <p>Landslide hazard area designation criteria relies on definition of "Steep Slope", which excludes artificially created slopes and rockeries, which is too broad and could include many slopes that do not meet modern code stability requirements.</p> <p>Definition and designation criteria for erosion hazard areas are inconsistent with Troost and Wisler 2009 data and methods.</p>	<p>Update landslide hazard assessment (inventory mapping) to integrate additional data from W. Grimm study (2018). See BAS Report for details.</p> <p>Update "Steep Slope" definition to only exclude "engineered slopes and rockeries", and potentially areas of competent consolidated rock.</p> <p>Update assessments and designation criteria / definitions to provide consistency with Troost and Wisler (2009) methods for erosion hazard areas.</p>	<p>W. Grimm, 2018 Burns and Nickelson, 2016 Burns et al., 2012 Slaughter et al., 2017 Seattle Code 20.09.090.B.2.b Medina Code 20.50.200.B Troost and Wisler, 2009</p>	<p>Planning Commission recommendation: Follow consultant recommendation</p>	<p>Designation of Geologic Hazard Areas updated to be consistent with BAS.</p>
19.07.060 B Buffers	<input type="checkbox"/> Consistent w/ BAS <input checked="" type="checkbox"/> Inconsistent w/ BAS <input type="checkbox"/> Opportunity for improved BAS consistency <input type="checkbox"/> Clarity / Ease of use <input type="checkbox"/> Consistency of code sections	<p>There are no standard buffers or setbacks provided for any geologic hazard areas per code, but setbacks are included in Mercer Island Landslide Hazard Map</p>	<p>Delineation of elevated landslide hazard areas per Grimm 2018, and erosion hazard area by Troost and Wisler, 2009. Include 25-foot setback for steep slopes up to 50 feet high and shallow landslide hazard areas, and 15-foot setback for slopes over 50 feet high and for deep-seated landslide hazard areas. Reduction or increase by geotechnical/geological professionals, but not less than 10-foot setback for erosion hazard areas and shallow landslide hazard areas, and 50-foot for deep landslide hazard areas.</p> <p>See BAS Report for details on recommended updates for landslide hazard area development standards.</p>	<p>State Guidance (Berryman & Henigar, 2000; CTID, 2007) Troost and Wisler 2009 Landslide Hazard Assessment and Map Grimm, 2018 City of Bainbridge Island Code, City of Medina Code</p>	<p>Planning Commission recommendation: Follow consultant recommendation</p>	<p>Buffers added to landslide hazard areas.</p>
	<input type="checkbox"/> Consistent w/ BAS <input checked="" type="checkbox"/> Inconsistent w/ BAS <input type="checkbox"/> Opportunity for improved BAS consistency <input type="checkbox"/> Clarity / Ease of use	<p>Development standards for seismic hazard areas should be updated to address hazard associated with Holocene fault ruptures, even though</p>	<p>No active faults have been identified or mapped with precision appropriate for site-specific hazards evaluation or designation within an inventory map. Aspect recommends standard be provided to require that applicants check the U.S. Geological Survey Quaternary Faults and Folds Database to check for new information regarding active faults</p>	<p>State Guidance (Berryman & Henigar, 2000; CTID, 2007) Seattle BAS 5.1.3</p>	<p>Planning Commission recommendation: Follow consultant recommendation</p>	<p>Development standards for hazards associated with Holocene fault ruptures added to code.</p>

See Exhibit 1032 - Planning Commission Recommendation – May 21, 2019,

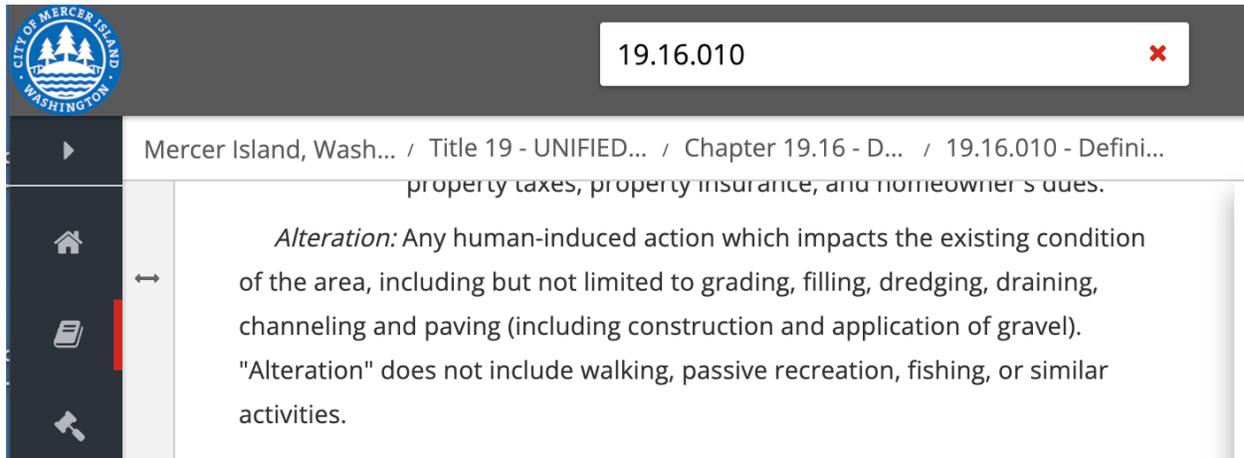
136. Note, the above is days before the Ordinance was passed on or about June 4, 2019

137. It is precisely this type of behavior by City Staff that causes City Council to amend code language to state completely obvious things, such as "Alteration"

"does not include walking, passive recreation, fishing, or similar activities."

138. Language such as this, saying that walking/fishing is not an alteration, has a place in the Code only because City Staff had tried to cite someone for an alteration for walking or fishing.

1
2 Figure 22 – Alteration Code Definition cites, “walking, passive recreation, fishing, or similar
3 activities is not an “Alteration”



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12 139. Whew, what a relief it is knowing it is okay to do “walking, passive recreation and
13 fishing” without first obtaining an Alteration Permit and Inspection from our City

14
15 12/30/2019

16
17 140. City Leaders including Mr. Evan Maxim promised a simplified permit approval
18 should I agree to Stay the Appeal and proceed down a path of submitting a permit
19 application.

20
21 141. It was also agreed, including w/ Mr. Maxim and others including Ms. Van Gorp
22 and Mr. Myers, that the approx. \$1,000 permit fee would be waived. They also agreed not
23 to require a separate critical areas review.

24
25 142. Based on various promises, I submitted a permit application only to learn promises
were hollow and empty and would never be honored.

1 143. The Permit Application submitted was rejected for dozens of incorrect and patently
2 false reasons. For example,

3 144. Does not reflect fact that this was approved previously as a cut slope with absolutely
4 no retaining structure. See 2001 permits approved and inspected by Mr. Cole.

5
6 145. Does not reflect taht putting ornamental stone against a cut slope does not adversely
7 impact a cut slope. It decorates it. A façade.

8 146. The scope is/was radically increased to include review of trees by species, etc.
9 “Provide location, species, caliper size of all trees”

10
11 147. The scope requires proof of legal nonconformity which was already previously
12 agreed legal

13 148. For example, City Staff including Ms. Nicole Gaudette Senior Planner had agreed
14 the area would be “grandfathered because they previously had a retaining wall in the same
15 location”,

16
17 *“I had told you that what they were applying for could not be approved. However, upon*
18 *review of their code enforcement file, I learned that they are grandfathered because they*
19 *previously had a retaining wall in the same location. So, please route the project for*
20 *review.”*

21 See Exhibit 1033 – Email from Nicole Guadette, Senior Planner, with Subject 7709 W
22 Mercer Way Retaining Wall

23 149. The permit response requires excavation parameters, but there is not excavation.
24 This shows how the permit and permit reviewers are unnecessary / not applicable

1 150. Response includes contradictory information, e.g. says there is an existing rockery
2 retaining wall permit, while also saying there is not an existing rockery retaining wall
3 permit

4 151. Says a geotech engineer must determine cause of failure, when there is no failure.
5 That is, was a cut slope decorated w/ ornamental stone. It didn't fail. It was proactively
6 cleaned, maintained.

7 152. Response requires review of features of upslope wall even though 2001 permits
8 were approved and inspected by Mr. Cole. Those walls are engineered and steel reinforced
9 per 2001 permits w/ Mr. Cole.

10 153. Updated Geotech engineering report required. Geotech is not required for an
11 already approved and inspected cut slope. Can see the 2001 permit.

12 154. Geotech peer review required.

13 155. Says no exemptions in Critical areas. It has already been developed twice (1984
14 and again in 2001). Doesn't need an "exemption".

15 156. Response says it is a Steep Slope critical area because the slope is greater than 40%
16 slope, which is untrue (proven elsewhere herein).

17 157. Response requires a new topographic survey of the entire property. Note a topo
18 survey alone is \$10,000.00. I have a bid.

19 20 21 22 23 24 25
158. Rather than pay \$10,000.00, I'd rather move the rocks elsewhere and in doing so
return to the open cut slope as per the 2001 permit and the 1984 original finalled site
condition.

1 159. Response applies the incorrect definition of steep slope, e.g. says steep slope
2 defined as “Any slope of 40 percent or greater calculated by measuring the vertical rise
3 over any 30-foot horizontal run” but this again omits the second sentence, “excluding cut
4 slopes and rockeries” and also omits the direction from City Council, which says excluding
5 “engineered walls and areas of competent rock”.

6 160. Response says it is “mapped” a geo hazard zone. However, this mapped result is
7 incorrect. Both surveyors Mr. Winters and Mr. Meyring have gone on record saying the
8 slope is 37%. Therefore, a slope 37% is less than 40% and therefore is not regulated as a
9 steep slope hazard. Also, the “mapped” label needs to be updated to reflect the significant
10 engineering undergone in 2001 and 1984.

11 161. The fact the area was developed twice mitigates the need for a critical area
12 designation. i.e., developed in 1984 and redeveloped a second time in 2001.

13
14 162. Response says the area is getting redeveloped or developed, which is incorrect.

15 163. Response says there was a slide, which is incorrect. As described above and
16 mitigated with the new poly line, a broken water line had blown out soils down the hill.
17 This is not the same as a landslide. Regardless, it is due to a recalled water line pipe that
18 was replaced relatively recently.

19 164. There are a whole host of artifacts and features throughout the property, and all of
20 the artifact-features remain at finished grade today just as they did in 1983 when the
21 property was first developed. For example, there are sewer drain manholes, 10 different
22 survey monuments, fence posts, fence footings, rockeries, bulkhead rockery, drain grates,
23 concrete flat work including staircases, timber retaining walls, Japanese maple trees, slabs,
24 poured concrete walkways, poured concrete pads for a heat pump, wood fencing,
25 foundation stem walls, foundation footings, breezeways, driveways, tract x paving, even
some sprinkler heads were familiar to the 1980s, etc and all are at the same finished grade

1 today as during 1983. And, everything that is in between is decorative for rocks, plants,
2 etc.

3
4 165. The fact that ALL these artifacts remain at finished grade today just as they did in
5 1983 proves that grading, fill, etc has not occurred in the past 40 years.

6
7 166. I'm willing to share photos and location map of all the feature artifacts from 1983
8 that are still at grade today currently, if helpful

9 October 15, 2021

10 167. Subject: Received Voluntary Compliance Agreement

11
12 168. Requires recording with the County Auditor even though doing so would result in
13 Slander of Title.

14
15 169. For example, says "slope of the property was calculated at 43.8%"; however, this
16 is incorrect and would result in Slander of Title vis-à-vis Mr. Winters Report, which is also
17 Recorded with the King County Auditors Recording Office and says the slope is 37%.

18 170. I shouldn't have to Slander my Title just because the City insists on using incorrect
19 slope data. The 43.8% is clearly incorrect (shown why incorrect seperately herein; many
20 compounding reasons)

21
22 171. Note that if the City fixes the incorrect slope data, the entirety of the Agreement is
23 mooted. This is the reason the City insists on having the slope calculation remain incorrect.
24 City refuses to moot the whole document upon change to correct slope = 37% per Licensed
25 Surveyor.

1 172. I had asked for a meeting with Mr. Bio Park to discuss the 43.8% error and the Title
2 Slander issue, but Mr. Park refused. Mr. Park said no to a meeting, and “No other option”
3 to the proposed language. Language set in stone, basically.

4 See Exhibit 1034 – Email from Mr. Park refusing to meet or budge on the incorrect slope
5 percentage

6
7 November 9, 2021

8 173. The Staff Report dated November 9, 2021 shows similar issues as rebutted above.
9

10 174. Most egregious is the omission of the 2nd sentence in the definition of a Steep Slope
11 and in doing so clearly false slope calculations not in accordance with code definitions.

12
13 175. Secondly, suggesting that construction/development including alteration were
14 occurring is simply untrue.

15 176. Thirdly, the complete omission of the 2001 permitted plans inspected by Mr. Cole
16

17 177. Fourth, the notion that Mr. Cole decides alone and at his sole discretion whether a
18 permit is needed is in major conflict with what City Staff promised to Citizens and what
19 City Council agreed and passed at the time that City Council passed the Ordinance.

20
21 178. For example, Public Comment Received on CAO/SMP update through March 6,
22 2019 had Mr. Ira Appelman say,

23 *“Concerned about numbered of references to the “code official” and that this may*
24 *give too much discretion to staff”*

25 179. City Staff responded to Mr. Appelman, saying,

1
2 *“Amendment made in response to comments: Removed references to the code*
3 *official where possible”*

4 See Exhibit 1035 – Public Comment Received on CAO/SMP update through March
5 6, 2019

6
7 180. However, the City Staff Report aims to do the exact opposite of what was agreed:
8 the Report reverts back to aiming to give back all the discretion to the Code Official.

9 181. The Response to Mr. Appelman’s request is not getting honored per the Staff
10 Report

11
12 182. Mr. Cole should not have all the discretion. There should be rules, and there are.
13 We call them ordinances, and codes. And the ordinances and codes contradict the
14 discretion aiming to get applied with this Case. The discretion is being applied improperly.

15 183. Said another way, discretion can be used properly to grant exceptions/flexibility
16 where warranted. However, discretion should not be getting used to block reasonableness.

17
18 184. The subject area had previously been developed twice; in 1983 and again in 2001

19 185. The subject area appears the same today as compared to how looked in 1984. There
20 were not alterations. The code definition of alteration supports this position.

21
22 186. See Exhibit 28 – Affidavit of Mr. George Lewis, which has Mr. Lewis describing
23 how the subject area to him appears the same as it appeared during 1984. Mr. Lewis is
24 correct in his observations and assertions.

1 187. The subject area was merely undergoing some ordinary repair maintenance, which
2 is precisely what the licensed experts are saying

3
4 188. The Staff Report says that Mr. Haberman is a “PE”, which is true. However, he is
5 also an LG and LEG. By being more than just a “PE”, Mr. Haberman is an expert in this
6 highly specialized field, which is why I sought his opinion. His opinion is that nothing
7 additional is necessary from me or the City. I trust his opinion, and the City should also.
8 The City should have listed Mr. Haberman’s complete credentials in its Staff Report.

9 189. The critical areas code allows some things can be done, including ordinary
10 maintenance and repairs of existing landscaping as well as addition of simple landscaping.
11 The code defines and the definitions support.

12 190. The statements about a “surcharge” are nothing more than a red herring.

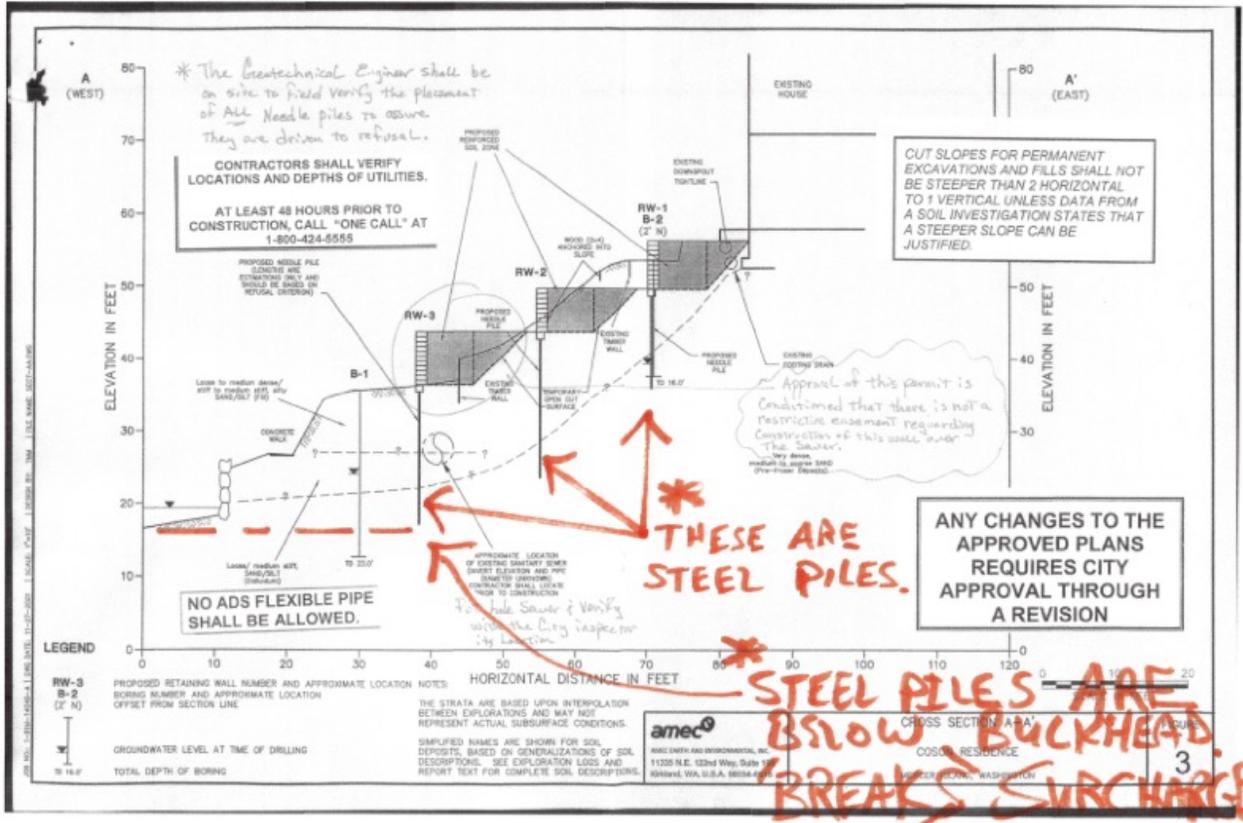
13
14 191. There is not a surcharge from above because the walls above were permitted in
15 2001 and penetrate down into glacial till rock via via steel piles to a depth that is beneath
16 the bulkhead toe, and therefore ‘breaks’ the surcharge from above.

17
18 192. I tried explaining this to Gareth, and he said that he would find the Plans for the
19 upslope walls and get back to me. He got back to me saying he could not find the Plans.
20 However, I was able to obtain the Plans from the City Records Department even though
21 Mr. Park was trying to block the records. Should have been far easier and faster for Gareth
22 to locate than for me to locate.

23 193. Also, the entire area from the bulkhead to the house was designed by engineers and
24 stamped, reviewed and inspected by Mr. Cole to be in place exactly as it is currently.
25

1 194. Clearly the engineers who designed the plans that were followed during the 2001
 2 permitting and development had considered the need for surcharge considerations during
 3 their evaluations.

4 Figure 23 – Steel Piles Penetrate to Depth Below Bulkhead Toe, ‘Breaks’ Surcharge



18 See Exhibit 1036 – 2001 Plans Show Steel Piles Driven to Depth Below Bulkhead, which ‘Breaks’
 19 Surcharge from upslope

20 Note “Coson” is the former owner. I purchased the home in 2006 from Coson and his wife Ms.
 21 Tessie Tsy.

1 CONCLUSION:
2

3 195. It has been very well-documented that Mr. Gartz makes inappropriate offers to City
4 Staff, including City Attorneys. This is what this case is all about. Mr. Gartz and City
5 Staff are buddies and he propositions them often. See Exhibits 1017 and 1018 for
6 examples. Mr. Gartz almost certainly will offer free architect services in exchange for City
7 Staff enacting revenge on me. Mr. Don Cole talks with Mr. Gartz on Sundays. Mr. Cole
8 gave Mr. Gartz a Permit on a Sunday, for example.

9 196. Mr. Cole and Ms. Van Gorp are on the public record apologizing profusely to Mr.
10 Gartz for having caught Mr. Gartz having obtained permits using incorrect slope
11 calculations multiple times consecutively. They know he is committing fraud, and they
12 apologize to him for the fact that I caught them and I caused Mr. Cole and Ms. Van Gorp
13 to Correct his Permit.

14 197. City Staff should know better than to try pulling these revenge-based shenanigans
15 on behalf of Mr. Gartz.

16 198. And, Mr. Gartz doesn't even live next door at 7703 WMW any longer nor does he
17 live on Mercer Island any longer. He may not be living in the United States any longer.

18 199. "Come hook or by crook", City Staff are going to try and win at Appeal. "Win".
19

20 200. That assumes "win" means emptying the Miller Family 529 College Plans to fund
21 over \$100,000 of nonsense development based entirely on an amalgam of incorrect
22 information and punitive revenge-seeking.

23 201. Note that I paid a premium for this house at time of purchase BECAUSE it had
24 undergone development of engineered landscaping. I can't pay then and pay again now.
25 Doing so is foolish.

1
2 202. On the other hand, Mr. Gartz' purchased his house at a discount BECAUSE at that
3 time his house did NOT have engineered landscaping. He was able to use the discount he
4 obtained at purchase to fund the engineering investment.

5
6 203. The City did their absolute best to delay producing my records request #21-300 for
7 more than 5 months so that I would not have any of the documents shown herein. Hundreds
8 of other citizens' record requests jumped the line ahead of mine. No one else was waiting
9 5 months. Just me.

10 204. I had to threaten Mr. Park with a Bar Complaint for Abuse of Power, Obstruction
11 of Justice and Ethics Violations and ONLY AFTER MY THREAT EMAIL did he produce
12 the records. In fact, he did produce the records *the next business day*, but only after the
13 Bar Complaint Threat email from me. Absent the Bar Complaint, there is no chance the
14 records would have been produced in time for hearing. I would have had no defenses
15 whatsoever. That was the goal of City Staff. No defenses.

16 See Exhibit 1037 – Mr. Park email justifying 5 plus month delay re: records production
17 needed to defend case

18 205. Due to the 5+ months delay in getting records, I only had time to review about 2%
19 of the records. I asked for more time to review the records due to the delay. My request
20 for more time was denied. Expedience was given overwhelming priority and the offset to
21 expedience was blocking my ability to conduct a review helpful to defending myself. I
22 was denied the right to review records; to prepare.

23 206. I've already lost over \$100,000 to the dishonest actions of Mr. Gartz. He lied on
24 his permit documents in order to add on to his house in such a way that trespasses currently
25 by 1.2 feet and creates risk of house fire spread from one house to the next. The Code
requires setback of 5 feet or more to prevent fire spread, but instead trespasses his home

1 gets to trespass by 1.2 feet. I've had the loss appraised. The appraiser calls it diminution
2 of value. I've paid \$4,000 for survey monuments that Mr. Gartz removed. I've paid
3 \$10,000 for trees that Mr. Gartz trespassed and destroyed claiming it was necessary for
4 him to do so in order to protect his historic views. Mr. Gartz lied to City Staff repeatedly
5 in order to succeed with altering our shared driveway from a consistent 23% slope to 33%
6 part way followed by 15% thereafter, which created a bump and mortal hazard and harmed
7 property use and value. We have paid more than \$10,000 in attorney fees, mostly to Mr.
8 Scarff, but also to Ms. Fowler and another attorney. We have drawn the line at this level
9 of loss. There can be no more losses at the hands of Mr. Gartz' continued lies, fraud and
10 harassment. Mr. Lewis has lost even more, closer to \$200,000. We are unwilling to accept
11 any more.

12 207. Per Rule 316.a the City has the burden of proving the violation. The City did not
13 meet its burden. Worse yet, the City showed a pattern of bad faith and misuse of incorrect
14 code definitions and data and information and withheld records. The City delayed for 5+
15 months my getting me the records shown herein. The City sent a Voluntary Settlement
16 Offer at the 11th hour that is egregious in requiring Slander of Title re: slope 43.6% vs.
17 actual 37%. 43.6% vs. 37% slope across over 200 feet is 14 feet difference in elevation.
18 Being off by 14 feet is not a simple mistake. It was absurd the City was unwilling to
19 include in its Staff Report and related Exhibits the information re: the 2021 permits and the
20 37% slope per Licensed Surveyors documented in City Files, and then tried to block me
21 from getting those very same records. Attempts to talk with City Staff about the Settlement
22 were refused/denied, including by Mr. Park. I ask that the Notice of Violation and Order
23 to Correct be dismissed with prejudice, which harms no one and is completely fair and
24 reasonable. Thank you for your time and consideration.

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

Signed at Mercer Island, [City] WA [State] on November 15,
2021 [Date].

Shane Miller

Shane Miller

(printed name) Signature