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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

DECLARATION RE: ISSUES THAT
SHALL DELAY RESETTING OF
THE NEW HEARING DATE

Dear Mr. Hearing Examiner:

The Parties are not ready to set a new hearing date due to the following issues:

1. Records Request #21-300 remains open currently and has been open for more than the past more than five months since initial request entry date of May 23, 2021, with records not yet produced as of today October 27, 2021 – last communication as to further delay received on September 27, 2021 – See Exhibit A delay communication of September 27, 2021.
2. Records Request #21-483 remains open currently and has been open for nearly the past three months since initial request entry date of August 2, 2021, with records not yet

1 produced as of today October 27, 2021 – last communication as to further delay received
2 on October 19, 2021 – See Exhibit B delay communication of October 19, 2021.
3

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5 3. Records Request #21-483 currently open – previous delay announced on September 21,
6 2021 – See Exhibit C previous delay communication of September 21, 2021
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10 4. Records Request #21-300 currently open – previous delay announced on August 27, 2021
11 – See Exhibit D previous delay communication announcement of August 27, 2021
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14 5. Records Request #21-483 currently open – previous delay announced on August 9, 2021 –
15 See Exhibit E previous delay communication announcement of August 9, 2021
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19 6. Records Request #21-300 currently open – previous delay announced on August 2, 2021 –
20 See Exhibit F previous delay communication announcement of August 2, 2021 5:46 P.M.
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24 7. Records Request #21-483 – currently open – previous delay announced on August 2, 2021
25 – See Exhibit G previous delay communication announcement of August 2, 2021 4:03 P.M.

8. Records Request #21-300 – currently open – previous delay announced on July 12, 2021 –
See Exhibit H previous delay communication announcement of July 12, 2021

9. Records Request #21-300 – currently open – previous delay announced on May 28, 2021
– See Exhibit I previous delay communication announcement of May 28, 2021

10. Emails between a Code Enforcement Officer (Ms. Jimmi Serfling) and Planner (Mr. Travis Saunders) are redacted. Neither Ms. Serfling nor Mr. Travis are attorneys. City staff has refused to produce unredacted version. See Exhibit J – redacted email between City staff who are not attorneys. This is merely one example. There are very likely additional examples.

1 CONCLUSION
2
3

4 City Records Requests initially entered on May 23, 2021 and August 2, 2021 remain open currently
5 with records not yet produced/disclosed to me as of today October 27, 2021. Based on the
6 numerous announcements of delays shown as exhibit herein, it appears there cannot be certainty
7 as to when these records may eventually get produced by the City. Note, I cannot arrive at a
8 reasonable excuse for this level of chronic and repeated delay and failure – i.e. records requests
9 entered properly on May 23, 2021 not yet produced as of October 27, 2021. Note, the records are
10 all digital. With regard to Records Request #21-300, The City has had 154 days to produce the
11 records, and has not done so. I think it is obvious the City is hiding something, and it is bad faith
12 doing so, especially in this bizarre way of pretending over and over the records will get produced
13 in 15, 20 or 25 day delays each time, only to not actually produce the records. The City aimed to
14 delay the records until after the hearing date which was previously set for October 28, 2021. Had
15 this hearing date not been continued during last week, then the City would have succeeded in
16 preventing records production by the hearing date. It is clear the City is not producing these
17 records in order to hide something from me and my Appeal case. In fact, I have already in other
18 City records found many instances of evidence materially at odds with the most relevant claims
19 made by the City. For example, see Exhibit K, which is a letter from a Washington State Licensed
20 Surveyor indicating the subject area slope is 37% versus City Staff having written in their proposed
21 VCSA the same area slope is 43.8%. Obviously, the City’s case would be more likely to prevail
22 should I not be privy to such records, which are only available via City-controlled Records staff
23 that are in fact supposed to be made available to the public as a matter of law. Therefore, it is
24 reasonable for me to request that the City produce the available records requested and only after
25 the records get produced will the Parties be ready to reconvene for the purposes of setting the new
hearing date. For clarity, I should have the right and opportunity to see requested records before
the hearing. The City has had more than sufficient time – since May 2021, more than 5 months,
or ~154 days – to produce the records in good faith as should have been done by this time. Also,
there are records that were redacted that I believe should not have been redacted. This also needs
correcting, and the City needs the time to do so. Lastly, I would have liked the opportunity to
meet with the City Attorney in order to explain why the City is incorrect in so many of its
assertions, but the City Attorney has explicitly denied my requests for an in-person meeting. This

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denial is bad faith and also insubordinate vs. his manager Ms. Bon who has said he would do so.
See Exhibit M – City Attorney denial of request for in-person meeting to resolve differences. The
result is that I have no other choice but to continue down this path of trying my best to achieve a
fair hearing and outcome that includes symmetrical disclosure of highly pertinent records
information, i.e. fair disclosure and due process. Will it be possible?

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 __October 27,
2021_____ [Date].

Shane Miller *Shane Miller*

(printed name) Signature

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Exhibit A



City of Mercer Island Public Records

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

[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

-- 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>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Exhibit B



City of Mercer Island Public Records

Inbox - Google October 19, 2021 at 4:51 PM

[External Message Added] City of Mercer Island public records request #21-483

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-483-requester-notes@inbound.nextrequest.com

-- 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 message was sent to you regarding record request #21-483:

Dear Mr. Miller,

The City has released an installment of emails in response to your request.

Due to workload considerations, the City requires an additional fifteen (15) 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

[View Request 21-483](#)

<https://mercerisland.nextrequest.com/requests/21-483>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)

Exhibit C



City of Mercer Island Public Records

Inbox - Yahoo! September 21, 2021 at 2:49 PM

[Document Released] City of Mercer Island public records request #21-483

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-483-requester-notes@inbound.nextrequest.com

-- 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

Documents have been released for record request #21-483 along with the following message:

Dear Mr. Miller,

A first installment of records in response to your request is now ready for you. Due to workload considerations, the City requires an additional twenty (20) 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

- 21-483 7703 Emails Released 09.21.2021.zip
- 21-483.zip
- 21-483 Emails 7709 Released 09.21.2021.pdf

[View Request 21-483](#)

<https://mercerisland.nextrequest.com/requests/21-483>



POWERED BY NEXTREQUEST

Exhibit D



City of Mercer Island Public Records

Inbox - Google August 27, 2021 at 3:35 PM

[External Message Added] City of Mercer Island public records request #21-300

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-300-requester-notes@inbound.nextrequest.com

-- 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 message was sent to you regarding record request #21-300:

Dear Mr. Miller,

An new installment of records is ready for you including emails regarding 7701 and 7703 WMW. We have additional emails to review and release for 7709 WMW. Thank you.

Due to workload considerations, the City requires an additional twenty (20) 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

[View Request 21-300](#)

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



POWERED BY NEXTREREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)

Exhibit E



City of Mercer Island Public Records

Inbox - Google August 9, 2021 at 11:39 AM

[External Message Added] City of Mercer Island public records request #21-483

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-483-requester-notes@inbound.nextrequest.com

-- 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 message was sent to you regarding record request #21-483:

Dear Mr. Miller,

The City received your public records request on August 2, 2021.

Due to workload considerations, the City requires an additional thirty (30) 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

[View Request 21-483](#)

<https://mercerisland.nextrequest.com/requests/21-483>



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)

DECLARATION RE: ISSUES THAT SHALL DELAY RESETTING OF THE NEW HEARING DATE - Page 9 of 17

Exhibit F



City of Mercer Island Public Records

Inbox - Yahoo! August 2, 2021 at 5:46 PM

[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

-- 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,

An installment of emails for 7701 and 7703 are now ready for your review and download. Please note, the zip file containing emails for 7703 is a large file and may take some time to download. Due to workload considerations, the City requires an additional twenty (20) business days from the date of this email to respond to your request pursuant to RCW 42.56.520 in order to review additional email installments, review each email for possible exempt information, and to prepare redaction logs.

Sincerely,

Mary Swan, Public Records Officer/Paralegal

206.275.7651

- 21-300 Emails 7703 Released 8.2.2021.zip

[View Request 21-300](#)

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



POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

[Technical support: See our help page](#)

Exhibit G



City of Mercer Island Public Records

Inbox - Google August 2, 2021 at 4:03 PM

Your City of Mercer Island public records request #21-483 has been opened.

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-483-requester-notes@inbound.nextrequest.com

-- 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

Your record request #21-483 has been submitted. It is currently under review and is not available for the general public to view.

Pursuant to RCW 42.56.520, the City will respond to your request by either (1) providing the record(s); (2) providing an internet address and link on the agency's web site to the specific records requested; (3) acknowledging that the request has been received and providing a reasonable estimate of the time required to respond to the request; or (4) denying the public record request.

Records released are subject to the [Fee Schedule](#) (MICC 2.14) as follows:

1. Photocopies, per page = \$0.15
2. Printed copies of electronic records, per page = \$0.15
3. Scanning paper records, per page = \$0.10
4. Electronic files or attachments uploaded for electronic delivery (email, cloud based data storage service, or other means of electronic delivery), for each four files = \$0.05
5. Transmission of records in an electronic format or for the use of agency equipment to send the records electronically, per gigabyte (GB) = \$0.10
6. Any digital storage media or device provided by the agency = Actual cost

[View Request 21-483](#)

<https://mercerisland.nextrequest.com/requests/21-483>

As the requester, you can always see the status of your request by signing in to the City of Mercer Island Public Records Request site [here](#). If you haven't already signed in to your account, you may need to [activate your account](#) to sign in.

Exhibit H



City of Mercer Island Public Records

Inbox - Google July 12, 2021 at 3:57 PM

[External Message Added] City of Mercer Island public records request #21-300

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-300-requester-notes@inbound.nextrequest.com

-- 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 message was sent to you regarding record request #21-300:

Dear Mr. Miller,

We are still working on an email search for your records request. Due to workload considerations, the City requires an additional fifteen (15) 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

[View Request 21-300](#)

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



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The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)

DECLARATION RE: ISSUES THAT SHALL DELAY RESETTING OF THE NEW HEARING DATE - Page 12 of 17

Exhibit I



City of Mercer Island Public Records

Inbox - Yahoo! May 28, 2021 at 2:34 PM

[External Message Added] City of Mercer Island public records request #21-300

To: shanemillerus@gmail.com,

Reply-To: mercerisland_21-300-requester-notes@inbound.nextrequest.com

-- 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 message was sent to you regarding record request #21-300:

Dear Mr. Miller,

The City received your public records request on May 23, 2021.

Due to workload considerations, the City requires an additional thirty (30) 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. Because this is a large request, we will respond in installments.

Sincerely,

Mary Swan, Public Records Officer/Paralegal

206.275.7651

[View Request 21-300](#)

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



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The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Mercer Island.

Technical support: See our [help page](#)

Exhibit J

From: Travis Saunders [Saunders](#)
To: Jimmi Serfling
Cc:
Subject: Gartz Permit Expiration
Date: 4/8/2016 1:47:42 PM
Attachments:

Jimmi,

Linda indicated that you were hoping to talk with me this morning about the expiration of the Gartz permit (#1410-199). Unfortunately, I was in a meeting through the time you were here today and I will be on vacation until April 20th.

[REDACTED]

Travis Saunders | Senior Planner
City of Mercer Island Development Services
9611 SE 36th Street, Mercer Island, WA 98040-3732
p: 206.275.7717 fx: 206.275.7726
travis.saunders@mercergov.org

View the status of permits at www.mybuildingpermit.com
View information for a geographic area [here](#)
View application and other zoning information [here](#)

NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account may be a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

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Exhibit K



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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



MAR 8 1984

Exhibit L

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 19.16.010,² "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.**

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

Exhibit M



Bio Park

RE: Request for in-person meeting

To: Shane yahoo email

Inbox - Yahoo! October 25, 2021 at 4:18 PM



Siri found new contact info Bio Park bio.park@mercergov.org

add... (x)

Mr. Miller - You are already in receipt of the Voluntary Compliance Agreement (VCA) setting forth the terms under which the City is willing to accept a resolution to APL 19-002. No other option, short of a voluntary dismissal of the appeal by you or a resolution to the appeal by the Hearing Examiner, is available for discussion during an in-person meeting. Consequently, instead of meeting with me, please respond to the City's VCA offer. Thank you.

Bio Park

City Attorney

City of Mercer Island

206-275-7652 | mercerisland.gov

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

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

From: shane miller <shane_miller_usa@yahoo.com>

Sent: Tuesday, October 19, 2021 7:30 AM

To: Bio Park <Bio.Park@mercergov.org>

Subject: Request for in-person meeting

Dear Mr. Park,

May we please meet in-person to try and discuss and aim to resolve differences re: APL - 002? I'd also welcome if Mr. Cole and/or Ms. Van Gorp joined.

Sincerely,
Shane Miller

Sent from my iPhone