

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

ROBERT GROSSMAN,

Appellants,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL25-004

CITY OF MERCER ISLAND’S MOTION
TO DISMISS

I. RELIEF REQUESTED

The City of Mercer Island (“City”) brings this Motion to Dismiss Appellant’s appeal of the April 14, 2025 decision approving Seascope Homes, LLC’s Critical Area Review 2 permit application, CAO24-32 (“the Decision”). The basis of Appellant’s appeal is that exceptional tree(s) should be retained; however, pursuant to Mercer Island City Code (“MICC”) 19.07.090, the purpose of a Critical Area Review 2 (“CAR 2”) is “to review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers.” Put differently, CAR 2 does not address retention of trees; to wit, the appealed CAR 2 Decision does not address retention or removal of exceptional trees. No alteration of the CAR 2 Decision would affect either retention or removal of exceptional trees by the Applicant because

1 authorization to remove exceptional trees is not granted within the CAR 2 Decision. Accordingly,
2 because the relief requested is not authorized under the MICC, the Hearing Examiner lacks
3 jurisdiction to grant the same, and the appeal should be dismissed.

4 II. FACTS

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6 The facts included herein are only those related to this Motion. The Decision being
7 appealed, attached as Exhibit A, approved the Critical Area Review 2 for the construction of a new
8 single-family residence at a location containing a piped and open watercourse and within
9 geologically hazardous areas. Pursuant to MICC 19.07.090, the scope of a Critical Area Review 2
10 (“CAR 2”) is “to review critical area studies and mitigation plans in support of proposed buffer
11 averaging and reduction of wetland and watercourse buffers.” The appealed CAR 2 Decision
12 addresses the critical area study provided by the Applicant, the standards for development in sites
13 containing geologically hazardous areas, standards for development within landslide hazard areas
14 and associated buffers, development within erosion hazard areas, and standards for development
15 on sites containing watercourses. Exhibit A. The appealed CAR 2 Decision does not authorize
16 removal of any trees. *Id.*

17
18 Appellant filed an appeal of the CAR 2 Decision on April 28, 2025. Exhibit B, attached.
19 The sole basis for error in the appeal is Appellant’s allegation that two exceptional trees (trees
20 1003 and 1004) should be retained. *Id.* Appellant does not make any allegation that the CAR 2
21 Decision errs in its consideration of the critical area study provided by the Applicant, the standards
22 for development in sites containing geologically hazardous areas, standards for development
23 within landslide hazard areas and associated buffers, development within erosion hazard areas, and
24 standards for development on sites containing watercourses. *Id.*
25

1 **III. ISSUES**

2 1. Should Appellant’s Appeal be dismissed? *Yes.*

3 **IV. ANALYSIS**

4 Under the City of Mercer Island’s Hearing Examiner Rules of Procedures (“RoP”), any
5 party may request dismissal of all or part of an appeal at any time with notice to all parties. RoP
6 204. Grounds for appeal include instances where the appeal fails to state a claim for which the
7 Examiner has jurisdiction to grant relief. RoP 228.

8
9 The instant appeal is just such a claim. The CAR 2 Decision does not authorize the removal
10 of the exceptional trees that Appellant alleges should be retained. Exhibit B. Pursuant to MICC
11 19.07.090, the purpose of a CAR 2 is “to review critical area studies and mitigation plans in support
12 of proposed buffer averaging and reduction of wetland and watercourse buffers.” That is precisely
13 what the Decision addresses. Exhibit A. Notably, the Decision does not address either retention or
14 removal of exceptional trees. *Id.* Indeed, tree retention/removal is addressed within an entirely
15 different chapter of the MICC—CAR 2 review is addressed in MICC Ch. 19.06 and tree retention
16 in this context is addressed within MICC Ch. 19.10. Tree removal requires a permit, not CAR 2
17 review. MICC 19.10.020.

18
19 Because the appealed Decision does not authorize the removal of exceptional trees, the
20 Hearing Examiner lacks the authority to grant the relief that Appellant requests. Appellant’s only
21 mention of any item even remotely relating to the CAR 2 Decision is his allegation that retention
22 of the trees is important because the trees “are on a site with geological hazardous areas and a
23 watercourse...” Exhibit B. However, Appellant does not actually allege that any of the findings or
24 conclusions contained within the CAR 2 Decision are erroneous. Further, the CAR 2 Decision
25

1 does not contain the authorization to remove the exceptional trees that Appellant seeks to preserve.
2 Exhibit A. The Hearing Examiner lacks the authority to order any alteration of the CAR 2 Decision
3 that would result in preservation of the exceptional trees at issue. Because the Examiner lacks
4 jurisdiction to grant the relief requested, this appeal should be dismissed.
5

6 **V. CONCLUSION**

7 The Hearing Examiner lacks jurisdiction to grant the relief requested. Accordingly, City
8 respectfully requests that Appellant's appeal be dismissed.

9 DATED this 12th day of May, 2025.

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Attorneys for City of Mercer Island

1 **DECLARATION OF SERVICE**

2 I, Reina McCauley, declare and state:

3 1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this
4 action, and competent to be a witness herein.

5 2. On the 12th day of May, 2025, I served a true copy of the foregoing **CITY OF**
6 **MERCER ISLAND’S MOTION TO DISMISS** on the following parties using the method of
7 service indicated below:
8

<p>9 Robert Grossman 10 5249 W. Mercer Way 11 Mercer Island, WA 98040 12 <i>Appellant</i></p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: reg232@gmail.com</p>
<p>13 Jon Tellefson 14 Seascape Homes, LLC 15 PO Box 40568 16 Bellevue, WA 98015 <i>Applicant</i></p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: jmt1231@gmail.com</p>

17 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
18 is true and correct.

19 DATED this 12th day of May, 2025, at Auburn, Washington.

20
21 */s/Reina McCauley*
22 Reina McCauley
23
24
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