Hearing Examiner John Galt

BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF MERCER ISLAND

In Re The Appeal of: ROBERT GROSSMAN, Appellant, vs. CITY OF MERCER ISLAND, Respondent.	NO. APL 25-003 APPLICANT SEASCAPE HOMES, LLC'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION & RELIEF REQUESTED

Applicant SeaScape Homes, LLC ("Applicant") respectfully requests that this Court grant Applicant's Motion for Summary Judgment ("Motion"). Appellant's claims against Applicant fail as a matter of law, as Appellant cannot show that Applicant's plan violates the Mercer City Island Code. Further, there are no questions of fact that prevent this Court from granting Applicant's Motion.

Applicant proposes to construct a single-family residence on King County Assessor's Parcel # 141030-00570 ("Parcel 0057"). On September 24, 2024, Applicant submitted a Critical Area Review 2 ("CAR 2") application to the City of Mercer Island Community Planning & Development Department's ("CP&D") for development of Parcel

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0057, given that the development required mitigation of a watercourse buffer. On April 14, 2015, CP&D approved that application. On April 28, 2025, Appellant, who owns the property south of Parcel 0057, appealed CP&D's approval of Seascape's CAR 2 application. The appeal expressed concern that the removal of Trees 1003 and 1004 as depicted on the approved CAR 2 site plan would violate the Mercer Island City Code ("MICC").

Applicant has obtained permits for the plan, including building permits and tree removal permits, from City of Mercer Island Development Services. Furthermore, Applicant's CAR 2 application provided for replacement of the removed trees, and CP&D's approval was conditioned on the replacement of these trees.

II. STATEMENT OF FACTS

A. The Property and Application

Applicant acquired Parcel 0057 from Steven and Mahnaz Knutson under a warranty deed that was recorded on October 29, 2021 under Auditor's File No. 20211029001998.[1] The property is located at 5222 Forest Ave SE, Mercer Island, WA 98040.[2] Following Applicant's purchase of Parcel 0057, Applicant began to prepare to build a single family residence on the property.[3] As the Applicant undertook planning for the construction of the residence, Applicant discovered that Parcel 0057 contains "a piped and uniped watercourse and within a geologically hazardous areas, specifically a potential slide and erosion hazard area."[4] Accordingly, on September 24, 2024, Applicant submitted an application for CAR 2, the purpose of which is to "review critical area studies and mitigation plans in support of proposed buffer averaging and reduction of wetland and watercourse buffers."[5] Applicant

[1] *See* Declaration of Michael A. Spence ("Spence Decl."), Ex. A.
[2] Spence Decl., Ex. B.
[3] Spence Decl., Ex. C.
[4] *Id*.
[5] Spence Decl., Ex. C, MICC 19.07.090(B)(1).

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also attached a letter titled "FP1 – Tree Justification" to its Building Permit Application, which outlined justification for tree removal as part of the Building Permit.[6]

Applicants obtained Building approval on April 18, 2025, Planning approval on April 15, 2025, Engineering approval on March 25, 2025, Tree approval on April 15, 2025, and Fire approval on March 31, 2025.[7] Applicant obtained both a Building Permit and Tree Permit, which are signed and dated April 30, 2025.[8]

B. Appeal

On April 28, 2025, Appellant appealed the CP&D's approval of Seascape's CAR 2 application.[9] The appeal stated concerns that removal of Trees 1003 and 1004 as depicted on the approved CAR 2 site plan would violate Mercer Island City Code ("MICC") 19.10.060.[10] Trees 1003 and 1004 are located near the border of Parcel 0057 with Appellant's property, as indicated with two X marks on the Replacement Tree Plan.[11] Appellant argued that these two trees were "exceptional trees" with a diameter of 24," that none of the exceptions to tree removal under MICC 19.10.060(A)(3) had been met, and therefore, that the two trees should be retained.[12]

On May 12, 2025, per the City of Mercer Island Hearing Examiner's guidance, CP&D filed a Motion to Dismiss asserting that the concern stated in Grossman's appeal was beyond the scope of the CAR 2 review.[13] On May 13, 2025, Applicant joined in CP&D's Motion.[14]

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[6] Spence Decl., Ex. E.
[7] Spence Decl., Ex. F.
[8] Spence Decl., Ex. B, Ex. G.
[9] Spence Decl., Ex. H.
[10] *Id*.
[11] Spence Decl., Ex. I.
[12] *Id*.
[13] Spence Decl., Ex. J., Ex. K.
[14] Spence Decl., Ex. K.

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Appellant responded on May 20, 2025, reiterating his concerns.[15] On June 9, 2025, the Hearing Examiner issued an order denying the Motion to Dismiss.[16] In the order, the Hearing Examiner stated that "issues of material fact exist that render summary dismissal inappropriate."[17] The Hearing Examiner's concerns turned on whether a tree removal permit existed, and whether the tree removal permit had been "rolled into" another development permit, such as the CAR 2 permit or the building permit.[18] As stated herein, Applicant had received a tree permit.[19] Summary judgment in favor of the Applicant is therefore appropriate.

III. STATEMENT OF ISSUES

Whether this Court should dismiss this matter, as there are no genuine issues of material fact, and the issues presented in this Motion can be decided as a matter of law? **Yes**.

IV. EVIDENCE RELIED UPON

This Motion relies upon the Declaration of Michael A. Spence, as well as the pleadings and files herein.

V. AUTHORITY & ARGUMENT

A. Summary Judgment Standard

As the Hearing Examiner notes, "summary dismissal requests in the quasi-judicial realm are akin to summary judgment requests in the judicial realm."[20] "The object and function of the summary judgment procedure is to avoid a useless trial."[21] Summary judgment is properly granted "if the pleadings, affidavits, depositions or admissions on file show that there is no genuine issue as to any material fact, and that the moving party is entitled to

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[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] Spence Decl., Ex. G.
[20] *Id*.
[21] *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963).

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judgment as a matter of law."[22] In ruling on a summary judgment motion, it is the duty of the trial court to consider all evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party.[23] If, from this evidence, reasonable people could reach only one conclusion, the motion should be granted.[24] Because there are no genuine issues of material fact, this Court should grant Applicant's Motion.

B. Plaintiff's Allegation of Violation of MICC 19.10.060 Fails as a Matter of Law

Appellant argues that Trees 1003 and 1004 are "exceptional trees" with a diameter of 24" and thus should be retained per MICC 19.10.060(A)(3).[25] However, Appellant has failed to consider MICC 19.10.060(A)(3) in the context of other sections within the code. MICC 19.10.060(A)(3) states that tree retention must comply with retention requirements set forth in MICC 19.10.060(A)(2).[26] MICC 19.10.060(A)(2) requires that development proposals be "designed to further minimize the removal of large trees" and that such trees can be replaced as part of retention efforts, pursuant to MICC 19.10.070.[27]

MICC 19.10.070(A) provides the following schedule for tree replacement:[28]

Diameter of removed tree	Number of replacement trees required
Less than 10 inches	1
10 inches up to 24 inches	2
24 inches up to 36 inches	3

[22] *Balise*, 62 Wn.2d at 199; *see Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 362, 324 P.2d 1113 (1958); CR 56(c).
[23] *Reed v. Davis*, 65 Wn.2d 700, 705, 399 P.2d 338 (1965).
[24] *Wood v. City of Seattle*, 57 Wn.2d 469, 471, 358 P.2d 140 (1960).
[25] Spence Decl., Ex. H.
[26] MICC 19.10.060(A)(3).
[27] MICC 19.10.060(A)(2).
[28] MICC 19.10.070(A).

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More than 36 inches and any exceptional tree(s)	6

Applicant's proposal has been designed to minimize the removal of trees, including large trees.[29] Only three trees, including the two at issue, are to be removed in the entire development.[30] Notably, Applicant's development proposal provides for 14 replacement trees – greater than the number of replacement trees required for the removal of two exceptional trees.[31] This is why the City approved Applicant's Replacement Tree Plan.

Appellant further argues that none of the circumstances permitting removal of exceptional trees under MICC 19.10.060(A)(3) had been met.[32] However, exception (b) applies. Exception (b) permits removal of an exceptional tree when "retention… will limit the constructable gross floor area to less than 85 percent of the maximum gross floor area allowed under chapter 19.02 MICC."[33] That is true here, as explained in the "FP1 – Tree Justification" letter attached to the Building Permit Application.[34]

Applicant has more than satisfied the provisions of MICC 19.10, and the approval of the CAR 2 application reflects its compliance.[35]

C. Defendants are Entitled to the Reasonable Attorneys' Fees and Expenses

Attorney fees and costs may be awarded when authorized by a contract, statute, or a recognized ground in equity.[36]

[29] Spence Decl., Ex. G, Ex. I.
[30] *Id*.
[31] Spence Decl., Ex. G, Ex. I; MICC 19.10.070(A).
[32] Spence Decl., Ex. H.
[33] MICC 19.10.060(A)(3)(b).
[34] Spence Decl., Ex. E.
[35] Spence Decl., Ex. F.
[36] *Kaintz v. PLG, Inc.,* 147 Wn. App. 782, 785, 197 P.3d 710 (2008).

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In Washington, the prevailing party in a land use appeal shall be awarded reasonable attorneys' fees and costs if the prevailing party on appeal was the prevailing or substantially prevailing party before the city in a decision involving a substantial development permit.[37] Applicants prevailed in the CP&D decision regarding its CAR 2 application. Accordingly, should this Court grant the Motion, Applicant is entitled to its reasonable attorney fees and costs.

VI. CONCLUSION

For the forgoing reasons, this Court should dismiss this matter, as Appellant's claims fail as a matter of law, and award Applicant their reasonable attorneys' fees and expenses.

Respectfully submitted this 20th day of June, 2025.

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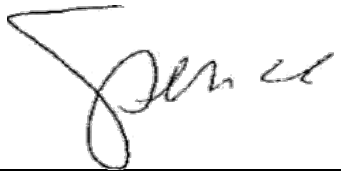

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[37] RCW 4.84.370.

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