BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In re the Appeal of: MELINA LIN, Appellant, v. CITY OF MERCER ISLAND, Respondent.	File No. APL25-006 MELINA LIN'S REQUEST FOR RECONSIDERATION OF THE EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION

I. INTRODUCTION

Pursuant to Mercer Island City Code ("MICC" or "Code") 3.40.110 and City of Mercer Island Hearing Examiner Rule of Procedure ("RoP") 504(a), Melina Lin hereby requests the Examiner reconsider its Findings of Fact, Conclusions of Law, and Final Decision ("Decision"). Ms. Lin does not challenge the Examiner's findings and conclusions that the Middle Easement exists, or that Ms. Lin maintains utility rights to the middle easement. Ms. Lin's Request for Reconsideration is limited to challenging Finding of Fact ("FoF") 9, and Conclusions of Law ("COL") 1 and 4.

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II. REQUESTS FOR RECONSIDERATION[1]

Under MICC 3.40.110(A), the Examiner may reconsider its Decision if it was "based in whole or in part on erroneous facts or information[,]" or "failed to comply with existing laws or regulations[.]" As described below, the Decision is contrary to law because (1) the Examiner lacks jurisdiction to adjudicate title disputes by defining and interpreting the scope of the easement under MICC 19.02.020(H)(2), (2) the Decision represents an impermissible advisory opinion, (3) the Decision is contrary to the Code's plain language and intent, and (4) the Decision violates Ms. Lin's due process rights and constitutionally protected property interest. Finally, the Decision is based upon erroneous facts or information because it ignores substantial evidence in the record, which establishes that the retaining wall encroaches into and encloses the Middle Easement, and Applicant intends to prevent access to the middle easement for any future utility work.

A. The Examiner lacks jurisdiction (CoL 1).

Ms. Lin does not challenge the Examiner's conclusion that "Judge Segal's superior court decision is found binding and determinative on the scope of the middle easement." Decision at 6, CoL 2. Nor does Ms. Lin challenge the Examiner's conclusions that Ms. Lin "ha[s] utility rights to the middle easement[,]" *id.* at 7, CoL 3, and the Middle Easement "still grant[s] utility rights over the 'existing driveway' location depicted in the 1978 short

[1] Ms. Lin appreciates the Examiner's clerical corrections made on April 1, 2026 ("April 1 Decision") to change "[t]he reference to the 'Applicant's water line contractor' on page 5[,] [which] was replaced with the 'Appellant's water line contractor.'" *See* April 1 Decision at 9, n.6. Ms. Lin also notes that Finding of Fact 8 still states that "The Applicants have also submitted a declaration from its waterline contractor, Ex. 1003, which establishes that the existing waterline is located within the middle easement." *See* April 1 Decision at 4 (emphasis added). Accordingly, Ms. Lin also requests that the Examiner correct this scrivener's error as well, by replacing "Appellant" with "Applicants." *See* RoP 508 ("The Examiner may correct obvious clerical errors in decisions on his/her own initiative or in response to a request from a party of record. Clerical corrections are limited to those clearly identifiable from the public record.").

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plat." *Id.* at 6, CoL 2 (italics in original omitted).[2] But Ms. Lin does challenge the conclusion that the Examiner retains authority to define and interpret the scope of the easement under MICC 19.02.020(H)(2) because the Code limits the Examiner's jurisdiction to "hear and decide upon applications and appeals as designated in th[e] Code." MICC 3.40.020(A).

As the Examiner recognizes, *see* Decision at 5, CoL 1, "the Washington State Constitution specifically states that 'cases at law which involve the title or possession of real property' are within the superior court's subject matter jurisdiction." *Guest v. Lange*, 8 Wn. App.2d 1062, 2019 WL 2004235 at *7 (quoting WASH. CONST. art. IV § 6) (concluding "superior court indisputably had subject matter jurisdiction" in "quiet title action [which] involves the title or possession of real property").

Nevertheless, the Examiner repeatedly emphasized that this appeal centers around a "conflicting title history on whether the scope of the middle easement included utilities." Decision at 2, FoF 4. And despite recognizing its limited jurisdiction, the Examiner confusingly concluded that it retained jurisdiction to "adjudicate the title disputes of the subject property" under a flawed interpretation of *Halverson v. Bellevue*, 41 Wn. App. 457, 704 P.2d 1232 (1985). *See* Decision at 5, CoL 1. Indeed, without analysis of subsequent case law, and only passing reference to the Land Use Petition Act's ("LUPA") "simple process to acquire a stay," *see* ch. 36.70C RCW, and the Regulatory Reform Act's permit processing deadlines, *see* ch. 36.70B RCW, the Examiner concluded that "the *Halverson* ruling is no longer found necessary to govern local land use decisions affected by title disputes." Decision at 5–6. This conclusion is contrary to law.

First, *Halverson* has not been overruled by subsequent case law. In fact, post-*Halverson* cases affirm that the Examiner's direction that Ms. Lin should file a stay under

[2] Because the 2021 Segal decision conclusively confirms the existence of the easement, and the Examiner does not have authority to adjudicate a title dispute, Conclusions of Law 2 and 3 should have been stated as Findings of Fact.

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LUPA to assert her property rights is contrary to law.[3] *See, e.g.*, *Gorman v. City of Woodinville*, 175 Wn.2d 68, 74, 283 P.3d 1082 (2012) (city "could have avoided the cost of this litigation by conducting an inspection or survey of the dedicated property to ensure no superior claim to it existed" and quiet title action was not a "prerequisite," because it "simply would have clarified what already exists."); *Gorman v. City of Woodinville*, 160 Wn. App. 759, 763, 249 P.3d 1040 (2011) ("adverse possessor need not record or sue to preserve his rights in the land.") (citing *Halverson*, 41 Wn. App. at 460); *Harrison v. Cnty. of Stevens*, 115 Wn. App. 126, 132, 61 P.3d 1202 (2003) ("[c]onsent by the owners is necessary to prevent future title challenges.") (citing *Halverson*, 41 Wn. App. at 460).[4]

Second, the *Halverson* court held that, although applicable statutes "d[id] not provide a direct answer to the question of how a city, town, or county should proceed in cases of disputed ownership of a portion of [a] property[,]" approval of a permit is improper once a jurisdiction is "put on notice" of a title dispute. *Halverson*, 41 Wn. App. at 459–60.

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[3] Nor would Ms. Lin be able to seek review of the Examiner's decision in a LUPA proceeding as the Examiner suggests. "A LUPA action c[an] not determine the validity of [an] easement because an easement's validity is not a 'land use decision' within the meaning of RCW 36.70C.020(2)" because "[t]he statute does not include resolving disputes regarding title as a land use decision.") *Durbin v. City of Univ. Place*, 33 Wn. App.2d 1025, 2024 WL 5055510 at *3 (citing RCW 36.70C.020(2)(a)–(c); *Lakeside Indus. v. Thurston Cnty*., 119 Wn. App. 886, 903, 83 P.3d 433 (2004)) (cited pursuant to GR 14.1(a)); *see also Durland v. San Juan Cnty*., 175 Wn. App. 316, 324, 305 P.3d 246 (2013) ("A superior court may not expand its statutory authority by varying LUPA's definition of a 'land use decision.' Nor may the superior court expand its authority in a LUPA action by reviewing that which the legislature, in enacting LUPA, did not allocate to the court the authority to review."). Despite being contrary to law, the Examiner's suggestion would in effect, require Ms. Lin to—(1) file a LUPA appeal, (2) successfully argue a motion to stay the LUPA appeal, (3) defend the LUPA appeal against motions to dismiss for lack of jurisdiction, and (4) bring a separate superior court action for a quiet title determination—all to conduct emergency repairs or routine maintenance within her utility easement. This is not "feasible and efficient" as the Examiner suggests.

[4] Although non-precedential and non-binding, *see* GR 14.1(a)), the Court of Appeals in *Shadle v. Kailah Dev., LLC*, 146 Wn. App. 1041, 2008 WL 4003732 at *4, noted that, *Halverson* "does not stand for the proposition . . . that an adverse possession claim is barred if it is not timely asserted or if it is not asserted before preliminary plat approval is received. Moreover, the *Halverson* court did not address whether LUPA applied because that statute was not then in existence.").

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The Code requires the City to determine if "the language of [an] easement" permits a structure to be "constructed on or over any easement[.]" MICC 19.02.020(H)(2). City Staff explained that, "once the plans are submitted and reviewed and easements are identified, the city or reviewer will identify what type of easements are present and then coordinate with . . . what the code says regarding that specific type of easement, whether it be ingress, egress, or utility, and confirm that the improvements are in compliance with that applicable code section." *See* Tr. at 62, 2:03:51. Although the City issued the building permit in "good faith on reliance upon materials provided by the applicant," as it is entitled to do, it later discovered new information after Ms. Lin appealed, which City Staff testified, could have "potentially lead to a different result[.]" *Id.* at 64, 2:09:41–2:10:18; *see also id.* at 56, 1:52:39–1:53:45; *id.* at 63, 2:07:04–16; *id.* at 2:20:53–2:21:11; Ex. 48 at 7:23–8:2.[5]

Although the City's position adheres to the principles set forth in *Halverson*,[6] the Examiner disregarded the City's cautionary (and correct) approach,[7] and erred in concluding that the Examiner had jurisdiction to define and interpret the scope of the easement under MICC 19.02.020(H)(2).

[5] The fact that the City was not aware of Judge Segal's ruling until Ms. Lin filed this appeal demonstrates that Applicants—not Ms. Lin—failed to meet their burden. *See* MICC 19.15.060(A) ("An application shall contain all information. . . to determine if the proposed permit or action will comply with the requirements of the applicable development regulations. The applicant. . . shall have the burden of demonstrating that the proposed development complies with the applicable regulations and decision criteria."); *Cf.* MICC 19.15.130(C) ("The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action.").

[6] *See* 41 Wn. App. at 460 ("Because the merit of an adverse possession claim cannot be determined by the city prior to adjudication, caution in approving plats in such cases is warranted. The platting statute requires the consent of owners in order to prevent future title disputes. Once the City was put on notice of Halverson's claim, approval of the plat as submitted was improper. RCW 58.17.170.").

[7] As land use practitioners, the undersigned have experienced many instances in which jurisdictions refuse to process permits where there are colorable claims of easement disputes that are central to the permit approval, unless and until, the parties resolve the easement dispute.

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B. The Examiner's Decision is an impermissible advisory opinion (CoL 4).

The Examiner does not have authority to make a discretionary decision reserved for City Staff. *See Lejune v. Clallam Cnty*., 64 Wn. App. 257, 270–71, 823 P.2d 1144 (1992) ("Administrative tribunals are creature of the legislative body that creates them, and their power is limited to that which the creating body grants. They cannot possess inherent power, because by definition such power is power not granted yet still possessed.") (citations omitted); MICC 19.15.030(C) ("Type III reviews require the exercise of discretion about nontechnical issues.").

As referenced above, City Staff testified that at the time of permit processing, the Applicant did not provide the City with the 2021 Segal decision. *See* Tr. at 63, 2:07:04–16;[8] *see also id.* at 69, 2:20:53–2:21:11;[9] *id.* at 56, 1:53:45;[10] Ex. 18 at 1.[11] But after reviewing "additional information . . . since receiving the appeal and the testimony" at the hearing, City Staff testified that a "re-review of this building permit" may result in a decision requiring Applicant "to remove the retaining walls from the easement area." *See* Tr. at 64,

[8] (Q: "And I know we saw earlier a 2021 decision by former Superior Court Judge, Matt Siegel. Was that something applicant had provided to you?" A: "No.").

[9] (Q: "[D]o you know whether there was an agreed writing that between the parties here, that is the appellant and the applicant, that structures could be placed in utility easement areas?" A: "So when I was doing the review process with the applicant, I requested them show compliance with that code section [MICC 19.20.020(H)(2)]. You just stated no agreement was provided to me during the review process.").

[10] ("[D]uring the preparation for this appeal hearing, the city did discover new information, including the 2021 summary judgment order we've heard about this morning, and that new information has really put the applicant's assertions regarding what they call the middle easement into question.").

[11] ("As I indicated, our position is that according to the easement document my clients do not need the permission of the waterfront owner to construct or re-buil[d] their retaining wall. Per your request I am attaching the 1979 Declaration of Easement, Restrictions and Privileges which controls and addresses the easement rights between the current property owners.").

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2:09:41–2:10:18; *see also id.* at 70–71, 2:24:15–2:25:05.[12] The Examiner erred in ignoring this testimony from the decision-maker itself, which establishes that the City did not have all relevant information when it issued the permit—but if it did—a different decision was likely.

As such, the Examiner made an original determination that, under MICC 19.02.020(H)(2), "the language of the easement" allows the retaining wall to encroach into the easement. This conclusion is contrary to what City Staff likely would have concluded. *See* Tr. at 64, 2:09:41–2:10:18.[13] But it also goes outside the bounds of the Examiner's explicit authority and is an impermissible advisory opinion. *Prosser Hill Coal. v. Cnty. of Spokane*, 176 Wn. App. 280, 292, 309 P.3d 1202 (2013) (declining to rule on "substantive issues" of conditional use permit because any discussion "would amount to an advisory opinion," when the "trial court did not rule on substantive issues.") (citations omitted); *Open Door Baptist Church v. Clark Cnty*., 140 Wn.2d 143, 157, 995 P.2d 33 (2000) ("Although courts in some states do render advisory opinions, we do not do so in this jurisdiction.") (internal citation omitted). As the City appropriately requested, the Examiner should have remanded the building permit back to City Staff to revise the permit to move the retaining wall outside of the easement. *See* Tr. at 109, 4:03:59.

[12] (Q: "Do you, as a representative of the city, do you know whether there was or is currently a utility easement through the middle of my client's property?" A: "Yeah, I think as previously stated, based on the record, we do think there is an easement there." Q: "What is that belief based upon?" Q: "Yeah, that belief was based upon the new information provided through this appeal process." Q: "My inference is, and I want you to correct if I'm wrong, but that's based upon the Superior Court order that was provided to you, is that correct?" A: "That was seen as very relevant information to the city while reviewing whether or not the easement was present, correct.").

[13] (Q: "[W]ith the additional information that the city has looked at since receiving the appeal and the testimony this morning, would re-review of this building permit potentially lead to a different result?" A: "Yes." Q: "And what result would that be?" A: "Yeah, that result may be to remove the retaining walls from the easement area.").

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C. The Decision is contrary to the Code's intent and plain language (CoL 4).

Ms. Lin does not waive her prior arguments that the 1981 Declaration, Ex. 45, does not apply to the Middle Easement. Even if it did apply, as the Examiner appears to have relied upon, the Examiner's interpretation of MICC 19.02.020(H)(2) is contrary to the Code's intent and plain language.

The objective in interpreting municipal ordinances is to "ascertain and give effect to legislative intent." *Washington State Dep't of Transp. v. City of Seattle*, 192 Wn. App. 824, 837, 368 P.3d 251 (2016) (citing *Ellensburg Cement Prods., Inc. v. Kittitas Cnty*., 179 Wn.2d 737, 743, 317 P.3d 1037 (2014)). To that end, "an interpretation that results in unlikely or strained consequences" must be avoided by considering provisions "within the context of the regulatory and statutory scheme as a whole." *Washington State Dep't of Transp.*, 192 Wn. App. 824 at 837–38 (citations omitted).

The Code's intent is clear: "Easements shall remain unobstructed." MICC 19.02.020(H). This is strong, unambiguous language that creates the baseline condition that structures shall not obstruct easements before any exceptions are considered. Nevertheless, the Examiner's interpretation of MICC 19.02.020(H)(2) ignores (1) the intent of MICC 19.02.020 by disregarding the Code's plain language, which requires easements to "remain unobstructed" with limited exception, and (2) City Staff testimony that confirmed the Code

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language does not allow encroachments into easements. *See* Tr. at 68, 2:18–42;[14] *see also* Ex. 1001 at 1, ¶ 3;[15] Tr. at 112, 4:16:34.[16]

To that end, "zoning ordinances are to be liberally construed so as to effectuate their intent." *Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 379, 739 P.2d 668 (1987) (citing *Dando v. King Cnty.*, 75 Wn.2d 598, 603, 452 P.2d 955 (1969)). Here, there are two limited exceptions to MICC 19.02.020(H)'s pronouncement that "[e]asements shall remain unobstructed." First, if it "is mutually agreed in writing between the grantee and grantor of the easement." MICC 19.02.020(H)(2). "There [is] no question that the parties do [not] mutually consent to the encroachment." Decision at 8:5–7.

Second, "[n]o structure shall be constructed on or over any easement for . . . utilities . . . unless it is permitted within the language of the easement." MICC 19.02.020(H)(2) (emphasis added). The Examiner ignored this plain language of the Code by applying a less exacting standard that evaluated whether the encroachment is "consistent with the scope of the easement." *See* Decision at 8:1–2 ("MICC 19.02.020H authorizes encroachments authorized by the scope of an easement."); *id*. at 8:3–4 ("MICC 19.02.020H2 prohibits the construction of any structure within a utility easement unless consistent with the scope of

[14] (Q: "Is it your understanding that as a code compliance officer, that structures can be placed in an easement area as long as there's agreement by the landowners?" A: "Sort of. . . .For ingress egress easements, no encroachments are allowed.").

[15] ("The portion of a new stone step, walkway and rockery walls are located on the northwestern side of the property is encroaching and will be buil[t] on a "5' Utility Easement (Rec. No. 8107070095) for the City of Mercer Island.' Per MICC 19.02.020(F)(2), Utility and Other Easements. No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trial or other public purposes unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement. Please revise the portion of addition, new stone step, walkway and rockery wall to bring the structure to conformity and reflect the changes as necessary on any plan sets.").

[16] ("Moreover, the issue of a retaining wall has already previously been determined by the city to be a structure. And we noticed from the Lin Exhibit 1001, which was for the 2011, 2012 construction of the applicant's house. And at that point, the city told them that they cannot put any retaining walls and that they cannot put any retaining walls in the . . . I think at the point it was in the setback area and also on the easements in the side yard.").

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the easement[.]"); *id*., at 8:7–8 ("The retaining wall encroachment is found to be consistent with the scope of the middle easement."). But, as required by the Code—the "language of the easement"—not the Examiner's interpretation of the "scope of the easement"—is the operative analysis. Here, the "language of the easement" states:

> [N]o owner of the upland parcel shall erect, construct, plant or maintain any fence, rockery, shrubbery or similar device for the purpose of denying access to or physically enclosing any such easement herein without first obtaining the written consent of the owner of the waterfront parcel.

Ex. 45 at 3; *see also* Ex. 2001; Decision at 3, FoF 4. Thus, the "language of the easement" only authorizes Applicant's retaining wall *if* they "obtain[ed] the written consent of the owner of the waterfront parcel." Ex. 45 at 3. As the Examiner concluded, "the parties do [not] mutually consent to the encroachment." Decision at 8:5–7. The Examiner's analysis should have ended there.

Nevertheless, the language of the easement also precludes the retaining wall if it "den[ies] access to" or "physically enclose[es]" the Middle Easement. *See* Ex. 45 at 3. The Examiner erred in failing to analyze the retaining wall under the easement's express language and limitations.

D. Substantial evidence establishes that the retaining wall denies access to and physically encloses the Middle Easement (FoF 9, CoL 4).

As described above, under the Code and the operative easement language, the retaining wall must be removed if it (1) "denies access to" or (2) "physically encloses" the easement. *Id.* The Decision ignores substantial evidence in the record, which demonstrates the retaining wall does both.[17] *See Wenatchee Sportsmen Ass'n v. Chelan Cnty*, 141 Wn.2d

[17] Because the easement language also precludes "plant[ing] or maintain[ing] any fence, rockery, shrubbery or similar device[,]" *id*., Applicant's shrubs and the chain linked fence also deny access to and physically enclose the easement, and should be removed. *See* Ex. 1012 (video showing yard structure, retaining wall, chain link fence and shrubs enclosing easement area); Tr. at 45, 1:31:45–

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169, 176, 4 P.3d 123 (2000) (under the substantial evidence standard, "there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true.") (citation omitted).

As an initial matter, and as the Examiner found, the "parties do not dispute . . . the location of retaining walls encroaching into the middle easement." Decision at 4, FoF 7 (emphasis added); *see also id.* ("The survey shows the Applicants retaining walls encroaching into the middle easement.") (emphasis added). But the Examiner concluded that because the "retaining wall encroachments are modest[,] [t]hey do not in any sense of the term 'enclose' the utility area." *Id.* at 5, FoF 9. Regardless of the Examiner's opinion, the Code's exceptions are limited. The Examiner cannot add subjective criteria to MICC 19.02.020(H) to allow encroachments into easements if they are "modest." Nor can the Examiner ignore its own findings and City Staff testimony, which prove that the retaining wall "physically enclose[es]" the easement. *See* Tr. at 64, 2:09:17–40.[18]

In addition, contrary to the Examiner's Finding of Fact 9, substantial evidence establishes that the retaining wall prevents access to Ms. Lin's easement. First, throughout the permitting process, Ms. Lin consistently asserted that "[p]ermanent structures such as retaining walls . . . should not be built over utility easements, as they will obstruct access needed for maintenance of emergency repairs" and "[a]llowing these structures to be rebuilt or remain in this area could present significant long-term risks related to accessibility, liability, and maintenance." Ex. 38 at 3; *see also* Ex. 39 at 1 ("As far as I understand, no structure—including a retaining wall—should be placed within a utility easement, as it

1:32:03 (Ms. Lin testifying that the chain link fence "does interfere with the waterline . . . the fence is right about the waterline. . . I need access to the waterline.").

[18] (Q: "And then this particular site plan does show the dashed lines that appellant refers to as the middle easement, is that right?" A: "Yes." Q: "Okay. And so looking at this, would it be your opinion that this portion that I'm circling of the retaining wall would encroach into the appellant middle easement?" A: "Yes.").

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would obstruct access for maintenance or emergency purposes."); Ex. 43 at 3, ¶ 14 ("Even though right now I do not have immediate need to replace the water line, but I see that will be needed if my house project scope is added back on. I may also need to replace other utilities in the future[.]"). Similarly, Ms. Lin's waterline contractor opined, after visiting the site and observing conditions, "portions of retaining walls located within or near the utilities easement . . . may impact future access, maintenance, or replacement of subsurface utilities beneath them." Ex. 1003 at 2, ¶ 5.

Finally, the record demonstrates that the Applicant has consistently prevented Ms. Lin from accessing her utility easement and will likely continue to prevent access.[19] Indeed, the Applicant testified that they would not allow Ms. Lin access to service her waterline in the future. Tr. at 91, 3:07:45–3:08 (Q: "Despite the existence of what I would call a very, very short retaining wall, if Ms. Lin needed to access that for actual servicing her water line in the future, would you allow that?" Applicant: "No.").

Substantial evidence in the record establishes that the retaining wall both "denies access to" and "physically encloses" the Middle Easement. Moreover, testimony and evidence demonstrates that, even though the retaining wall "may impact future access, maintenance, or replacement of subsurface utilities" beneath it, *see* Ex. 1003 at 2, ¶ 5,

[19] *See* Ex. 43 at 3, ¶ 13 ("[Applicant] responded by claiming that I did not have right to replace my old water line in the area shown on the 1983 plat map nor at its existing location. They posted signs on that area that read 'No Trespassing . . .' and scared off my contractors. I then asked them to tell me where I should install my new water line, but they refused to tell me. Then they sued me in this lawsuit seeking a ruling that the utility easement on the plat is not valid and also demanded me not to install the new line at its existing location."); Tr. at 15, 32:58–33:58 ("[M]y neighbor is very hostile. Whenever I ask for the reasonable access from the three years ago, they refused me from going, and this time the same thing."); Tr. at 15, 35:32 ("[A]t that time we spent about 10 days or two weeks [to] try to coordinate for the access."). Tr. at 16, 36:27 ("[T]he applicant refused us from entering the location, refused the date . . . finally she put it out the date far away, then we have to scramble around, try to schedule with the locator."); Tr. at 16, 37:24 ("So again, I tried to schedule that appointment with my neighbor and it was so difficult."); Tr. at 49, 1:40:14 ("They're going to shut the door down, so no, you cannot access. I know that for a fact.").

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Applicant intends to prevent access to the middle easement for any utility work. The Examiner's findings to the contrary are in error.

E. The Decision violates Ms. Lin's due process rights and constitutionally protected property interest (FoF 9, CoL 1, CoL 4).

Finally, Ms. Lin has a "legitimate claim of entitlement" to the Middle Easement. *Durland v. San Juan Cnty*., 182 Wn.2d 55, 69, 340 P.3d 191 (2014) ("A constitutionally protected property interest exists when a plaintiff demonstrates that he or she possesses a 'legitimate claim of entitlement' under the law.") (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). When a municipal code "grant[s] adjoining property owners a claim of entitlement in the protection" of their property rights, and a permitting decision encroaches upon said property interest, the permit must be denied. *Durland*, 18 Wn.2d at 69. Here, the Code requires the City (and the Examiner) to deny a permit if a "structure [is] constructed on or over any easement for . . . utilities . . . unless it is permitted within the language of the easement[.]" MICC 19.02.020(H)(2).

By approving the building permit and dismissing Ms. Lin's appeal, the Decision violates Ms. Lin's due process and constitutionally protected property interests. *Cf. Durland*, 182 Wn.2d at 69 (concluding "due process claims fail[ed]" when code "does not grant adjoining property owners a claim or entitlement in the protection of their views" nor "require the county to deny a building permit that might impair private views of the water.").

III. CONCLUSION

Because the Decision is "based in whole or in part on erroneous facts or information" and "failed to comply with existing laws or regulations[,]" *see* MICC 3.40.110(A)(1)–(2), Ms. Lin respectfully requests that the Examiner reconsider Finding of Fact 9 and Conclusions of Law 1 and 4 for the reasons described above.

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Respectfully submitted this 2nd day of April 2026.

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CERTIFICATE OF SERVICE

I, Ann Gabu, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein:

That I, as a Legal Assistant in the office of Van Ness Feldman LLP, caused true and correct copies of the following documents to be delivered as set forth:

1. Motion for Reconsideration; and
2. Certificate of Service

And that on April 2, 2026, I addressed said documents and deposited them for delivery as follows:

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EXECUTED at Seattle, Washington, on this 2nd day of April 2026.

/s/ Ann Gabu
Ann Gabu, Legal Assistant

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