

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:
MELINA LIN,

Appellant,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL25-006

CITY OF MERCER ISLAND’S
RESPONSE ON APPELLANT
REQUEST FOR
RECONSIDERATION

I. INTRODUCTION

The City of Mercer Island (“City”) submits the following Response to Appellant’s Request for Reconsideration, pursuant to the request from the Hearing Examiner issued April 2, 2026. The Hearing Examiner solicited three questions of the parties, which the City responds to accordingly, below.

II. ISSUES

- 1. If Halverson still applies as asserted by the Appellant, why does the City and Examiner still have the authority to adjudicate the scope of the easement as asserted by the Appellant? The City believes Halverson does not apply to the case at hand.



- 1 2. If Halverson still does apply to the completely changed regulatory background of today,
2 isn't it limited to circumstances where a quiet title action has already been filed? *The*
3 *City believes Halverson does not apply to the case at hand.*
- 4 3. Do all the parties find that the accessibility of the easement should be resolved from the
5 record of this case? *No.*

6 III. ANALYSIS

7 1. *Halverson Does Not Apply In This Proceeding*

8 It is the City's position that *Halverson* does not apply to the case at hand, based on key
9 differences between the *Halverson* case and the case at hand. First, *Halverson* involved a claim of
10 adverse possession and the case specifically focused on Ms. Halverson's asserted "ownership
11 interest" in the property at issue. *Halverson v. City of Bellevue*, 41 Wash. App. 457, 458, 704 P.2d
12 1232, 1233 (1985). This alleged "ownership interest" was key, as the Court of Appeals, Division
13 I, examined language in the subdivision statute, relating to the necessity to have the signature of
14 "all parties having any ownership interest in the lands subdivided and recorded as part of the final
15 plat." *Id.* at 1234, quoting RCW 58.17.165.¹ In the instant proceeding, there is no adverse
16 possession alleged and it is the City's understanding that Appellant does not assert ownership
17 rights to Applicant's property. Instead, at issue are easement rights, which are property rights
18 "separate from ownership that allows the use of another's land without compensation." *810 Props*
19 *v. Jump*, 141 Wn.App. 688, 696, 170 P.3d 1029 (2007).

20
21 Further, this case does not concern the application of RCW 58.17.165 and any corollary
22 language in the Mercer Island City Code (MICC). Instead, the key issue was whether, under MICC
23 19.02.020(H)(2), Applicant's retaining wall was constructed on or over a utility easement benefiting
24

25
26 ¹ While the Bellevue City Code required signature and acknowledgement by any party with *any interest* in the lands subdivided, the Court focused its analysis on the statute. *Id.* at 1235.

1 Appellant and if so, whether such construction is permitted within the language of the easement.
2 These are inapposite from the facts giving rise to *Halverson* and as such, that case is inapplicable
3 to the instant appeal proceeding.
4

5 **2. *Halverson* Does Not Apply But If It Did, the Case Does Not Limit Its Application Only**
6 **to Circumstances Where a Quiet Title Has Been Filed**

7 As to the Hearing Examiner's second question, again, the City's position is that *Halverson*
8 is so factually and legally dissimilar to the case at hand that it is not controlling in the instant
9 proceeding. Accordingly, the City does not believe the Examiner must make a finding in this
10 proceeding as to whether its doctrine is only applicable where a quiet title action has been filed.

11 **3. Accessibility of the Easement Need Not Be Resolved From the Record of the Appeal**

12 MICC 19.02.020(H)(2) requires an inquiry as to whether construction of Applicant's
13 retaining wall on or over a utility easement is permitted within the language of the easement in
14 question. In the context of this proceeding, the MICC thus requires an examination of the language
15 of the easement to determine whether it permits such encroachment. However, the code does not
16 require the adjudication of the accessibility of the easement in practice and/or whether there has
17 been any interference with the easement rights (such as by alleged verbal denial of access by
18 Applicant). Such matters are instead most appropriately litigated in superior court as a purely
19 private matter between the two neighbors, Applicant and Appellant.
20

21 **IV. CONCLUSION**

22 As discussed above, the City finds *Halverson* inapposite to the facts and the law at issue in
23 this proceeding. Additionally, the MICC does not require a determination whether there has been
24 actual interference with Appellant's easement right by Applicant. The City does not take a position
25 otherwise on the Request for Reconsideration by the Appellant.
26

1 DATED this 10th day of April, 2026.

2 MADRONA LAW GROUP, PLLC

3
4 By: /s/ Eileen M. Keiffer
5 Eileen M. Keiffer, WSBA No. 51598
6 14205 SE 36th Street
7 Suite 100, PMB 440
8 Bellevue, WA 98006
9 Telephone: (425) 201-5111
10 Email: eileen@madronalaw.com

11
12 **CITY OF MERCER ISLAND**
13 **OFFICE OF THE CITY ATTORNEY**

14 By: /s/ Bio Park
15 Bio Park, WSBA No. 36994
16 9611 SE 36th Street
17 Mercer Island, WA 98040
18 Telephone: (206) 275-7652
19 Email: bio.park@mercerisland.gov

20 Attorneys for City of Mercer Island

1 **DECLARATION OF SERVICE**

2 I, Tori Harris, 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 10th day of April, 2026, I served a true copy of the foregoing City of Mercer
6 Island’s Response on Appellant Request for Reconsideration on the following parties using the
7 method of service indicated below:
8

<p>9 Liberty Quihuis, WSBA No. 57779 10 H. Ray Liaw, WSBA No. 40725 11 Van Ness Feldman, LLP 12 1191 Second Avenue, Suite 1800 13 Seattle, WA 98101 <i>Attorneys for Appellant Melina Lin</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: lquihuis@vnf.com rliaw@vnf.com</p>
<p>14 Morgan J. Wais, WSBA No. 36603 15 Douglas W. Scott, WSBA No. 6658 16 Rainier Legal Advocates, LLC 17 465 Rainier Boulevard N., Suite C 18 Issaquah, WA 98027 <i>Attorneys for Applicant/Applicant Representative</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: morgan@rainieradvocates.com doug@rainieradvocates.com</p>

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

21 DATED this 10th day of April, 2026, at Seattle, Washington.

22
23 By: /s/ Tori Harris
24 Tori Harris

