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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

MELINA LIN,

Appellant,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL25-006

APPLICANTS' BRIEF

INTRODUCTION

The Applicants', Kan Cui and Yan Liu building permit was signed and approved by the City of Mercer Island (the "City") on November 21, 2025. Appellant, Melina Lin, has appealed the City's determination. The City's Staff Report recommends that the Appellant's appeal be dismissed on all grounds except with regard to whether the Applicants' retaining wall encroached upon a utility easement. The Staff Report leaves this issue for the determination of the Hearing Examiner. The resolution of this issue largely depends upon the proper location of the utility easement through Applicants' property and whether the retaining wall denies access.



1 **HISTORY**

2 The following documents in chronological order are those dealing with easements that
3 are related to the Applicants' property which is Parcel A.

4 **A. December 15, 1978 Approved Short Subdivision - Exhibit 2001.**

5 Swanson Dean Profit Sharing Trust, hereafter "Swanson Dean" owned Tract 10 Sunny
6 Bank and in 1978 and 1979 divided it into Parcel A (now owned by Applicants) and Parcel B
7 (now owned by Appellant). The City approved this short plat which formally created and
8 described two easements:

- 9 1. "an easement for driveway and utilities across the southeasterly 10 feet in width."
10 2. An easement for side sewer (not at issue).

11 This document attached drawings on pages 4 - 7 delineating the "Drive & Utility
12 Easement" located on the southeasterly 10 feet of Parcel A. It also shows a "Existing Drive"
13 which does not contain any easements.

14 **B. May 18, 1979 Easement for Underground Electric System - Exhibit 2002**

15 Swanson Dean granted Puget Sound Power and Light Company a 10 foot easement for
16 power facilities "located southerly of the driveway" along the southerly portion of Parcel A.

17 **C. April 23, 1979 (approved November 6, 1979) Boundary Line Revision**
18 **between Parcels A & B short plat of portion of tract 10, Sunnybank as recorded under**
19 **King Co. Recording No. 7812180972.**

20 This survey was prepared by Jones - Bassi and Associates to show the boundary division
21 between Parcels A and B. It references Cui easements:

1 1. A "revised location of 12 foot easement for ingress, egress & utilities (Easement
2 No. 1)".

3 2. The northerly "Utility Easement (Easement No. 2)".

4 3. "5 foot utility easement (Easement No. 3)".

5 It was not signed, approved or acknowledged by owner Swanson Dean.

6 **D. December 6, 1979 Declaration of Easements, Restrictions and Privileges**
7 **recorded in 1981 - Exhibit 2004.**

8 This is the governing document for Parcels A and B which in detail sets forth the
9 property uses and the parties' easement rights. It has been signed and acknowledged by Swanson
10 Dean as well as accepted, signed and acknowledged by Merrill and Ida Gerstel the original
11 owners of Parcel A. This Declaration of Easements sets forth three easements through the Parcel
12 A property for the benefit of Parcel B:

13 1. "4.a. A non-exclusive easement for vehicular, pedestrian and other ingress and
14 egress by the owners of the waterfront parcel (Parcel B), their guests and invitees, over a strip of
15 land lying six (6) feet on each side of a line denominated the "driveway centerline" on the
16 attached Exhibit "A".

17 2. "4.b. An easement for water, sewer, phone, gas, electricity, and all other utility
18 services over, across, upon and beneath a strip of land five (5) feet in width running parallel to
19 the northerly boundary of the upland parcel and lying immediately to the south of the northerly
20 boundary."

21 3. "4.c. An easement for water, sewer, phone, gas, electricity and all other utility

1 services over, across, upon and beneath a strip of land five (5) feet in width parallel to the
2 southerly boundary of the upland parcel and lying immediately to the north of the southerly
3 boundary."

4 These 3 easements correspond with numbers 1, 2 and 3 in the April 23, 2019 survey -
5 Exhibit 2003. This Declaration of Easements creates a new easement for utilities along the
6 northerly boundary and has established the location for the vehicular easement upon Parcel A. It
7 does not grant an easement for utilities along the 12 foot driveway easement which corrects this
8 reference from the April 23, 1979 survey.

9 **E. 1983 April 23, 1979 survey - Exhibit 2005.**

10 This is the same April 23, 1979 survey only with the notation in the lower left portion
11 which states: "See Declaration of Easements, Restrictions and Privileges recorded under King
12 County Recorder's No. 8107070095 & 8107070094 for details of easements and waterfront uses,
13 etc.". This provision references the easement language of the December 6, 1979 Declaration of
14 Easements (Exhibit 2004). The April 23, 1979 survey incorrectly references utilities in the
15 driveway area that had not been changed. However, it does reference the Declaration of
16 Easements which properly explains that there is not a utility easement in the driveway area.

17 Provision 4.d. of the Declaration of Easements sets forth the following provision which
18 explains that there shall be no construction which prevents access to the above the easements
19 which were set forth in provisions 4.a., 4.b. or 4.c.:

20 4.d. The owner of the upland parcel shall have exclusive control
21 over the landscaping of the easements described under
sub-paragraphs 4 (a), (b) and (c) provided that no owner of the
upland parcel shall erect, construct, plant or maintain any fence,
rockery, shrubbery or similar device for the purpose of denying

1 access to or physically enclosing any such easement herein
2 reserved without first obtaining the written consent of the owner of
the waterfront parcel.

3 **F. September 26, 2011 Access and Utilities Easement - Exhibit 2006.**

4 In 2010 Applicants purchased Parcel A and built the current home. This included the
5 slight relocation and straightening of the access driveway and the installation and maintenance of
6 utilities over that portion of the property. All plans and details were approved by the City which
7 encouraged this document to formally describe the location where the driveway is now located.

8 By this recorded document, the owners of Parcels A and B both agreed that the driveway
9 easement as well as that for any utilities, shall be located as it is described legally on Exhibit A
10 and described physically on Exhibit B of this document. Both owners signed and acknowledged
11 this document.

12 **G. 2017 Driveway Relocation Easement - Exhibit 2007.**

13 The owners of Parcels A and B were to prepare a document to relocate the driveway
14 easement to the location where the driveway had been since 2011. This document accomplished
15 that purpose. Provision 2 states "in consideration of the relocation of the driveway, any
16 Easement rights in the former Driveway area, which is no longer used, shall be cancelled,
17 extinguished and of no further effect."

18 **H. November 5, 2021 Order Granting Defendant's Motion for Partial Summary**
19 **Judgment - Exhibit 2008.**

20 In response to Appellant's Summary Judgment Motion, Judge Segal signed this Order
21 which indicates that the parties' 2017 Driveway Relocation Easement did not intend "to relocate

1 utility easements". This Court recognized the parties' "mutual intent" to relocate the driveway
2 easement. No mention of the 2011 Access and Utilities Easement, Exhibit 2006 was made by
3 the Court.

4 ARGUMENT

5 **A. Conflicting Language.**

6 It is the Applicants' position that the language in the April 23, 1979 surveys (Exhibit
7 2003 and 2005) that states "revised location of 12 foot easement for ingress, egress & utilities
8 (Easement #1)" improperly contains the words "& Utilities".

9 First, the April 23, 1979 survey predated and was corrected by the later December 6,
10 1979 Declaration of Easements regarding this provision.

11 Second, the April 23, 1979 survey references easements 1, 2 and 3 which are the exact
12 same as easements 4.a, b. and c. in the December 6, 1979 Declaration of Easements which later
13 document explains these easements in depth.

14 Third, the December 6, 1979 Declaration of Easements specifically enumerated and
15 detailed the easement rights where the April 23, 1979 survey merely says "& Utilites".

16 Fourth, the April 23, 1979 survey was only signed by the surveyor, not signed nor even
17 approved by the property owners in writing.

18 Fifth, there was no deed granting or reserving that driveway utility easement and no
19 written instrument with appropriate granting language ever came into existence. Survey
20 designations cannot trump the statutory requirement for a deed or written instrument to create
21 and convey an easement.

1 Sixth, the case of *Solberg v. River Park Estates Property Owners Ass'n*, No 40743-8-III
2 (Court of Appeals, Div. 3, November 10, 2025). Unpublished. In this case the Solbergs' bought
3 their home in River Park Estates in 2019. After closing, they learned that the HOA claimed the
4 right to use part of their property as an Entrance Easement according to a 1998 recorded
5 Amended Survey against the property. The Solbergs filed suit against the HOA requesting a
6 Declaratory Judgment that the Entrance Easement was invalid. The developer testified that when
7 he first conveyed the land, he intended the Amended Survey to burden the lots. The Court of
8 Appeals found in favor of the Solbergs ruling that the Amended Survey did not constitute a
9 written instrument containing appropriate granting language to constitute an easement.
10 Therefore, no Entrance Easement came into existence. The Court held as follows:

11 All real property interests in the State of Washington, including
12 easements, must be conveyed by written deed. RCW 64.04.010,
020; *Kesinger*, 113 Wn.2d at 325-26.

13 A document meets this requirement if it "demonstrate[s] a present
14 intent to grant or reserve an easement" and is signed by the bound
party and acknowledged.

15 The Court went on to explain:

16 A property owner may create private easements through grants in a
17 final plat. *See* RCW 58.17.165. A survey map lacks the statutory
18 privileges afforded final plats. Nevertheless, a survey map may be
19 sufficient to create an easement provided the necessary language
20 granting or reserving the easement is included on the map, along
with the bound party's signature and an acknowledgment.
Moreover, an easement may be granted when a deed references a
map.

21 Standing alone, the 1998 Amended Survey lacks the necessary
requirements of RCW 64.04.020 to convey an easement in Lot 1.
In other words, the 1998 Amended Survey alone did not create any
easements.

1 Seventh, the Boundary Line Revision is designed to adjust or change a boundary between
2 two properties. To accompany this submission to the City is a survey. That is what the April 23,
3 1979 survey was designed to accomplish. Its purpose was to delineate the boundary between
4 Parcels A and B not to create a utility easement along the driveway where none had been
5 granted.

6 Eighth, *Richardson v. Cox*, No. 191880-5-III (Div. III, 2001). Unpublished. This case
7 held: "Because an easement is an interest in land, it must be conveyed by a written deed." RCW
8 64.04.020. *Berg v. Ting*, 125 Wn.2d 544, 551, 886 P.2d 564 (1995).

9 DATED this 20th day of FEBRUARY, 2026.

10 RAINIER LEGAL ADVOCATES, LLC

11
12 By: /s/ Morgan J. Wais
13 By: /s/ Douglas W. Scott
14 Morgan J. Wais, WSBA #36603
15 Douglas W. Scott, WSBA #6658
16 Attorneys for Applicant/
17 Applicant Representative
18 E-Mail: morgan@rainieradvocates.com
19 E-Mail: doug@rainieradvocates.com
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21



CERTIFICATE OF SERVICE

The undersigned declares as follows:

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

On the 20th day of FEBRUARY, 2026, I caused to be served a true and copy(ies) of the following pleadings:

1. Applicants' Brief; and
2. Certificate of Service

on the party or parties listed below in the manner indicated:

PARTY OR PARTIES	VIA
Hearing Examiner Phil A. Olbrechts, Attorney-At-Law WSBA #19146 Olbrechts and Associates PLLC 720 N. 10th Street, Suite A-297 Renton, WA 98057-5683 Phone: 206-650-7268 E-Mail: olbrechtslaw@gmail.com	[] Hand Delivery - Legal Messenger Service [] U.S. Mail [X] Electronic E-Mail - ONLY [] Facsimile Transmission
Attorneys for Appellant Stephan D. Wakefield, Attorney-At-Law WSBA #22762 Christopher T. Benis, Attorney-At-Law WSBA #17972 John Yip, Attorney-At-Law, WSBA #46597 First Avenue Law Group, PLLC 321 First Avenue West Seattle, WA 98119 Phone: 206-447-1900 E-Mail: stephanw@firstavenuelaw.com E-Mail: chrisb@firstavenuelaw.com E-Mail: johnny@firstavenuelaw.com	[] Hand Delivery - Legal Messenger Service [] U.S. Mail [X] Electronic E-Mail - ONLY [] Facsimile Transmission



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<p>2 Attorneys for Respondent 3 Eileen M. Keiffer, Attorney-At-Law 4 Madrona Law Group, PLLC 5 14205 SE 36th Street, Suite 100, PMB 440 6 Bellevue, WA 98006 7 Phone: 425-201-5111 8 E-Mail: eileen@madronalaw.com 9 E-Mail: tharris@madronalaw.com</p> <p>10 Bio Park, Attorney-At-Law 11 WSBA #36994 12 City of Mercer Island 13 Office of the City Attorney 14 9611 SE 36th Street 15 Mercer Island, WA 98040 16 Phone: 206-2750-7652 17 E-Mail: bio.park@mercerisland.gov</p>	<p>[] Hand Delivery - Legal Messenger Service [] U.S. Mail [X] Electronic E-Mail - ONLY [] Facsimile Transmission</p> <p>[] Hand Delivery - Legal Messenger Service [] U.S. Mail [X] Electronic E-Mail - ONLY [] Facsimile Transmission</p>
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<p>City of Mercer Island Deborah Estrada, MMC Administrative Coordinator/Deputy City Clerk City of Mercer Island 9611 SE 36th Street Mercer Island, WA 98040 E-Mail: deborah.estrada@mercerisland.gov</p>	<p>[] Hand Delivery - Legal Messenger Service [] U.S. Mail [X] Electronic E-Mail - ONLY [] Facsimile Transmission</p>

I certify under penalty of perjury under the laws of the State of Washington that the



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foregoing is true and correct.

DATED this 20th day of FEBRUARY, 2026, at Issaquah, Washington.

/s/ Ingrid C. Vermehren
Ingrid C. Vermehren, Legal Assistant
E-Mail: chris@rainieradvocates.com

