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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' RESPONSE TO  
MELINA LIN'S REQUEST FOR  
RECONSIDERATION**

Applicant Kan Cui and Yan (Tammy) Liu hereby responds to Melina Lin's Request for Reconsideration of the Examiner's Findings of Fact, Conclusions of Law, and Final Decision.

**I. CITY WAS CORRECT**

In its recommendation approving the Applicants' landscaping project and recommending that Appellant's appeal should be dismissed, the City was correct. Moreover, the landscaping project was reasonable, necessary and benefited both the upland parcel and the waterfront parcel owners because it stabilized the soil upon the slope, prevented erosion and prevented rain/storm



1 water from running down the steep slope unobstructed.

2 The City appropriately considered the "tortured history of this easement" [February 17,  
3 2022 City Staff Report] which included previous superior court references, in making its  
4 recommendaiton.

5 **II. HEARING EXAMINER WAS CORRECT**

6 In determining that the City properly approved the Applicants' landscaping project, the  
7 Hearing Examiner was correct. Although the Applicants do not agree that there was a valid  
8 utility easement in the middle of Applicants' property or that Appellant maintains utility rights  
9 thereon, the Hearing Examiner's conclusions concerning the encroachment of a very short and  
10 narrow brick retaining wall is accurate. The Hearing Examiner found that the retaining wall in  
11 the vicinity of the "middle easement" does not interfere with or otherwise limit the Appellant's  
12 access to the utility easement, which only contains a waterline.

13 **III. MICC 19.02.020(H)(2)**

14 MICC 19.02.020(H)(2) states:

15 No structure shall be constructed on or over any easement for  
16 water, sewer, strom drainage, utilities, trail or other public purposes  
17 *unless it is permitted within the language of the easement* or is  
18 mutually agreed in writing between the grantee and grantor of the  
19 easement. [Emphais added.]

18 The governing documents for Appellant's property and for Applicants' property is the  
19 December 6, 1979 Declaration of Easements Restrictions and Privileges which designates the  
20 applicable easements and follows in Section 4d. with:

21 "[t]he owner of the upland parcel [Applicants] shall have exclusive  
control over the landscaping of the easements... provided that no  
owner of the upland parcel shall erect, construct, plant or maintain

1 any fence, rockery shrubbery or similar device *for the purpose of*  
2 *denying access to or physically enclosing any such easement*  
3 herein reserved without first obtaining the written consent of the  
4 owner of the waterfront parcel." *Id.* [Emphasis added.]

5 Appellant has failed to show that the retaining wall was installed "*for the purpose of*  
6 *denying access to the easement*". As the Hearing Examiner properly found "the encroachments  
7 do not appear to serve as any major impediment to access."<sup>1</sup> Appellant has also failed to show  
8 that this very small retaining wall is "*physically enclosing*" the easement or that it was for the  
9 purpose of physically enclosing the easement. As the Hearing Examiner properly found "the  
10 retaining wall encroachments are modest. They do not in any sense of the term "enclose" the  
11 utility easement area."<sup>2</sup>

12 MICC 19.02.020(H)(2) authorizes encroachments to easements that are authorized by the  
13 easement documents. The retaining wall is within the scope of this authorization. In other words,  
14 the encroachment of the retaining wall upon the utility easement is within the December 6, 1979  
15 Declaration of Easements Section 4.d.

16 In this case, there is no suggestion that the landscaping project in the vicinity of the  
17 waterline was built for the purpose of blocking or restricting the easement. This is particularly  
18 evidenced by the fact that the Appellant did not even know where the waterline was located in  
19 the garden area until a week or so before the hearing, when she had a utility locate company  
20 conduct the location. Similarly, the Applicants did not know about the waterline either, so the  
21 notion that the landscaping was installed for the purpose of obstructing or enclosing the easement

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<sup>1</sup> Findings of Fact, Conclusions of Law and Final Decision p. 5, l. 5.

<sup>2</sup> Findings of Fact, Conclusions of Law and Final Decision p.5., l. 1.

1 does not follow.

2 **IV. CONCLUSION**

3 In accordance with MICC 19.15.130(C) Appellant is unable to meet her burden of proof  
4 that there has been substantial error, or the proceedings were materially affected by irregularities  
5 in procedure, or the decision was unsupported by evidence in the record, or the decision is in  
6 conflict with standards for review of the particular action. This is a heavy burden to overcome.

7 DATED this 10th day of APRIL, 2026.

8 RAINIER LEGAL ADVOCATES, LLC

9  
10 By: /s/ Morgan J. Wais

11 By: /s/ Douglas W. Scott

12 Morgan J. Wais, WSBA #36603  
13 Douglas W. Scott, WSBA #6658  
14 Attorneys for Applicant/  
15 Applicant Representative  
16 E-Mail: *morgan@rainieradvocates.com*  
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**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 10th day of APRIL, 2026, I caused to be served a true and copy(ies) of the following pleadings:

1. Applicants' Response to Melina Lin's Request for Reconsideration; and
2. Certificate of Service

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

<b>PARTY OR PARTIES</b>	<b>VIA</b>
<b>Hearing Examiner</b> Phil A. Olbrechts, Attorney-At-Law WSBA #19146 Olbrechts and Associations 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 - <b>ONLY</b> [ ] Facsimile Transmission
<b>Attorneys for Appellant</b> Liberty Quihuis, Attorney-At-Law WSBA #57779 H. Ray Liaw, Attorney-At-Law WSBA #40725 Van Ness Feldman LLP 1191 Second Avenue, Suite 1800 Seattle, WA 101 Phone: 206-623-9371 E-Mail: lquihuis@vnf.com E-Mail: rliaw@vnf.com E-Mail: agabu@vnf.com	[ ] Hand Delivery - Legal Messenger Service [ ] U.S. Mail [X] Electronic E-Mail - <b>ONLY</b> [ ] Facsimile Transmission

<p><b>Attorneys for Respondent</b>  Eileen M. Keiffer, Attorney-At-Law  Madrona Law Group, PLLC  14205 SE 36th Street, Suite 100, PMB 440  Bellevue, WA 98006  Phone: 425-201-5111  E-Mail: eileen@madronalaw.com  E-Mail: tharris@madronalaw.com</p> <p>Bio Park, Attorney-At-Law  WSBA #36994  City of Mercer Island  Office of the City Attorney  9611 SE 36th Street  Mercer Island, WA 98040  Phone: 206-2750-7652  E-Mail: bio.park@mercerisland.gov</p>	<p><input type="checkbox"/> Hand Delivery - Legal Messenger Service  <input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Electronic E-Mail - <b>ONLY</b>  <input type="checkbox"/> Facsimile Transmission</p> <p><input type="checkbox"/> Hand Delivery - Legal Messenger Service  <input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Electronic E-Mail - <b>ONLY</b>  <input type="checkbox"/> Facsimile Transmission</p>
<p><b>Applicant/Applicant Representative</b>  Gary Mok/GM Design  4511 Somerset Drive SE  Bellevue, WA 98006  E-Mail: mokgary@gmail.com</p> <p>Tammy Liu  8636 North Mercer Way  Mercer Island, WA 98040  E-Mail: tmsliu3@gmail.com</p>	<p><input type="checkbox"/> Hand Delivery - Legal Messenger Service  <input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Electronic E-Mail - <b>ONLY</b>  <input type="checkbox"/> Facsimile Transmission</p>
<p><b>City of Mercer Island</b>  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><input type="checkbox"/> Hand Delivery - Legal Messenger Service  <input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Electronic E-Mail - <b>ONLY</b>  <input type="checkbox"/> Facsimile Transmission</p>

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



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DATED this 10th day of APRIL, 2026, at Issaquah, Washington.

/s/ Ingrid C. Vermehren  
Ingrid C. Vermehren, Legal Assistant  
*E-Mail: [chris@rainieradvocates.com](mailto:chris@rainieradvocates.com)*

