BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

Phil Olbrechts, Hearing Examiner

In Re the Appeal of: MELINA LIN, Appellant, v. CITY OF MERCER ISLAND, Respondent.	No. APL25-006 Findings of Fact, Conclusions of Law and Final Decision

Ms. Lin's appeal is denied. Ms. Lin is found to have a utility easement that accommodates Ms. Lin's waterline across the middle front yard portion of the property owned by the Applicants, Ms. Liu and Mr. Kan. However, the Applicants' encroachment onto that easement is within the scope of the easement. The easement authorizes encroachments to the extent they don't enclose the easement or deny access. The modest encroachments installed by the Applicants are consistent with this restriction.

TESTIMONY

A computer-generated transcript has been generated to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A. The transcript is not 100% accurate, but does provide a useful indication of what testimony was presented during the hearing.

EXHIBITS

The exhibits identified in the 2/13/26 City, 2/20/26 Applicant and 2/20/26 Appellant exhibit lists were all admitted during the February 27, 2026 hearing. In addition, a photograph labelled invading1.jpg presented at 1:45:30 in the hearing video was admitted from the Applicants as a rebuttal document.

FINDINGS OF FACT

Procedural:

1. Parties. The parties to this appeal are comprised of the City, the Applicants (Yan Liu and Kan Cui) and Appellant (Melina Lin). The address for the Applicants is 8636 N Mercer Way, Mercer Island WA 98040. The address for the Appellant is 8630 N Mercer Way, Mercer Island WA 98040.

1. Subject Property. The Appellant and Applicants own the lots of a two-lot short plat that fronts North Mercer Way on the westerly side and fronts Lake Washington on the easterly side. The Appellant's lot fronts Lake Washington. The Applicants' property fronts North Mercer Way. The Appellant's property is accessed via a driveway easement crossing the Applicants' property from its connection to North Mercer Way.

2. Decisions Under Appeal. The decisions under appeal are a critical area ordinance (CAO) review approval, CO24-036, Ex. 24, and a building permit approval, Permit No. 2401-034, Ex. 22. The CAO decision was issued on November 17, 2025. The CAO decision approved the construction of a retaining wall, greenhouse and gazebo in areas containing geologically hazardous areas composed of potential slide, seismic and erosion hazard areas. The building permit was approved on November 21, 2025. The building permit approved the repair of a retaining wall and other site improvements.

3. Appeal. Ms. Lin filed her appeal on December 1, 2025. Her grounds for appeal are that the approved improvements encroach into zoning setbacks and her utility easements.

Substantive:

4. Utility Easement. The central issue of this case is whether there's a utility easement across the middle portion of the Applicants' front yard area. This easement will be referenced as the "middle easement." The Appellant's primary appeal claim is that the decisions under appeal improperly authorized the construction of retaining walls within this middle easement in violation of the terms of the easement.

   The parties are at odds in this case because there is conflicting title history on whether the scope of the middle easement included utilities. The middle easement was initially limited to a driveway easement. However, through what was likely a survey preparation error, the driveway easement was depicted as including utility rights in the survey to a subsequent easement declaration. The erroneous survey was subsequently used in a boundary line adjustment (BLA). As discussed in the conclusions of law, that BLA established the utility rights if they weren't already created previously when the erroneous survey for the declaration was recorded. To further confuse matters, the owners of the two short plat lots at one point agreed to

relocate the middle easement from the middle area to the southern border of the Applicants' lot. However, the relocation only identified the relocation of a driveway easement as opposed to including the utility rights as well.

The title documents detailing the chronology above are summarized as follows:

A. 1978 Short Plat. The two subject lots were created by a short plat recorded in 1978. Ex. 2001. The middle easement is depicted on the plat map as an "*existing drive*." The "*existing drive*" is not depicted in the map or its legal descriptions as an easement.

B. 1981 Declaration. The 1981 Declaration defines three easements across the Applicants' property. Ex. 45. The "existing driveway" from the 1978 short plat is identified as one of the easements in Paragraph 4a of the declaration. The declaration limits the scope of the "existing driveway" easement to "…*vehicular, pedestrian and other ingress and egress*…" Utility rights are not included in the scope described in Paragraph 4a. However, the survey attached as Exhibit A to the Declaration adds utilities to the scope of the easement by identifying the easement as an easement for "*ingress, egress* ***and utilities***." (emphasis added).

C. 1983 Boundary Line Adjustment (BLA). The 1978 short plat was revised by a BLA recorded as 8309159010 in 1983. Ex. 2005. The survey appears to be the same as that used for the 1981 declaration. It was likely recorded to incorporate the modifications made by the 1981 Declaration into the1978 short plat. The BLA survey identifies the same scope for the middle easement as that depicted in the 1981 declaration survey, i.e. "*ingress, egress and utilities*."

D. 2011 Second Driveway Location. A new driveway easement was created by an easement granted in 2011. Ex. 2006. The easement was located southerly of the driveway easement created in the 1981 Declaration. Curiously, the easement didn't purport to extinguish the location of the "*existing driveway*" easement created by the 1981 Declaration. The scope of the easement was identified as "…*vehicular, pedestrian, and other ingress and egress and the installation and maintenance of utilities…*"

E. 2017 Driveway Extinguishment. At the request of the City, a "*driveway relocation easement*" was recorded in 2017 to make clear that the "*existing driveway*" easement from the 1981 Declaration was extinguished as a result of creating the 2011 second driveway easement. Ex. 2007. Notably, the text of the easement in the third recital identified the scope of the 2011 Easement as limited to pedestrian and vehicular

ingress and egress. This reinforces the Applicants' position that the 1981 Declaration survey inclusion of utilities in easement scope was a drafting error. Also notably, the 2017 relocation easement was not recorded as a plat amendment.

5. North Utility Easement. The 1981 Declaration and 1983 BLA both show a utility easement along the northerly property line of the Applicants' property of five feet in width. The approved survey for the building permit approval (2401-034) is Ex. Ex. 23, p. 4[1]. The site plan depicts the authorized structures to all be located outside of the five-foot utility line created in the 1981 Declaration that borders the northerly property line of the Applicants.

6. Front-Yard Setback. As previously noted, the Ex. 23, p. 4 site plans identify the location of all structures authorized by the building permit. The site plans depict the 20-foot front yard zoning setback applicable to the project site. All authorized structures are depicted outside of this front setback.

7. Middle Easement Encroachment. Ex. 9, p. 2 is a survey prepared by the Applicants that shows the location of their retaining walls as well as the location of the middle easement. The parties do not dispute[2] the accuracy of the survey, including the location of retaining walls encroaching into the middle easement. The survey shows the Applicants retaining walls encroaching into the middle easement.

8. Waterline. It is uncontested that the Appellant has a waterline running through the middle easement to serve her home. 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. The declaration references an electromagnetic signal location process to ascertain the waterline location.

9. Access to Utility Easement. The retaining wall encroachments into the middle easement are not found to "enclose" the easement or to have been installed to prevent access to the easement from the Appellant.

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[1] At hearing the City's code compliance planner testified that Sheet A02 of Ex. 9, p. 3 is the approved plan set. However, this site plan sheet fails to show conformance to the 20 foot front yard setback and also shows encroachment of the retaining wall into the north five-foot side yard and five foot utility easement. See Appendix A Transcript, p. 58-59. The site plan labelled as "approved" in the City's exhibit list and that does show conformance to setback and the north easement is Ex. 23, p. 4. This decision specifies that the Ex. 23, p. 4 site plan is controlling to remove any confusion since all parties at the hearing appeared to agree that the Applicants would be made to conform to the required setbacks and the northerly utility.

[2] The Applicants dispute that there is any middle easement that currently exists on the property, but do not dispute that the location of the former "existing driveway" easement is accurately depicted on the survey.

As shown in Ex. 9, p. 2, the retaining wall encroachments are modest. They do not in any sense of the term "enclose" the utility easement area.

There is no evidence in the record to suggest that the retaining wall or any landscaping features are designed to prevent access. The encroachments are modest extensions of landscaping improvements constructed throughout the majority of the front yard space of the Applicants' property. Further, the encroachments do not appear to serve as any major impediment to access. The Appellant's water line contractor submitted a declaration stating that the retaining wall structures "*may impact future access, maintenance, or replacement of subsurface utilities beneath them*." Ex. 1003, Par. 5. These comments hardly reach the level of establishing that the encroachment renders the easement inaccessible. Presumably, if the retaining wall encroachment do present an unreasonable obstruction to access, the Appellant can require the Applicants to remove the obstruction in exercising her easement rights when she needs to access the middle easement. There certainly has been no evidence presented in this appeal that such action would be necessary. That is an issue to be resolved at a future date, if necessary.

Conclusions of Law

1. Jurisdiction. MIMC 19.15.030 Table A classified nonmajor building permit applications and CAO review applications as Type A permits subject to appeal to the Hearing Examiner.

The authority of the hearing examiner to adjudicate the title disputes of the subject property is not as clear as that for hearing the appeal itself. Article IV, section 6 of the Washington Constitution expressly establishes that superior courts "*shall have original jurisdiction in all cases at law which involve the title or possession of real property*." See also RCW 2.08.010.

Older case law suggests that this appeal proceeding should be stayed pending superior court resolution of the title issues of this appeal. *See Halverson v. Bellevue*, 41 Wm. app. 457 (1985). *Halverson* involved City Council review of a preliminary plat application. Plat laws at the time required that all persons who had an ownership interest in plat property had to sign off on the application. The City Council approved the plat despite receiving notice from an adjoining property owner that she had filed a judicial adverse possession claim asserting ownership rights to part of the plat. The Court of Appeals ruled that the City Council did not have the authority to adjudicate claims to adverse possession. The Court ruled that the Council should have suspended plat review until the judicial claim was resolved. Id. at 460.

Over the years *Halverson* has proven to be very challenging. Planners, building officials and land use decision makers routinely have to make judgment calls about

ambiguous property lines or other title issues to ensure that zoning setbacks and other development standards are properly met. Permit review can't practically be stalled every time a title issue arises. The *Halverson* procedure is also no longer feasible or necessary under standards that have been adopted since that case under the Regulatory Reform Act (Chapter 36.70B RCW) and the Land Use Petition Act (Chapter 36.70C RCW). The Regulatory Reform Act imposes permit processing deadlines that could not be met if permit review were to be suspended every time a question of title arose. *See* RCW 36.70B.080. The Land Use Petition Act provides for a simple process to acquire a stay upon a judicial appeal of a local land use decision. See RCW 36.70C.100. Under that stay process, a party who has a valid title dispute involving a land use decision can stay enforcement of the land use decision until the superior court has had the opportunity to adjudicate the party's quiet title action.

Under the modern land use statutes cited above, the *Halverson* ruling is no longer found necessary to govern local land use decisions affected by title disputes. Local decision makers can still make judgment calls on title disputes. However, those decisions should only be found binding as to the permit criteria under review. The decision wouldn't qualify as a final quiet title action because that decision making is within the exclusive province of the superior courts. If a party needs a binding quiet title action and/or disagrees with the local decision maker on the title issue, that matter can still be brought forth to superior court for a quiet title determination. The stays authorized by the Land Use Petition Act make such a process feasible and efficient.

2. Judge Segal Decision. Judge Segal's superior court decision is found binding and determinative on the scope of the middle easement. The middle easement is found to still grant utility rights over the "*existing driveway*" location depicted in the 1978 short plat.

As background, Judge Segal of King County Superior Court issued a November 5, 2021 summary judgement ruling for the Applicants and Appellant of this case, Case No. 20-217330-4 SEA. Judge Segal ruled that the 1978 short plat and 1983 BLA includes a

> *"12 FOOT EASEMENT FOR INGRESS EGRESS & UTILITIES (EASEMENT NO. 1"), which remains in effect, and as a matter of law was not modified or terminated by the parties' private 2017 Driveway Relocation Easement."*

At hearing the Applicants claimed that the ruling above was not about the Appellant's utility rights to the middle easement. It is acknowledged that Judge Segal's ruling was focused upon whether the 2017 relocation easement entirely eliminated the middle easement. Judge Segal's reference to the "12 FOOT EASEMENT…" could have just been a means of identifying which easement he was addressing, as opposed to adjudicating the scope of that easement. However, in the last sentence of the same paragraph referencing the easement, Judge Segal wrote that "*[i]nterpreting the 2017 agreement, the Court does not conclude that it expressly intended to relocate utility*

*easement*s." Given that the only easement addressed by Judge Segal's decision was the middle easement, his reference to "utility easements" establishes that his conclusion that the "*12 FOOT EASEMENT…remains in effect*" was a conclusion that it remains in effect as a utility easement. This conclusion is further substantiated by the fact that the Appellant's motion for summary judgment in that case was limited to whether the Appellant had utility rights in the easements depicted in the 1979[3] and 1983 BLAs and whether the 2017 driveway relocation easement terminated them. See Ex. 42.

3. Segal Alternative Ruling. If for whatever reason the Segal ruling isn't determinative and the examiner has authority to adjudicate such issues, the Appellant is found to have utility rights to the middle easement.

Judge Segal's single case citation in his summary judgment ruling is found to resolve the issue. *See M.K.K.I., Inc. v. Krueger*, 135 Wn. App. 647, 659, 145 P.3d 411, 418 (2006). The ruling of his page citation provides that "*[w]ith limited and specific exceptions, once a private easement is depicted on a short plat, the easement cannot be extinguished without amending the plat document*."

The *M.K.K.I* ruling provides for a straightforward resolution of the title issues of this appeal. The *M.K.K.I* ruling establishes that the 1983 BLA created the middle utility easement if it didn't exist already and that the 2017 extinguishment didn't remove it. As outlined in the Findings of Fact above, the Applicants may well be correct that the reference to utilities in the middle easement of the survey of the 1981 Declaration was some kind of "scrivener's error." The text of the Declaration defining the scope of the middle easement (Par. 4a) may well have superseded the conflicting scope set by the survey. However, that situation was turned around upon recording of the 1983 BLA. As noted in the *MKKI* ruling, an easement shown on a plat map is controlling. A BLA serves as an amendment to a plat map. As shown in Ex. 2005, the BLA is entirely composed of the plat map itself and the recording cover sheet. There's no conflicting text in that recording. The BLA survey references an "Easement No. 1," which is clearly referring to Paragraph 4a the 1981 Declaration. However, upon recording of the BLA, the survey becomes the controlling document. The 1981 Declaration serves as an extrinsic aid to interpreting ambiguous portions of the BLA. Since there's no ambiguity in the BLA designation of utilities as part of the middle easement scope, there's no need to resort to the 1983 Declaration on that issue. Further, (and perhaps most pertinent to Judge Segal's ruling), since the 2017 extinguishment didn't amend the plat, the utility easement depicted in the 1983 BLA remained in place.

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[3] The Applicants' briefing referenced a 1979 BLA in addition to the 1983 BLA. As far as can be surmised from the record of this proceeding, the 1979 BLA was the same as the 1983 BLA. The Applicants' exhibit for the 1979 BLA as presented is not shown as recorded and appears to be identical to the recorded 1983 BLA. See Ex. 2003 and 2005. The 1979 BLA simply hadn't been recorded until 1983. There's no evidence in the record of this proceeding that a BLA for the subject lots had been recorded any time prior to 1983. If there was any difference between the 1979 and 1983 BLAs, those differences don't change the result of this decision.

4. Easement Encroachment Authorized. The City's building permit decision to approve the proposed retaining wall does not violate MICC 19.02.020H. MICC 19.02.020H authorizes encroachments authorized by the scope of an easement. The Applicants' retaining wall encroachment of the middle easement is within its scope.

MICC 19.02.020H2 prohibits the construction of any structure within a utility easement unless consistent with the scope of the easement or mutually agreed upon in writing. As determined in Finding of Fact No. 8, the Applicants' retaining wall encroaches into the middle easement. There's no question that the parties don't mutually consent to the encroachment. It's unclear, however, whether the proposed encroachment is within the scope of the easement.

The retaining wall encroachment is found to be consistent with the scope of the middle easement. The BLA survey doesn't identify the scope of the easement beyond identifying it's for vehicular access and utilities. If an easement is ambiguous or even silent on some points, the rules of construction call for examination of the situation of the property, the parties, and surrounding circumstances. *Nw. Props. Brokers Network, Inc. v. Early Dawn Ests. Homeowner's Ass'n*, 173 Wash. App. 778, 792, 295 P.3d 314, 321 (2013). The reference to "Easement No. 1" on the survey is clearly tied to the 1981 Declaration[4]. Paragraph 4d of the Declaration identifies some usage limitations on Easement No. 1. Specifically, it provides that the Applicants may not install any structure "*for the purpose of denying access to or physically enclosing any such easement" without written consent of the Appellant*." The retaining wall encroachment is not found to enclose the middle easement or to be intended to deny access for the reasons identified in Finding of Fact No. 9.

5. Setback Encroachments. As approved by the building and CAO permits, the Applicants' proposal doesn't include any zoning code setback violations. In the approved site plan for the building permit, Ex. 23, p. 4, the five-foot side yard and twenty foot front yard setbacks are accurately depicted[5]. The structure locations authorized in the site plan conform to these setbacks. As identified in the City's prehearing brief, the eaves of any accessory structures may extend 18 inches into the setbacks. See MICC 19.02.020C3A.

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[4] The survey prepared appended to the Declaration references three easements (Easement No. 1, 2 and 3), which matches the three easements serving the Appellant's lot as described in Paragraph 4 of the Declaration. The easement description of Paragraph 4a clearly references Easement No. 1.

[5] The project site is zoned R-15. MICC 19.02.020C imposes a 20-foot front yard for R-15 lots and side yards must total more than 17% of lot width for lots over 90 feet in width with a minimum side yard of 33% of total required side yard width. The Applicant's lot width is 91 feet per the Ex. 9 site plan. Such a width requires 15.47 feet of total side yard with a minimum 5.1 foot side yard on one side. The side yard depicted in Ex. 9, p. 3 exceeds 5.1 feet on the northerly side and the remaining 10.37 feet on the southerly side.

Decision

The Appellant's appeal is denied. The location of structures proposed in the Applicants' building and permits shall conform to the locations depicted in Ex. 23, p. 4.

Dated this 23rd day of March, 2026[6].

Phil Olbrechts

Phil Olbrechts,
City of Mercer Island Hearing Examiner

Appeal Right and Valuation Notices

This land use decision is final and subject to appeal to superior court as governed by the Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

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[6] Two scrivener's errors were corrected on April 1, 2026. A reference to the "Applicant's water line contractor" on page 5 was replaced with the "Appellant's water line contractor." Reference to "code enforcement officer" in Footnote 1 was replaced with "code compliance planner." As these errors were obvious from the record, they have no bearing on the substantive results of the decision and are considered scrivener's errors pursuant to Hearing Examiner Rule 508. The corrections do not change the judicial appeal deadline of this case.