Hearing Examiner Olbrechts
Hearing Date: February 27, 2026

BEFORE THE HEARING EXAMINER FOR THE CITY OF MERCER ISLAND

In re the Appeal of: MELINA LIN, Appellant, v. CITY OF MERCER ISLAND, Respondent.	NOS. APL25-006 **APPELLANT'S HEARING BRIEF** (Per Mercer Island Rule 224(e)).

COMES NOW the Appellant, Melina Lin (hereinafter the "Appellant" or "Lin"), by and through her below named attorneys, and provides the below hearing brief.

I. INTRODUCTION

The focus of Lin's appeal is her challenge to structures installed by her neighbors, Kan Cui and Yan Liu (hereinafter "Cui/Liu") on their property which include retaining walls and rockeries constructed over Lin's utilities easements serving her neighboring property, as well as a greenhouse and gazebo encroaching into the 20-foot front yard setback. Since these structures were initially constructed without permits, Cui/Liu applied for a retroactive permit which the City of Mercer Island (hereinafter the "City") granted on November 17, 2025 (hereinafter the "Decision").

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Subsequently, Lin appealed the Decision on two grounds. First, significant portions of Cui/Liu's retaining walls and rockery were constructed over and encroach onto utility easements benefiting Lin's property and burdening Cui/Liu's property in violation of Mercer Island ordinance including MICC 19.02.020(H), which prohibits structures built over utility easements. The Decision erroneously found there were no encroachments under a mistaken view that the utility easements had been relocated to a different location, which was conclusively rejected by King County Superior Court in 2021. Second, Cui/Liu's greenhouse and gazebo are partially within the 20 foot front yard setback, in violation of MICC 19.02.020, but the Decision failed to address the issue.[1] Thus, Lin seeks an order from the Hearing Examiner reversing the Decision and ordering the encroaching structures be removed from Lin's utility easements and the 20-foot front yard setback.

I. STATEMENT OF FACTS

A. Lin Has At Least Three Utility Easements Over the Cui/Liu Property.

Lin owns the real property located at 8630 N Mercer Way (hereinafter, the "Lin Property"), which abuts Lake Washington and is to the northeast of, and immediately adjacent to, Cui/Liu's real property located at 8636 N Mercer Way (hereinafter, the "Cui/Liu Property"). (City Ex. 46). Previously, the Lin Property and the Cui/Liu Property were one parcel, which was subdivided in 1978, pursuant to the "Subdivision of Tract 10" recorded under King County Recording No. 7812180972 (hereinafter, the "Subdivision"), with the Cui/Liu Property identified as Parcel A and the Lin Property identified as Parcel B. (Id.at 0381). As alluded to by the City's Brief and as further explained below, various documents have since been recorded involving the two properties.

[1] Although the Decision also made findings concerning Critical Areas, Lin did not appeal those findings.

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Pertinently, Lin has at least three utility easements over the Cui/Liu Property[2] that benefit her property, which can be generally described as "North", "South" and "Middle."[3] Lin's first easement, chronologically, is the "Middle Easement," a 12-foot easement running roughly down the middle of the Cui/Liu Property from street to the Lin Property. (City Ex. 46). It was created through the above-referenced 1978 short plat, which subdivided the Lin Property and the Cui/Lin Property. (Id.). In 1979, the Middle Easement was reaffirmed in a "Boundary Line Revision" recorded in King County under Recording No. 7911309020. (City Ex. 43, p. 0334).

On December 4, 1979, the North and South easements were created via a "1979 Declaration of Easements, Restrictions, and Privileges" (hereinafter the "1979 Declaration"), recorded in 1981, and as denoted, run along the Northern 5 feet and Southern 5 feet of the Cui/Liu Property, respectively, for the purpose of providing the Lin Property with "water, sewer, phone, gas, electricity and all other utility services." (City Ex. 45). Although the 1979 Declaration reserved a right for Cui/Liu to perform "landscaping" within the easement areas, there is no similar reservation of rights to install hardscaping, such as retaining walls or rockeries. (City Ex. 45). In fact, the 1979 Declaration confirms that "no owner of the upload parcel [i.e. Cui/Liu] 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 reserved without first obtaining the written consent of the owner of the waterfront parcel [i.e. Lin]." (Id. at p. 0368). Nevertheless, from their very inception, the North and South Easements were in addition to, not in place of, the Middle Easement, as indeed a survey map attached to the 1979 Declaration showed

[2] Lin reserves any rights she might have to additional easements, but the three mentioned are the most pertinent.

[3] More accurately, the North Easement is on the northwestern side of the Cui/Liu property, while the South Easement is on the southeastern side thereof.

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all three easements. (Id. at p. 0376). To make it absolutely crystal clear that all three easements remained in full force and effect after the recording of the 1979 Declaration, a further Boundary Line Revision was recorded in 1983 (hereinafter, "1983 Document") in King County under Recording No. 8309159010. (City Ex. 43, p. 0338). That 1983 Document clearly shows the North Easement as "Utility Easement (Easement No. 2)" towards the northern side of the Cui/Liu Property, the Middle Easement as "Revised Location of 12 Foot Easement for Ingress, Egress, & Utilities (Easement No. 1)," and the South Easement as "5 Foot Utility Easement (Easement No. 3)" towards the southern side of the Cui/Liu Property. (Id.). In this context, an important clarification must be made: the 1979 Declaration had also created a driveway easement in the exact same location as the then-existing Middle Easement (which again was created in 1978), but the two easements ultimately remain separate and were not created by the same granting clause.

None of the aforementioned three utility easements were ever amended or terminated since the 1983 Document. While there was a later 2011 Access and Utilities Easement document, it does not purport to amend or terminate any existing easements, but appears to grant an additional easement. (City Ex. 43, p. 0340-0346). There was also a 2017 Driveway Relocation Easement, but it expressly addressed only the driveway easement created in the 1979 Declaration, particularly in subsection "4a". (City Ex. 43, p. 0347-0352). The 2017 Driveway Relocation Easement did not address or purport to modify any of the utility easements. (For reference, the North and South utility easements were created by other subsections of the 1979 Declaration, subsections "4b" and "4c," respectively, while the Middle Easement was created by the 1978 Subdivision).

Nevertheless, while the Middle Easement was created by the 1978 Subdivision, it was in the same location as the driveway easement being relocated by the 2017 Driveway Relocation Easement. Thus, a dispute arose whether the Middle Easement also had been relocated by the 201

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Driveway Relocation Easement, though it did not state or even hint as such. That lawsuit was hotly litigated in King County Superior Court by Lin and Cui/Liu, culminating in an Order Granting Lin's Motion for Partial Summary Judgment entered on November 5, 2021. (City Ex. 44) , which ruled:

> The City of Mercer Island Subdivision, recorded under Recording Number 7812180972, and as delineated on survey thereof, recorded under Recording Number 7911309020, as revised under Boundary Line Revision Recording Number 8309159010, 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, King County Recording Number 20170329001022.

(*Id.*) As confirmed by the Order, the Middle Easement remains intact and was not "modified or terminated" by the 2017 Driveway Relocation Easement. The Order was never appealed. Indeed, on November 23, 2021, the parties signed a Stipulation and Order of Entry of Final Judgment, which stipulated and thus recognized that "all claims in this action have been fully and final resolved by orders of the court" and thus entered final judgment without an award of fees to any party, thus confirming the Order's finality. (Lin Ex.1015). In summary, the existence of the three easements at issue has been confirmed repeatedly and consistently in the various survey plans submitted in this case. (*See, e.g.,* City Ex. 9, p. 0105).

B. Cui/Liu Installed Disputed Structures That Encroach on Lin's Easements and Also Intrude Into the Front Yard Setback.

Around 2023, Cui/Liu installed various structures on their property without a permit, including, without limitation, a gazebo, a greenhouse, and a network of retaining walls and rockeries (hereinafter, "Disputed Structures"). At the time, there appeared two issues with the structures, in addition to not being permitted, namely: (1) the rockeries and retaining walls

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encroached onto the aforementioned utility easements and (2) the gazebo/greenhouse encroached into the 20-foot front yard setback.

As to the encroachment onto the aforementioned utility easements, Cui/Liu's own survey plans from 2023 confirm that one end of their retaining wall network encroaches into the North Easement, while the other end encroaches into the Middle Easement. (City Ex. 9, p. 0104). That survey states in General Note 3 that it was based on surveys made in May 2015 and March 2023 "and can only be considered as indicating the general conditions existing at that time." (Id.). Additionally, Cui/Liu installed a rockery further south on the Middle Easement. (Id.). Lin never agreed to the installation of the retaining walls, nor do the easements expressly authorize Cui/Liu to install such structures. It is noteworthy that the City had previously warned Cui/Liu not to install rockeries or similar structures on the utility easements back when Cui/Liu was constructing their home in the early 2010s. Particularly, in 2012, City Administrative Project Specialist/Planner Sung Lee sent Cui/Liu's then-architect Chandler Stever an e-mail, explaining:

> 3. The portion of new stone step, walkway and rockery walls are located on the northwestern side of the property is encroaching and will be build 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, trail 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.

(Lin Ex. 1001). Thus, the prohibition that rockery walls or similar structures may not be installed on any easement area was known to Cui/Liu since at least 2012. It is noteworthy that Cui/Liu's completed house design did not feature any rockery or similar object on the easement areas, instead leaving those areas clear of any structures. (Lin Ex. 1002). The need to keep those areas clear is

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particularly important, as for example but without limitation, the water line serving the Lin Property runs in the Middle Easement, as confirmed by a contractor, C-N-I Locates Ltd. (Lin Ex. 1003). That contractor confirmed that there are "retaining walls located within or near the utilities easement [i.e. Middle Easement]" and that "[t]hese retaining wall structures may impact future access, maintenance, or replacement of subsurface utilities beneath them." (*Id.*). Photographs also confirm that the retaining walls comprise a massive, terraced structure. (Lin Ex. 1012-1013). In sum, Cui/Liu has installed structures on the utility easements, which will hinder the maintenance or use of those easements.

Regarding the intrusion into the 20-foot setback, Cui/Liu submitted at least 7 seeming survey plans (City Ex. 4, 5, 6, 7, 8, 9, 23). The most pertinent survey plans are the initial one (City Ex. 9) and the last one, which was approved by the City (City Ex. 23). The initial survey plan depicts the 20-foot front yard setback as a dashed line running diagonally in a northwest to southeast direction, and that line bisects the gazebo while also running through a sizable portion of the greenhouse. (City Ex. 9, p. 0106; City Ex. 38, p. 0262 (annotated version)). That diagram has an annotation stating, "Built Gazebo See Structural Detail." (City Ex. 9). On the very next page, there are structural drawings of a "pergola" (apparently the gazebo, as there was no separate pergola structure) along with an acknowledgement from Cui/Liu of the front yard setback encroachment, stating, "Move Existing, Non-Permitted Frame Pergola Approximately 7'-8" NE to Comply with Min. 20'0" Front Yard Setback." (City Ex. 9, p. 0107). Thus, there were clearly front yard setback issues with the Disputed Structures.

In that context, the approved so-called survey plan (City Ex. 23) contains substantial errors. From the outset and on its face, that survey plan recites that, like the initial survey plan (City Ex. 9), it too was only based on a May 2015 and a March 2023 survey. In other words, and pertinently,

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the approved so-called survey plan was not based on any actual re-survey of the Cui/Liu Property. (City Ex. 23, p. 0183). Despite the absence of a new survey, the approved so-called survey plan (City Ex. 23) includes several notable changes from the initial survey plan (City Ex. 9) that appear incorrect. First, that survey plan shows only one unpermitted structure (the greenhouse building) and it completely omits the other unpermitted structure—the gazebo building. (City Ex. 23). Photographs confirm that two buildings were present on site as of February 19, 2026 and appear unmoved from their initial installation (Lin Ex. 1004). The gazebo had not been removed, and there is also no demolition permit issued for such removal, nor was removal addressed in the Decision. Thus, the approved survey plan's omission of the gazebo is contrary to the actual situation. (City Ex. 23). Second, the survey plan should depict recorded easements, including driveway and utility easements, and while the initial survey plan shows the Middle Easement as a dashed line, the approved survey plan completely omits the Middle Easement, without any explanation and seemingly contrary to the 2021 Order recognizing that the Middle Easement still exists. (*Compare* City Ex. 9 (initial survey plan), Ex. 23 (approved survey plan). These errors thus obscure what the initial survey plan revealed – that the greenhouse and gazebo are on the front yard setback – and the City's approval on Cui/Liu's survey plan was thus based on a factually inaccurate so-called survey. (City Ex. 23). In that context, since those two buildings remain at the site and the Middle Easement still exists, the City should require Cui/Liu to submit an accurate survey plan prepared by a qualified surveyor and showing the actual situation on the ground and moreover should impose a condition that Cui/Liu's structures be outside the front yard setback.

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C. The City's Decision Merely References the Utilities Easements In a Single Mistaken Sentence and Does Not Address the Front Yard Setback At All.

Despite the above-described lingering front yard setback issues, the City's Decision made no mention of the setback at all, neither confirming compliance nor mandating it. The City claims in its brief that only the gazebo/pergola's eaves are over the front yard setback, but there is no basis for that claim. In fact, photographs reveal the opposite: the gazebo/pergola remains immediately behind a retaining wall and next to a water vault as shown in the initial survey plan, and has not been removed. (*Compare* City Ex. 9 (initial survey plan) and Lin Ex. 1004 (photograph, matching the configuration on City Ex. 9).

With regard to Lin's utility easements, the City's November 2025 Decision makes only a mere passing reference on page 2 of 8, stating, "The new retaining wall is proposed to be located outside of any easement area, as the previous easement for ingress, egress, and utility has been relocated to follow the existing driveway (rec. no. 20170329001022)." (City Ex. 24). The Decision provided no further analysis or explanation. As noted above, that finding is directly contrary to the 2021 Superior Court Order, which expressly stated the 2017 Driveway Relocation Easement (which is the 2017 recorded document cited by the City Decision) did not affect the utility easements but only moved the separate driveway easement to a different location. (City Ex. 44). Notably, the 2017 Driveway Relocation Easement did not even mention utility easements, much less purport to terminate or alter them in any way. (City Ex. 43, p. 0347-0352). The Decision's claim that the retaining wall is not in any utility easement area is thus incorrect, as again, that retaining wall has one end that encloses a sizable section of the North Easement and the other end in the Middle Easement, and there is also a rockery in the Middle Easement. (City Ex. 9). It is also noteworthy that the subject utilities easements do not expressly authorize Cui/Liu

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to install any retaining wall or rockery in the easement areas, nor has Lin ever consented to such structures. Since the Decision fails to address the front yard setback at all, and is incorrect as to whether any structures encroach onto utility easement areas, Lin filed this appeal. Ultimately, she seeks the abatement of all Disputed Structures on any easement area and an express requirement that Cui/Liu fully complies with the front yard setback.

II. STATEMENT OF ISSUES

1. Whether the Hearing Examiner should reverse the Decision to disallow and require the abatement of any Disputed Structures in any utilities easement areas, when such structures would violate MICC 19.02.020(H)? (Yes).

2. Whether the Hearing Examiner should amend the Decision to condition any permit grant on a requirement that Cui/Liu ensure that the greenhouse and gazebo/pergola are entirely off the 20-foot front yard setback as required by MICC 19.02.020(C)? (Yes).

III. LEGAL ARGUMENT

A. All Disputed Structures on an Easement Area Are Disallowed and Must Be Abated.

Mercer Island City Code ("MICC") strictly prohibits the installation of structures in an easement area. Particularly, MICC 19.02.020(H) provides:

> H. *Easements.* Easements shall remain unobstructed.
>
> 1. *Vehicular access easements.* No structures shall be constructed on or over any vehicular access easement. A minimum five-foot yard setback from the edge of any easement that affords or could afford vehicular access to a property is required for all structures; provided, that improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed within the five-foot yard setback so long as such improvements do not interfere with emergency vehicle access or sight distance for vehicles and pedestrians.
>
> 2. *Utility and other easements.* No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail 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.

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MICC 19.02.020(H). Indeed, MICC 19.02.020(H) generally prohibits any structure from being "constructed on or over any easement" for utilities whatsoever, without limitation to only easements presently in use or structures that interfere with the easement.

Here, Lin indisputably has utility easements over the Cui/Liu Property, notably the North and South Easements set forth in the 1979 Declaration and the Middle Easement set forth in the 1978 subdivision and confirmed by the 2021 Order. (*See generally* City Ex. 43). Although the City's Decision found "the previous easement for ingress, egress, and utility has been relocated to follow the existing driveway (rec. no. 20170329001022) [i.e. the 2017 Driveway Relocation Easement]," that finding is directly contrary to the 2021 Order. (City Ex. 24, 44). Since the 2021 Order involved the same parties (Lin and Cui/Liu), the same 1979 Declaration, and was fully litigated via summary judgment, it has preclusive effect under the doctrine of collateral estoppel. *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wash. 2d 299, 306, 96 P.3d 957, 960 (2004) ("Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties….collateral estoppel is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation.").[4] Thus, the fact that the utility easements were not altered or terminated by the 2017 Driveway Relocation Easement is already established and cannot be relitigated here.[5] (City Ex. 44). Hence, the City's unsupported

[4] For example, in *Christensen*, a prior tribunal ruled that a paramedic was not fired as retaliation for union activities, and that determination is conclusive and prevents the paramedic from later arguing that he was fired as retaliation.

[5] Additionally, the Hearing Examiner does not appear to have the general authority to adjudicate land rights beyond the interpretation and enforcement of local ordinances. Indeed, the scope of the Hearing Examiner's authority under RCW 58.17.330 is "plat approval," and under MICC 19.15.010 is "administering the development code," but original jurisdiction over "the title or possession of real property" is vested in the superior court under RCW 2.08.010. *See also Lakey v. Puget Sound Energy*, 176 Wn.2d 909 (2013) (hearing examiner had authority to rule on a zoning issue but not a related inverse condemnation issue).

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finding that the 2017 Driveway Relocation Easement applied to and relocated the utility easements is incorrect and should be reversed. (Id.).

In that regard, the initial survey plan depicting the easements over the Cui/Lui Property clearly shows the subject retaining walls and rockeries within the utility easements. (City Ex. 9, 23). The approved survey plan inexplicably omits the Middle Easement, contrary to the 2021 Order, but the retaining wall remains in the same location as the initial survey plan, i.e. with the retaining wall enclosing a section of the North Easement and the other end of that same retaining wall in an L-shape on the Middle Easement. (*Compare* City Ex. 23 *and* City Ex. 9 (showing the encroachment)). There is also a rockery section on the Middle Easement approximately to the southwest of the L-shape ending to the retaining wall structure. (City Ex. 9). Again, the City itself previously indicated in 2012 that no rockeries or similar structures should be placed in the utility easement areas on the Cui/Lin Property. (Lin Ex. 1002). The retaining walls and rockery in the easement areas are therefore in violation of MICC 19.02.020(H) generally prohibiting structures from being "constructed on or over any easement for water, sewer, storm drainage, utilities, trail or other public purposes…"

Indeed, and further confirming the subject retaining wall and rockeries as violating MICC 19.02.020, those structures are not otherwise "permitted within the language of the easement" nor were they "mutually agreed in writing between the grantee and grantor of the easement." Specifically, Lin never agreed to the installation of the retaining walls or rockery on the easement areas. Those structures were likewise never permitted by the express easements at issue. Usually, words in an ordinance are given their ordinary meaning. *See City of Bellevue v. Lorang*, 140 Wn.2d 19, 24 (2000). Here, "permit" means "to consent to expressly or formally." https://www.merriam-webster.com/dictionary/permit; *See also* Black's Law Dictionary (defining

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"permit" to mean "To consent to formally; to allow (something) to happen, esp. by an official ruling, decision, or law <permit the inspection to be carried out>."). Thus, for a structure to be "permitted within the language of the easement," that permission would need to be express, and this interpretation also comports with the general statute of frauds requiring land rights to be set forth in writing. *See* RCW 64.04.010; *Berg v. Ting*, 125 Wn.2d 544, 551 (1995). In that context, the retaining walls and rockeries are also not expressly authorized by the respective utilities easements. Again, the Middle Easement was, as noted in the 2021 Order, created by the 1978 subdivision, as amended in 1979 and 1983, and none of those documents permit any structures on said Middle Easement. (*See* City Ex. 43 p. 0322-0332 (1978 Subdivision), 0334-0335 (1979 revision), 0337-0338 (1983 revision)). Meanwhile, the North and South Easements were created by the 1979 Declaration, which not only does not expressly authorize the installation of any retaining wall or rockery but also provides, "no owner of the upland parcel [Cui/Liu] 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 reserved without first obtaining the written consent of the owner of the waterfront parcel [Lin]." (City Ex. 45).

As depicted in Cui/Liu's own survey plans, the retaining wall on the North Easement created by the 1979 Declaration physically acts to fully enclose sections of that utilities easement, particularly forming a box around a portion of the utilities easement just southwest of the structure labeled "ADU Building Roof," with the retaining wall section immediately to the southwest of that also forming an L-shaped enclosure. (City Ex. 9, 23). Hence, not only does the 1979 Declaration not expressly permit Cui/Liu to build a retaining wall on the North Easement, but since their retaining wall encloses sections of that easement, the 1979 Declaration also requires them to obtain Lin's written consent. Lin never consented to the retaining wall in the North Easement

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meaning it is in violation of MICC 19.02.020. Indeed, it appears from the City's Prehearing Brief that the City realizes that the Decision mistakenly found the utility easements to be relocated, when they were not, and thus now concurs that "MICC 19.02.020(H) further provides that structures may not be constructed on utilities easements unless the language of the agreement permits it or it is mutually agreed in writing between easement grantor and grantee." (City Br. p. 7). In summary, the portions of the retaining wall and rockery in the North Easement and the Middle Easement violate MICC 19.02.020, and the Decision should be reversed pursuant to MICC 19.15.130(G)(1)(a) to disallow those encroaching sections and order their removal.

B. The Decision Should Confirm that the Front Yard Setback is Inviolate.

Moreover, the Decision errs by not addressing the front yard setback issue in any way, even though the issue of the greenhouse and gazebo encroachment was known as confirmed by Cui/Liu's own initial survey plan. (City Ex. 9). The survey plan also acknowledges the need to "Move Existing, Non-Permitted Frame Pergola [Gazebo] Approximately 7'-8" NE to Comply with Min. 20'0" Front Yard Setback." (Id.). Thus, the Decision errs in not addressing the front yard setback issue. Although the City's Brief claims that presently only the gazebo's eaves encroach over the front yard setback, there is no support for that claim. Meanwhile, the Applicant Cui/Liu's so-called survey plan, which was approved by the City (City Ex. 23) is actually not based on any changes on the ground or a re-survey, but merely omits the gazebo, which is still obviously visible on the Cui/Liu Property. (Lin Ex. 1004). Indeed, the gazebo does not appear to even have been moved, as it still appears immediately behind the retaining wall closest to the street and next to a water vault, as depicted in Applicant Cui/Liu's initial survey plan, and thus apparently still within the front yard setback. (Lin Ex. 1004). Thus, pursuant to MICC 19.15.130(G)(1)(c), Lin requests the Decision be remanded to the City to require Applicant to ensure full compliance with the 20-

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foot front yard setback, including a requirement to confirm through actual surveys that the subject gazebo and greenhouse are out of the 20-foot front yard setback as a condition for the completion of any permit.

IV. CONCLUSION

In sum, the Decision errs in finding that Lin's utility easements have been relocated via the 2017 Driveway Relocation Easement, as such relocation has conclusively been rejected by the court's 2021 Order. Flowing from that erroneous finding of relocation, the Decision fails to address the fact that the subject retaining walls and rockeries actually encroach onto Lin's easements on the Cui/Liu Property and were never authorized by the respective express easements, nor consented to by Lin. Thus, the Decision should be reversed to require the removing of all encroaching structures from the easement areas.

The Decision also errs in not addressing the front yard setback at all, even though a prior survey plan shows the Cui/Liu's greenhouse and gazebo encroachment, and they acknowledged that at least the pergola/gazebo encroached into the front yard setback by over 7 feet and needed to be moved. Per Lin's knowledge and observations, the greenhouse and gazebo were never moved, and thus, the encroachment still exists. The Applicant's mere omission of the gazebo from their latest so-called survey plan does not resolve the issue when the gazebo is still visible on the property, and the Decision does not include any provisions requiring the gazebo's removal or authorizing its demolition. Thus, the Decision should be remanded to require the City and the Applicants ensure full compliance with the 20-foot front yard setback, including a requirement to confirm through actual surveys that the subject gazebo and greenhouse are out of the 20-foot front yard setback as a condition for the completion of any permit.

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Dated this 19th day of February, 2026

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