



Mok Gary <mokgary@gmail.com>

Liu retaining wall 2401-034

Douglas Scott <doug@rainieradvocates.com>

Mon, May 12, 2025 at 9:55 AM

To: grace.manahan@mercerisland.gov

Cc: Mok Gary <mokgary@gmail.com>, Christopher Gregerson <chrisg@gregersoncustomhomes.com>, Tammy Liu <tmsliu3@gmail.com>

Good morning Grace,

Thanks for chatting with me this morning about this matter. Again, this office represents Kan Cui and Tammy Liu owners of property at [8636 N. Mercer Way](#). As I indicated, our position is that according to the easement document my clients do not need the permission of the waterfront owner to construct or re-build their retaining wall. Per your request I am attaching the 1979 Declaration of Easement, Restrictions and Privileges which controls and addresses the easement rights between the current property owners.

As we discussed, MICC 19.02.020 H 2 states that no structure shall be constructed over an easement unless it is permitted within the language of the easement or agreed in writing between grantor and grantee. The Mercer Island Code references that actual easement (attached) which states in provision 4d that the owner has exclusive control over the landscaping and no owner shall erect a structure for the purpose of denying access to or physically enclosing any easement without written consent.

If the erection or construction was not for the purpose of "denying access to or physically enclosing any such easement" then no consent is needed. Here the retaining wall is not for that purpose. The retaining wall is for the purpose of holding back soil and preventing erosion.

As an aside, it does not interfere with any utilities. I look forward to hearing from you once your manager returns. Let me know if you need anything else.

Warm regards,

DOUGLAS W. SCOTT

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DECLARATION OF EASEMENTS,
RESTRICTIONS AND PRIVILEGES

SWANSON-DEAN PROFIT SHARING TRUST, a QUALIFIED PROFIT SHARING
TRUST, being the owner in fee of the following described
real property situated in the city of Mercer Island, King County,
Washington:

Tract 10, Sunnybank, according to plat thereof recorded
in Volume 29 of Plats, Page 31, records of King County,
EXCEPT the northwesterly 10 feet in width of the south-
westerly 300 feet, as measured along the northwesterly
line thereof, TOGETHER with the Shorelands of the 2nd
class adjoining and lying between the northeasterly pro-
jection of the sidelines of said Tract (hereinafter
"Property");

does hereby subject the Property to the following easements and
restrictions and does hereby grant the following privileges on
behalf of itself, its grantees, assigns, heirs, successors and
transferees:

1. Incorporation by Reference. Attached hereto as Exhibit
"A" are various legal descriptions, each of which refers to the
Property. Exhibit "A" and the descriptions contained thereon are
incorporated herein by this reference.

2. Waterfront Parcel. That portion of the Property as is
denominated the "waterfront parcel" on the attached Exhibit "A"
shall hereafter be referred to as the "waterfront parcel."

3. Upland Parcel. That portion of the Property as is denomi-
nated the "upland parcel" on the attached Exhibit "A" shall here-
after be referred to as the "upland parcel."

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By [Signature] Deputy

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4. Waterfront Easements. The following easements over, across, and upon the upland parcel are hereafter reserved for the owners of the waterfront parcel, their grantees, assigns, heirs, successors and transferees:

a. A non-exclusive easement for vehicular, pedestrian and other ingress and egress by the owners of the waterfront parcel, their guests and invitees, over a strip of land lying six (6) feet on each side of a line denominated the "driveway centerline" on the attached Exhibit "A". In the event that the owners of either the waterfront parcel or the upland parcel determine that the portion of the existing driveway within the upland parcel shall need maintenance, upkeep or repair, either owner shall have the option to cause such maintenance, upkeep or repair to be performed on the following terms and conditions: one owner shall give written notice to the other of the conditions requiring correction and setting forth the estimated cost of correction. If, within thirty (30) days of such notice the two owners have not agreed to commence and complete the correction specified in the notice on mutually agreeable terms, then the owner first giving such notice shall be entitled to cause such conditions to be corrected and one-half of all reasonable costs incurred therefor shall immediately be due to the owner first giving the correction notice. Such costs, if not properly paid, shall constitute a lien upon the parcel owned by the owner from whom payment is hereunder due, which lien may be perfected and foreclosed by the owner to whom payment is due in the same manner as mechanics and materialmans liens may now, or as they

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may be hereafter, perfected and foreclosed except no prior notice of intent to claim such a lien shall be required hereunder.

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

c. An easement for water, sewer, phone, gas, electricity and all other utility services over, across, upon and beneath a strip of land five (5) feet in width running parallel to the southerly boundary of the upland parcel and lying immediately to the north of the southerly boundary.

d. The owner of the ^{UPLAND} ~~waterfront~~ parcel shall have exclusive control over the landscaping of the easements described under subparagraphs 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 access to or physically enclosing any such easement herein reserved without first obtaining the written consent of the owner of the waterfront parcel.

5. Upland Easements and Restrictions. The following easements over, across and upon the waterfront parcel are hereafter reserved for the owners of the upland parcel, their grantees, assigns, heirs, successors and transferees:

a. An easement for the existing side sewer system and necessary access for its repair, maintenance, and replacement over, across, upon and beneath a strip of land lying five (5) feet on

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each side of a line denominated the "side sewer centerline" on the attached Exhibit "A".

b. A non-exclusive easement for pedestrian ingress and egress by the owners of the upland parcel, their invitees and guests, over, across and upon the northerly six (6) feet of the waterfront parcel and over, upon and across a strip of land lying three (3) feet on each side of a line denominated the "diagonal pedestrian access centerline" on the attached Exhibit "A".

"Pedestrian ingress and egress" as herein used shall include ingress and egress for a non-motorized cart or other device necessary for transportation of a waterfront craft to and from Lake Washington.

c. A non-exclusive easement for customary waterfront uses by the owners of the upland parcel, their guests and invitees, over, upon and across the following portion of the waterfront parcel:

Beginning at the northwestern corner of the existing dock, thence westerly a distance of six (6) feet along a line running parallel to the northerly boundary of the waterfront parcel, thence northerly to the northerly boundary of the waterfront parcel along a line perpendicular to the said northerly boundary, thence easterly along the northerly boundary of the waterfront parcel to the ordinary high water line of Lake Washington, then southerly along the ordinary high water line of Lake Washington to the northwestern corner of the existing dock, the point of beginning; together with the shorelands of the second class adjacent thereto.

"Customary waterfront uses" shall include swimming, boating, and the right to install and moor one (1) recreational waterfront craft not to exceed thirty (30) feet in length by buoy or similar anchorage device independent of a dock or pier.

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d. The owner of the waterfront parcel shall have exclusive control over the landscaping of the easements described under subparagraphs 5(a), (b) and (c) provided that no owner of the waterfront parcel 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 upland parcel.

e. The easements described in subparagraphs 5(a), (b) and (c) shall be perpetual and appurtenant to the upland parcel, and shall be neither assignable nor transferable other than in connection with a sale and conveyance or other transfer of ownership of the portion of the upland parcel upon which the existing residence is located. No owner of the upland parcel shall have any right to in any way grant or extend any right, benefit or interest in, on or to the easements described in subparagraphs 5(a), (b) or (c) to any person or party other than the owner or occupant of the portion upon which the existing residence is located by license, agreement or any other device or means whatsoever.

6. Upland Benefits. The following rights and privileges shall, on the following terms and conditions, also inure to the benefit of the owners of the upland parcel, their grantees, assigns, heirs, successors and transferees:

a. Existing Boathouse. The owners of the upland parcel shall have the exclusive right to use the boathouse facility now located on the waterfront parcel ~~for so long as owners of the~~

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~~waterfront parcel elect. to retain such boathouse~~); provided this right shall be contingent upon the owners of the upland parcel sharing equally with the owners of the waterfront parcel in all costs and expenses of necessary and reasonable maintenance, upkeep and repair of the existing boathouse, as below provided. During the year 1981, the existing dock and boathouse will be repaired in accordance with design of the waterfront owner's architect at a cost estimated to be \$30,000. The owners of the upland parcel and the waterfront parcel will share equally in the cost thereof; provided that the upland owners share of such cost shall not exceed \$17,500 (1/2 of \$35,000) without the upland owner's consent.

b. Existing Dock. The owners of the upland parcel, their invitees and guests, shall have a non-exclusive right to use the existing dock now located on the waterfront parcel for swimming, other water-related uses, and for ingress and egress to the existing boathouse facility; provided this right shall be contingent upon the owners of the upland parcel sharing equally with the owners of the waterfront parcel, in all costs and expenses of necessary and reasonable maintenance, upkeep and repair of the existing dock. In the event that the owner of the waterfront parcel or the upland parcel determines that the existing dock shall need such maintenance, upkeep or repair, such owner shall have the option to cause such maintenance, upkeep or repair to be performed on the following terms and conditions: the owner of the parcel requiring repair shall give written notice to the owner of the other parcel

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of the conditions requiring correction and setting forth the estimated cost of the correction. If within thirty days of such notice, the two owners have not agreed to commence and complete the construction specified in the notice on mutually agreeable terms, then the owner of the ~~waterfront~~ parcel shall be entitled to cause said conditions to be corrected and one-half of all reasonable costs incurred therefor shall immediately be due to the owner of the parcel making such repairs from the owner of the other parcel. * Such cost, if not promptly paid, shall constitute a lien upon the other parcel, which lien may be perfected and foreclosed by the owner of the parcel making such repair in the same manner as mechanics and materialmans liens may now, or as they may hereafter, be perfected and foreclosed except that no prior notice of intent to claim such lien shall be required hereunder.

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REQUESTING REPAIRS

c. Use Restrictions. The rights and privileges afforded the owners of the upland parcel, their invitees and guests, under subparagraphs 5(b), 6(a) and (b) shall be strictly construed and limited as follows: no such right or privilege shall be exercised in a manner which is unreasonably offensive to the then owners of the waterfront parcel or intrudes upon their privacy; and without limiting the generality of the foregoing, such rights and privileges shall not without the prior consent of the then owner of the waterfront parcel be exercised other than between the hours of 8:00 a.m. through daylight hours, nor may any owner of the upland parcel or any invitee or guest thereof construct, add, plant, destroy, remove,

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*The owner of the upland parcel shall only be entitled to request repairs that adversely effect the safety of the dock.

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EXHIBIT "A"

WATERFRONT PARCEL:

Lot B of Mercer Island Short Plat recorded under Recording Number 7812180972, and revised under Recording Number 7911309020 being a subdivision of:

Tract 10, Sunnybank, according to the plat thereof recorded in Volume 29 of Plats, Page 31, in King County, Washington, EXCEPT the northeasterly 10 feet in width of the southwesterly 300 feet, as measured along the northwesterly line thereof,

TOGETHER WITH the shorelands of the second class adjoining and lying between the northeasterly projection of the sidelines of said Tract.

UPLAND PARCEL:

Lot A of Mercer Island Short Plat recorded under Recording Number 7812180972, and revised under Recording Number 7911309020 being a subdivision of:

Tract 10, Sunnybank, according to the plat thereof recorded in Volume 29 of Plats, Page 31, in King County, Washington, EXCEPT the northeasterly 10 feet in width of the southwesterly 300 feet, as measured along the northwesterly line thereof,

TOGETHER WITH the shorelands of the second class adjoining and lying between the northeasterly projection of the sidelines of said Tract.

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