



# HEARING EXAMINER OPEN RECORD PUBLIC HEARING AGENDA

Friday, February 27, 2026, at 9:00 AM

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## CALL TO ORDER

## APPEAL HEARING

**1. APL25-006 | Building Permit No. 2401-034 | Critical Area Review No. CAO24-036**

Appeal regarding the decision for Building Permit 2401-034 and Critical Area Review CAO24-036 for the construction of a gazebo, greenhouse, and retaining wall on a site containing critical areas at 8636 N. Mercer Way, Mercer Island, WA 98040.

## ADJOURNMENT

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**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF MERCER ISLAND**

Phil Olbrechts, Hearing Examiner

<p>In Re the Appeal of:</p> <p>MELINA LIN,</p> <p style="text-align: center;">Appellant,</p> <p style="text-align: center;">v.</p> <p>CITY OF MERCER ISLAND,</p> <p style="text-align: center;">Respondent.</p>	<p>No. APL25-006</p> <p>Findings of Fact, Conclusions of Law and Final Decision</p>
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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

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**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

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

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

- 4 A. 1978 Short Plat. The two subject lots were created by a short plat  
 5 recorded in 1978. Ex. 2001. The middle easement is depicted on the  
 6 plat map as an "*existing drive*." The "*existing drive*" is not depicted in  
 the map or its legal descriptions as an easement.
- 7 B. 1981 Declaration. The 1981 Declaration defines three easements across  
 8 the Applicants' property. Ex. 45. The "existing driveway" from the  
 9 1978 short plat is identified as one of the easements in Paragraph 4a of  
 10 the declaration. The declaration limits the scope of the "existing  
 11 driveway" easement to "...*vehicular, pedestrian and other ingress and*  
 12 *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).
- 13 C. 1983 Boundary Line Adjustment (BLA). The 1978 short plat was  
 14 revised by a BLA recorded as 8309159010 in 1983. Ex. 2005. The  
 15 survey appears to be the same as that used for the 1981 declaration. It  
 16 was likely recorded to incorporate the modifications made by the 1981  
 17 Declaration into the 1978 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*."
- 18 D. 2011 Second Driveway Location. A new driveway easement was  
 19 created by an easement granted in 2011. Ex. 2006. The easement was  
 20 located southerly of the driveway easement created in the 1981  
 21 Declaration. Curiously, the easement didn't purport to extinguish the  
 22 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*..."
- 23 E. 2017 Driveway Extinguishment. At the request of the City, a "*driveway*  
 24 *relocation easement*" was recorded in 2017 to make clear that the  
 25 "*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

1 ingress and egress. This reinforces the Applicants' position that the  
2 1981 Declaration survey inclusion of utilities in easement scope was a  
3 drafting error. Also notably, the 2017 relocation easement was not  
4 recorded as a plat amendment.

- 5 5. North Utility Easement. The 1981 Declaration and 1983 BLA both show a utility  
6 easement along the northerly property line of the Applicants' property of five feet  
7 in width. The approved survey for the building permit approval (2401-034) is Ex.  
8 Ex. 23, p. 4<sup>1</sup>. The site plan depicts the authorized structures to all be located outside  
9 of the five-foot utility line created in the 1981 Declaration that borders the  
10 northerly property line of the Applicants.
- 11 6. Front-Yard Setback. As previously noted, the Ex. 23, p. 4 site plans identify the  
12 location of all structures authorized by the building permit. The site plans depict  
13 the 20-foot front yard zoning setback applicable to the project site. All authorized  
14 structures are depicted outside of this front setback.
- 15 7. Middle Easement Encroachment. Ex. 9, p. 2 is a survey prepared by the Applicants  
16 that shows the location of their retaining walls as well as the location of the middle  
17 easement. The parties do not dispute<sup>2</sup> the accuracy of the survey, including the  
18 location of retaining walls encroaching into the middle easement. The survey  
19 shows the Applicants retaining walls encroaching into the middle easement.
- 20 8. Waterline. It is uncontested that the Appellant has a waterline running through the  
21 middle easement to serve her home. The Applicants have also submitted a  
22 declaration from its waterline contractor, Ex. 1003, which establishes that the  
23 existing waterline is located within the middle easement. The declaration  
24 references an electromagnetic signal location process to ascertain the waterline  
25 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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<sup>1</sup> At hearing the City's code enforcement officer 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.

<sup>2</sup> 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.

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

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

12 **Conclusions of Law**

13  
14 1. Jurisdiction. MIMC 19.15.030 Table A classified nonmajor building permit  
15 applications and CAO review applications as Type A permits subject to appeal to the  
16 Hearing Examiner.

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

19 Older case law suggests that this appeal proceeding should be stayed pending superior  
20 court resolution of the title issues of this appeal. *See Halverson v. Bellevue*, 41 Wm.  
21 app. 457 (1985). *Halverson* involved City Council review of a preliminary plat  
22 application. Plat laws at the time required that all persons who had an ownership  
23 interest in plat property had to sign off on the application. The City Council approved  
24 the plat despite receiving notice from an adjoining property owner that she had filed a  
25 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

1 ambiguous property lines or other title issues to ensure that zoning setbacks and other  
 2 development standards are properly met. Permit review can't practically be stalled  
 3 every time a title issue arises. The *Halverson* procedure is also no longer feasible or  
 4 necessary under standards that have been adopted since that case under the Regulatory  
 5 Reform Act (Chapter 36.70B RCW) and the Land Use Petition Act (Chapter 36.70C  
 6 RCW). The Regulatory Reform Act imposes permit processing deadlines that could  
 7 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  
 8 acquire a stay upon a judicial appeal of a local land use decision. *See* RCW  
 9 36.70C.100. Under that stay process, a party who has a valid title dispute involving a  
 10 land use decision can stay enforcement of the land use decision until the superior court  
 11 has had the opportunity to adjudicate the party's quiet title action.

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

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

25 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

1 easements.” Given that the only easement addressed by Judge Segal’s decision was the  
 2 middle easement, his reference to “utility easements” establishes that his conclusion that  
 3 the “12 FOOT EASEMENT...remains in effect” was a conclusion that it remains in effect  
 4 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<sup>3</sup> and 1983 BLAs and  
 whether the 2017 driveway relocation easement terminated them. See Ex. 42.

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

7 Judge Segal’s single case citation in his summary judgment ruling is found to resolve  
 8 the issue. See *M.K.K.I., Inc. v. Krueger*, 135 Wn. App. 647, 659, 145 P.3d 411, 418  
 9 (2006). The ruling of his page citation provides that “[w]ith limited and specific  
 10 exceptions, once a private easement is depicted on a short plat, the easement cannot be  
 extinguished without amending the plat document.”

11 The *M.K.K.I* ruling provides for a straightforward resolution of the title issues of this  
 12 appeal. The *M.K.K.I* ruling establishes that the 1983 BLA created the middle utility  
 13 easement if it didn’t exist already and that the 2017 extinguishment didn’t remove it. As  
 14 outlined in the Findings of Fact above, the Applicants may well be correct that the  
 15 reference to utilities in the middle easement of the survey of the 1981 Declaration was  
 16 some kind of “scrivener’s error.” The text of the Declaration defining the scope of the  
 17 middle easement (Par. 4a) may well have superseded the conflicting scope set by the  
 18 survey. However, that situation was turned around upon recording of the 1983 BLA.  
 19 As noted in the *MKKI* ruling, an easement shown on a plat map is controlling. A BLA  
 20 serves as an amendment to a plat map. As shown in Ex. 2005, the BLA is entirely  
 21 composed of the plat map itself and the recording cover sheet. There’s no conflicting  
 22 text in that recording. The BLA survey references an “Easement No. 1,” which is clearly  
 23 referring to Paragraph 4a the 1981 Declaration. However, upon recording of the BLA,  
 24 the survey becomes the controlling document. The 1981 Declaration serves as an  
 25 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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<sup>3</sup> 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.

1 4. Easement Encroachment Authorized. The City’s building permit decision to  
2 approve the proposed retaining wall does not violate MICC 19.02.020H. MICC  
3 19.02.020H authorizes encroachments authorized by the scope of an easement. The  
4 Applicants’ retaining wall encroachment of the middle easement is within its scope.

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

11 The retaining wall encroachment is found to be consistent with the scope of the middle  
12 easement. The BLA survey doesn’t identify the scope of the easement beyond  
13 identifying it’s for vehicular access and utilities. If an easement is ambiguous or even  
14 silent on some points, the rules of construction call for examination of the situation of  
15 the property, the parties, and surrounding circumstances. *Nw. Props. Brokers Network,  
16 Inc. v. Early Dawn Ests. Homeowner's Ass'n*, 173 Wash. App. 778, 792, 295 P.3d 314,  
17 321 (2013). The reference to “Easement No. 1” on the survey is clearly tied to the 1981  
18 Declaration<sup>4</sup>. Paragraph 4d of the Declaration identifies some usage limitations on  
19 Easement No. 1. Specifically, it provides that the Applicants may not install any  
20 structure “*for the purpose of denying access to or physically enclosing any such  
21 easement*” without written consent of the Appellant.” The retaining wall encroachment  
22 is not found to enclose the middle easement or to be intended to deny access for the  
23 reasons identified in Finding of Fact No. 9.

24 5. Setback Encroachments. As approved by the building and CAO permits, the  
25 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<sup>5</sup>. 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.

22 \_\_\_\_\_  
23 <sup>4</sup> The survey prepared appended to the Declaration references three easements (Easement No. 1, 2 and  
24 3), which matches the three easements serving the Appellant’s lot as described in Paragraph 4 of the  
25 Declaration. The easement description of Paragraph 4a clearly references Easement No. 1.

<sup>5</sup> 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.

*Phil Olbrechts*  
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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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## Appendix A

February 27, 2026 Hearing Transcript  
Administrative Appeal; APL25-006

*Note: This is a computer-generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. A recording of the hearing is available at the Mason County Community Development Department should anyone need an accurate rendition of the hearing testimony.*

Examiner Olbrechts: [\(00:00:02\)](#):

Okay, perfect. We are recording. All right. For the record, it's February 27, 2026, 9:00 AM. I'm Fallbrex Hearing Examiner for the City of Mercer Island, holding a hearing this morning on an appeal of some city permits from Lynn versus City of Mercer Island. We have an appellant in this case, an applicant, and the city is parties. The hearing format today is going to follow the city's rules of procedure, which are a little different for when it comes to appeal hearings in that they allow the general public to testify for some reason. But the general format is we'll have the appellant start off since they have the burden, then the city, then the applicant, then the general public. If we have any members of the public here to testify. Then for rebuttal, we'll have appellant go first, the city, then the applicant. And I guess the public for some reason is how that hearing examiner rule goes.

[\(00:00:56\)](#):

And finally, the closing statements will be applicant first, then the city, and then the appellant. So that's the overall process. And we'll take a stab at entering all the exhibits for this hearing at the beginning. Before we jump into that, are there any other preliminary matters we need to get into? And I should say, but let's do introductions real quick too, as well. As I said, I'm Phil Albert's hearing examiner for Mercer Island. And Ms. Kiefer, you're here for the city. Is that correct?

Ms. Kiefer: [\(00:01:24\)](#):

That's correct. Eileen Kiefer, Madrona Law Group. I serve as a contract assistant city attorney for Mercer Island.

Examiner Olbrechts: [\(00:01:30\)](#):

Okay, fantastic. And Mr. Yip, you're here for the applicant, is that right?

Ms. Yip: [\(00:01:34\)](#):

I'm here for the appellant.

Examiner Olbrechts: [\(00:01:38\)](#):

Okay. And who do we here have for the applicant then?

Mr. Wais: [\(00:01:40\)](#):

Yeah, good morning. My name's Morgan Weiss. I'm an attorney for Tammy Liu and Can Chu, who are the applicants in this matter. Also present, but offscreen in my office is Doug Scott, who's also an attorney at this office and represents the applicant.

Examiner Olbrechts: [\(00:01:54\)](#):

Oh, great. Okay. It looks like we have all the necessary parties here. And before we jump into exhibits, are there any other preliminary matters we need to address at this point?

Mr. Wais: [\(00:02:05\)](#):

I would like to essentially raise an evidentiary issue and bring it to Hearing Examiner Olbrich's attention, if I may. Is that okay?

Examiner Olbrechts: [\(00:02:17\)](#):

Oh yeah, yeah, go ahead.

Mr. Wais: [\(00:02:18\)](#):

Okay. So some of the documents, a lot of the documents that were presented by Ms. Lin and her counsel as part of this administrative procedure are irrelevant, and so we're objecting on the basis of relevance. And secondarily, I'm objecting on the basis that they were surreptitiously obtained under false pretenses. I expect there'll be testimony under this about this later, but literally a week ago, Ms. Linn had a waterline inspector come to my client's property under the pretense that there was a water leak that needed to be investigated. But in fact, what occurred was they ran a pipe test to locate the waterline, and this was literally on the 19th of February, to locate it, mark paint on the ground, and then photographed my client's property all over. And again, this was done under the pretense that they were just investigating a water leak. In fact, they weren't investigating a water leak.

[\(00:03:23\)](#):

They were just documenting the property most likely for purposes of this hearing. And so Ms. Linn has submitted photographs and depictions on a map of where the waterline lays based upon this pretextual or investigation and is submitted evidence in this hearing here. So we're objecting to it on the basis A, that it was obtained under false pretenses, not proper under normal discovery standards. I understand that this isn't in civil litigation in the sense that we're not in superior court, but nevertheless, the manner in which this information was obtained would completely be excluded under Sierra 26 and its progeny. And then it's also just irrelevant under the rules of evidence because it's really not germane to the issues that this administrative hearing is going to determine. So I want to put that on the record. I don't know if you want to hear rebuttal or if you're going to make

Examiner Olbrechts: [\(00:04:29\)](#):

Rulings on it. Respond to that if he wants.

Mr. Wais: [\(00:04:33\)](#):

Okay. Thank you.

Examiner Olbrechts: [\(00:04:34\)](#):

Sure. Yeah. Mr. Ipp, do you have any response to that?

Ms. Yip: (00:04:37):

Oh yeah, I have responses to that. Okay. So I'll address it point by point. First, with regards to whether the documents are relevant, we would possibly that they are relevant. I mean, these are photographs of the area at issue. One of the questions here is regards to the location of the easement, which is established by a court order, but the photographs confirm that those utility lines do in fact exist there. And besides this, the scope of relevance is very broad even under the evidence rules, just anything that makes a claim of defense more or less likely. And so if the opposing counsel wishes to renew his relevance objection later, I guess he can do so. But at this point, it would not be appropriate to exclude all those exhibits as irrelevant. Secondly, with regards to whether they're taken under false pretenses, we disagree with that characterization.

(00:05:29):

These photographs were taken, as I understand them, from what we call the middle easement in our brief. And Ms. Linn has a legal right to be on the middle easement. She didn't trespass into any other parts of the Decoy Leo property, and so these photographs are appropriately taken from a place where she's legally entitled to be. And if the opposing counsel disagrees with the concept of photographs, he's welcome to do questioning or to put on his own case, but at this point, it would not be appropriate to exclude the photographs either.

Examiner Olbrechts: (00:06:07):

So is it your contention then that the ... Excuse me, I'm on the downhill side of a bad cold here. Is it your position then that the wording of the easement in allowing maintenance and repair also includes just identifying where it's located for purposes of an appeal like this?

Ms. Yip: (00:06:25):

Well, part of the issue was also to identify the line, the location of the line, and that is germane to the maintenance of the easement. So yeah, I would say yes to that.

Examiner Olbrechts: (00:06:37):

Okay. All right. Okay. Yeah, it's a little bit of a tough issue to come up and rule off on the fly, but I think it is probably, I would say it's within the scope of the easement. It's of marginal relevance. I mean, the fact that the waterline is there gives some evidence on the intent of the parties to relocate it. Obviously, they probably wouldn't want to relocate it if they knew the waterline was there. So it is relevant to that issue. So I'm going to overrule the objections based on relevancy and I guess kind of the fruit of the poisonous tree argument there. And well, let's go to the appellant's exhibit list since we were talking about that. We'll address that one first. Pull it up on my screen here. All right. And so it looks like we have a total of, was it 15 or 16 exhibits there for the appellants?

(00:07:39):

And Mr. Weiss, did you have any other objections over the exhibit list from the appellants?

Mr. Wais: (00:07:45):

No, not other than I've already stated. Thank you.

Examiner Olbrechts: (00:07:48):

Okay. And the city have any objections over the appellant's exhibits?

Ms. Kiefer: [\(00:07:51\)](#):

No objections.

Examiner Olbrechts: [\(00:07:53\)](#):

Okay. So we'll admit exhibits 1001 through 1016. Let's move on to the city's exhibit list. Sorry, clicking on so many windows here. Okay. And the city had an amended list from what I recall. Hold a second. Where did that go? Ah, here we go. Okay. And the city has a total of 46 exhibits. This is not the amended list.

Ms. Kiefer: [\(00:08:28\)](#):

Sorry. No, Mr. Examiner, the city has 48 exhibits.

Examiner Olbrechts: [\(00:08:32\)](#):

Okay. Yeah. Yeah, let me pull that up. Any objections over the city's 48 exhibits? No. From anyone? Okay, those are admitted as well. And finally, moving on to the applicant's exhibit list. And let me pull that up here. All right. We've got exhibits 2001 through 2009. Any objections over those from anybody? No. Those will be admitted as well. Okay. That makes it a lot easier. We can get all the exhibits resolved up front. Okay. Well, I guess we can just jump right into the appellant's presentation unless there's anything else we need to address at this point. Okay. So Mr. Yip, it's up to you at this point.

Ms. Yip: [\(00:09:18\)](#):

Thank you, Mr. Hearing Examiner. This again is John Yip from First Avenue Law Group, the attorney for Appellant Molina Lin. There are two issues in this case in the appeal. One is with regards to whether the applicant may install and maintain structures over utility easements. And the second issue is regards to the front yard setback. And from the outset, we would just like to confirm that the primary issue to be discussed here is with regards to what is known as the middle easement in our brief. To recap, there are at least three utility easements at issue. There are easements along the northern and southern side of the applicant's property benefiting the appellant. These were formed by the 1979 declaration, and there's also a middle easement which was formed by a 1978 short plat, and that short plat was amended twice, once in 1979 and once in 1983.

[\(00:10:25\)](#):

To clarify, the issue before the hearing examined today is not whether the middle eastment exists nor whether it is still in its original location. In fact, those issues have already been hotly contested and fully litigated in court, in the case resulting in the order entered by the King County Superior Court in 2021. That court ruled that it refers to that Middle Eastment as a 12-foot easement for ingress, egress, and utilities, easement number one. And then the court goes on to say, "Which remains in effect and as a matter of law was not modified or terminated by the party's private 2017 driveway relocation easement." So it's already established by the court as a matter of law and also as a matter of fact that the easement still exists and is in the same location as it was depicted in the last map at issue governing that middle easement, which is the 1983 map.

[\(00:11:32\)](#):

And I'll also further confirm that after that order was entered, the parties stipulated that it is final and it was never appealed and all appeal deadlines would've already passed since this was entered in 2021. So with that background, the real issue before the hearing examine today is actually the following: Whether the applicant has either installed or plans to install any retaining walls or rockeries over an

easement, the Mercer Island City Code 19.02.020H is very clear. It says, "Easement shall remain unobstructed." And then part two of that says, "No structure shall be constructed on or over any easement for water, sewer, storm, drainage, utilities, trail, or other public purposes, unless it's permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement." And here, there is nothing authorizing these retaining walls and rockeries over the middle easement.

[\(00:12:41\)](#):

There's nothing authorizing them, nor has Ms. Lin consented to them in any way. And while we are not required to prove actual interference, because the focus of the Mercer Island ordinance is whether or not the structures are built on a place where we have easement rights, whether those rights are used or not, that's not really germane to the ordinance. But just as further evidence, there actually is in fact a waterline in that easement area, which was again confirmed by a contractor, waterline contractor just last week. And that contractor also noted in his declaration and his written testimony that the retaining wall would in fact make it more difficult to maintain, inspect, and repair these waterlines in the future. So the point of that is not that, again, the point is not so much whether we have to show actual interference because that's not required a statute and ordinance, I mean, but rather that this is a real issue, not really theoretical or something or hypothetical.

[\(00:13:53\)](#):

This is a real issue, and therefore it is very important to Ms. Linn. So the relief that Ms. Linn primarily requests is that you, Mr. Hearing Examiner, order that the retaining wall and rockery be removed from the middle easement. I will also briefly touch upon the other points in our briefing, but those points are very largely addressed. So to recap the other issues that previously, there were also ... Well, actually currently there are retaining walls in the northern easement as well. However, then the approved site plan already shows that those retaining walls will be removed from the north easement, which is good. And we appreciate the city apparently working with the applicant to require that change. So what we are asking is that that change also be applied to the middle easement, meaning that the retaining walls and rock rise also be removed from the middle easement.

[\(00:14:55\)](#):

And then the other issue is regards to the front yard setback. The applicant has built a gazebo and a greenhouse that is partially in the 20-foot front yard setback, and the approved plans show that those structures will be removed from the front yard setback. So for that one, but there's no mention of it in the decision itself, so there might be some confusion in that regard. So for that one, we just ask that the hearing examiner also includes ... I just amend the decision to require that all objects be all such objects, especially the gazebo and the greenhouse be removed from the front yard setback and to also set forth terms for confirming that compliance. Ultimately, again, the main issue is whether or not there are structures being built on the Middle Eastment. The answer to that is yes, and under the Mercer Island City Code, those structures need to be removed, and so we respectfully ask that they be removed.

[\(00:16:03\)](#):

Thank you.

Examiner Olbrechts: [\(00:16:05\)](#):

And are you presenting any witnesses, Mr. Yep, or is that it?

Ms. Yip: [\(00:16:09\)](#):

That's my opening statement. I will now call my witness, which is the client, Melina Lynn.

Examiner Olbrechts: ([00:16:18](#)):

Okay. And probably, I'm sure the attorneys all realize this all testimony is subject to cross-examination today, of course. And also I didn't mention before, I don't know how long this hearing's going to go, but I tend to have breaks or set breaks every 90 minutes for about 15 minutes. And if we get to after two sessions, we'll take an hour lunch break. So anyway, Ms. Linn, let me swear you in. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding? Yes. Okay, great. All right, go ahead, Mr. Yip.

Mr. Wais: ([00:16:48](#)):

Before Ms. Linn begins, I just want to just let the parties know, Mr. Ulbrich, we have two witnesses that are going to testify, and I told them both to be present or dial into the hearing at about 10:00, so I'm just giving you a heads-up that that might occur

Examiner Olbrechts: ([00:17:06](#)):

Because

Mr. Wais: ([00:17:08](#)):

I didn't know when the timing was going to be. Sorry to interrupt. I just want to give you- Oh,

Examiner Olbrechts: ([00:17:12](#)):

No problem. Thank you, sir. All right, Mr. Yip, go ahead.

Ms. Yip: ([00:17:16](#)):

All right, thank you. Would you please state your name for the record?

Ms. Lin: ([00:17:21](#)):

Lina Lang.

Ms. Yip: ([00:17:23](#)):

Okay. And could you describe the easements for the utility easements on the Coial property?

Mr. Wais: ([00:17:35](#)):

Object to foundation. They need to establish foundation before she can testify to that.

Ms. Yip: ([00:17:42](#)):

Okay. To your understanding, do you have utility easements over the Cool property?

Ms. Lin: ([00:17:51](#)):

Yes, I know I have it. So the opponent lawyer mentioned about last week, I hired a water detector company, come to detect the waterline. It was like I pretending I was doing the water leak, but actually located the waterline. So first thing, I want to clarify that. Regarding the location of the waterline location-

Mr. Wais: ([00:18:16](#)):

I'm going to object. This was responsive to the question.

Ms. Lin: (00:18:19):

It was not found.

Ms. Yip: (00:18:20):

Yes, it was. We'll get to that point later. I'm just trying right now to just try to lay the background for the easements. So to your knowledge, you have utility easements on the Coyle property?

Ms. Lin: (00:18:33):

Yes. It was also confirmed by the locator back about two or three years ago, maybe three, four years ago. So I present in my evidence in my appeal submission. So that was the first time I know for sure I have a waterline in my neighbor's property. So the last week was only the second time double checking, double verified. That's all.

Ms. Yip: (00:18:56):

Yes, I understand. Again, we'll get to that, but I'm just trying to lay the background right now. Okay. So at least how many easements do you know of on the utility easements do you know of on the Coyle property?

Ms. Lin: (00:19:15):

I think as you mentioned about, I have three. One's on the top, five feet setback, northern setback, another one is on the thousand setback. And then under the middle part, the middle part was under old driveway. It was older driveway. That's why it was in the middle of the property.

Ms. Yip: (00:19:34):

Okay. So now I'm going to go ahead and just go to the exhibits. So I'm going to pull up the city's exhibit number 43 and especially page 338. And I'll do a share screen to put on my screen.

Examiner Olbrechts: (00:19:52):

Okay.

Ms. Yip: (00:19:54):

Okay. Do you recognize this document?

Ms. Lin: (00:20:00):

Yeah, I saw this one in the past, yes.

Ms. Yip: (00:20:04):

Okay. And is this the northern easement?

Ms. Lin: (00:20:08):

I think so, yes.

Ms. Yip: (00:20:09):

Okay. And the middle eastment, is this windy area land here?

Ms. Lin: (00:20:16):

Yes. That was the old driveway, yes, location.

Ms. Yip: (00:20:19):

Okay. And there's a southern easement, right?

Ms. Lin: (00:20:23):

Correct.

Ms. Yip: (00:20:24):

Okay. And this middle eastment, it was also the location of a old driveway?

Ms. Lin: (00:20:31):

Yes.

Ms. Yip: (00:20:32):

Okay. But there's also utilities there?

Ms. Lin: (00:20:35):

That's my understanding is combined, yes, correct.

Ms. Yip: (00:20:38):

Okay. And in 2020, were you involved in a lawsuit regarding whether or not the utilities easement has been relocated?

Examiner Olbrechts: (00:20:52):

Yes.

Ms. Yip: (00:20:53):

Okay. And I'm now going to pull up City Exhibit number 44. Okay. Can you read lines nine to 15? Just ending over here, this period into the record.

Ms. Lin: (00:21:11):

Sure. The City of Merced Island subdivision recorded under recording number 7812180972, and I delineated on survey zero recorded under the recording number 7911309020 as revised under boundary line revision recording number 8309159010 includes a 12 feet, 12 foot easement for ingress, egress and utilities easement number one, which remains in effect and as matter of the law was not modified or terminated by the party's private 2017 driveway relocation easement, King County recording number 20170329001022.

Ms. Yip: (00:22:14):

Okay. And this is the court order that was signed by the Honorable Matthew Siegel, right?

Ms. Lin: (00:22:24):

That's by the judge, I believe, yes.

Ms. Yip: (00:22:26):

Yes. Okay. And just want to clarify, so here this says, "This order resolves all remaining claims in this case." Is that right?

Ms. Lin: (00:22:36):

Correct. It says that per the briefing of the parties and the parties' agreement at oral argument, this order resolves all remaining claims in this case and the final judgment shall be entered accordingly.

Ms. Yip: (00:22:52):

Okay. So now I'm going to bring up just to complete this particular line of question. So it stipulated order of entry of final judgment. And is it your understanding this is the final document that was filed in this case?

Ms. Lin: (00:23:11):

I believe so.

Ms. Yip: (00:23:12):

Okay. And to your knowledge, this order, exhibit number 44, it has never been appealed and it's not presently on appeal, correct?

Ms. Lin: (00:23:21):

No.

Ms. Yip: (00:23:22):

Okay. It's not on appeal. Okay. So now- No,

Ms. Lin: (00:23:24):

It's not on appeal.

Ms. Yip: (00:23:26):

Okay. Now I want to go to City Exhibit number nine. Okay. All right. So this is ... Yeah, let me zoom out so I establish what this is. So do you recognize this document?

Ms. Lin: (00:23:43):

I saw this a few times. Yeah, it's a survey plan done by site survey. It's a company do the survey job.

Ms. Yip: (00:23:51):

Okay. And do you know who hired a site survey?

Ms. Lin: (00:23:55):

I believe it's the applicant.

Ms. Yip: (00:23:57):

Okay. And for that one, okay, so is it correct that there's a line here down the middle, like a patch of land that's delineated by dash lines?

Ms. Lin: (00:24:12):

I can see that dash lines really match the old easement document for the old driveway before it was relocated, that dash line representing that older location of the driveway.

Ms. Yip: (00:24:25):

Yeah. And it says here, ingress, egress, and utilities easement, right?

Ms. Lin: (00:24:29):

Correct. Not only driveway, but also utility easement, correct.

Ms. Yip: (00:24:34):

Yeah. And I know this is covering the briefing, but actually the utilities easement and the driveway easement, they're covered by separate documents. Is that your

Ms. Lin: (00:24:44):

Understanding? Okay. Yeah. Objection, leading. And now I understand now. Now I understand now. Yeah, because that's the legal documents. Yes.

Examiner Olbrechts: (00:24:51):

Yeah. Okay.

Ms. Yip: (00:24:53):

Okay. Okay. So that's background. So this is by the ... And I also want to point out the date of this one. This is from ... Okay, let's see here. Okay. What is the date of this document?

Ms. Lin: (00:25:09):

April 4th, 2023.

Ms. Yip: (00:25:13):

Okay. And April 4th. Okay. And this was after, was it after the order regarding the 12-foot easement?

Ms. Lin: (00:25:21):

Yeah, the order was 2021.

Ms. Yip: (00:25:25):

Okay. Right. So this is a site plan. Okay. Now I'm going to pull up exhibit number 23, the city's exhibit number 23. And do you recognize this document?

Ms. Lin: (00:25:39):

I know this is approved the plan.

Ms. Yip: (00:25:42):

Okay.

Ms. Lin: (00:25:42):

During the discovery, during the case.

Ms. Yip: (00:25:46):

Okay. Okay. So this one, does it show the line in the Middle Eastment?

Ms. Lin: (00:25:57):

Oh, disappeared.

Ms. Yip: (00:25:59):

Okay. But it was shown in the prior one, the preparer.

Ms. Lin: (00:26:05):

Exactly. That was exactly how it was appealing. I see why the survey plan changed.

Ms. Yip: (00:26:11):

Okay. Okay. And here, this particular one, can you just read general notes number ... Sorry, let me put it up. Number three.

Ms. Lin: (00:26:23):

Number three? Okay. The information on this map represents the results of a survey made in May 2015 and March 2023, and it can only be considered as indicating the general condition existing at that time.

Ms. Yip: (00:26:44):

Okay. And then now let's go to the more recent ... Okay. And again, just to reestablish the background, so this one, this map, City Exhibit number nine, what was the date of this one again?

Ms. Lin: (00:27:00):

April 4th, 2023.

Ms. Yip: (00:27:02):

Okay. So now Exhibit 23 and this one says reviewed.

Ms. Lin: (00:27:06):

September 11, 2025.

Ms. Yip: (00:27:10):

Okay. And then now let's go back to general notes number three. What does that say?

Ms. Lin: (00:27:20):

I think it's the same thing. The information on this map repeats the same thing, the March 2023. That was the last time updated. Okay.

Ms. Yip: (00:27:30):

Okay. So as far as you know, have there been any further surveys done by site surveying of this property since March 23rd, 23, based on these notes?

Ms. Lin: (00:27:41):

Based on this note, since that they did not do any survey, only the last one was March 2023, the same date for the both version of the survey per the plan. But I don't know actually they did or not, because that's applicant hired survey.

Ms. Yip: (00:27:58):

Okay. But what I'll call the final site, the approved site plan, this one, it doesn't reference any surveys that are not already referenced in the previous one. Is that your understanding?

Ms. Lin: (00:28:12):

It should be the same survey.

Ms. Yip: (00:28:14):

Okay. But yet, however, this one just omits the Middle Eastment.

Ms. Lin: (00:28:21):

Right, right. I think ... By the way, I did have a chance to talk to the survey company because the survey, they did the survey for my house too.

Mr. Wais: (00:28:31):

Objection, nonresponsive. Doesn't answer the question.

Ms. Yip: (00:28:35):

She hasn't even completed her answer. You need to at least clear.

Mr. Wais: (00:28:37):

No, she did. You didn't ask a question.

Ms. Yip: (00:28:40):

She was still answering my question with regards to preparation of the survey. I think that's relevant. If you don't like it, then you have letter finished and you can move to strike.

Ms. Lin: [\(00:28:48\)](#):

Yeah, so I'm continuing. So the same survey company did my survey. I talked to them maybe a few weeks ago and they say that, "Oh, we just changed it. Oh, maybe we didn't do it right." So they told me that they can come out. So

Mr. Wais: [\(00:29:01\)](#):

I'll object to hearsay. Let me do it. I'll object to hearsay and move to strike. But the survey company told her is absolutely hearsay and inadmissible.

Examiner Olbrechts: [\(00:29:09\)](#):

Okay. Well, the rules of evidence are relaxed for these kind of proceedings. However, there is also a constitutional right for cross-examination, so I guess I'll sustain the objection.

Ms. Yip: [\(00:29:22\)](#):

All right. So moving on. Okay. So this is the exhibit number 23, and I just want to orient the hearing examiner, page 10183. So Ms. Lin, can you describe what this particular page is?

Ms. Lin: [\(00:29:43\)](#):

It's a survey show the existing condition of the property.

Ms. Yip: [\(00:29:50\)](#):

Okay. And in this one, does this map show any encroachment onto the north easement?

Ms. Lin: [\(00:29:57\)](#):

It's hard to tell because it didn't show the 20 For the line, but I noticed that there's that gazebo, gazebo building disappeared. It's not on the survey. So I pass by the driveway every day. I see the two buildings stand there the same as before. No change whatsoever since they built that two building without permit. But the survey should be captured the existing condition on site, especially this project was for the rectified the unpermitted tool structures on the backyard. So that's very crucial information. That's the main part about this project. So I'm very surprised that survey does not show all the illegal build building on the survey because that's main focus of the project. So that's why in my appeal information, in my comments, I've been mentioning this. I see why the building disappeared and over and over. And also the dash line for the old driveway disappeared for the easement disappeared.

Ms. Yip: [\(00:31:04\)](#):

Okay. So again, just to recap, we are comparing this and this. So this one doesn't also ... But from what you see, there is a gazebo over here in this area?

Ms. Lin: [\(00:31:23\)](#):

Only from what I see. We took a photo that's in the exhibit. In the photo shows there's two buildings standing there square. No change whatsoever from when they built illegally without permit.

Ms. Yip: [\(00:31:36\)](#):

Okay. So let's

Ms. Lin: (00:31:37):

Just go back here. I don't know which exhibit, John, you can point out.

Ms. Yip: (00:31:41):

Yeah. So let's go back to the middle eastment issue first. Okay. So I'm back. And just for everybody, I'm back to exhibit number nine, the city exhibit number nine. So on this one, what is your understanding again of this line, this area here in the middle?

Ms. Lin: (00:32:03):

In this area, this area shows the driveway.

Ms. Yip: (00:32:07):

Okay. But is this your middle utilities easement as far as you

Ms. Lin: (00:32:10):

Know? Correct. Middle easement. Driveway and also the middle easement. We call middle easement in our brief.

Ms. Yip: (00:32:17):

Yeah, but I'm not talking about the driveway. I'm just talking about the middle utilities easement. This is your understanding of the middle utilities easement, right? Correct. Okay.

Ms. Lin: (00:32:26):

Yes.

Ms. Yip: (00:32:27):

And based on this drawing, is it your understanding that there are retaining walls or rockeries in that middle easement?

Ms. Lin: (00:32:40):

Yes. It shows on the plane.

Ms. Yip: (00:32:43):

Okay.

Ms. Lin: (00:32:43):

Showing the survey plan to show that intruding into that dash line.

Ms. Yip: (00:32:48):

Okay. And then just to confirm, are these small square boxes, are those what you understand to be the retaining walls? I think from

Ms. Lin: (00:32:58):

The photo, because I never go to that part of this backyard, my neighbor is very hostile. Whenever I ask for the reasonable access from the three years ago, they refused me from going, and this time the same thing. Even though we got a photo, they're still against in a quarter appearance by their attorney. But I can see from the driveway and from the photo, that retaining wall is very large and they are there. And also there's a fence above the retaining wall completely close that part of the yard. So for access, I don't know if the fence should be taken down or not. That's part of that's another thing. It's enclosed. The home building, because my neighbor's very hostile for me to access for that easement three years ago, three, four years ago when first time I needed to upgrade my size of the water meter.

(00:33:57):

So that's why we discovered that's the location of the water pipe. It's just-

Ms. Yip: (00:34:03):

Okay. We'll get to the photographs. Right now, I'm just trying to establish what this diagram shows. So as far as you know, these boxes, are those representing retaining walls based on what you understand? Yes,

Ms. Lin: (00:34:17):

It

Ms. Yip: (00:34:18):

Is. Okay. And just based on your observations, again, we'll get to the photographs later. Just based on your visual observations, do you in fact see retaining walls in that area?

Ms. Lin: (00:34:26):

Yes.

Ms. Yip: (00:34:27):

Okay. Now I just want to, again, also before going to the photographs, I just want to talk about the exhibit 23, the approved site plan. And under this one, are the retaining walls still shown? Yes. Okay. And as far as you can tell between, and I'll move slowly, Exhibit nine, which is the one from 2023 versus Exhibit 23, which is from 2025, do you see any differences in terms of the shape or the size of the retaining walls as depicted on these maps? Okay. All right. So moving on. Okay. So with regards to the ... So now let's talk about the locate work. Can you talk about the locate work from last week?

Ms. Lin: (00:35:30):

Yeah.

(00:35:32):

So to give some background, I received a notice from the city of Merced Island mentioned about my water line is leaking because the city of Merced Island changed a smart meter, water meter. It can detect every half an hour, every 15 minutes there's reading. My house meter is reading every single minute. So I got the notice, I think towards around December. That was before the holiday. I had a travel plan, so I was out of town. So I told the city of Merced, I'm going to try my best, locate where it's leaked as soon as possible. So around in January, I was traveling. I was back in February, early February. So I had my niece, Rebecca, and I had her. I said, "Can you please hire a locator located with a leak?" She just hired the locator, but at that time we spent about 10 days or two weeks try to coordinate for the access.

[\(00:36:27\)](#):

Tammy, the applicant refused us from entering the location, refused the date and say, "This date, that date doesn't work. None of the date works." Finally, she put it out the date far away, then we have to scramble around, try to schedule with the locator. So finally, locator went in, but when the locator detect that time, they did not locate the line location. So they map all over the yard, everywhere, everywhere. And finally, they say they find a leak location, which is in my courtyard, in my house in the courtyard. So when I come back in February, I hired a contractor open my courtyard, find out there's no leak. It's dry like a boom. So we call locator, which is not leak. Then as well, we're not guaranteed the accuracy. We can come back again. So they suggest this time in order to really locate where the leak, we need identify where's the location of the line first.

[\(00:37:24\)](#):

That total makes sense because when they know where's the line located, then they can use that specific machine. The instrument going to detect that location little by little. It's about a 300 feet long distance from the side of the North Mercer Way, the meter location up to my house. So we start to do that. So again, I tried to schedule that appointment with my neighbor and it was so difficult. I was going to do that work way sooner, but then finally we booked appointment was last Thursday, I believe last Thursday. So that day, our job supposed to have two things. Number one, locate was the line located because they want to do a good job now. And number two, then detect the leak. So that day, supposedly should have show up at 8:00 AM. By 7:30, I already got my helper, the plumber opened the line already.

[\(00:38:24\)](#):

The technology, by the way, and maybe add a little bit background, the technology, how to detect the line location is we're required to insert a fish tape. The fish tape is a metal metal line, not very big, about maybe not even half inch, maybe a quarter inch wide, a flat piece of the metal. Inset that fish tape inside the waterline. My water line is about one and a half inch or one and a quarter inch. So pretty big size inside that line, inside the tape as far as possible, ideally to cover the whole entire length of the waterline. Then the whole instrument going to detect that fish tape location, magnet or some that technology, I don't know how they do that, but they have a very institute located line. Then they use a different instrument and locate a leak. So at 7:30 AM on that day, the technician supposed to show up at my job called me.

[\(00:39:24\)](#):

He told me he's really sick. He said, "I'm really sick. I'm going to the hospital now." I was like, "What? What are we going to do? I already got a line open already and I'm just waiting for him to show up." So we scrambling around. I called the office. I called the office. I said, "What are you going to do?" I said, "We try so hard to lock today with my neighbor because my neighbor's very hard. Do not allow me to enter. I respect her, but even though I have the right, but I still respect her schedule." So finally the office told me, "We are going to send a different guy because you are ready inside the fish tape. Then why not we locate a line first? Then we're going to send the leak detector later." The reason is only two technician in this office can use that very expensive machine to detect the leak once line is located.

[\(00:40:19\)](#):

That's office CNI office told me. So this technician is sick. Another technician was on maternity leave, maternity. So two, none of them available. So instead he sent this technician over. He said, "Why don't we detect the line for you first? At least you're going to know the location." And I said, "Okay, why not do that so I can get a ground cover up?" So that's what happened. So that day, last Thursday, they send a second technician and he come over very quickly. Within half an hour, he detect the line location.

That's how he mark on the ground. And also he told me, "Please keep those mark on the ground because we are going to send the technician once he recovered the back again to detect the leak." So now I have a little bit other problem because the lengths of the detection can maximum about 240 feet.

(00:41:12):

The fish tape length is only 240 feet. Now the dictator line, the signal end at about 220 feet. So the signal disappeared. So then they told me I have to open the pipe from the other end to do another line location or something. So I'm still tackling it. So that leak problem has not been fixed and I'm under the pressure. I need to fix the leak. So it just happened. It just accidentally happened at the same time, leak detection and a line location. And by the way, I don't have to locate the line again because the line was located about a three, four ... I don't remember the date. Three, four years ago in my exhibit, in my exhibit of the comments to the city. I said, I know the line located in my neighbor's yard. Today, not today, last week, the located line still the same location, still around the same spot of the yard.

(00:42:12):

So really does not change the facts, just double verify.

Ms. Yip: (00:42:16):

Okay. So just to summarize, the line location, is it related to or in preparation for repairing the water leak?

Ms. Lin: (00:42:26):

Yes. It's solely for the water leak. It is byproduct because we have this hearing. So I say, "Hey, since you do that, why not just do more for me?" So technician, then they did a declaration for me. It is all the facts. I already told my neighbor, I think it doesn't matter if they do another line located or not. It's already a fact. This time we just want to put more official documentation to present to the appeal board. That's all.

Ms. Yip: (00:42:53):

Yeah. Okay. Now I'll get to the declaration. Okay. So I'm going to pull up Lin Exhibit 1003, and this is specifically the page that is 1003. 21. Do you recognize this particular page of this document? Yes. Okay. And can you describe what this is?

Ms. Lin: (00:43:15):

So this is a indicator of the line location, kind of like to translate the language from the locator, put some little flag and also paint on the ground, transfer into a map, just rough indicator of the location of the waterline. And it just happened so accidentally that's about end of the neighbor's property, the driveway. That's a signal that lost. He could not locate it anymore. I wish he could do more because ... Yeah, exactly. That's a located line.

Ms. Yip: (00:43:53):

So that's the located line. And it's your understanding that this located line, that's the highlighted, right?

Ms. Lin: (00:43:59):

The yellow? Yes.

Ms. Yip: (00:44:01):

Yes. Okay. And is it your understanding that the located line generally fits the contours of the middle easement?

Examiner Olbrechts: (00:44:08):

Yep.

Ms. Yip: (00:44:09):

Okay. And just again, just to refresh everyone's memory, exhibit number 43, city exhibit number 43, this squiggly running roughly down the middle, this is the middle easement to your understanding, right?

Ms. Lin: (00:44:24):

Yeah.

Ms. Yip: (00:44:26):

Okay. And that's also what this squiggly shows. That's also the middle easement in this middle line. Is that where it is? Yes. Okay. All right. So now I'm going to go to the photographs. Before I do that, so generally, is it your understanding that the contractor stayed within the easement area?

Ms. Lin: (00:44:55):

Contractor went in with neighbor. I did not go in because neighbor refused me from enter that yard. Even though I think I have absolute right can go in, but I did not contact. I just let that go. So the contractor went in with Tammy, so Tammy should know where they went.

Ms. Yip: (00:45:12):

Okay. And then so the photographs, those are taken by the contractor, not by you, or were they taken by you?

Ms. Lin: (00:45:21):

Which one? This paragraph?

Ms. Yip: (00:45:23):

No, let me just go to the photograph, one on the photograph I'm talking about. Who

Ms. Lin: (00:45:29):

Took this? Contractor.

Ms. Yip: (00:45:30):

Okay. What does this photograph show? They show

Ms. Lin: (00:45:34):

There's a blue line on the ground, which is a location of my waterline to my house. And also show the background of that yard. There's two building. You can see there's a gazebo and also the greenhouse and also the backyard, some retaining wall and also the water valve.

Ms. Yip: (00:45:52):

Okay. So the blue line, is that your understanding this is the waterline?

Ms. Lin: (00:45:56):

Yes. Okay.

Ms. Yip: (00:45:57):

And it's also your understanding this waterline would actually, that this retaining wall is over this water line?

Ms. Lin: (00:46:05):

Yes.

Ms. Yip: (00:46:06):

Okay. I'll go back to 1003 notice upside down. Okay. There's some more photographs here, I think up top. Just want to go over some more just for further illustration. So this is 1003.04. What does this show?

Ms. Lin: (00:46:28):

Waterline. Oh, blue dots and little flag show the location of the waterline they detected.

Ms. Yip: (00:46:35):

Okay. And this is a retaining wall, right?

Ms. Lin: (00:46:40):

Correct. Is

Ms. Yip: (00:46:41):

This one of the retaining walls that you are concerned about?

Ms. Lin: (00:46:45):

Maybe. Yeah.

Ms. Yip: (00:46:47):

Okay. Yeah. This one we already talked about. Here's another one. Can you just briefly describe this one

Ms. Lin: (00:46:55):

Too? This one, there's a fence next to the shrap and behind the fence is a current driveway. So this part is right behind the current driveway. And also there's a retaining wall there and also the fence. And you can see the little fence too on the left side. It's all closed. So they have to walk around to access to that point. Maybe they have a gate. I cannot tell because I never went inside there myself.

Ms. Yip: (00:47:23):

Okay. So generally your understanding is that there are retaining walls over your middle easement? Yes. Okay. And a key purpose of this appeal is to seek the removal of the retaining wall sections over your middle easement, right?

Examiner Olbrechts: (00:47:45):

Yes.

Ms. Yip: (00:47:46):

Okay. All right. So just a few more questions. So now I'll just briefly touch upon the north easement. Let me pull this back up. All right. So this is City Exhibit number 23. Okay. And I see that along the top part of this is a dash line and this says five feet. Is it your understanding this is the north easement? Correct. Okay. And are these all retaining walls in the north easement? For

Mr. Wais: (00:48:21):

The plan, yes. Objection. Lack of foundation. She's testified she doesn't know or wasn't there.

Examiner Olbrechts: (00:48:27):

Correct. Mr. Yip, rephrase.

Ms. Yip: (00:48:30):

Okay. To your knowledge, are there any retaining walls in the northeastment?

Mr. Wais: (00:48:36):

Objection. Foundation.

Ms. Yip: (00:48:38):

Okay. Based on this picture, are there ... Okay. Is this a survey, ma'am? Yes.

Ms. Lin: (00:48:44):

Based on the survey, there's an easement inside that five foot.

Ms. Yip: (00:48:48):

All right. And based on this survey, and this survey was prepared by applicant's surveyor, am I understanding correctly?

Ms. Lin: (00:48:55):

Correct.

Ms. Yip: (00:48:56):

All right. And according to this survey, are there retaining walls being shown on the northeastment?

Ms. Lin: (00:49:04):

Correct.

Ms. Yip: (00:49:05):

Okay. And now I'm going to go two pages down. What is this page showing? Yeah,

Ms. Lin: (00:49:14):

I just want to make sure. Yes. Is this approved the plan? Exhibit 23? Yes, this is the approve plan.

Ms. Yip: (00:49:19):

Correct.

Ms. Lin: (00:49:19):

Exhibit number

Ms. Yip: (00:49:20):

23. Yes.

Ms. Lin: (00:49:21):

This one does not show inside at five foot.

Ms. Yip: (00:49:24):

No. Okay. But what does this picture show? What is the purpose of this particular page?

Mr. Wais: (00:49:29):

Objection. Foundation.

Ms. Yip: (00:49:32):

Well, based on what you know, what is the purpose of this page?

Ms. Lin: (00:49:35):

Yeah. Just so everybody know that my pre-career, I was a structural engineer, so I do the plan all the time myself. So that's why I read the blueprints. I do the design myself. And this is a very simple project, very simple, really nothing. It just like a survey, you show the existing condition, and then you show another plan, which is they call side plan. I may not call side plan myself, but they call side plan. That's okay. Site plan is show the new condition or the call proposed structure on the plan. Proposed structure is supposed to be built. So from the side plan here, it shows the returning wall is off the five feet recess. And also seems as ... Yes, answer your question, John.

Ms. Yip: (00:50:22):

Okay. So just to summarize that, so I'm going to go because I just want to be very clear. So this is page 183. And according to this page, this is the current one that supposedly shows current conditions, right?

Ms. Lin: (00:50:40):

Survey showed existing condition and shows that returning was inside the five foot and the side plan showed it out. So that's mean they're going to have to remove it.

Ms. Yip: (00:50:49):

Okay. And is that satisfactory to you for them to remove the retaining wall from the northeastment?

Examiner Olbrechts: (00:50:56):

Yes.

Ms. Yip: (00:50:57):

Okay. And however, for the ... Okay, let me go back two pages. All right. So here, this is the survey. Am I understanding correctly? I'm

Ms. Lin: (00:51:14):

So sorry, John. Is this a survey? Oh, okay. Does that show the survey plan, then the survey?

Ms. Yip: (00:51:20):

Yeah, so let me just zoom out so everybody can see better.

Ms. Lin: (00:51:25):

I'm sorry. I just blinked my eye.

Ms. Yip: (00:51:27):

Yeah, no, this is Exhibit 23, page 183. It says topographic survey. Yes. So as far as you know, this is supposed to depict the existing condition, right?

Ms. Lin: (00:51:42):

Correct.

Ms. Yip: (00:51:43):

Okay. And again, even though the middle eastment is somehow not shown, these retaining walls towards the middle, those are the ones you're concerned about, right?

Ms. Lin: (00:51:54):

Yes.

Ms. Yip: (00:51:55):

Okay. Now let's go to the site plan, which is the proposal. So in this proposal, are those retaining walls that you're concerned about, do they still appear in this site plan?

Ms. Lin: (00:52:10):

Correct. Still on the plan.

Ms. Yip: (00:52:12):

Okay. So what you seek in this action, in this appeal, is in the removal of the retaining wall sections in the middle easement?

Ms. Lin: (00:52:21):

Correct.

Ms. Yip: (00:52:22):

Okay. All right. So that's it for the easement issue. Just want to briefly touch upon the front yard setback, and then I think we should be about done. Okay. So previously, okay, so is it your understanding that the gazebo and the greenhouse may be in the 20-foot setback?

Ms. Lin: (00:52:50):

This is absolutely show within the setback because you can see there's 24 measurement. So one challenging about this is it's very hard to tell by eyeball because by you looking at the site, you cannot tell it's within or out. So the survey is extremely important. So from this plan, I can see this is, I saw this is XB the nine, so the old plan is not permitted plan. So I can see that the gazebo is within that. Everybody can see there's a dash line here to show the 20 feet. John, you can point about that 20 feet there. Go below a little bit. Okay. Below.

Ms. Yip: (00:53:31):

Okay.

Ms. Lin: (00:53:31):

You're talking about the front setback, right? Is that what the question? Yeah,

Ms. Yip: (00:53:35):

No. Yeah, just in the setback, but this is the diagram.

Ms. Lin: (00:53:38):

Exactly. So here is a line of the 20 foot because there's a mark here. It's called 20 foot. You can point that out, 20 foot below.

Ms. Yip: (00:53:46):

Okay.

Ms. Lin: (00:53:46):

Okay. So yes, both buildings are intruding.

Ms. Yip: (00:53:50):

Okay. Very clear. And from the photographs taken last week, are the gazebo and the greenhouse still there? This Lin Exhibit 1004 for everyone's reference.

Ms. Lin: (00:54:02):

Yes.

Ms. Yip: (00:54:02):

Okay. Now I'm going back to City Exhibit 23. Does the gazebo appear on this one, on the survey map?

Ms. Lin: (00:54:10):

No.

Ms. Yip: (00:54:11):

Do you know why it doesn't appear?

Ms. Lin: (00:54:14):

Don't know. I think maybe the ... If you go to that Exhibit nine, you just saw that plan, Exhibit nine. So this is my theory. Okay. So in this plan, it shows that

Mr. Wais: (00:54:27):

Greenhouse- Objective, speculative. Move to strike.

Ms. Yip: (00:54:30):

She hasn't even said her theory. I mean, maybe it's based on actual facts. You didn't ask her theory. Sure.

Examiner Olbrechts: (00:54:34):

Okay. John

Ms. Lin: (00:54:35):

Asking question then. Yeah,

Examiner Olbrechts: (00:54:36):

Go ahead and answer the question.

Ms. Yip: (00:54:39):

You got to let her finish. If you don't like her answer, then you can object and move to strike. But she hasn't finished her answer. And I'm almost done anyway, so I think we should just let her finish.

Examiner Olbrechts: (00:54:47):

Yeah, in this case-

Ms. Lin: (00:54:48):

So XB-9 is one of the submission plan. Based on the exhibit displayed by City of Mercer Island, I find out there's many, many submissions. As I said, this is a very, very straightforward, simple project and just build a two building in the backyard. So I believe the city of Most Island has made a lot of effort to make the applicant to conform the code, not only the erosion, but also the location of the two building. So from this XBD nine, this is one of the submittal. It shows that two building is over than 20 foot. This is very obvious intruding the front yard setback. I don't remember when that, because this is too many, too many submittals. I don't remember. Maybe I comment based on the submission because I commented twice. When I saw the building intruding 20 foot, that's how I raised question. I said the building is intruding the front yard 20 foot because here showed clearly.

(00:55:50):

So I want to add a point. The reason they put that two building like that, that two building location is pretty much from the survey plan. They just transplanted here. So when we do ... I can give you some background. Since I was an engineer for 14 years, full-time. Objection,

Mr. Wais: [\(00:56:07\)](#):

Nonresponsive.

Ms. Lin: [\(00:56:09\)](#):

And it just happened-

Mr. Wais: [\(00:56:11\)](#):

Move to strike. She's just offering narrative that's not responsive to a question.

Ms. Yip: [\(00:56:16\)](#):

Yeah, I'm asking her what this depicts, and she's talking about what she depicts from her experience as an engineer. I don't see how this is irrelevant. I don't see how you should restrict

Examiner Olbrechts: [\(00:56:23\)](#):

That. Overruled. Ms. Lynn, go ahead.

Ms. Lin: [\(00:56:25\)](#):

Thank you, Judge. So normally when an engineer design a plan, first thing they need a survey because no eyeball can show where the location where's existing. So first thing, the designer need to know what's existing condition. That's number one. So survey. Then move to, okay, I want to change that location of the two building. So when they design this version, they just maintain the same location of the building and show the 20 foot. I hope the city didn't pay attention, didn't see it, and they built it. So of course, city is very due diligent. I so appreciate that. City Most Island is very awesome in the permitting process. And also I provide comments too. So that two buildings intruding at 20 foot, everybody can see that. Everybody can see that the dash line is 20 foot from the property line and two buildings intrusion. I provided my comments.

[\(00:57:20\)](#):

So now the shrink, the building. So in the design part, when the existing building at a certain location that you build a new location at the site plan, it going to be very confusing to contractor. They missed one step, which is a demolition plan, demolition plan. Because in the demolition plan, going to show the contractor how that corner of that building be removed. Is that going to be take out the entire building, rebuild a new footprint, or simply chop them off the item two post? There's a detail. The good plan needed to show that demolition plan. So tell the contractor how you're going to take down this side of the building. They don't have that information in the design. So it's very confusing. Even myself, I was a professional engineer. I read this plan. I kind of lost. I said, where exactly new location? Sometimes I'm confused with the survey plan as the final plan.

[\(00:58:22\)](#):

But anyway, that's my comments. Demolition plan should be part of it, especially this project is for unpermitted structure on the location. So demolition plan is very crucial because this building already built that need to be relocated.

Ms. Yip: (00:58:39):

Okay. So just to summarize, so this diagram, exhibit number nine, this, to your understanding, shows a intrusion into the 20-foot setback, right?

Ms. Lin: (00:58:49):

Correct.

Ms. Yip: (00:58:50):

Okay. And this is what prompted you to be concerned about the setback?

Ms. Lin: (00:58:55):

Yes.

Ms. Yip: (00:58:55):

Okay. And then now I'm going to go to exhibit number 23, which is the approved site plan. And this one, does it still show the intrusion? No. Okay. And it's your concern, however, how to get from this point to this point from Exhibit nine to exhibit 23, is that generally your concern?

Ms. Lin: (00:59:17):

Exactly. It does not tell how they're going to get there.

Ms. Yip: (00:59:21):

And to your knowledge, does the decision address the front yard setback at all?

Ms. Lin: (00:59:27):

John, can you say that again?

Ms. Yip: (00:59:29):

Yeah. So what do you call it? The staff report and decision, to your knowledge, does it even address this front yard setback issue at all?

Ms. Lin: (00:59:39):

I don't remember that. I don't think so. No. Okay. I didn't say specifically how they going to do the relocated building. I don't remember it says that.

Ms. Yip: (00:59:53):

Okay. I'll just briefly pull that one up. So can Okay. And let's see. Okay. This is City Exhibit number 24. I'll pull it up on the screen. Yeah, bear with me here. Thank you. All right. So staff report and decision. Is that what it says on the top?

Ms. Lin: (01:00:26):

Yes. Staff report and decision.

Ms. Yip: (01:00:29):

Yeah, staff. Sorry. And then I'll give you a chance to read one and two here, just the introduction.

Ms. Lin: (01:00:40):

Introduction. Okay. The project description, the applicant- You can just

Ms. Yip: (01:00:43):

Read with your eyes. My question is just that-

Ms. Lin: (01:00:46):

Based on what you see

Ms. Yip: (01:00:47):

Here, based on what you see here, does this even talk about the setback at all? So that's just my question.

Ms. Lin: (01:00:55):

No, it did say outside of any easement area and also a critical ... No, didn't say the front yard 24 setback, no.

Ms. Yip: (01:01:04):

Okay. Okay. And then so as far as you know, again ... No, strike that because we already answered that. Okay. So just to wrap it up, ultimately this decision also states here, can you read this highlighted sentence?

Ms. Lin: (01:01:26):

"The new returning wall is proposed to be located outside of any easement area as a previous easement for ingress and utility has been relocated to follow the existing driveway." Yeah, I think that's the main part where appeal here. That was the main point. I think the city of Merced misunderstood that court order and easement.

Ms. Yip: (01:01:52):

Okay. Because as far as to your knowledge, this conflicts with the court order. Is that your position? Okay.

Ms. Lin: (01:02:00):

Yes.

Ms. Yip: (01:02:00):

All right. All right. I think that's it for me. Anything else you want the hearing examiner to know?

Ms. Lin: (01:02:07):

Anything else? I think I want to say that because the city of Merce Island handle a lot of project, I totally understand that this is actually, as I said over and over, it's a very straightforward and simple project. And so I'm so sorry for causing so much time of everybody and here to hear this. But I can see from the

applicant to do the plan, they try to sneak in, try to maybe avoid the complete conform to the code. Just think about using existing building, maybe say, "Hey, I don't have to remove it because I don't have a demolition plan. I don't tell the contract how to demo it and we can figure it out when it comes." So I think it's very important for City of Mercer Island to put some requirement in the final permitting document, which is reinforce the location of the two building, because that's a whole purpose.

[\(01:03:02\)](#):

As I said, without bare eye, you would never tell the building is in the setback, in the easement or not. No idea. No, no, no, you could not tell. So I think it's very important to put some requirement in the final approval about how to comply, how to reinforce the compliance. I know the City Master Island have a lot of method, maybe ask her applicant to provide a final as build survey to show exact location of the final building location and the returning location, everything location, and show all the background easement and mark on the plan properly. In that case, then we can make sure this project is done correctly.

Ms. Yip: [\(01:03:42\)](#):

Okay. All right. Thank you for your time. And thank you, Hearing Examiner. Okay. That will conclude our presentation.

Examiner Olbrechts: [\(01:03:50\)](#):

Okay.

Ms. Lin: [\(01:03:50\)](#):

Well- Thank you, everybody.

Examiner Olbrechts: [\(01:03:52\)](#):

Oh, just hold on a second. Mr. Weis, did you have any cross-examination?

Mr. Wais: [\(01:03:58\)](#):

Yes, I do. I don't know if you would like the city to go first if

Examiner Olbrechts: [\(01:04:04\)](#):

They- No, if that's the city, that's your preference. I mean, I usually have the city to clean up after, but Ms. Kiefer, did you want to go first?

Ms. Kiefer: [\(01:04:13\)](#):

I can make it really easy. I don't think the order is necessary. I don't have any questions for Ms. Lynn.

Examiner Olbrechts: [\(01:04:18\)](#):

Okay. That makes it easier. Thank you. Ms. Lee. Okay. Mr. Royce, any questions?

Mr. Wais: [\(01:04:23\)](#):

Yes.

Examiner Olbrechts: [\(01:04:24\)](#):

Okay.

Mr. Wais: [\(01:04:25\)](#):

So good morning, Ms. Linn.

Ms. Lin: [\(01:04:27\)](#):

Good morning.

Mr. Wais: [\(01:04:32\)](#):

You and your attorney keep referencing a middle easement. Do you recall that? My question for you is, what legal document creates a middle easement?

Ms. Yip: [\(01:04:46\)](#):

Objection. This is a cause for a legal conclusion. It's already resolved by the court order of 2021.

Examiner Olbrechts: [\(01:04:52\)](#):

All right. Well, I mean, I'll overrule. Ms. Linton has already testified about her understanding of what the middle and the side easements are. So it's a valid question. Go ahead, Ms. Linn. And I'm sorry, Ms. Lynn, did you say your last name is pronounced Linny or am I misconducting Lin. Sorry? Lin? Ling. Okay. Yeah, Lin.

Mr. Wais: [\(01:05:13\)](#):

Okay.

Examiner Olbrechts: [\(01:05:14\)](#):

Yeah,

Mr. Wais: [\(01:05:14\)](#):

Go ahead. Okay. So I'll ask again. What document creates a middle easement?

Ms. Lin: [\(01:05:20\)](#):

Morgan, I think that question is really to my lawyer because I don't have all the easement in my hand tip, but I understand my lawyer, John, has done a lot of good work about code out, which document is in the brief. I cannot tell you which document, but I know I have an easement in the old driveway. Okay.

Mr. Wais: [\(01:05:39\)](#):

How do

Ms. Lin: [\(01:05:39\)](#):

You know that? Which document I cannot tell you. I'm so sorry.

Mr. Wais: [\(01:05:44\)](#):

No, answer my question. You're deferring to your lawyer. You are the witness. You are the one who presents evidence. Why do you have a middle easement? Why do you believe you have a middle easement?

Ms. Lin: [\(01:05:56\)](#):

Because I can answer that question.

Mr. Wais: [\(01:05:59\)](#):

You cannot?

Ms. Lin: [\(01:06:00\)](#):

Because I can't.

Mr. Wais: [\(01:06:02\)](#):

Okay. I can't

Ms. Lin: [\(01:06:02\)](#):

Answer that question. Yeah. So there was an old driveway.

Mr. Wais: [\(01:06:08\)](#):

Right.

Ms. Lin: [\(01:06:09\)](#):

That was my old driveway easement to get out to the street on my neighbor's property. So under that driveway, there was utility buried. Probably not just waterline, maybe some other things too. I have not verified maybe there's electrical line, maybe this cable, Comcast, and the telephone.

Mr. Wais: [\(01:06:28\)](#):

Sure. And you're speculating about all that. You don't actually

Ms. Lin: [\(01:06:31\)](#):

Know. I'm not speculating. No, hold on. No, no, I'm not. I'm not at all. This old driveway that location showed very clearly this dash line and also there's a utility under there. And I'm not speculating because I had it down twice waterline locate. It's just right in the territory. So that's my easement. Utility easement has not been relocated to under the new driveway. Sorry.

Mr. Wais: [\(01:06:57\)](#):

So Ms. Linn, we can agree that there was 15 years ago, a driveway that went through the middle of the property. You agree with that and you understand that, right?

Ms. Lin: [\(01:07:10\)](#):

I'm sorry. 15 years ago, the driveway middle to the middle of the ... I'm sorry, can you explain more? What do you mean middle?

Mr. Wais: [\(01:07:18\)](#):

Through the garden area. You're the one using the phrase middle easement and you are describing an old driveway. And so you and I, I think we can agree that 15 years ago, there was a driveway through the middle part of the property where this area you're calling an easement is. Is that right?

Ms. Lin: [\(01:07:36\)](#):

When you say 15 years ago, that's before my neighbor's house was built. Yes. That's old time before I even bought my house. Correct.

Ms. Yip: [\(01:07:42\)](#):

And I'll also object just for the record. I object to the line of questioning for relevance because as exception to 2021 order, the driveway easement is separate from the middle easement. We're not talking about the same thing here.

Examiner Olbrechts: [\(01:07:55\)](#):

All right. Overruled. But I think if you could be more clear about your distinction between the easements, Mr. Weiss, that could help.

Mr. Wais: [\(01:08:02\)](#):

Well, that's where I'm trying to go.

Examiner Olbrechts: [\(01:08:04\)](#):

Okay.

Mr. Wais: [\(01:08:05\)](#):

So we agree there was a driveway there 15 years ago, right, Ms. Nguyen?

Examiner Olbrechts: [\(01:08:10\)](#):

Yes.

Mr. Wais: [\(01:08:15\)](#):

Do you believe that there was a easement for the driveway 15 years ago?

Ms. Lin: [\(01:08:21\)](#):

Which driveway? The old driveway? The middle one?

Mr. Wais: [\(01:08:24\)](#):

Yes, ma'am.

Ms. Lin: [\(01:08:26\)](#):

There is one. Yes, there was one.

Mr. Wais: [\(01:08:31\)](#):

What legal document creates that easement for the old driveway that existed 15 years ago?

Ms. Lin: [\(01:08:40\)](#):

Again, Morgan, you asked me what document. That's really a lawyer's question. I hired my lawyer. John's telling me which legal document. I know the facts on the ground. I'm not a lawyer. Which document? I defer to the John again. No, no, no. Plus doesn't have to go there. As John said, we already have a court order in 2021. I rule that email. All got the order passed to figure it out. So I don't know why we have to go back original. It's just like we already have a court order. Why we have to go back to question about that court order? This is what you're trying to do.

Examiner Olbrechts: [\(01:09:15\)](#):

Yeah, that's one of the primary arguments in this case, Ms. Lynn. But if you don't know the answer to a question because it's legal, just say, "I don't know." I mean, that's-

Ms. Lin: [\(01:09:23\)](#):

I don't know. Legally, I don't know. Yeah. Thank you. Thank you, Judge. Help me.

Mr. Wais: [\(01:09:28\)](#):

So Ms. Lynn, you've testified for about the last 45 minutes that there's a middle easement, but you don't actually know what this middle easement's based on. You don't have any personal knowledge of a middle easement, is that correct? I

Ms. Yip: [\(01:09:41\)](#):

Will object because she already established that she has personal knowledge in City Exhibit number 43. This is a Declaration of Melinda Linn. There was a signed exhibit presented before the court in the 2021 order matter. It sets forth all these facts that you're looking for in great detail. So that's already addressed.

Examiner Olbrechts: [\(01:10:00\)](#):

Okay. Overruled. Go ahead and answer, Ms. Lynn.

Ms. Lin: [\(01:10:02\)](#):

Thank you. I know from what John said, that document, the court order, I know I have easement.

Mr. Wais: [\(01:10:15\)](#):

Ms. Lynn, I'm going to do a screen share here of the city's Exhibit 46. So give me a moment if I may. So for the record, I'm screen sharing City's Exhibit 46, and I'll scroll up to the top for the benefit of the parties and hearing examiner. But this is the short plat for the properties filed in 1978. So this page one, I'm scrolling down to page two, which describes parcel A, parcel B. And then when you scroll down to what is page four of seven, it shows a map of the short plat. Ms. Linn, can you see that that I'm screen sharing?

Ms. Lin: [\(01:11:07\)](#):

I can see the screen sharing, yes.

Mr. Wais: [\(01:11:09\)](#):

Okay, fantastic. Ms. Lynn, do you understand that this is the legal document that's subdivided your property and CanChu and Tammy Lou's property?

Ms. Lin: [\(01:11:24\)](#):

I cannot answer that question because that's one of the title document. My property has about 150 page of the legal document easement. I scratch my head. Okay. That's one of the document. That's what I can answer your question. What's the purpose? I don't know.

Mr. Wais: [\(01:11:42\)](#):

Okay. So you don't know the significance of this document that I'm screen sharing with you right now?

Ms. Lin: [\(01:11:47\)](#):

No.

Mr. Wais: [\(01:11:53\)](#):

Is that correct? You don't understand what this document-

Ms. Lin: [\(01:11:55\)](#):

I say no. I don't understand significance. I know that's one of the document. I saw that a similar thing in my title document, but I don't ... Yeah, correct. No.

Mr. Wais: [\(01:12:07\)](#):

Okay. Ms. Lu, do you see that, and unfortunately the quality's rather poor, but do you see that down here at the bottom, you see it says drive and utility easement along the southern portion of this depiction? Do you see

Ms. Lin: [\(01:12:33\)](#):

That?

Mr. Wais: [\(01:12:33\)](#):

That's very

Ms. Lin: [\(01:12:33\)](#):

Hard to read, but I think I agree with you. It say drive and a utility easement. Correct.

Mr. Wais: [\(01:12:42\)](#):

And over here, do you see where I'm highlighting the word new?

Ms. Lin: [\(01:12:47\)](#):

I cannot tell. That's new. It's hard to tell.

Mr. Wais: [\(01:12:49\)](#):

Yeah, unfortunately, poor quality. I'm going to highlight another portion here, and it's a dashed line consistent with the prior exhibits you and your attorney have shown, and it's handwritten in there and it says, "Existing drive." Do you see that?

Ms. Lin: [\(01:13:04\)](#):

I can see existing drive, yes,

Mr. Wais: [\(01:13:06\)](#):

Sir. Okay. And you agree that's where the ... Or it's your understanding, because you don't actually have any personal knowledge, but it's your understanding that that's where the old driveway existed 15 years ago?

Ms. Lin: [\(01:13:18\)](#):

Honestly, I cannot tell because the driveway maybe changed it again and again. I don't know.

Mr. Wais: [\(01:13:24\)](#):

Okay. You don't actually have any personal knowledge of the condition of the property before you purchased it, is that correct?

Ms. Yip: [\(01:13:30\)](#):

No. Objection. Condition of the property is vague. I mean, are we talking about the title? Are you talking about the land whether there's any defects? I mean, what's the condition of the property?

Examiner Olbrechts: [\(01:13:37\)](#):

Okay. Rephrase, Mr. Weiss.

Mr. Wais: [\(01:13:40\)](#):

Okay. The physical, you don't have any personal knowledge of the physical existing condition of the property before you purchased it, is that correct?

Ms. Lin: [\(01:13:51\)](#):

When I bought the property, I did inspection and I reviewed the title document, but Title was so headed. That's so far I know. But before that, I have no knowledge about this property, not so ever. No.

Mr. Wais: [\(01:14:06\)](#):

What year did you purchase the property?

Ms. Lin: [\(01:14:09\)](#):

Let me think. 2017, September. I think I might be right because that's a while ago. Yeah, 2017.

Mr. Wais: [\(01:14:23\)](#):

Okay. So prior to September of 2017, you had never been on this property, is that correct?

Ms. Lin: [\(01:14:30\)](#):

Yeah, not before. I know it was for sale. No.

Mr. Wais: [\(01:14:36\)](#):

When you purchased the property, the driveway did not run through the middle of the applicant's property, correct?

Ms. Lin: [\(01:14:44\)](#):

Correct. Is

Mr. Wais: [\(01:14:46\)](#):

That

Ms. Lin: [\(01:14:46\)](#):

The existing now location?

Mr. Wais: [\(01:14:48\)](#):

Correct. Okay. In fact, as long as you've lived in the property, the driveway has remained in the same place, right?

Ms. Lin: [\(01:14:53\)](#):

Correct.

Mr. Wais: [\(01:15:05\)](#):

You had the waterline located in November of 2021. Do you remember that?

Ms. Lin: [\(01:15:14\)](#):

I don't know the date exactly. I don't have a record, but I think yes, I did one time locate. Yes.

Mr. Wais: [\(01:15:19\)](#):

I'll represent to you it was in November of 2021. Yeah.

Ms. Lin: [\(01:15:23\)](#):

If you can show me that invoice, then I can confirm.

Mr. Wais: [\(01:15:27\)](#):

I had a CNI. And when the utility locate company went out there, they put blue marks on the ground, correct?

Ms. Lin: [\(01:15:39\)](#):

They sprayed on the ground, correct.

Mr. Wais: [\(01:15:44\)](#):

Correct. Did you go onto the property that time and observe the markings and condition of the property?

Ms. Lin: [\(01:15:49\)](#):

That time I did wind to the site. I did because there's nobody coming out from my neighbor's house. Not like this time. They got an army come out when my contractor come to locate, but the first time it was quiet. They agreed to the date, then I just went in. I did. I did went into her property.

Mr. Wais: [\(01:16:15\)](#):

Ms. Linn, I'm showing you a photo or screen sharing a photo that was taken from November of 2021, the first time you did the utility locate.

Ms. Yip: [\(01:16:23\)](#):

I'll object to this just on the ground that I don't believe this has ever been provided in the exhibits that has to be submitted in time. So this is something new.

Mr. Wais: [\(01:16:34\)](#):

That's correct. And I'm asking the witness about it because she was there as she

Ms. Yip: [\(01:16:38\)](#):

Just- Yeah, but I don't think you can ask because it wasn't submitted beforehand to the hearing examiner and to us and to the city.

Examiner Olbrechts: [\(01:16:46\)](#):

Yeah. I mean, all exhibits were supposed to be presented about a week in advance, Mr. Weiss. Why is this coming up?

Mr. Wais: [\(01:16:53\)](#):

Well, frankly, because I didn't know to look for the prior photos until we got their exhibits when she did the utility locate on the 19th. Literally eight days ago, they gave us the photos that they took. So I'm looking at the comparison photos from five years before, if that makes sense. So I just want the hearing examiner and opposing counsel to understand that I'm not trying to spring this. It's that we didn't have photographs of the area prior to a week ago.

Examiner Olbrechts: [\(01:17:27\)](#):

So where did these come from again? You're saying this was a locator done several years ago or I'm just trying to understand what- That's

Mr. Wais: [\(01:17:34\)](#):

Correct. This was the same contractor that Ms. Lynn contracted with in November of 2021 to do the exact same thing they did a week ago.

Examiner Olbrechts: [\(01:17:45\)](#):

Okay.

Ms. Yip: [\(01:17:45\)](#):

So the deadlines are set forth in the Mercer Island rules of procedure. They're all known to everybody. We all abide by them. This is untimely. I move to strike.

Examiner Olbrechts: [\(01:17:54\)](#):

Yeah. And so Mr. Weiss, you're saying you got these for the first time when? And why did- Well,

Mr. Wais: [\(01:17:59\)](#):

No, in full disclosure, these have been in my archived file for four or five years since Ms. Linn was litigating a separate issue, and I didn't know that it would be germane to this hearing until we got their utility to locate that took place eight days ago.

Examiner Olbrechts: [\(01:18:21\)](#):

Okay.

Mr. Wais: [\(01:18:21\)](#):

So I want you to understand, I'm not trying to pull a fast one here or anything. It's just that I didn't know the relevance or significance of five-year-old photographs until I got

Examiner Olbrechts: [\(01:18:32\)](#):

... So why is this relevant to the more recent locator photographs you got? What's the purpose?

Mr. Wais: [\(01:18:40\)](#):

Well, it's going to show the before and after conditions. I mean, counsel's making a big

Examiner Olbrechts: [\(01:18:43\)](#):

Issue

Mr. Wais: [\(01:18:44\)](#):

Of the retaining wall, the location of the waterline, which I refuse to call an easement. He's making a big deal of the waterline. And what I'm saying is we've known for five years where the waterline exists and Ms. Lin's known for five years where the waterline exists. So I want to show the condition of the property and that it's previously been marked and measured.

Examiner Olbrechts: [\(01:19:07\)](#):

Okay.

Ms. Yip: [\(01:19:07\)](#):

Well- We have not seen this photograph before, so it would not be fair to us to be highly irregular to spring this on us. This is literally like trial by ambush. We move to strike again.

Mr. Wais: [\(01:19:15\)](#):

Well, I'll supplement the record.

Examiner Olbrechts: (01:19:18):

Well, no. Okay. Yeah, I think the issue of what the property looked like before was an issue before you knew about the most recent location. I don't see that the most recent location really creates the need for this photograph, nor that provides something highly probative. So I'll sustain the motion to strike.

Mr. Wais: (01:19:43):

Understood. Okay. Give me a moment here. Here we go. Ms. Linn, I'm screen sharing with you a photograph from the C&I declaration, which is your exhibit number 1003. Do you see that? I'm sorry. I didn't hear your answer.

Ms. Lin: (01:20:32):

Yes, I see it. Yeah.

Mr. Wais: (01:20:36):

Is it your testimony that an employee from CNI took this photo? I still didn't hear an answer.

Ms. Lin: (01:20:50):

Sorry, did I? Can everybody else hear me? Is my too low voice?

Mr. Wais: (01:20:54):

Yeah.

Ms. Lin: (01:20:54):

Cut out

Examiner Olbrechts: (01:20:55):

There.

Ms. Lin: (01:20:56):

Cut out? Yes. Seeing I took those photos.

Mr. Wais: (01:21:00):

Okay. I'm just going to ... So that was the first in the series of photos. I'm going to scroll down. So second, third. So I'm looking at 1003. 06 photo here that I'm screen sharing. Is it your understanding that the blue line depicted on the ground there is where the waterline goes? Is that correct?

Ms. Lin: (01:21:27):

Correct.

Mr. Wais: (01:21:31):

And based on this photograph, it appears to go under the cinder blocks that are depicted there, is that right?

Ms. Lin: (01:21:40):

I don't know. Is any blue line under there?

Mr. Wais: [\(01:21:43\)](#):

I don't know. I'm asking you.

Ms. Lin: [\(01:21:48\)](#):

Yeah, there's blue line on there, then that's where ... Yes, that's the line continuous. Yes.

Mr. Wais: [\(01:21:53\)](#):

So I'm screen sharing and I'm just verbalizing this in the event I think this is recorded and on the record, but so photograph 1003.07 shows the blue flags, blue paint, and they're on either side of what appears to be a sloped some cinder blocks in the ground. Do you see that?

Ms. Lin: [\(01:22:17\)](#):

Yes.

Mr. Wais: [\(01:22:19\)](#):

Is this what's depicted in this photograph, is this the interference that you're concerned about?

Ms. Lin: [\(01:22:31\)](#):

I'm concerned about the interfere completely the size of the easement because I have a legal right, which is I believe the 10-foot wide of the older driveway as easement.

Mr. Wais: [\(01:22:44\)](#):

Okay. So let's go back to that, because that's what I started asking about. What's your knowledge of this 10-foot wide easement based upon? Because you're testifying about it again. What's that based on?

Ms. Lin: [\(01:22:56\)](#):

This one was from an old driveway. The utility was under old driveway.

Mr. Wais: [\(01:23:03\)](#):

That

Ms. Lin: [\(01:23:03\)](#):

Should be the easement.

Mr. Wais: [\(01:23:05\)](#):

Okay. Ms. Linn, was there ever a utility easement through the middle of my client's property?

Ms. Yip: [\(01:23:12\)](#):

Objection. Calls for a legal conclusion. Res judicata is already resolved in 2021 order. We are not relitigating this. Besides, there actually is no jurisdiction before this tribunal to even adjudicate that issue, which is already adjudicating the correct tribunal to Superior Court.

Mr. Wais: [\(01:23:26\)](#):

I would like the witness to answer. If she's going to testify to certain facts, then she needs to answer.

Examiner Olbrechts: [\(01:23:33\)](#):

Yeah, she's already testified about her knowledge about the easements in the appellant's direct testimony, so it's fair to cross-examine her about that knowledge as well. So please answer the question, Ms. Lynn.

Mr. Wais: [\(01:23:44\)](#):

Ms. Lynn, what's your knowledge that there's a utility easement located what's depicted here in Exhibit 1003.07? What's your knowledge about an easement based upon?

Ms. Lin: [\(01:24:00\)](#):

Based on a court order under the older driveway, that's my utility easement called a middle easement.

Mr. Wais: [\(01:24:08\)](#):

Who called it a middle easement? Besides your lawyer, who calls it a middle easement?

Ms. Lin: [\(01:24:15\)](#):

My lawyer in the brief for the convenience of the reference.

Mr. Wais: [\(01:24:19\)](#):

Sure. Did Judge Siegel call it a middle easement?

Ms. Lin: [\(01:24:30\)](#):

No.

Mr. Wais: [\(01:24:31\)](#):

Okay. Does the short plat that I'm again sharing with you, does it call a middle easement?

Ms. Lin: [\(01:24:39\)](#):

No, I don't think the names matters. Location of the easement matter the most. The name

Mr. Wais: [\(01:24:44\)](#):

Is just

Ms. Lin: [\(01:24:45\)](#):

For easy reference.

Mr. Wais: [\(01:24:46\)](#):

Sure. I'm screen sharing the short plat again, which is City's Exhibit 46. Under the part that I highlight that says existing driveway, does it say anything about an easement?

Ms. Lin: (01:25:01):

Yes. It says drive and the utility easement.

Mr. Wais: (01:25:05):

Right. And it says that on the south border of the property, correct?

Ms. Lin: (01:25:10):

I disagree. The driveway is continuously.

Mr. Wais: (01:25:13):

Well, but I highlight the word new also. It says new drive and utility easement.

Ms. Lin: (01:25:21):

I cannot answer your question.

Mr. Wais: (01:25:23):

Yeah. Give me a moment here. So I have to go back to my previous document and the screen share function is hiding it. Okay. Okay, two. Sorry, a little clumsy with the technology here. So Ms. Slyn, we were looking at photos 1003. 07 and also 1003. 06. Right in the foreground in front of these planter boxes, and there's some PVC pipes, there's a two cinder block brick, tall hardscaping. Is that what you're referring to as the retaining wall?

Ms. Lin: (01:26:41):

Hard to tell. I cannot tell. I don't know. I guess it is.

Mr. Wais: (01:26:45):

Well, you're calling it a retaining wall. And you're saying that this retaining wall is interfering with your easement, is that right? I didn't catch your answer audibly. Yes. I saw your mouth. Okay, thank you. Okay. What's a retaining wall?

Ms. Lin: (01:27:05):

Retaining wall is a wall to support the soil.

Mr. Wais: (01:27:11):

Sure. And since, I mean, you're an engineer, so is something that's six inches tall, is that a retaining wall?

Ms. Lin: (01:27:24):

I cannot answer the question.

Mr. Wais: (01:27:25):

Is something that's 12 inches tall a retaining wall?

Ms. Lin: (01:27:29):

I cannot answer that question. It's depending on the situation. You have to show me in the paragraph, the plan.

Mr. Wais: [\(01:27:34\)](#):

Could we agree that something that's 10 feet tall, that would be a retaining wall?

Ms. Lin: [\(01:27:43\)](#):

I cannot answer that question.

Mr. Wais: [\(01:27:44\)](#):

Okay. So you don't know what height a piece of stone or cement in the ground becomes a retaining wall?

Ms. Lin: [\(01:27:57\)](#):

I cannot answer a question without looking at the plan's retaining wall. I cannot.

Mr. Wais: [\(01:28:03\)](#):

Okay. So you don't know if this is a retaining wall or not then?

Ms. Lin: [\(01:28:08\)](#):

I know the wall here is retaining wall

Mr. Wais: [\(01:28:12\)](#):

Because

Ms. Lin: [\(01:28:14\)](#):

It's built on the ground already.

Mr. Wais: [\(01:28:18\)](#):

Okay. So at what height does cinder blocks placed on the ground become a retaining wall, Ms. Lynn?

Ms. Lin: [\(01:28:33\)](#):

I think any rock, which is to support the soil to prevent the soil or to support the soil as can be a retaining wall. Okay.

Mr. Wais: [\(01:28:43\)](#):

Let me ask you this. Would it be your preference that there'd be nothing retaining the soil so that it all just runs when it rains, the soil just runs down the driveway?

Ms. Yip: [\(01:28:55\)](#):

Objection. Assumes facts not in evidence. I mean, how do we know that any soil run over? We don't know that.

Examiner Olbrechts: [\(01:29:04\)](#):

I

Mr. Wais: [\(01:29:04\)](#):

Don't understand the objection, so I can't even rephrase my question.

Examiner Olbrechts: [\(01:29:09\)](#):

Yeah, go ahead and answer, Ms. Linn.

Ms. Lin: [\(01:29:12\)](#):

Can you ask again?

Mr. Wais: [\(01:29:14\)](#):

Yeah.

Examiner Olbrechts: [\(01:29:15\)](#):

Wouldn't

Mr. Wais: [\(01:29:16\)](#):

You prefer there be a retaining wall or some kind of structures to prevent erosion and preventing the dirt and soil and mulch from running down the driveway into your yard?

Ms. Lin: [\(01:29:29\)](#):

I prefer nothing there so that I can access to the easement when I need to access. I just return that part of the soil back to the condition to build a returning wall, like the photo you showed us, it was dragged out. I do not see any returning wall on that yard. That's natural state of the soil. It's not going to go

Mr. Wais: [\(01:29:53\)](#):

Anywhere. You say so you have access to your easement, but I'm just not understanding why you think you have an easement.

Ms. Yip: [\(01:29:59\)](#):

Objection, argumentative. Object to asked and answered.

Mr. Wais: [\(01:30:02\)](#):

No, I mean, you're calling it an easement, but no legal document calls it an easement.

Examiner Olbrechts: [\(01:30:09\)](#):

Okay.

Ms. Lin: [\(01:30:11\)](#):

So what- I cannot answer that question. I thought that question has been answered many, many times already by the court order. Yeah,

Ms. Yip: [\(01:30:17\)](#):

It's not in the witness at this point. I mean, I guess same question over and over again.

Examiner Olbrechts: ([01:30:21](#)):

Back to the next question.

Ms. Lin: ([01:30:21](#)):

It's the same question.

Examiner Olbrechts: ([01:30:23](#)):

That's the next question.

Ms. Yip: ([01:30:24](#)):

Okay.

Mr. Wais: ([01:30:33](#)):

I'm sorry, Ms. Lin, the water line when you had it located both five years ago and one week ago went under a chain link fence. Is that fair? Or is that accurate?

Ms. Lin: ([01:30:49](#)):

I have to go back and look at the photos. It seems like a yes. Close to the chain fence. Will

Mr. Wais: ([01:30:55](#)):

You drive your driveway multiple-

Ms. Lin: ([01:30:56](#)):

Oh,

Mr. Wais: ([01:30:56](#)):

I'm sorry. Go ahead. I didn't mean to interrupt.

Ms. Lin: ([01:31:00](#)):

I answered your question.

Mr. Wais: ([01:31:02](#)):

Okay. There's a chain link fence that the waterline goes under, correct? It's not a trick question.

Ms. Lin: ([01:31:12](#)):

I'm not sure it's right on top or is close. Yeah, that shop.

Mr. Wais: ([01:31:20](#)):

Right?

Ms. Lin: ([01:31:21](#)):

Correct.

Mr. Wais: [\(01:31:22\)](#):

Okay. As depicted in picture 1003.07. Do you object to there being a chain link fence?

Ms. Lin: [\(01:31:32\)](#):

I think if they can remove it, that's great.

Mr. Wais: [\(01:31:36\)](#):

Does it obstruct the waterline?

Ms. Lin: [\(01:31:41\)](#):

It simply does now. Yes.

Mr. Wais: [\(01:31:44\)](#):

Pardon me?

Ms. Lin: [\(01:31:45\)](#):

Yes, it does interfere with waterline.

Mr. Wais: [\(01:31:48\)](#):

How?

Ms. Lin: [\(01:31:50\)](#):

Look to mean the fence is right above the waterline.

Mr. Wais: [\(01:31:56\)](#):

Now, you don't need access to the waterline, do you?

Ms. Lin: [\(01:32:03\)](#):

I need access to the waterline.

Mr. Wais: [\(01:32:07\)](#):

Why?

Ms. Lin: [\(01:32:10\)](#):

Waterline is utility. It can be leak, can be broken down, I need a maintenance. So I do need access to my utility easement.

Mr. Wais: [\(01:32:22\)](#):

Well, you previously signed a declaration where you actually can just replace the entire waterline, your contractor can, and just do it all, I forget what they call it, like surface drilling where they just go under, right? Do you remember that declaration you signed?

Ms. Yip: (01:32:38):

Objection. I'm not sure what declaration you're talking about.

Mr. Wais: (01:32:41):

Well, I'm not asking you.

Examiner Olbrechts: (01:32:43):

Oh, which declaration, Mr. Weiss? Yeah,

Ms. Yip: (01:32:45):

But you have to be facts in evidence. Which declaration?

Mr. Wais: (01:32:48):

Sure. No, counsel, you submitted it.

Ms. Yip: (01:32:52):

Okay. Well, let's take a look.

Mr. Wais: (01:32:59):

Pardon me. Give me a moment.

Examiner Olbrechts: (01:33:12):

Do you have a lot more questions, Mr. Weiss, or because we're at the 90-minute mark, but if you're almost done, we

Mr. Wais: (01:33:17):

Might- I think I'm near done. I'd prefer to-

Examiner Olbrechts: (01:33:20):

Be done. Yeah.

Mr. Wais: (01:33:22):

Be done. Sorry. You know what? How about we take a break?

Examiner Olbrechts: (01:33:33):

Okay. We'll take it now. Take it till 10:48. We'll see you then.

Mr. Wais: (01:33:37):

Okay. Sounds good. Thank you. Thank

Examiner Olbrechts: (01:33:39):

You. Back on the record, February 27th, 2026, 10:48 AM on the Lynn versus Mercer Island appeal, still in cross-examination of Ms. Flynn. So go ahead, Mr. Weiss.

Mr. Wais: [\(01:33:52\)](#):

Sounds good. I'm going to do a screen share again. Ms. Lynn, before we took a break, I was asking about a prior declaration that you did. I'm going to scroll up in fairness to you and counsel. And for the judge and counsel's reference, this is actually City's Exhibit number 43. So City's Exhibit 43 is a declaration of Molina Linn. It was filed with King County Superior Court according to the stamp on October eight, 2021. It also includes Exhibits A through G. It's 46 pages long. So Ms. Linn, I'm going to scroll down just so you see what I'm talking about. So on the bottom here, rather page four of your declaration, it's dated October 8th, 2021. Do you see that, Ms. Lynn? You're muted, ma'am.

Ms. Lin: [\(01:35:02\)](#):

Yes, I see that. I'm so sorry. I'm muted.

Mr. Wais: [\(01:35:05\)](#):

No problem. So Ms. Linn, do you remember signing this declaration?

Ms. Lin: [\(01:35:17\)](#):

It shows that and I must have signed it, yes.

Mr. Wais: [\(01:35:20\)](#):

Okay. I'm reading from paragraph 12 of the declaration, the part that I highlighted in yellow. It says, "I plan to install the new line at the same location of the old line within that easement using trenchless technology. The contractor will only need to dig two or to three holes, one at the end of each straight segment of the planned line. Then they can pull the new water line from the hole to the other. This would have had minimal to no impact on plaintiff's property. As I understand it, there will probably two to three holes to be on plaintiff's property to pull the new waterline through. The rest of the line would have been on my property." Did I read that correctly, Ms. Linn?

Examiner Olbrechts: [\(01:36:09\)](#):

Yes.

Mr. Wais: [\(01:36:10\)](#):

Okay. Now we were looking at the photograph previously of, okay, what is Exhibit 1003.07, and you indicated in your testimony today that the cinder blocks and the chain link fence would interfere with your ability to use or maintain the waterline, but your declaration here says it can all be done with trenchless technology. Is that right?

Ms. Lin: [\(01:36:49\)](#):

I want to correct the point.

Mr. Wais: [\(01:36:51\)](#):

Okay, go ahead.

Ms. Lin: [\(01:36:53\)](#):

Okay. Back in 2020 or 2021? Yeah, 2020. Okay. Yeah, the time-wise, sometimes I ... Okay. At that time, I was required to need to upsize my water size, so I tried my best to be the good neighbor to my neighbor. I want to have a minimum interference into the yard. So I contact the different contractor and because I'm in real estate, I have done a couple jobs. They can do trenchulars in the sewer line. They can liner line. The sewer line is very large. It's about four inch to eight inch. So they can lining some lining inside the pipe. Then I find this contract, now I recollect my memory. But in my career, I never done a trenchless for waterline. Water line is very small. It's only one and a half inch or one quarter inch. I never done in a real life. So when I wrote that statement, I was trying to be a very good neighbor, minimal impact, but even so that can be done, but I cannot give up my right of the easement on the neighbor property.

[\(01:38:04\)](#):

Even though the line is using the method to install even backward a thousand step, I still need access to maintain the new line. But by the way, luckily it proved my line actually does not need the upgrade anymore because it's proved my line right now is one and a half inch or one a quarter inch. So it's large enough. So that job was dropped. I never did that job. The job never happened because I hired the plumber, checked my existing water line. It's big size enough. So at that point, I don't need access for install that new line anymore, but

Examiner Olbrechts: [\(01:38:44\)](#):

It

Ms. Lin: [\(01:38:44\)](#):

Doesn't matter what I need access to maintain my waterline. For example, right now I have a leak line, the water leak. My neighbor refused me from going there. If she had not refused me that hard about four years ago, maybe I don't even realize this is an issue.

Mr. Wais: [\(01:39:02\)](#):

Okay. But the Can Chu and Tammy Liu have allowed you to come on their property twice to spray paint it with blue lines and flag it where the waterline is, correct?

Ms. Lin: [\(01:39:18\)](#):

That's correct. That's only

Mr. Wais: [\(01:39:21\)](#):

After- And hold on. So you've

Ms. Lin: [\(01:39:22\)](#):

Answered my question. Try this so hard. I can show you all the email if you want to see it.

Mr. Wais: [\(01:39:26\)](#):

Okay. No, I've seen that

Ms. Lin: [\(01:39:27\)](#):

Now. Coordination two weeks just for the minimal access on outside of the yard, not inside the house. I said, you don't have to be there, but there I don't know-

Mr. Wais: [\(01:39:35\)](#):

Excellent. I want to ask you another question.

Ms. Lin: [\(01:39:37\)](#):

Go ahead.

Mr. Wais: [\(01:39:38\)](#):

Can I ask you another question now? You also had somebody come in January and they were testing on my client's property and your niece was there and my client was there and they were testing for leaks on their property, right?

Examiner Olbrechts: [\(01:39:56\)](#):

Yes.

Mr. Wais: [\(01:39:57\)](#):

Okay. So my client has in fact allowed you to get on the property to use and maintain the waterline on at least three known occasions, two within the last two months, right?

Ms. Lin: [\(01:40:06\)](#):

Yes. After I tried it so hard with the arms.

Mr. Wais: [\(01:40:12\)](#):

And you agree that you- I imagine I don't

Ms. Lin: [\(01:40:14\)](#):

Have easement. They're going to shut the door down, so no, you cannot access. I know that for a fact.

Mr. Wais: [\(01:40:19\)](#):

Okay. One of the conditions was that you would not use the photographs or take any videos of the property for use in litigation or this administrative hearing, right?

Ms. Lin: [\(01:40:31\)](#):

I'm not sure what you're saying.

Mr. Wais: [\(01:40:33\)](#):

Okay.

Ms. Lin: [\(01:40:33\)](#):

I don't know. I don't understand

Mr. Wais: [\(01:40:36\)](#):

That. It seems not. Did you trespass on my client's property at any point?

Examiner Olbrechts: (01:40:43):

No.

Mr. Wais: (01:40:44):

Were you taking any photographs on my client's property?

Ms. Lin: (01:40:51):

I took some photo from the driveway.

Mr. Wais: (01:40:55):

Did you take any videos on my client's property?

Ms. Lin: (01:40:58):

Yes.

Mr. Wais: (01:40:59):

Okay. And in fact, you submitted one of those videos as part of this hearing, correct?

Ms. Lin: (01:41:04):

I don't remember. Probably.

Mr. Wais: (01:41:08):

Let me screen share again. Oh, I am screen sharing. Pardon me. This is a video that it's Exhibit number 1012. Do you see my screen, Ms. Lynn?

Ms. Lin: (01:41:26):

I do.

Mr. Wais: (01:41:28):

And I'm playing it, it's just like a 11-second clip. Did you take this video, Ms. Linn?

Ms. Lin: (01:41:41):

I did.

Mr. Wais: (01:41:42):

Okay. I'm going to play it again. I'm actually just going to ... I want to establish something and be very clear to our hearing of administrative law judge. So I'm pausing it at the 10-second mark. Now, where it's paused at the 10-second mark of Exhibit 1012, it shows a pretty substantial retaining wall and it shows the pergola. Do you agree with that, Ms. Linn?

Ms. Liu: (01:42:08):

Yes.

Mr. Wais: [\(01:42:09\)](#):

Now, none of the area depicted in this paused image is in or near the waterline, correct?

Ms. Lin: [\(01:42:21\)](#):

In the backyard.

Mr. Wais: [\(01:42:23\)](#):

Right. But this area in the foreground with the retaining walls and the stair and the pergola, this is not even within 15 feet of the waterline, is that right?

Ms. Yip: [\(01:42:36\)](#):

Objection. Just want to see clarification. You're talking just for the record, but really, you're talking about just this particular screenshot, the 10th minute of Lin Exhibit 10, 12, right?

Mr. Wais: [\(01:42:47\)](#):

Correct, yes. Okay.

Ms. Yip: [\(01:42:48\)](#):

Yeah, go ahead.

Mr. Wais: [\(01:42:52\)](#):

I just want to subject what's being depicted at the 10-second mark here, none of this is at issue other than I understand your contention about the pergola being within 20 feet of the property line. I do understand that, but this retaining wall as constructed, this is not near the waterline, correct?

Ms. Lin: [\(01:43:13\)](#):

Probably is not.

Mr. Wais: [\(01:43:14\)](#):

Okay. In fact, let's see, I'm going to ... At the five-second mark, the video's pointed to the corner where you can see a white pot. The waterline's more in the area depicted at the five-second mark, is that correct?

Ms. Lin: [\(01:43:44\)](#):

Right. But I think need a survey to finalize, but you're right.

Mr. Wais: [\(01:43:50\)](#):

Okay. Stop share for a moment. Ms. Linn, you said you took this video from the driveway?

Ms. Lin: [\(01:44:17\)](#):

Yes.

Mr. Wais: [\(01:44:20\)](#):

The common driveway or not?

Ms. Lin: [\(01:44:24\)](#):

Around the driveway, I don't quite remember. What's your point?

Mr. Wais: [\(01:44:29\)](#):

Well, I'm getting there. Ms. Linn, I'm showing you what are essentially Ring camera photos. Is that you there with the red boots taking a video?

Ms. Lin: [\(01:45:00\)](#):

Is this an exhibit?

Ms. Yip: [\(01:45:03\)](#):

No. Yeah, I'll also object because this is also not provided in the exhibits by the applicant.

Mr. Wais: [\(01:45:10\)](#):

You're right. It's impeachment, and so I don't have to submit it ahead of time.

Examiner Olbrechts: [\(01:45:15\)](#):

Well, this is a response to her video. Is that correct, Mr. Weiss?

Mr. Wais: [\(01:45:25\)](#):

That's correct. This is

Examiner Olbrechts: [\(01:45:25\)](#):

Literally a photo of her taking. Actually, I mean, I admitted it as rebuttal essentially, but not impeachment, but yeah, it's admitted as rebuttal.

Mr. Wais: [\(01:45:36\)](#):

So Ms. Lynn, I just want you to confirm, is this you in the red boots taking the video that we just watched?

Ms. Lin: [\(01:45:43\)](#):

Yes.

Mr. Wais: [\(01:45:44\)](#):

Okay. Did you have permission to enter onto my client's property and take videos? I know the answer to this question, and so do you. So you can answer it.

Ms. Yip: [\(01:46:04\)](#):

Objection, because you say on my property. I have to clarify. This is very important for the record. You said for my client's property. Well, any place easement is technically your client's property. So I need you to clarify. Are you talking about an easement area or just your client's property in general?

Mr. Wais: [\(01:46:20\)](#):

Ms. Lynn, do you understand the question?

Ms. Lin: [\(01:46:22\)](#):

Not really.

Mr. Wais: [\(01:46:23\)](#):

Okay. Did you have permission to enter onto my client's property, not in the easement area and start taking videos and photos?

Ms. Lin: [\(01:46:39\)](#):

"My neighbor never permitted me do anything near to their property, not access to the easement." So my neighbor never say yes. So the question for you is no, that's exact problem about this appeal. Normally I would not go so far about this type of easement, but yeah, you ask a very good question. No, my neighbor never allow me.

Mr. Wais: [\(01:47:04\)](#):

Thank you. I just want to point something out. In your declaration from October of 2021, Ms. Linn, again, it's Exhibit 43 of the city. You attached to that as Exhibit A, the short plat from 1978. And I'm scrolling down just to ... Oh, I'm sorry. I'm not screen sharing it with you. I don't want you to think I'm misrepresenting something. So again, I'm screen sharing Exhibit 43, which is your declaration. So you see that here? So Exhibit A to your declaration from October of 2021 was the 1978 short plat. Do you see that?

Ms. Lin: [\(01:47:48\)](#):

I see the screen.

Mr. Wais: [\(01:47:50\)](#):

Okay. Well, I asked you about the 1978 short plat earlier and you said you didn't know anything about it, but do you remember that?

Ms. Lin: [\(01:48:00\)](#):

I say that I don't remember exactly which easement document, because my house has about a 200 page of the easement, has a lot of 1978, 79. I don't recall any particular one unless I have to go back to do the homework. So I still don't know what's this page.

Examiner Olbrechts: [\(01:48:17\)](#):

Okay.

Ms. Lin: [\(01:48:18\)](#):

It's very confusing of my easement, my document. That's why I had a lawyer.

Mr. Wais: [\(01:48:23\)](#):

Right. I just want to point out to you and to our hearing examiner that you've already provided a sworn declaration about all these documents. Or I'm sorry, Ms. Linn, I'm asking about, let's see, this is Exhibit C to your declaration from 2021, and it appears to show the survey that was done in this case, but I want to talk about the easements that are talked about in here. Can you see the document, ma'am?

Ms. Lin: [\(01:49:10\)](#):

Can. Yes.

Mr. Wais: [\(01:49:15\)](#):

Can we agree that in all the property documents, entitled documents, that there is an easement along the southern border, which I'm highlighting yellow on this. Can we agree that there's a easement there?

Ms. Lin: [\(01:49:30\)](#):

I agree, but any legal question about how to interpret this easement document, I have to defer to my lawyer.

Mr. Wais: [\(01:49:36\)](#):

Okay. Ms. Lyng, can we agree that there is also a utility easement along the northern border of my client's property that I'm highlighting yellow?

Ms. Lin: [\(01:49:50\)](#):

I can say yes, but I defer that to my lawyer.

Mr. Wais: [\(01:49:57\)](#):

Okay. Now you earlier testified that parts of the retaining wall were built into the northern easement, is that correct?

Ms. Lin: [\(01:50:07\)](#):

I'm sorry, repeat the question again.

Mr. Wais: [\(01:50:09\)](#):

Yeah. When Mr. Yip, your attorney was asking you questions, you had testified that you believe that parts of my client's landscaping were built into the northern easement area. Do you remember that testimony?

Ms. Lin: [\(01:50:23\)](#):

Yes. I believe so, because based on the survey.

Mr. Wais: [\(01:50:27\)](#):

So you can agree that there's a northern easement, is that right? Do you also agree that there's a southern easement?

Ms. Lin: [\(01:50:34\)](#):

Yes.

Mr. Wais: [\(01:50:35\)](#):

Okay. And do you understand that the southern easement is for utilities and ingress and egress?

Ms. Lin: [\(01:50:54\)](#):

I cannot answer the question. I believe for easement.

Mr. Wais: [\(01:50:57\)](#):

Okay. Ms. Linn, I don't think I have any other questions for you. Thank you for your time. Okay.

Examiner Olbrechts: [\(01:51:08\)](#):

Thank you. Ms. Tiefer, still no questions?

Ms. Kiefer: [\(01:51:13\)](#):

Correct. No questions. Thank

Examiner Olbrechts: [\(01:51:15\)](#):

You. Okay. And Mr. Yip, any redirect?

Ms. Yip: [\(01:51:19\)](#):

No. No redirect. Okay.

Examiner Olbrechts: [\(01:51:21\)](#):

Ms. Linden, I think you're finally done. Thank you for your testimony. Very helpful for us today. It's great. All right. Thank you, Judge. Yeah, thank you. And Mr. Yip, I understand that this was your one witness for today,

Ms. Yip: [\(01:51:32\)](#):

Correct? Yes, that's all one witness. Yeah.

Examiner Olbrechts: [\(01:51:35\)](#):

Okay. So let's move on then. I think that the next, yep, according to the rules is the city at this point. Ms. Kiefer, any witnesses you want to present?

Ms. Kiefer: [\(01:51:42\)](#):

Yes. And I have a very brief opening statement before we get into our one witness just to reframe us after about two hours. So good morning, hearing examiner, counsel and parties. As you've heard extensively this morning, this case is an appeal of two land use reviews, a critical area to review and a building permit. I think it's uncontested at this point that there is no real appeal point about the critical area to review. So in the interest of time, the city's not going to address that land use review. So that really brings us to the building permit. And I think based on what we heard today from appellant's case as well, that essentially we're all in agreement about structures within the required setbacks. So we

heard and we will hear testimony that this is a permit to relocate a few unpermitted structures, gazebo, greenhouse, and retaining walls.

[\(01:52:39\)](#):

And as the structures will be reconstructed, not as they are today, they will be located in conformance with required setbacks. And we will present testimony as well to show that as the permit works, once the work is complete, there will be an inspection and that will verify that the structures are not within required setbacks. So the city does believe the permit decision as issued on the setback question is sufficient. And then finally, I think we can all agree that the largest issue in this appeal is the question of whether there is what appellant calls the middle easement and where that easement is located and what rights that involves. I will say that this is something that the city had asked applicant about in ... Testimony will show that the city had asked applicant about this in the context of reviewing the building permit. The city issued the building permit in good faith on reliance upon materials provided by the applicant, and the city's entitled to do that.

[\(01:53:45\)](#):

But during the preparation for this appeal hearing, the city did discover new information, including the 2021 summary judgment order we've heard about this morning, and that new information has really put applicant's assertions regarding what they call the middle easement into question. So the question before the hearing examiner is really going to be whether he agrees with the appellant or with the applicant. If he agrees with the appellant, then what is appropriate is a remand of the building permit for the applicant to revise to move the retaining wall outside of the easement. But if the hearing examiner agrees with the then he should uphold the city's permit and critical area to review and dismiss the appeal. And with that, I will call the city's first witness, who is Grace Manahan.

Examiner Olbrechts: [\(01:54:34\)](#):

Ms. Manahan, I'll have to swear you in. Let's see if I can see you out there. There you are. Okay. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding? I do. Great. Okay. All right. Go ahead, Ms. Kiefer.

Ms. Kiefer: [\(01:54:47\)](#):

Thank you. Okay. Ms. Manahan, can you tell us what your title is with the city of Mercer Island?

Ms. Manahan: [\(01:54:54\)](#):

Yes, I'm a code compliance planner.

Ms. Kiefer: [\(01:54:57\)](#):

Okay. And how long have you held that position at Mercer Island?

Ms. Manahan: [\(01:55:01\)](#):

I've held this position a year and a half.

Ms. Kiefer: [\(01:55:03\)](#):

Okay. And before you were a code compliance planner, were you still with the city?

Ms. Manahan: [\(01:55:09\)](#):

Yes, I was assistant planner at the city for two years prior.

Ms. Kiefer: (01:55:15):

Okay. And do you have any education or education that is relevant to your job as code compliance planner?

Ms. Manahan: (01:55:28):

Prior to being with the city of Mercer Island, I got a degree in landscape architecture from Washington State University.

Ms. Kiefer: (01:55:36):

Okay, great. And I apologize if I missed it earlier. In total, how long have you been with City of Mercer Island?

Ms. Manahan: (01:55:44):

Oh yeah, just over three and a half years.

Ms. Kiefer: (01:55:47):

Okay. And so review of building permits, is that something that you would typically do as part of your role as code compliance planner?

Ms. Manahan: (01:55:55):

Yes.

Ms. Kiefer: (01:55:56):

Okay. How many do you think that you've reviewed over the course of your three and a half years with the city?

Ms. Manahan: (01:56:04):

I don't know the exact number, but over a hundred at least, if even a couple hundred.

Ms. Kiefer: (01:56:10):

Okay. So would be fair to say they're pretty routine for you?

Ms. Manahan: (01:56:14):

Yes, very.

Ms. Kiefer: (01:56:15):

Okay. And were you the assigned reviewer for the building permit subject to this appeal?

Examiner Olbrechts: (01:56:22):

Yes.

Ms. Kiefer: (01:56:22):

Okay. Okay. We heard a little bit about setbacks earlier, Ms. Manahan. Can you just explain how the Mercer Island City Code treats setbacks? Does the code often refer to setbacks?

Ms. Manahan: [\(01:56:46\)](#):

Yeah, so the code refers to required yards, which have specific setbacks for front, sides and rear.

Ms. Kiefer: [\(01:56:54\)](#):

Okay. I'm going to pull up, it is City Exhibit 23. Let me do that real quick. Okay. Ms. Manahan, are you able to see my screen?

Ms. Manahan: [\(01:57:16\)](#):

Not yet. Yes, now I can.

Ms. Kiefer: [\(01:57:18\)](#):

Yes. Okay, great. And does this appear to be Exhibit 23?

Ms. Manahan: [\(01:57:22\)](#):

Yes.

Ms. Kiefer: [\(01:57:23\)](#):

Okay. And just to refresh the memory, Exhibit 23 is what?

Ms. Manahan: [\(01:57:27\)](#):

The approved plan set.

Ms. Kiefer: [\(01:57:29\)](#):

Okay. And so this first page, I think we heard Ms. Lynn testify about it. Was she correct that this is just a survey provided by the applicant?

Examiner Olbrechts: [\(01:57:39\)](#):

Yes.

Ms. Kiefer: [\(01:57:40\)](#):

Okay. So this shows conditions on the ground at the time of the survey, but not necessarily what's been approved?

Ms. Manahan: [\(01:57:49\)](#):

Correct.

Ms. Kiefer: [\(01:57:50\)](#):

Okay. So I'm going to scroll scroll down here just a bit. I'm sorry. I'm trying to scroll slowly to keep folks from getting seasick. I'm going to zoom in a bit here. Okay. And I'm going to scroll over. On this page, the enlarged site plan sheet number A0.2, can you explain what this sheet shows?

Ms. Manahan: (01:58:21):

Yeah, this sheet shows the approved configuration of the proposed improvements as well as a detailed ... You're just on the detailed of the retaining wall and then as well as tree protection fencing, I believe is the extent of what's shown on this page.

Ms. Kiefer: (01:58:36):

Okay, great. And so just to orient us, you can see my cursor, right?

Ms. Manahan: (01:58:43):

Yes.

Ms. Kiefer: (01:58:43):

Okay, great. So I'm circling this. So this is marked eight-foot greenhouse, is that correct?

Ms. Manahan: (01:58:50):

Yes, that's correct.

Ms. Kiefer: (01:58:51):

Okay. And does this show how the city has approved the location of the greenhouse to be moved?

Examiner Olbrechts: (01:58:58):

Yes.

Ms. Kiefer: (01:58:59):

Okay. And so this structure just to the side of the greenhouse, there's an arrow pointing to it. Can you tell us what this building would be?

Ms. Manahan: (01:59:12):

Yes, that would be the gazebo where it is to be relocated.

Ms. Kiefer: (01:59:16):

Okay. And the gazebo seems to have a dashed line around it, but the greenhouse does not. Can you explain why that is?

Ms. Manahan: (01:59:26):

Yes. Yeah. So the dashed line surrounding the gazebo indicates an eave or a small overhang of the gazebo. The greenhouse does not have a eave, and so it does not have a light dash line to indicate that.

Ms. Kiefer: (01:59:40):

Okay. What does the code say about eaves? Are they able to intrude into required yards?

Ms. Manahan: (01:59:50):

So eaves are allowed to intrude into front and rear yards and also side yards, but only when it's not abutting an interior lot line.

Ms. Kiefer: [\(02:00:00\)](#):

Okay. And so here it looks like the gazebo you've testified is the structure that has the eaves, and it looks like the only yard that the gazebo abuts is the front yard. Am I correct?

Ms. Manahan: [\(02:00:16\)](#):

Yes.

Ms. Kiefer: [\(02:00:17\)](#):

Okay. Okay. And so we've got a note here. Can you just read this note for us, Ms. Manahan?

Ms. Manahan: [\(02:00:26\)](#):

"Per MICC 19.02.020C3AE shall not protrude more than 18 inches into any required yard."

Ms. Kiefer: [\(02:00:37\)](#):

Okay, thank you. So as I read this plan, it looks like the city has approved a location where the eve has to comply with the Mercer Island City Code. Is that correct?

Ms. Manahan: [\(02:00:53\)](#):

Yes, that's correct.

Ms. Kiefer: [\(02:00:54\)](#):

Okay. And as I understand the permit too, the permit has been issued, but the work hasn't been done, is that right?

Ms. Manahan: [\(02:01:01\)](#):

Correct. The permit has been issued, but to my knowledge, the work has not started to relocate the gazebo or greenhouse or any of the other improvements.

Ms. Kiefer: [\(02:01:11\)](#):

Okay. So absent an appeal, when the city issues a building permit, that authorizes work to proceed, is that right?

Ms. Manahan: [\(02:01:20\)](#):

Yes, that's correct.

Ms. Kiefer: [\(02:01:21\)](#):

Okay. So then what's the next step?

Ms. Manahan: [\(02:01:24\)](#):

Yeah, so once the building permit is issued, to get technical, it's a little out of my wheelhouse, so I'm not going to speak too much on it, but there are pre-construction meetings and other construction meetings

that are required throughout the process that I'm not personally involved in, but the owner can start work and then start completing the required meetings and steps to complete the permitted work.

Ms. Kiefer: [\(02:01:52\)](#):

Okay. But I guess from the city's standpoint, is a permit complete just because it's been issued?

Ms. Manahan: [\(02:02:00\)](#):

No, it then becomes an active permit, not a final permit.

Ms. Kiefer: [\(02:02:04\)](#):

Okay. And so what I'm getting at here, not very elegantly, is will there be any checks that the applicant has built the structures according to the plans?

Ms. Manahan: [\(02:02:16\)](#):

Yes. Yeah. So the permit will become active, work can occur. Before the building permit's finalized, there are final inspections that occur to confirm that the work was performed in compliance with the approved plan set.

Ms. Kiefer: [\(02:02:31\)](#):

Okay. So just as a hypothetical here, Ms. Manahan, if the gazebo is constructed and let's say the eave protrudes 24 inches into the front yard, first of all, that would violate the code, isn't that right?

Ms. Manahan: [\(02:02:48\)](#):

Yes, that would violate the code.

Ms. Kiefer: [\(02:02:49\)](#):

Okay. So if an inspector finds that, what would happen?

Ms. Manahan: [\(02:02:54\)](#):

Yeah, if the inspector finds that it was obviously, not obviously, but that indicates it was not built to the approved plan set and that needs to be revised prior to building permit, getting the final for the building permit.

Ms. Kiefer: [\(02:03:08\)](#):

Okay. So the building permit wouldn't be finalized if what's built doesn't meet the plans, is that right?

Ms. Manahan: [\(02:03:15\)](#):

Yes, that's correct.

Ms. Kiefer: [\(02:03:16\)](#):

Okay, thank you. I'm going to stop sharing real quick. Okay. Ms. Manahan, we heard a lot this morning about easements and easement rights. Can you just tell us generally what the city's role is with respect to easements when they're shown on submitted plans?

Ms. Manahan: [\(02:03:51\)](#):

Yeah, so once the plans are submitted and reviewed and easements are identified, the city or reviewer will identify what type of easements are present and then coordinate with the code and what the code says regarding that specific type of easement, whether it be ingress, egress, or utility, and confirm that the improvements are in compliance with that applicable code section.

Ms. Kiefer: [\(02:04:17\)](#):

Okay. Okay. And so when you were reviewing the building permit in this case, did you identify what appellant has been calling the middle easement?

Examiner Olbrechts: [\(02:04:31\)](#):

Yes.

Ms. Kiefer: [\(02:04:32\)](#):

Okay. And so when you identified that, what happened next?

Ms. Manahan: [\(02:04:40\)](#):

Yeah, so I identified what ... I'm going to also refer to it as the middle easement. I then noticed that improvements were located in that easement area, the retaining walls. I then made a review comment citing the code stating that ... I don't know exact code language, but the code section about structures and the limitations of them being present in an easement area.

Ms. Kiefer: [\(02:05:10\)](#):

Okay. So you provided them a review comment, and so how did the applicant respond?

Ms. Manahan: [\(02:05:17\)](#):

Yeah, so the applicant responded with the driveway relocation easement documentation in a resubmittal indicating that the easement was no longer present in the previously marked area.

Ms. Kiefer: [\(02:05:30\)](#):

Okay. And so when you say driveway relocation documentation, what are you referring to?

Ms. Manahan: [\(02:05:38\)](#):

Yeah, I'm referring to ... My apologies. My apologies. I'm trying to locate the exhibit number. Oh, well, I still am looking for the exact exhibit number, but it's the driveway relocation document is referenced on the approved plan set survey as the new location of the ingress egress easement with the recording number starting in 2017.

Ms. Kiefer: [\(02:06:53\)](#):

2017. Okay. So to your recollection, was that a 2017 document that was provided by the applicant?

Ms. Manahan: [\(02:07:03\)](#):

Yes, it was.

Ms. Kiefer: [\(02:07:04\)](#):

Okay. And I know we saw earlier a 2021 decision by former Superior Court Judge, Matt Siegel. Was that something applicant had provided to you?

Examiner Olbrechts: [\(02:07:16\)](#):

No.

Ms. Kiefer: [\(02:07:17\)](#):

Okay, thank you. I am going to pull up City Exhibit number seven, which is one of the plan submittals. Okay, that has ... My apologies. This is having a technical difficulty. Okay, here we go. Okay. So Ms. Manahan, are you able to see my screen?

Ms. Manahan: [\(02:08:15\)](#):

Yes.

Ms. Kiefer: [\(02:08:16\)](#):

Okay. And this is Exhibit seven?

Ms. Manahan: [\(02:08:18\)](#):

Yes.

Ms. Kiefer: [\(02:08:19\)](#):

Okay. I'm sorry to talk over you. I did not mean to. I'm going to scroll down to the final page. I'm going to zoom in a bit here. So Ms. Manahan, this is not the approved plan set. Is that accurate?

Examiner Olbrechts: [\(02:08:47\)](#):

Yes.

Ms. Kiefer: [\(02:08:48\)](#):

Okay. So this shows some structures that aren't in the location that the city has ultimately approved in the building permit. Is that right?

Examiner Olbrechts: [\(02:08:56\)](#):

Yes.

Ms. Kiefer: [\(02:08:57\)](#):

Okay. I'm going to use my cursor and cursor over a portion of the retaining wall. I'm going to circle this area here. Are you able to follow my cursor?

Examiner Olbrechts: [\(02:09:07\)](#):

Yes.

Ms. Kiefer: [\(02:09:08\)](#):

Okay. Is that part of the retaining wall roughly in the same position that's as on the approved plans?

Examiner Olbrechts: ([02:09:16](#)):

Yes.

Ms. Kiefer: ([02:09:17](#)):

Okay. And then this particular site plan does show the dashed lines that appellant refers to as the middle easement, is that right?

Examiner Olbrechts: ([02:09:28](#)):

Yes.

Ms. Kiefer: ([02:09:29](#)):

Okay. And so looking at this, would it be your opinion that this portion that I'm circling of the retaining wall would encroach into the appellant middle easement?

Examiner Olbrechts: ([02:09:40](#)):

Yes.

Ms. Kiefer: ([02:09:41](#)):

Okay. Thank you. Ms. Manahan, with the additional information that the city has looked at since receiving the appeal and the testimony this morning, would re-review of this building permit potentially lead to a different result?

Ms. Manahan: ([02:10:13](#)):

Yes.

Ms. Kiefer: ([02:10:14](#)):

Okay. And what result would that be?

Ms. Manahan: ([02:10:18](#)):

Yeah, that result may be to remove the retaining walls from the easement area. Okay.

Ms. Kiefer: ([02:10:39](#)):

Okay. I want to loop back just a little bit just to clear something up in the record. I'm pulling up City Exhibit number 18. Ms. Manahan, are you able to see my screen?

Examiner Olbrechts: ([02:11:01](#)):

Yes.

Ms. Kiefer: ([02:11:01](#)):

Okay. Do you recall receiving this email from Doug Scott?

Examiner Olbrechts: ([02:11:08](#)):

Yes.

Ms. Kiefer: (02:11:08):

Okay. And with respect to this email, did it relate to what we've been referring to as the middle easement or a different easement?

Ms. Manahan: (02:11:18):

This was regarding the north five-foot utility easement and the ... Yeah, it was referring to the north five-foot utility easement.

Ms. Kiefer: (02:11:30):

Okay. But not the middle easement?

Ms. Manahan: (02:11:32):

Correct.

Ms. Kiefer: (02:11:33):

Okay.

Mr. Wais: (02:11:34):

Thank you. Apologies for my interruption. What exhibit number is this?

Ms. Kiefer: (02:11:37):

Sure. This is Exhibit 18.

Mr. Wais: (02:11:39):

Gotcha. Thank you.

Ms. Kiefer: (02:11:41):

Yes. I'm looking through my notes here, Ms. Manhan, to make sure I haven't missed anything. Just a few additional questions. Ms. Manahan, we heard discussion this morning about a survey and I just wanted to ask, did the city approve any surveys? Is that what the city does as far as the building permit?

Ms. Manahan: (02:12:45):

Not necessarily approve the survey. We're approving the proposed improvements in the plan set.

Ms. Kiefer: (02:12:52):

Okay. Okay. And does the city have to ... Or I'm sorry, does the city always require a survey for a building permit?

Ms. Manahan: (02:13:00):

Yeah, surveys aren't an outright requirement for building permits, but the city may require them.

Ms. Kiefer: (02:13:07):

Okay. Okay. So when it comes to finaling the permit, is an updated survey a requirement or can the city rely on the inspection that you referenced earlier in your testimony?

Ms. Manahan: (02:13:25):

Yeah, the city can require an updated survey to show the new as-built conditions.

Ms. Kiefer: (02:13:34):

Okay. Okay. Okay. Those are all the questions I have for you, Ms. Manahan. Thank you. Thank you.

Examiner Olbrechts: (02:13:49):

Okay. Mr. Weiss, any cross?

Mr. Wais: (02:13:54):

Well, I think it would be the appellant's turn probably first.

Examiner Olbrechts: (02:13:59):

Well, the party, the most adversarial position to the last cross is the order that I do.

Mr. Wais: (02:14:06):

Okay. Sounds good. Ms. Manhan, thanks for your work on this project and working with my clients. I just want to be pretty clear in part because my client's here as are the contractors involved. I understand that in order to be compliant with the city's requirements, a gazebo needs to be moved some distance, I guess it would be to the northeast. How far does it need to be moved to be compliant, that is?

Ms. Manahan: (02:14:38):

Yeah, it needs to be built to the approved plan set.

Mr. Wais: (02:14:44):

Okay. And I'm not trying to grill you on this, but do you know what that distance is?

Ms. Manahan: (02:14:50):

I do not know the distance.

Mr. Wais: (02:14:52):

Okay. In terms, does the city code define what a retaining wall is?

Ms. Manahan: (02:15:04):

The city code does have retaining wall in our definition section.

Mr. Wais: (02:15:08):

And are you able to tell me what a retaining wall is defined as?

Ms. Kiefer: (02:15:17):

Mr. Weiss, would it perhaps be helpful if I pull up the city code and you guys can look at it together?

Mr. Wais: [\(02:15:24\)](#):

Yeah. Yeah, sure thing.

Ms. Kiefer: [\(02:15:25\)](#):

Okay.

Mr. Wais: [\(02:15:34\)](#):

While she's doing that, Ms. Manhan, let me just ... Does the city code differentiate between landscaping and hardscaping?

Ms. Manahan: [\(02:15:46\)](#):

We have a definition of hardscape.

Mr. Wais: [\(02:15:56\)](#):

So Eileen, I assume you're screen sharing right now?

Ms. Kiefer: [\(02:15:59\)](#):

Yes.

Mr. Wais: [\(02:16:00\)](#):

Okay. Sorry, it's so small on my screen. So I'll just read it into the record and for the benefit of the hearing examiner and the parties, it just says, I guess this is what, 19.16.010 definitions, retaining walls/rockeries, a wall of masonry, wood, rock, metal, or other similar materials or combination of similar materials that bears against earth or other fill surface for purpose of resisting lateral or other forces in contact with the wall and/or the prevention of erosion. Okay. Ms. Mann, is there a height limitation on this or not?

Ms. Manahan: [\(02:17:00\)](#):

Yeah, I think as you've just read, there's no mention of height in our definition.

Mr. Wais: [\(02:17:08\)](#):

Is a permit required to build, let's just say, a retaining wall of two feet or less?

Ms. Manahan: [\(02:17:17\)](#):

If it's located within G-Loc in any critical areas, a building permit would be required, yes.

Mr. Wais: [\(02:17:23\)](#):

I see. And so just to be clear, the area where these two homes are located is considered to be in a critical area?

Ms. Manahan: [\(02:17:31\)](#):

Yes, that's correct.

Mr. Wais: [\(02:17:32\)](#):

And is that because of a slope? Yeah,

Ms. Manahan: [\(02:17:35\)](#):

That's due to there's geologically hazardous areas located. Looks like potential slide erosion and seismic.

Mr. Wais: [\(02:17:49\)](#):

I see. The email that came from my colleague, Doug Scott, to you earlier last year, did you respond to that email?

Ms. Manahan: [\(02:18:13\)](#):

I don't want to speak incorrectly, so I'm going to say I don't know.

Mr. Wais: [\(02:18:18\)](#):

Fair enough. Is it your understanding that as a code compliance officer, that structures can be placed in an easement area so long as there's agreement by the landowners?

Ms. Manahan: [\(02:18:42\)](#):

Sort of. If we want, we can look at the easement code language. For ingress egress easements, no encroachments are allowed.

Mr. Wais: [\(02:18:53\)](#):

Right. And for utility easements?

Ms. Manahan: [\(02:18:56\)](#):

Yeah.

Mr. Wais: [\(02:19:09\)](#):

And I'd be happy to read it to you. In fact, I could even screen share if that's helpful.

Ms. Manahan: [\(02:19:14\)](#):

Yeah. Yeah, I just pulled it up as well, but yes. Yeah.

Mr. Wais: [\(02:19:17\)](#):

Let's make sure we're looking at the same thing. I think it is ... Oh gosh, you probably know better than I do, but it's 19 ... Oh, I have to scroll all the way up to see what it's ... Sorry. It's 1902020H, I believe.

Examiner Olbrechts: [\(02:19:36\)](#):

Yes.

Mr. Wais: [\(02:19:42\)](#):

Sorry, I'm scrolling back down to it. Sorry, when I expanded my screen it ... Lost it. Technology glitches here. Where is H? Forgive me. Sorry, it was 020.

Ms. Manahan: (02:20:12):

Oh yeah, down at H.

Mr. Wais: (02:20:14):

I see. So here I'll do a screen share. So I'm going to just highlight it for ease of sharing. It says, "No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail, or other public purpose unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and the grantor of the easement." Do you see that, Ms. Manahan?

Ms. Manahan: (02:20:52):

Yes. I'm

Mr. Wais: (02:20:53):

Going to stop the screen share. Based on that, do you know whether there was an agreed writing that between the parties here, that is the appellant and the applicant, that structures could be placed in utility easement areas?

Ms. Manahan: (02:21:11):

Yeah. So when I was doing the review process with the applicant, I requested them show compliance with that code section. You just stated no agreement was provided to me during the review process.

Mr. Wais: (02:21:27):

Okay. You received the email that was shared with you by Attorney Doug Scott though, and he provided you with the declarations?

Ms. Manahan: (02:21:44):

I'm sorry, can you re-share that and-

Mr. Wais: (02:21:46):

Yeah,

Ms. Manahan: (02:21:47):

I'd be happy to- what you're speaking to.

Mr. Wais: (02:21:51):

What exhibit number was that? Ms. Keefer shared it, but ... Yeah.

Ms. Kiefer: (02:22:00):

For the interest of time, it's Exhibit 18.

Mr. Wais: (02:22:02):

Thank you. Okay.

Ms. Manahan: (02:22:09):

I see yes, he shared the declaration materials.

Mr. Wais: [\(02:22:16\)](#):

Gotcha. So I'm sharing the screen sharing with the parties here, and this is from Exhibit 18, which Mr. Scott had emailed to you.

[\(02:22:30\)](#):

Do you see it says, I'm going to read section D and it reads, quote, "The owner of the upland parcel shall have exclusive control over the landscaping of the easements described under subparagraphs 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 area, easement herein reserved without first obtaining written consent of the owner of the waterfront parcel." So I was reading that into the record, but Ms. Manahan, do you understand that this controls between these two parcels of property in terms of what can be done?

Ms. Manahan: [\(02:23:24\)](#):

Yes. Okay.

Mr. Wais: [\(02:23:26\)](#):

Do you understand that it has the caveat of for purposes of denying access or physically enclosing? That's a terrible question, so I'll retract it because I know you're not necessarily in a position to answer that.

Examiner Olbrechts: [\(02:23:45\)](#):

Yeah.

Mr. Wais: [\(02:23:56\)](#):

Ms. Manahan, is the city taking a position on whether or not a utility easement exists in the middle of my client's property?

Ms. Manahan: [\(02:24:13\)](#):

Can you repeat the question?

Mr. Wais: [\(02:24:15\)](#):

Sure. Well, let me ask you this. Do you, as a representative of the city, do you know whether there was or is currently a utility easement through the middle of my client's property?

Ms. Manahan: [\(02:24:28\)](#):

Yeah, I think as previously stated, based on the record, we do think there is an easement there.

Mr. Wais: [\(02:24:39\)](#):

What is that belief based upon?

Ms. Manahan: [\(02:24:44\)](#):

Yeah, that belief was based upon the new information provided through this appeal process.

Mr. Wais: [\(02:24:57\)](#):

My inference is, and I want you to correct me if I'm wrong, but that's based upon the Superior Court order that was provided to you, is that correct?

Ms. Manahan: [\(02:25:05\)](#):

That was seen as very relevant information to the city while reviewing whether or not the easement was present, correct.

Examiner Olbrechts: [\(02:25:15\)](#):

Okay.

Mr. Wais: [\(02:25:21\)](#):

Is there any other legal documents or title documents or ownership documents that the city believes indicate that there's a utility easement through the middle of my client's property?

Ms. Manahan: [\(02:25:36\)](#):

I mean, as I stated, in the initial review, I identified the easement being there through IJIS mapping and I've seen it on various documents throughout the years, but nothing beyond what we've discussed so far today. Thank

Mr. Wais: [\(02:25:52\)](#):

You. Okay. Thank you, Ms. Manahan. I don't have any other questions.

Examiner Olbrechts: [\(02:25:57\)](#):

Okay. Okay. Mr. Yip, any questions?

Ms. Yip: [\(02:25:59\)](#):

No, thank you very much for your testimony.

Examiner Olbrechts: [\(02:26:01\)](#):

Okay. And Ms. Keefer, any redirect?

Ms. Kiefer: [\(02:26:04\)](#):

None at all. Thank you. Thank you, Ms. Manahan.

Examiner Olbrechts: [\(02:26:07\)](#):

Yeah, thanks, Ms. Manahan. Thank you for your time today. Thank you. All right. And Ms. Keefer, anyone else from the city, I think that was the only person on your witness list.

Ms. Kiefer: [\(02:26:17\)](#):

You are correct. That concludes the city's case in chief. All

Examiner Olbrechts: [\(02:26:20\)](#):

Right, perfect. I guess now we'll move on to the applicant, Mr. Weiss. Okay.

Ms. Yip: [\(02:26:24\)](#):

May we take a quick five-minute break?

Examiner Olbrechts: [\(02:26:28\)](#):

Yeah, I mean, we're going to be taking our lunch break in about 20, but yeah. Oh,

Ms. Yip: [\(02:26:33\)](#):

Okay.

Examiner Olbrechts: [\(02:26:33\)](#):

Is that okay then, Mr. Yep, or did you need ...

Ms. Yip: [\(02:26:35\)](#):

Yeah, yeah.

Examiner Olbrechts: [\(02:26:36\)](#):

Okay. All right. Yeah, let's charge. We'll take our lunch break at noon then instead of 12:15.

Mr. Wais: [\(02:26:42\)](#):

Okay. What I'd like to do just so that they don't have to remain on this phone call is I think see if I can quickly get in the testimony of Gary Moe and Christopher Gregerson who've kindly joined us and then I'll have Ms. Liu testify after the lunch break.

Examiner Olbrechts: [\(02:27:01\)](#):

Okay. All right. Starting off with Mr. Mo then. Okay.

Mr. Wais: [\(02:27:05\)](#):

All right.

Examiner Olbrechts: [\(02:27:07\)](#):

Mr. Mo, let me swear you in. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Ms. Mok:: [\(02:27:13\)](#):

Yes.

Examiner Olbrechts: [\(02:27:14\)](#):

Great. Thank you, sir. Welcome to the hearing. And Mr. Weiss, go ahead.

Mr. Wais: [\(02:27:17\)](#):

Sure. Mr. Mo, just please, why don't you just introduce yourself?

Ms. Mok:: ([02:27:24](#)):

Yeah, I'm a architectural designer working with my clients to do design and permit applications for the site improvement and the new building and remodeling.

Mr. Wais: ([02:27:41](#)):

Are you a general architect or do you special in landscaping and outdoor work?

Ms. Mok:: ([02:27:46](#)):

I do most architectural design. Yeah, I do some construction, but for this project, Chris, he's the contractor in charge of the construction.

Mr. Wais: ([02:28:03](#)):

Can you tell me how you came to be working with Tammy and Can on their project?

Ms. Mok:: ([02:28:11](#)):

Yeah, it was about a year ago and I got a phone call from Tammy, called me about, he got a notice from the city about the not unpermitted or landscaping work in her front yard. And then I met Chris and we reviewed the site and we collect all information from the survey, structural engineer, geotech engineer, contractors, and documented what they have done on site. And we start to do the design and do the permit application followed by the city's instruction and requirements.

Mr. Wais: ([02:29:09](#)):

Now, when you came to visit Tammy and Can's house for the first time, most of the work had already been completed at that time, is that correct?

Ms. Mok:: ([02:29:19](#)):

Correct. Yes.

Mr. Wais: ([02:29:24](#)):

Do you know what other professionals Tammy and Can had hired before you to do the work?

Ms. Mok:: ([02:29:35](#)):

I'm not sure because yeah, I don't know the timeline. Maybe they hired the geotech or surveyor. I know they hired surveyor before and then Chris, we contact the landscape architects, geotech, structural engineer. So at the same time, I don't know what's the timeline before or after.

Mr. Wais: ([02:30:01](#)):

I'm not sure. Okay. What was your role in trying to get their landscaping project approved by the city? What did you do?

Ms. Mok:: ([02:30:10](#)):

Yeah, I do the side plan. I'm using the background from engineer and the surveyor and put them together and fill out all the forms, do the calculations for the site area requirements and then apply the permit.

Mr. Wais: ([02:30:37](#)):

So are you the person who did the permit applications with the city of Mercer Island?

Ms. Mok:: ([02:30:43](#)):

Yes, correct.

Mr. Wais: ([02:30:45](#)):

Were you doing those essentially as an agent or representative of Tammy and Can?

Ms. Mok:: ([02:30:51](#)):

Yes, correct.

Mr. Wais: ([02:30:54](#)):

Did you also have any telephone conversations with Ms. Manahan?

Ms. Mok:: ([02:30:59](#)):

Yes, but not too many times. I think a couple of times. Yeah.

Mr. Wais: ([02:31:09](#)):

What was your goal in doing this work for Tammy and Can?

Ms. Mok:: ([02:31:15](#)):

My goal is as a drafter and also architectural services and application services.

Mr. Wais: ([02:31:31](#)):

Were you trying to comply with all the city codes?

Ms. Mok:: ([02:31:37](#)):

Yes. Just follow all the instruction from Grace.

Mr. Wais: ([02:31:47](#)):

Since you did all the application work, have you made any changes or actually done any additional work since the time you began helping them with the application process?

Ms. Mok:: ([02:32:02](#)):

I think so, yes. We do the revision and correction back and forth, I think at least five or six times.

Mr. Wais: ([02:32:10](#)):

I see. So you have submitted revised plans to the city for approval?

Ms. Mok:: ([02:32:15](#)):

Yeah, it's a long, very long

Mr. Wais: ([02:32:19](#)):

Period

Ms. Mok:: ([02:32:20](#)):

Of time to do that, yes.

Mr. Wais: ([02:32:29](#)):

Through your process of design and drafting these site plans and the various renditions of them, did you have any notice that there was a utility easement through the middle of the project?

Ms. Mok:: ([02:32:45](#)):

Well, at the beginning, I don't know. I'm pretty focused on the setback and the easement on the north and the south. I'm not sure. We have a middle easement at that time until later Grace told me we have to clarify there's an easement in the old driveway. Yeah.

Mr. Wais: ([02:33:12](#)):

I see. Okay. Gary, I don't have any other questions for you. Other counsel may have questions for you.

Ms. Mok:: ([02:33:21](#)):

Okay. Thank you.

Examiner Olbrechts: ([02:33:22](#)):

Mr. Yip, any questions?

Ms. Yip: ([02:33:24](#)):

No, no questions. Thank

Examiner Olbrechts: ([02:33:26](#)):

You. All right, Ms. Kiefer?

Ms. Kiefer: ([02:33:27](#)):

None for me. Thank you.

Examiner Olbrechts: ([02:33:29](#)):

All right. Okay. Mr. Mo, you had it easy today. Thanks for your help. Appreciate it. Yeah,

Ms. Kiefer: ([02:33:33](#)):

Thank

Ms. Mok:: ([02:33:33](#)):

You. Yeah.

Examiner Olbrechts: ([02:33:33](#)):

Yeah, have a great weekend. Okay. Mr. Weiss, you had another witness you wanted to get through real quick?

Mr. Wais: [\(02:33:39\)](#):

Yes. Christopher Gregison, who's on this Zoom

Examiner Olbrechts: [\(02:33:41\)](#):

Call as well.

Mr. Wais: [\(02:33:42\)](#):

Okay.

Examiner Olbrechts: [\(02:33:42\)](#):

Mr. Gregerson, we don't see you quite yet. You're still black. You have to turn on your video

Ms. Gregerson:: [\(02:33:47\)](#):

If you can. I was having an issue with my computer, so I still like the computer for the documents, but I'm talking through my phone, if that makes

Examiner Olbrechts: [\(02:33:55\)](#):

Sense. Oh, okay. We see you. Yeah. Okay, great. All right. Well, let me swear you in. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Ms. Gregerson:: [\(02:34:02\)](#):

Yes, I do.

Examiner Olbrechts: [\(02:34:03\)](#):

Okay, great. Thanks, Mr. Gregerson. Welcome to the hearing and go ahead, Mr. Weiss.

Mr. Wais: [\(02:34:08\)](#):

Okay. Mr. Garrison, thanks for

Examiner Olbrechts: [\(02:34:09\)](#):

Being

Mr. Wais: [\(02:34:09\)](#):

Here. I'm going to ask you similar questions that I asked Gary. So I'll start with just introduce yourself briefly and tell me what you do for a living.

Ms. Gregerson:: [\(02:34:20\)](#):

Christopher Gregerson with Gregerson Custom Homes. We've built a lot of homes along Mercer Island, Bellevue. A lot of experience with steep slope, retaining walls. I built the house next to Can and Tammy. Became friends with them. I've done some work on their home for them. Yeah.

Mr. Wais: ([02:34:44](#)):

Okay. Well, actually, what work have you done for Can and Tammy?

Ms. Gregerson:: ([02:34:53](#)):

They had some issues with some water damage around their house, some waterproofing issues from the builder that built their house that I came and corrected and fixed for them.

Mr. Wais: ([02:35:08](#)):

Got it. In terms of this front yard landscaping project, did you do any of the construction work of this?

Ms. Gregerson:: ([02:35:16](#)):

No.

Mr. Wais: ([02:35:18](#)):

Do you know when that was done and who did it?

Ms. Gregerson:: ([02:35:24](#)):

I can't recall his name. I've met him a couple times. I could look at the stop work order of when that was actually done. It was March 3rd, 2023, when it was roughly somewhat completed in the process, from what I recall. That's when I was first notified.

Mr. Wais: ([02:35:46](#)):

Okay. Why were you notified of issues with their landscape project in the front yard?

Ms. Gregerson:: ([02:35:54](#)):

The landscaper was there building everything and a stop work order was put up. So Tammy called me just because she knows me, trust me. And so she called me. I came out, looked at it, called Dave Henderson to get a grasp of how this process would move forward.

Mr. Wais: ([02:36:19](#)):

Who's Dave Henderson?

Ms. Gregerson:: ([02:36:21](#)):

He was a code compliance person at the City of Mercer. And I've worked with him quite a bit just on other projects on Mercer Island. Sometimes he would fill in as a building inspector, so I was familiar with him.

Mr. Wais: ([02:36:36](#)):

Okay. So he had a similar role as Ms. Manahan, it sounds like?

Ms. Gregerson:: ([02:36:40](#)):

Yes. Yes.

Mr. Wais: ([02:36:41](#)):

Got it. So this work stop order, that was something that came from the city of Mercer Island, is that correct?

Ms. Gregerson:: (02:36:51):

Yeah, like a red sticker on a stake that just said, "Hey, you don't have a permit for this. You got to get proper approval, so hold off on the project until you can get the proper

Mr. Wais: (02:37:06):

Permit." Did you get the impression or did you think that the prior contractor or Tammy and Can were trying to be elusive or sneak this project through?

Ms. Gregerson:: (02:37:21):

No. No. Yeah, I don't think that ... A lot of times you will see homeowners working with a landscaper and they're not as aware as a general contractor of the requirements in the different cities to get a permit.

Mr. Wais: (02:37:36):

Okay. So in other words, they just didn't know a permit was required?

Ms. Gregerson:: (02:37:40):

That's what I believe.

Mr. Wais: (02:37:45):

After there was a stop work order and you became involved helping Can and Tammy in working with Gary, what role did you have?

Ms. Gregerson:: (02:37:56):

I was really just trying to facilitate with my contacts who best could help us get all the proper documentation and get something designed to follow all the codes and ordinances that we need. So when I originally talked to Dave Henderson, when they first put the stop work order, his first guideline for us was, "What we need from you is to come up with a plan for this project," almost looking at it like none of this work has been taken place yet. So everything we've come to draw up is showing not what's there currently, it's what the final product will be after we follow all the proper codes and regulations.

Mr. Wais: (02:38:50):

I see. So it's not drawings of the as-built construction?

Ms. Gregerson:: (02:38:54):

Yeah, we got as-built drawings, obviously, to help with the design and see what's there, topography, elevation, stuff like that. But yes, the end goal was always follow all the proper codes and submit something that would get approval.

Mr. Wais: (02:39:16):

Yeah, I assume that our hearing examiner knows this, but I mean, is it unusual for people to apply for permits after the fact, after work's been done?

Ms. Gregerson:: (02:39:24):

No, you hear of that often.

Mr. Wais: (02:39:32):

Now, did you do any digging, no pun intended, to determine whether there were easements?

Ms. Gregerson:: (02:39:42):

I did go on the GIS website and there's a lot of documents on there. I tried to go through them all and see what was relevant as far as just trying to wrap my head around the general topography and the previous permits and what was said. So I did look through some of that, yes.

Mr. Wais: (02:40:05):

Did you come to the conclusion there was a utility easement through the middle of Cannes and Tammy's garden area?

Ms. Gregerson:: (02:40:13):

I did not. I was of the assumption that that was an old driveway easement that got shifted and into the new driveway location.

Mr. Wais: (02:40:25):

And when you were on site, I mean, you could see that the driveway was in a completely different spot, correct? Yeah. Did you have any notice that there was a water line going through the garden area?

Ms. Gregerson:: (02:40:41):

Well, I know that Can and Tammy have a water vault up there, partly for their fire sprinkler setup, but yes, I wasn't aware of the neighbor's waterline coming through that location.

Mr. Wais: (02:41:07):

Okay. I don't think I have any other questions for you. Counsel for the other parties may or Mr. Obricks.

Examiner Olbrechts: (02:41:15):

Mr. Yip, did you have any questions?

Ms. Yip: (02:41:17):

No, I have no questions for him.

Examiner Olbrechts: (02:41:19):

All right. And Ms. Kiefer?

Mr. Wais: (02:41:20):

No.

Ms. Yip: (02:41:21):

Thank

Mr. Wais: ([02:41:21](#)):

You.

Ms. Yip: ([02:41:21](#)):

Okay.

Examiner Olbrechts: ([02:41:22](#)):

We'll see you all then at one o'clock.

Ms. Yip: ([02:41:24](#)):

Thank you.

Examiner Olbrechts: ([02:41:25](#)):

Thank you for your testimony, sir. All right.

Mr. Wais: ([02:41:27](#)):

Okay, thank you.

Examiner Olbrechts: ([02:41:29](#)):

February 27th, 2026 at 1:00 PM. We're in the Lynn versus Mercer Island case. We still have Mr. Weiss presenting his witnesses, so I believe we're onto the next one. Mr. Weiss, who did you want to call? Oh, Mr. Weiss, you're muted. There you go. Still muted. Yeah.

Mr. Wais: ([02:41:58](#)):

Okay. There we go.

Examiner Olbrechts: ([02:42:00](#)):

There you go. Now we got you. Good.

Mr. Wais: ([02:42:01](#)):

There seems to be a little lag in my Zoom program. Must have had too much carbs at lunch.

Examiner Olbrechts: ([02:42:08](#)):

Yeah.

Mr. Wais: ([02:42:09](#)):

In any event, so we are going to now call our client, Ms. Tammy Lu as our witness. Okay,

Examiner Olbrechts: ([02:42:17](#)):

Great. All right, Ms. Liu, welcome to the hearing. Let me swear you in. Just raise your right hand. Do you swear or affirm to tell the truth, nothing but the truth in this proceeding?

Ms. Liu:: ([02:42:25](#)):

Yes. Yes.

Examiner Olbrechts: ([02:42:26](#)):

Okay, great. All right, go ahead, Mr. Weiss.

Mr. Wais: ([02:42:29](#)):

Sounds good. Ms. Liu, why don't you just introduce yourself to our hearing examiner?

Ms. Liu:: ([02:42:34](#)):

Okay. Hi. Hello, everyone. This is Tammy Liu. My husband, Ken, and I are the owner of a property of 8636 North Mercer Way. We purchased a property in early of 2010. At that time, the house was very old. We later demolished it and built a new home. So part of the property, as we discussed today, has a very steep slope. So managing the drainage, soil stability and the safety has always been a major concern for us. Let me

Mr. Wais: ([02:43:17](#)):

Back up a little bit. So when you purchased the home on Mercer Island, was there already a home there?

Ms. Liu:: ([02:43:25](#)):

It's very old home. That's beautiful.

Mr. Wais: ([02:43:27](#)):

Did you ever live in that home or was it immediately demolished?

Ms. Liu:: ([02:43:32](#)):

No. No, we never live in that home.

Mr. Wais: ([02:43:35](#)):

So when you guys bought the property, you and Ken, did you contract to have contractors and architects and so forth and design and build a new home?

Ms. Liu:: ([02:43:49](#)):

Yes. That's in 2011.

Mr. Wais: ([02:43:52](#)):

Okay. Can you explain that process that you went through in terms of hiring contractors and building a new home and all that?

Ms. Liu:: ([02:44:00](#)):

Yeah. In 2011, we went through a full city permit process to contract our new home. I think the architect is Chandler Steeler. We hired a licensed professional. We obtained all required permit and the plans were reviewed and approved by the city, and all inspection were completed and approved by the city.

Mr. Wais: ([02:44:27](#)):

Okay. Did you have somebody helping you and your husband get the permits into the city for the building and landscaping and all that work?

Ms. Liu: ([02:44:38](#)):

Yeah, I believe that Chandler steel, our architect.

Mr. Wais: ([02:44:43](#)):

I see. Early on, in that first year or two, when you purchased the property and were building the home, did you and your husband have an understanding of what easements existed on the property back then?

Ms. Liu: ([02:45:06](#)):

There was an older driveway that we revised it to the new location.

Mr. Wais: ([02:45:16](#)):

So when you purchased the driveway, or I'm sorry, when you purchased the home, where was the driveway at that time?

Ms. Liu: ([02:45:23](#)):

That in the part of my garden. So right now, in the location we are talking about.

Mr. Wais: ([02:45:30](#)):

Okay. And so when was the driveway physically moved from the middle part of your property or where the garden is now and to the southern edge of the property?

Ms. Liu: ([02:45:44](#)):

That's the part of the process for our build our new home. Yeah, in 2011, I think the access and the utility easement was formally revised and approved by the city.

Mr. Wais: ([02:46:00](#)):

Now, back in 2011, there was a downhill neighbor or waterfront neighbor who owned that property. Who was that back then?

Ms. Liu: ([02:46:10](#)):

That's Mr. Delkin and Mrs. Patricia King.

Mr. Wais: ([02:46:14](#)):

Okay. So when you bought the property, the Keens lived in the house that Molina Lynn now owns?

Ms. Liu: ([02:46:22](#)):

Yes. Yeah, we enter into the agreement with Mr. Del King and Mrs. Patricia King. Yeah.

Mr. Wais: ([02:46:30](#)):

What type of agreement did you enter into?

Ms. Liu:: ([02:46:32](#)):

That's the relocated driving easement to the new location. Yeah.

Mr. Wais: ([02:46:42](#)):

I want you to pause for a minute because I want to just make reference to the ... I'm sorry, I keep calling you arbitrator, the hearing examiner. The exhibit is 2006. It's Applicant's Exhibit 2006, which is the 2011 Relocation Agreement. Now, Ms. Liu, when was your home completed, all the construction, including the rerouting of the driveway?

Ms. Liu:: ([02:47:25](#)):

I think in early of 2013.

Mr. Wais: ([02:47:33](#)):

Okay. So it took more than a year or two to complete?

Ms. Liu:: ([02:47:38](#)):

Yeah, about two years. A little bit more than two years, I think, since the application submit. Yeah.

Mr. Wais: ([02:47:50](#)):

Were you and Can living in the area at the time?

Ms. Liu:: ([02:47:55](#)):

No. No, we live in our previous house.

Mr. Wais: ([02:47:59](#)):

Okay. Where was

Ms. Liu:: ([02:48:00](#)):

That? In the Samamich.

Mr. Wais: ([02:48:03](#)):

I see. When the driveway was moved from its location that it existed in when you purchased the house to its present location, approximately how far was it moved? And you can just give an estimate.

Ms. Liu:: ([02:48:30](#)):

Yeah, I just can go with the estimate. Probably approximately 30 to 40 feet to the south, closer to the southern property boundary.

Mr. Wais: ([02:48:42](#)):

I see.

Ms. Liu:: ([02:48:42](#)):

Yeah, that's a move from the middle of the property. Yeah.

Mr. Wais: [\(02:48:47\)](#):

Was the old driveway paved or asphalted or was it gravel?

Ms. Liu:: [\(02:48:56\)](#):

I forgot. Probably paved the asphalt. I cannot remember since that was really old and that everything is demolished. I

Mr. Wais: [\(02:49:10\)](#):

Understand.

Ms. Liu:: [\(02:49:10\)](#):

Yeah. Yeah.

Mr. Wais: [\(02:49:13\)](#):

When the new driveway was asphalted in its present location, did you and your husband pay for the asphalt work of the new driveway?

Examiner Olbrechts: [\(02:49:24\)](#):

Yes.

Mr. Wais: [\(02:49:25\)](#):

Okay. And that driveway, it serves the waterfront parcel as well, is that right?

Ms. Liu:: [\(02:49:33\)](#):

Yeah, it's a driving easement, yes.

Mr. Wais: [\(02:49:35\)](#):

Okay. And in the prior owners, Dell and Patricia Keen, they would drive down that driveway through your property to access the waterfront parcel?

Examiner Olbrechts: [\(02:49:43\)](#):

Yes.

Mr. Wais: [\(02:49:46\)](#):

Okay. Were you ever aware that there was a water line servicing the Keene property that went through the garden area under the old driveway location?

Examiner Olbrechts: [\(02:50:07\)](#):

No.

Mr. Wais: [\(02:50:09\)](#):

When did you first learn that there was in fact a water line that went under the location of the old driveway?

Ms. Liu:: [\(02:50:20\)](#):

That's in 2021. Before that, we have no knowledge of where the water utility were located. In 2021, litigation was the first time we have heard that claim.

Mr. Wais: [\(02:50:39\)](#):

And so how did you find out in 2021 that there was actually a water line under the old driveway location?

Ms. Liu:: [\(02:50:47\)](#):

That's the Melinda Lin's claim. That's from Melina Lynn's claim.

Mr. Wais: [\(02:50:54\)](#):

Okay. So you understand she had hired somebody to come and locate the water line?

Ms. Liu:: [\(02:51:00\)](#):

Yes.

Mr. Wais: [\(02:51:04\)](#):

Are you aware whether there are other utilities that run under or near the current driveway, such as electrical or cable or phone lines?

Ms. Liu:: [\(02:51:17\)](#):

No. I believe the document, all the utility should run the southern property boundary, that sudden easement. I cannot recall there is a really old document from a Puget Sound Energy, something like that.

Mr. Wais: [\(02:51:45\)](#):

Got it. As far as you know though, the only utility that runs under the middle part of your property where the old driveway was is just the waterline that goes to Ms. Lin's home?

Examiner Olbrechts: [\(02:51:58\)](#):

Yes.

Mr. Wais: [\(02:52:10\)](#):

Tell me about, or actually really tell Mr. Obrex, our hearing examiner, about why you wanted to do a garden and make improvements to the area up slope of your home near West Mercer Way.

Ms. Liu:: [\(02:52:30\)](#):

Yeah. Since this area is just at the beginning, this area has a really steep slope and that's the cost dangerous to our house. And so if we keep as the previous condition, we worry about the safety. So we have a slow storm water runoff and that's made our house is very dangerous. So that's why we want to make that area safe. That's our purpose to do this project.

Mr. Wais: [\(02:53:20\)](#):

So before you did the landscaping and hardscaping work, what would happen if there was a heavy rainstorm that we get of course here a lot in the Pacific Northwest?

Ms. Liu: [\(02:53:36\)](#):

Yeah. Since in that area, there are several really tall trees and there was one tree used to lean to our house, I mean, or my guest house, and I think we got the city permitted to remove it. And also the soil erosion, that's a big problem and water, slow water runoff, that's another big problem. So yeah, that's why we want to change that condition.

Mr. Wais: [\(02:54:16\)](#):

When it would rain heavily, would dirt or like mulch or beauty bark, as it's called, would that run onto the paved portions or the driveway?

Ms. Liu: [\(02:54:27\)](#):

Yes, to our pathway.

Mr. Wais: [\(02:54:33\)](#):

Would you then have to sweep it or shovel it back up into the garden area?

Ms. Liu: [\(02:54:39\)](#):

Yes. Yeah. We ask our landscape helper to come to clean that area all the time, especially after heavy rain.

Mr. Wais: [\(02:54:51\)](#):

I see. So when did you start the project that's now at issue in this hearing? When did you begin the work?

Ms. Liu: [\(02:55:03\)](#):

Yeah, we began the work in the late of 2022. So we wanted to stabilize the slope and improve the safety. At that time, our landscaper contractor whose name is Mark Koster, who is our landscaper for more than 10 years, initially advised us and without permit to do this project, that's based on his experienced work in the bellweil and the other city. And so when my project was nearly completed and Molina complained to the city, so we immediately stopped and hired licensed professionals, Mr. Gary Mark and Mr. Chris Gregson to prepare proper design, engineering and permit. So our goal has always been full complaints with the city code.

Mr. Wais: [\(02:56:22\)](#):

Before the city had you stopped the project, did you know if any permits were required?

Ms. Liu: [\(02:56:31\)](#):

No.

Mr. Wais: [\(02:56:34\)](#):

Did your landscape contractor who did the work initially, did he have at least professional looking architectural drawings of what was going to be done?

Ms. Liu: ([02:56:49](#)):

I think it sounds like he consulting, he's a architect design or some landscape design. Since I give him authorization to do this project, so I will let him handle everything.

Mr. Wais: ([02:57:10](#)):

I see. Was it a situation where he provided you with a bid or cost estimate to complete the project and then you agreed to it and he got to work?

Ms. Liu: ([02:57:23](#)):

Yeah. Since he works for me more than 10 years, I trust him. At that time, I did not bid with the other contractor.

Mr. Wais: ([02:57:33](#)):

I see. Did this contractor, I heard his first name was Mark. I didn't fully understand the last name. What is his last name?

Ms. Liu: ([02:57:44](#)):

I think Acosta.

Mr. Wais: ([02:57:46](#)):

Acosta. Got it. Did Mr. Acosta also build the pergola?

Examiner Olbrechts: ([02:57:57](#)):

Yes.

Mr. Wais: ([02:57:58](#)):

Did he also assemble the greenhouse that's next to the pergola?

Ms. Liu: ([02:58:03](#)):

No, I hired a professional. Yeah, especially for this kind of greenhouse. I mean, yeah.

Mr. Wais: ([02:58:14](#)):

The greenhouse, it's mostly glass panels held together with a frame, is that right?

Ms. Liu: ([02:58:19](#)):

Yes. This greenhouse I purchased from Costco. So Costco recommended me the professional assembler.

Mr. Wais: ([02:58:29](#)):

Can the greenhouse be ... I understand it can be moved, right? But it has to be disassembled because of all the glass panels?

Ms. Liu:: [\(02:58:39\)](#):

I don't know.

Mr. Wais: [\(02:58:40\)](#):

Okay, that's fair. So what communications did you have with Gary Moe and Chris Gregerson to help the city get approval on the project?

Ms. Liu:: [\(02:58:58\)](#):

Oh, that's a lot.

Mr. Wais: [\(02:59:02\)](#):

If you could summarize.

Ms. Liu:: [\(02:59:04\)](#):

Yes, since we hired the professionals, I will let Mr. Gregson to cooperate with all the professional we need. So we keep send the email and share the information and then know the process and the step that the city request. Yeah. I know that Mr. Mark sent several times to the application based on the city request.

Examiner Olbrechts: [\(02:59:47\)](#):

And

Ms. Liu:: [\(02:59:47\)](#):

During the process, we hired all the professionals that city based on the city request.

Mr. Wais: [\(02:59:58\)](#):

I just want I kind of go through the history of ownership. After Dell and Patricia Keen sold their property, there was a gentleman named Mr. Ma who owned the property for a period of time, is that right?

Ms. Liu:: [\(03:00:12\)](#):

That's correct.

Mr. Wais: [\(03:00:13\)](#):

And then in 2017, Mr. Ma sold the waterfront parcel to Molina Lynn, is that correct?

Ms. Liu:: [\(03:00:23\)](#):

Yeah. Yes.

Mr. Wais: [\(03:00:27\)](#):

Did you and your husband, Ken, have any issues working with the first property owner, the Keens, in terms of easement issues?

Examiner Olbrechts: [\(03:00:37\)](#):

No.

Mr. Wais: [\(03:00:40\)](#):

Did you and Ken have any issues working with Mr. Ma in terms of easements?

Examiner Olbrechts: [\(03:00:46\)](#):

No.

Mr. Wais: [\(03:00:48\)](#):

Did the disputes regarding the easements and use of the property only arise after Ms. Linn purchased the property in 2017?

Ms. Liu: [\(03:00:59\)](#):

Say that again?

Mr. Wais: [\(03:01:00\)](#):

I'm sorry. Did disputes only start to happen after Ms. Linn brought the property?

Ms. Liu: [\(03:01:05\)](#):

That's correct.

Mr. Wais: [\(03:01:21\)](#):

Sorry, I'm just looking at my notes here. Over the last five or so years, you've communicated with Ms. Lynn quite a bit, but by email, is that correct?

Ms. Liu: [\(03:01:39\)](#):

You mean for what purpose?

Mr. Wais: [\(03:01:42\)](#):

Well, with easement issues and access issues, have you communicated with Ms. Lynn by email?

Ms. Liu: [\(03:01:51\)](#):

Probably at the beginning we have an email communication, but most of communication we authorized Mr. Douglas Scott to communicate with Ms. Lin.

Mr. Wais: [\(03:02:08\)](#):

I see. Recently, that is just this year, Ms. Lynn and you were emailing about having a utility locate company come up to investigate a leak of the waterline. Do you recall that?

Examiner Olbrechts: [\(03:02:23\)](#):

Yes.

Mr. Wais: [\(03:02:24\)](#):

Can you please tell our hearing examiner ... I don't expect you to tell exactly every word that was said, but just tell them how that communication went and what the point was.

Ms. Liu:: ([03:02:33](#)):

Yeah. I think in the middle of December last year, Ms. Lin sent the email to my husband and forwarded the city's email for the water pipe leaking issue. Since that time is our holiday season. And so we've arranged our holiday schedule once a long time ago. So I reply her email and I said I give her my available timeline for the inspection come. And at the first couple of email, she gave me the schedule is based on her availability. So that did not work for me. So I give her the timeline, not the specific date, like afternoon from one to four or something like that. But finally, I cooperate and allow the inspection to come. The first inspection was on January 14th of 2026. And the result from the CNI, and that shows no leak was found on my property. And the technician told me clearly the leaking is in Molina's property.

([03:04:12](#)):

So the inspection was inconclusive.

Mr. Wais: ([03:04:18](#)):

Now understand that Molina Lynn emailed you again and wanted another inspection which took place just last week. Is that right?

Ms. Liu:: ([03:04:27](#)):

Yes. Yes. I think that as she mentioned, that happened on last Thursday, February 18th. Yep. I still allowed it. Yeah.

Mr. Wais: ([03:04:40](#)):

Did you, in your communications, put any limitations on that inspection? Yes.

Ms. Liu:: ([03:04:46](#)):

Yes.

Mr. Wais: ([03:04:46](#)):

What were those limitations?

Ms. Liu:: ([03:04:48](#)):

Yes. I said that's the only purpose for the leak detection. That it would not be used in the administrative hearing. However, the inspection did not search for leak. It was used to locate the waterline and document my garden construction. And Ms. Lin entered my property filming and taking photographs without my permission, which I had clearly prohibited in my email several times. So the leak inspection was actually a pretext to collect the evidence for this hearing. And the test result is still no leak found in my property.

Mr. Wais: ([03:05:49](#)):

I want to ask you about your knowledge of easements. Do you know where the utility easements are on your property that service Ms. Lynn's property?

Ms. Liu:: (03:06:07):

No.

Mr. Wais: (03:06:08):

Okay. Do you believe that the legal documents that are recorded with the county and the title company, those are the best demonstrate where the easements are?

Ms. Liu:: (03:06:22):

Yes, I believe so.

Mr. Wais: (03:06:27):

To your knowledge, has there ever been a utility easement that exists through your garden area?

Examiner Olbrechts: (03:06:35):

No.

Mr. Wais: (03:06:40):

Do you believe that the ... Well, let me ask you this. When you had the contractor, Mark Acosta, do the work in your garden area and build the different height retaining walls, did you build any of the retaining walls for the purpose of obstructing Ms. Linn's access to the water pipe?

Ms. Liu:: (03:07:08):

No. Since I also don't believe this area is a utility easement.

Examiner Olbrechts: (03:07:16):

Sure.

Ms. Liu:: (03:07:18):

And my purpose for this, as I said, a purpose for this project to prevent the soil erosion and the slow storm water run off, that's to protect my home and protect the neighboring property downhill. That's my purpose, is a safety major purpose.

Mr. Wais: (03:07:45):

Despite the existence of what I would call a very, very short retaining wall, if Ms. Linn needed to access that for actually servicing her water line in the future, would you allow that?

Ms. Liu:: (03:08:00):

No. Since this is not easement area, I mean, the utility easement area, I don't think she need to walk into my property. If there's some technical issue, we need a professional to fix anything. I think they have so many method to detect the leaking and repair the problem, use the new technique just under the ground.

Mr. Wais: (03:08:33):

So you understand that companies could use trenchless technologies to repair or replace the water line even in its current location?

Ms. Liu:: ([03:08:48](#)):

Yes. If the waterline is still in this position, but we have a question how we'll use the technique to do that. I need to know the detail about the method, how to do that.

Mr. Wais: ([03:09:10](#)):

Let me ask you this. If Ms. Linn were to redirect or reinstall her fresh waterline 30 feet to the south, such that it was adjacent to or under the existing driveway, would you allow that?

Ms. Liu:: ([03:09:30](#)):

I will. That's based on the 2011 agreement with Mr. Delkin and Mrs. Patricia King. Yeah. And also that permit approved by the city, we will allow.

Mr. Wais: ([03:09:59](#)):

Ms. Liu, I don't think I have any other questions for you. I think we covered what we need to. Mr. Yip may ask you questions and our hearing examiner may ask you questions, and Ms. Kiefer may ask you questions.

Examiner Olbrechts: ([03:10:12](#)):

Okay. Mr. Yip?

Ms. Yip: ([03:10:14](#)):

Yes. I just have a few questions to follow up. Okay. So I will just bring up City Exhibit number nine and I will share my screen just a minute. Share screen. Okay. Ms. Liu, do you recognize this drawing?

Ms. Liu:: ([03:10:42](#)):

Yes.

Ms. Yip: ([03:10:44](#)):

Okay. And can you describe what the drawing is?

Ms. Liu:: ([03:10:52](#)):

That's the application to the city to get the permit for my project.

Ms. Yip: ([03:11:02](#)):

Okay. And in this diagram, would you agree that some of the gazebo and the greenhouse seem to be in the front yard setback?

Ms. Liu:: ([03:11:14](#)):

I will follow the city's request.

Ms. Yip: ([03:11:20](#)):

I'm sorry, can you repeat that? I don't quite follow.

Ms. Liu:: ([03:11:23](#)):

I will follow the city's request.

Ms. Yip: ([03:11:25](#)):

And what is the city's request?

Ms. Liu:: ([03:11:28](#)):

It's based on the city's ... It's under the approved permit.

Ms. Yip: ([03:11:35](#)):

Okay. But that's not what I'm asking. I'm asking just according to this diagram, which I understand you submitted, does it show part of the buildings being in the setback?

Ms. Liu:: ([03:11:48](#)):

Can you indicate the point and the area?

Ms. Yip: ([03:11:54](#)):

Yeah. So just around this area

Ms. Liu:: ([03:11:57](#)):

Right here. I think if you ask the question, I think this should be answered by Mr. Mock. I'm the technical person. I'm not the professional person. I don't know the detail should meet the city's code or something like that.

Ms. Yip: ([03:12:13](#)):

Okay. And then for this area here to the northwest, I suppose, my understanding that what this shows here within five feet of that boundary is the retaining wall?

Ms. Liu:: ([03:12:33](#)):

Yes, I think so.

Ms. Yip: ([03:12:34](#)):

Okay. Is the retaining wall there right now?

Ms. Liu:: ([03:12:39](#)):

Yes.

Ms. Yip: ([03:12:40](#)):

Okay. Now I'm just going to turn to exhibit number 23. I will represent this is the approved plans, just so that everybody would know here it says review for code compliance. This is Exhibit 23. Do you see this exhibit?

Ms. Liu: ([03:12:56](#)):

Let me see. Yes.

Ms. Yip: ([03:13:00](#)):

Okay. So would it be correct to say that the retaining wall that used to be in that north five foot area, it shows that it will be removed from that?

Ms. Liu: ([03:13:16](#)):

Yes. I saw that from the drawing, yes.

Ms. Yip: ([03:13:19](#)):

Okay. Can you describe how you plan to remove the retaining wall from the area?

Ms. Liu: ([03:13:26](#)):

No, I'm not the professional. I don't know how to do that.

Ms. Yip: ([03:13:29](#)):

Okay. But would it be fair to say that whatever the city requires you will follow?

Ms. Liu: ([03:13:38](#)):

Yes, we will follow the city's request.

Ms. Yip: ([03:13:41](#)):

Okay. And then just one more thing I want to clarify. Were you involved in the prior 2021 litigation with Molina Linn?

Ms. Liu: ([03:13:52](#)):

I think so.

Ms. Yip: ([03:13:53](#)):

Okay. And have you previously, prior to this appeal, have you seen the orders from that lawsuit?

Ms. Liu: ([03:14:09](#)):

Yes.

Ms. Yip: ([03:14:10](#)):

Okay. Okay. Just a couple more questions. Can you describe what your occupation is?

Ms. Liu: ([03:14:28](#)):

Occupation?

Ms. Yip: ([03:14:29](#)):

Yeah. What's your job? What's your employment?

Ms. Liu:: (03:14:31):

Yeah, I'm a self-employee.

Ms. Yip: (03:14:33):

Okay. But in what field?

Ms. Liu:: (03:14:36):

We do the import and export.

Ms. Yip: (03:14:38):

Okay. Are you an engineer?

Ms. Liu:: (03:14:41):

No, I'm not.

Ms. Yip: (03:14:42):

Okay. And are you a surveyor?

Ms. Liu:: (03:14:44):

No, I'm

Ms. Yip: (03:14:45):

Not. Okay. And do you have any experience in terms of locating or maintaining water lines?

Examiner Olbrechts: (03:14:53):

No.

Ms. Yip: (03:14:54):

Okay. I have no further questions.

Examiner Olbrechts: (03:14:57):

All right. Ms. Kiefer, sorry.

Ms. Kiefer: (03:15:00):

No questions for me. Thanks, Ms. Lu.

Examiner Olbrechts: (03:15:03):

Mr. Waste, any redirect?

Mr. Wais: (03:15:09):

Yes. Just briefly. Ms. Liu, Mr. Yep, he showed you images, plans showing the retaining wall that's along the north boundary that goes within the five-foot easement area. Do you recall him asking about that?

Examiner Olbrechts: ([03:15:31](#)):

Yes.

Mr. Wais: ([03:15:34](#)):

Were those retaining walls built for the purpose of limiting anybody's access to a utility easement?

Ms. Liu:: ([03:15:45](#)):

No. They said the purpose only for the safety, because that has a very steep slope in that area. It's a dangerous cost of problem all the time. So I think that if we won't change the condition in that area, that will cause a big issue, not only to my house and also to my neighbor's property.

Mr. Wais: ([03:16:19](#)):

Okay. Do you know if, in fact, the retaining walls that are presently constructed within the five-foot wide easement area to the north, do they actually go over any known utilities?

Ms. Liu:: ([03:16:36](#)):

No. From my knowledge, there's no any utility on that side.

Mr. Wais: ([03:16:43](#)):

So to the best of your knowledge, the easement area that's designated on the north boundary of your property doesn't actually have any utilities going through it, is

Ms. Liu:: ([03:16:56](#)):

That right? That's right.

Mr. Wais: ([03:16:57](#)):

Yeah. And it's your understanding that the only utilities that go across your property are in the south boundary line as well as the one singular waterline through the garden area. Is that right?

Ms. Liu:: ([03:17:11](#)):

That's correct.

Mr. Wais: ([03:17:13](#)):

Okay. Nothing further.

Examiner Olbrechts: ([03:17:16](#)):

All right. Thank you, Ms. Liu, for your testimony. Thank you for sharing your information today. All right, Mr. Weiss, I guess you have one final witness, right?

Mr. Wais: ([03:17:27](#)):

I think he was listed. I think it's a gentleman from the title company, and I do not intend on calling him.

Examiner Olbrechts: ([03:17:33](#)):

Okay, so you're finished?

Mr. Wais: ([03:17:34](#)):

Unless he's on this call, but I don't see him.

Examiner Olbrechts: ([03:17:37](#)):

Okay. All right. Well, as I said, I think that after applicant is general public testimony. So at this point then I'll just ask if anyone from the public wants to say anything. And Ms. Estrada, is there anybody from the public that's participating virtually today? Can you tell?

Examiner Olbrechts:0 ([03:17:58](#)):

We do have, excuse me, one person, a Meg Lloyd.

Examiner Olbrechts: ([03:18:03](#)):

Oh, right. And Ms. Logan, if you want to say anything, just click on your raise hand button and then we'll call on you and make sure you can comment. All right. Not seeing that you're taking us up on that, that's just fine. All right, we'll move on then to the rebuttal portion of the hearing at this point. And now we first go back to Mr. Yip as appellant. And after that, the city and then finally the applicant.

Ms. Yip: ([03:18:26](#)):

Okay. For the closing?

Examiner Olbrechts: ([03:18:27](#)):

Yeah, this is rebuttal. At this point, we'll have a separate closing.

Ms. Yip: ([03:18:31](#)):

Oh, for a rebuttal. We don't have any rebuttal case.

Examiner Olbrechts: ([03:18:35](#)):

Okay. What about the city? Any rebuttal evidence?

Ms. Kiefer: ([03:18:38](#)):

No rebuttal from us either.

Examiner Olbrechts: ([03:18:39](#)):

Okay. And finally, Mr. Ways, applicant? I guess not.

Mr. Wais: ([03:18:42](#)):

Yeah, I just concluded. Yeah.

Examiner Olbrechts: ([03:18:46](#)):

Okay. And again, if anyone out there from the public, again, click on your virtual hand. All right, so we'll move on to closing statements. Then applicant goes first. Mr. Yip, then the city, and then the appellant finally, or excuse me, Mr. Weiss, sorry. Yeah, you get to go first on closing.

Mr. Wais: [\(03:19:06\)](#):

Just to be clear, because I think you might've misspoke there, but the appellant goes first, is that correct?

Examiner Olbrechts: [\(03:19:11\)](#):

Oh, according to the ... Yeah, no, I know it's weird. According to the hearing exam rules, it's the applicant goes first. Yeah. Yeah. Appellant since they have the burden of proof gets to go last.

Mr. Wais: [\(03:19:23\)](#):

I see.

Examiner Olbrechts: [\(03:19:24\)](#):

Yeah.

Mr. Wais: [\(03:19:25\)](#):

Well, in that case, I know there's not per se time limitations on this, but since I get to go first, that at least in superior court or district court matters means I also get to go last. So what I'd like to do is just reserve a few minutes for the end. And so- Okay.

Examiner Olbrechts: [\(03:19:46\)](#):

It's like I said, these are the hearings. I didn't put these rules together, but like I said, since the appellant has the burden of proof, they really get to go last, it's just not a dual. You don't get two shots at doing closing, but I'm very flexible on that. If you see a need to say something after the other parties have completed their comments, that's fine. I mean, as long as the appellant goes last, I'll always give them that chance.

Mr. Wais: [\(03:20:11\)](#):

I understand.

Examiner Olbrechts: [\(03:20:12\)](#):

Okay.

Mr. Wais: [\(03:20:12\)](#):

Well-

Ms. Yip: [\(03:20:14\)](#):

Yeah, we want to stick to the hearing examiner rules, and if they're going last, we don't agree to let them reserve any time. Yeah.

Examiner Olbrechts: [\(03:20:23\)](#):

Yeah. Well, and like I said, I mean, if Mr. Weiss, after you're done with your comments, Mr. Gibb wants to add, I'll probably let him, but then I'll let you do a serve rebuttal, essentially. You'll still- I understand. And I

Mr. Wais: [\(03:20:36\)](#):

Appreciate

Examiner Olbrechts: [\(03:20:38\)](#):

That. Yeah, sure. Go ahead.

Mr. Wais: [\(03:20:41\)](#):

So let me see here. Don't have a ton of time to prepare my thoughts here, but I got them.

[\(03:20:54\)](#):

So let me start with this comment. The appellant, Ms. Lynn, and her attorney have throughout this hearing today and in their briefing referred to a middle easement. That's a misnomer. There is no middle easement. Mr. Yip and Ms. Linn keeps saying there's a middle easement, but in fact, that's not supported by any legal documents. So it is my client's position and my position that no middle easement exists. It's calling a space on a map an easement over and over and over doesn't make it an easement. The only thing that does, particularly with a short plat is the short plat document itself, and it has to be in writing to comply with the statute of frauds. It has to be signed off by the property owners, and it has to be approved by the municipal agency, whether that's a city, county, et cetera. And in this case, there are utility easements that exist.

[\(03:22:05\)](#):

There is an access easement that exists, but none of those exist in the garden area that's at issue here.

[\(03:22:16\)](#):

It's beyond dispute that there is in fact a waterline that goes through the garden area, but the waterline doesn't mean that there is a utility easement by virtue of its existence. They're not claiming prescriptive easement or anything of the sort. They're just saying that there's an easement here. In fact, the documents don't support that, nor does the history of the documents on the title of this property. I've got a little slideshow presentation here, so I'm going to try and do a screen share. I'll make it quick share. So that's just my cover slide there. Are you able to see this?

Examiner Olbrechts: [\(03:23:02\)](#):

Yes.

Mr. Wais: [\(03:23:03\)](#):

Okay. So first and foremost ... Oh gosh, these sharing buttons are in the way. Okay, now I can move them. First and foremost, so what created these two parcels of property from one property was the 1978 short plat, which is recorded there under number 7812180972. This is the document that creates these two properties from one. And so this is what's controlling first and foremost and the first thing you should look at. I trust that because you do these hearings and you understand the law, you've used to looking at some short plats and other easement documents. I want to direct your attention primarily at the documents that control the property in this case. So the 78 short plat, which is exhibit number 2001, and I think the city also included as one of their exhibits, so it's in the record twice, but the short plat creates Parcel A, which is my client's property.

[\(03:24:13\)](#):

Ms. Lin's property is parcel B. And it says, which I've highlighted here, "Subject to an easement for driveway and utilities across the southeasterly 10 feet in width." So the critical thing here is the short

plat creates an easement for driveway and utilities. So it's conjunctive. It's both things across the southeasterly 10 feet.

[\(03:24:41\)](#):

And so when you go down and then look at the short plat map that was associated with the short plat, so again, 1978, same recording number, it shows a singular axis and utilities easement along the southeasterly border. So this is a document I asked Ms. Lynn about in her testimony. This is the short plat map. It's poor quality, unfortunately, but I think we can see that on the south here where my cursor is, where it highlights says drive and utility easement. And actually here, I don't know if you can still see my cursor, but the word new is there. So it says, so the significance is this, in 1978, this parcel was divided and they created a new drive and utility easement. However, what previously existed was an existing drive, and that's what represented with the dashed yellow, or sorry, the dashed lines and the words existing drive.

[\(03:25:39\)](#):

So the significance is that short plat both describes a singular access and utilities easement and it shows a singular access and utility easement. So that's what exists, period.

[\(03:25:55\)](#):

And that easement exists, according to the description, in the southeasterly 10 feet in width. So what's also important in interpreting these documents and determining where the easements is are the declarations. Now, the declarations were recorded in 1981, but they're actually signed in December of 1979 by the then property owners, parcels A and B. And so the declarations, and by the way, these are exhibits 45 of the cities in 2004 for the applicants, but so the declarations expressly define three easement areas, two of which are utilities and one is the driveway. So the declarations, and this is a little bit inconsistent with the short plat, which is part of the confusion here. So the declarations describe the vehicle access as vehicular pedestrian and other ingress and egress by the owners of the waterfront parcel, their guests and invitees over strip of land lying six feet on each side of a line denominated the driveway center line on the attached Exhibit A.

[\(03:27:25\)](#):

So in other words, there's a 12-foot wide driveway that provides an access easement as depicted on Exhibit A.

[\(03:27:36\)](#):

The declarations ... So this note, this is paragraph A4A. Paragraph 4B describes the utilities as does C. B describes the utilities easement for water, sewer, phone, gas, electricity, and other utilities over five feet in width running parallel to the northern boundary, and C describes an easement for water, sewer, gas, electricity running on the southerly boundary. So in other words, oops, A describes the driveway that existed. B and C described the northerly and southerly utility easements. Significantly, D under the same paragraph, 4D describes the duties with regard to landscaping on the easement areas. And D states, "The owner of the water..." I cut it off because of the way I had to edit it into this, but it says, "The owner of the, " I think it says, "Upland parcel shall have exclusive control over the landscaping of the easements described under subparagraphs 4A, B, and C." So again, shall have exclusive control over the landscaping provided, so that means conditioned upon 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 the physically or to physically enclosing such an easement.

[\(03:29:14\)](#):

So this is a writing, it's an agreement. That's what declarations are. They're agreements between property owners to be bound by the declarations. And here in paragraph 4D, it says, "Upland owner gets control of the landscaping and they can do as they please so long as it's not done for the purpose of denying access or physically enclosing any such easement." So I want to table that paragraph for now, but I want you to have in mind that the intent matters and the actual availability of the easements matters. That said, the only utility easements describe in the declarations and the short plat exist on the northern and southern boundary. You'll notice that none of these describes utility easements existing through the middle of the property, a. K.a. The garden area, not described in the short plat, not described in the declarations.

[\(03:30:24\)](#):

Now, Exhibit A to the 1981 declarations is a survey. And this, Mr. Ulbrich, unfortunately is the root of all our problems in this case. And so I want to offer some explanations to you so that it makes sense. So the survey that's Exhibit A to the 1981 declarations was actually completed, and you can see it in the documents, but it was completed, I want to say, I think it was in April or May of 79. So it was done after the short plat, but before the declarations were recorded, and it was made in exhibit to the declarations. The problem in the confusion to the city and Ms. Lynn and her counsel is that this Exhibit A describes the center line. Again, this is the one that's described in the declarations, and it says, "12-foot easement for ingress, egress, and utilities." The problem is this last ampersand utilities that creates all the problems here.

[\(03:31:41\)](#):

Now, this survey means that the surveyor who drew this wrote, "And utilities." What's critical is he also, or he or she, I don't know the gender, but also shows the utility easement on the south and the utility easement on the north. But unfortunately, the surveyor in 1979 wrote 12-foot easement for ingress, egress, and utilities. Now, to be clear, a survey doesn't create an easement. An easement is only created by a short plat or upon agreement by the parties, but the descriptions in these declarations, that is the paragraphs 4A, B and C are completely consistent with the survey except for the notation and utilities. So it's my firm belief, and I believe it's a fact that this and utilities was essentially included by the surveyor because he or she didn't know, and it is not in any way determinative of there being a utilities easement in the middle of the property.

[\(03:32:57\)](#):

Look through all the documents, all the title documents, everything you see, you won't find something creating a utility easement other than this notation by the surveyor who put it in the drawing. So I mean, I obviously wrote the words in red and put the arrow. This is the only place utilities are indicated to be in the middle of the property. Other than this, I'll call it a scrivener's error, there's nothing that creates it. And I don't believe the case law, the statutes, anything supports the notion that a utility easement is created by a surveyor's scrivener's error. There has to be agreement by the parties, the landowners, and there has to be approval by the city in this case, which was done in the short plat. So I want you to understand what the confusion is from, and it's from this and utilities on the survey that was done in 1979.

[\(03:33:56\)](#):

I want to point out that the survey corresponds though, otherwise with the declarations, paragraph A, B, and C because when you look at it, and again, this is unfortunately kind of a poor quality image, but A describes the driveway easement, and it says right here, easement number one, B describes the northern easement. And when you look here, it says utility easement number two that's highlighted yellow, and C describes the utility easement to the south, and that's what it says down here. And it's not

even legible on this copy, but it says easement number three. Okay. Yeah, it does says easement number three. You can't read it. I have a better copy, but my point is that this was drawn or these declarations were written up to correspond with the Exhibit A, which is the survey, and it does correspond in every way except for the notation of the and utilities that's put on the survey only, but not described in the declarations, nor is it described in the short plat.

[\(03:35:12\)](#):

So fast forward, oh, let's see, 20, 30 years. Yeah, so we fast forward 30 years to 2011, and my clients have purchased the property. They've torn down the old house, they're building a new house, and they have to go through a very intensive all- encompassing permitting process to do this, including moving the driveway. The old homeowners of parcel B were Dell and Patricia Keen. And my clients at the time said, "Okay, we got to move the driveway because we don't want it in the middle of what's now the garden area. We want it along the southern border." And so they drafted up this easement amendment with the Keynes, which is exhibit 2006. It says, "We hereby define, declare and dedicate an easement for vehicular, pedestrian, and other ingress and egress and installation and installation and maintenance of utilities over a portion of the above described property as described on Exhibit A and graphically represented and attached exhibit B to Dell and Patricia Keen." So this amendment purported to move both the driveway and the utilities, but I don't believe it wasn't a concession that there was a utility easement.

[\(03:36:40\)](#):

It was just saying, "Hey, we're moving the driveway and utilities." And it was really to check the boxes required for approval of their build. You need to understand that because they needed to have that moved, which subsequently wound up being at issue later in 2017. So this is Exhibit B to the amendment here. So this is what was attached. And so this is the graphic representation in 2011 that my client, Tammy and her husband Kan submitted to the city of Mercer Island and was approved and it's a new drawing and it legally describes the driveway as it exists presently. And it says here, "Access and utility easement, true point of beginning." And so it shows in 2011 under their plans that the new driveway's going to exist where it presently is and that utilities are going to be where they should be, which is under or adjacent to the roadway or driveway.

[\(03:37:52\)](#):

Fast forward to 2017, six years later, and my clients had entered into another agreement with the subsequent property owner, but before Ms. Linn purchased. And sorry, I know this is submitted as our exhibits, but I can provide you the number. I meant to put it on here. But the city of Mercer Island at some point needed, they were unclear about the 2011 easement, so they needed to extinguish the old one and make it clear where the driveway was. And so the legal documents say that there was this agreement entered into ... I'm sorry, I think it was by Mr. Ma. Yeah. So it was between Can and Tammy and Mr. Ma, and they entered into a 27 agreement that was intended to extinguish the old ingress egress easement, and it did not affect utilities. And it states, "Whereas the location of the driveway through the Chew property is set forth in the May 17, 1983 rise boundary line revision and recorded with King County, whereas over the last several years, the driveway has been relocated and paved in its current location and is now being used by both parties.

[\(03:39:13\)](#):

Whereas because the parties have slightly altered the location of the driveway as it approaches North Mercer Way, they desire this driveway relocation easement to cancel the previous location of the driveway and to adopt in its place the new location of the driveway easement." So 2017 agreement was

all about the driveway, and it was really to iron out and make clear that it existed where it was with permission and with agreement of the parties.

[\(03:39:46\)](#):

So now Ms. Lynn filed this appeal, and this is a screenshot taken from her appeal documents, and she had done these red lines as part of her appeal to the city and says, she writes, "Utility easement lines are taken out and this version dated nine eleven 2025 need to add back shown in four / four / 2023 version of survey." So Ms. Lynn, by virtue of her appeal is asserting that there's an easement here, a utility easement line, and she's saying that, "Hey," she's essentially suggesting that Tammy and Can either surreptitiously or inadvertently, I don't know, removed the lines showing a utility easement, but that's just not true because there never has been a utility easement in the middle of the property. Again, we know there's a waterline, but it doesn't mean that there's a utility easement. So Mr. Yip and I'm sorry, Ms. Lin's statements, the middle easement, the middle easement, they're just saying rhetoric that doesn't actually make it so.

[\(03:41:02\)](#):

The only thing that makes it so if there's a utility easement in the middle is the short plat. This is the document that dictates where the utility easement is, and that short plat document's essentially ratified by the language in the declarations that says, "Hey, there's a southerly utility easement and a northerly utility easement. There is nothing indicating a utility easement exists over the middle of the property." So the fact that there's an existing waterline does not create an easement at that location. Again, this is a red herring.

[\(03:41:53\)](#):

This drawing on the left of this slide is from the locate company that came out last week, and they traced the location of the waterline, which is fine. We know where it's at. We don't dispute where it's at. We're just saying that it exists in a location where ... I'm sorry, I'm waiting for it to come back online. Did my screen go black from what you can see?

Examiner Olbrechts: [\(03:42:27\)](#):

No.

Mr. Wais: [\(03:42:32\)](#):

Oh, shoot. Sorry, I'm having some kind of technical ...

Ms. Kiefer: [\(03:42:38\)](#):

We did lose video of you, Mr. Weiss.

Mr. Wais: [\(03:42:43\)](#):

Okay. Can you hear me?

Examiner Olbrechts: [\(03:42:45\)](#):

Yeah, I can hear you.

Mr. Wais: [\(03:42:47\)](#):

Oh, weird. Give me a second, please. I don't know. I'm going to log off and back on because I'm having some kind of weird computer issue.

Examiner Olbrechts: (03:43:10):

Okay.

Mr. Wais: (03:43:10):

Are you still?

Examiner Olbrechts: (03:43:11):

To do that. I'll be right back myself.

Mr. Wais: (03:43:13):

My apologies. What the heck? Crap. Oh, really?

Examiner Olbrechts: (03:44:36):

Okay. I can see you now.

Mr. Wais: (03:44:38):

Okay. Yeah, my apologies about that.

Examiner Olbrechts: (03:44:42):

All right.

Mr. Wais: (03:44:44):

Okay. I think that I exceeded my bandwidth.

Examiner Olbrechts: (03:44:58):

So you're back on now?

Mr. Wais: (03:44:59):

Correct. Yeah. So I was actually on my last slide,

Examiner Olbrechts: (03:45:03):

And

Mr. Wais: (03:45:03):

I'll wrap up here shortly. Okay.

(03:45:07):

So getting back to where I was, so the last slide shows where the water line locates, and the picture to the right is one of the photographs submitted by Ms. Linn and her utility locate company. And we can see that the line runs under approximately two foot tall, two paver ... Or not paver stones, cinder block stones, but it doesn't interfere with it. We know from her prior declaration, that is Ms. Lynn's prior declaration, that the pipes can be accessed, repaired, and managed, essentially using trenchless technology, and my client has allowed her on multiple occasions, twice within the last two months even, to come on and do whatever's needed to investigate and repair leaks, albeit apparently unsuccessful at

repairing the leak and willingly serve to provide evidence for this hearing. In terms of your decision, Mr. Ulbrich, am I saying your name correctly?

Examiner Olbrechts: [\(03:46:34\)](#):

Yeah.

Mr. Wais: [\(03:46:34\)](#):

Okay. Thank you. In terms of your decision, I don't think you need to decide whether there was an easement or not an easement, but my understanding of your scope of view and the obligation of you as the hearing examiner is to determine whether the city reasonably granted the permit based on what it knew and what it presently knows about the property. So the city didn't know that there was an easement, and the reason that the city didn't know that there was an easement in that area is because there is not, in fact, an easement. Or nothing supports the notion that there's a utility easement other than the 1979 surveyors notation of and utilities. That's literally the thing that supports the notion that there's an easement there. You won't find anything else that supports that. Now, it wasn't substantial error that the city committed in granting it.

[\(03:47:40\)](#):

In fact, it was appropriate for the city to approve the garden permit. And let's take a step back and look at what this really is. It's a homeowner trying to stabilize their slope, trying to make a level area so that water doesn't run off and make it look nicer and be more functional. This wasn't done for some nefarious purpose. It certainly wasn't done to obstruct access to any utilities, and that's important that are the declarations at play in this case.

[\(03:48:11\)](#):

But the city didn't commit any error, so I think you can affirm their approval of the building permit and allow my client to finally move forward with her garden project to rectify anything that is out of compliance, including the pergola setback and so forth, so that she can complete her project. That's all my client really wants to do, and there's no actual harm, inconvenience, or anything caused to Ms. Lynn by any of this. It stands to, frankly, protect her property better by having tension of dirt and soil and so forth up slope of her property, so there's no reason for her to object.

[\(03:48:59\)](#):

My client has tried to do everything correctly. She obviously, my client and her husband obviously misunderstood the need for a permit initially as their landscaper began the work and didn't have it, but they've taken every reasonable effort to hire qualified professionals to try and rectify that situation since that time. They're doing all this work in good faith with an earnest attempt to comply with the city's code. Nobody has said otherwise. A lot of the arguments that Ms. Lynn made here and her counsel made here are beside the point. The different plans that were submitted in this case don't really matter. It wasn't on the notion of being deceitful or misrepresenting where an easement isn't. It's just that there has to be lots of revisions of plans in the course of building these things for compliance. It's that simple. It's not nefarious.

[\(03:50:04\)](#):

Again, Ms. Linds asserts there's a north easement, a south easement, and a middle easement. There is no middle easement. Once upon a time, there was a middle easement, but it was only for a driveway. I want to quickly address and dismiss the 2021 motion for summary judgment order that was brought before Judge Siegel. There was separate litigation about the location of the driveway in 2021 that eventually went before the court, and it was between these two parties. It's probably pretty obvious to

you, but there's no love loss between these two parties as unfortunately they've been involved in multiple lawsuits in addition to this administrative hearing.

(03:50:52):

Judge Siegel's order did not say that there was a utility easement in the middle of a garden area. That's not what it says. It just says that his order doesn't make ruling on, and the reason his order didn't make ruling on it is because it was not at issue. Sorry, I'm going to pull that up here so that I don't have to necessarily talk about it in the abstract. So I'll do a screen share. Here, I'll make this larger. So Mr. Ulbrich, the only time that the notion of utility easement comes up in the order is right here where Judge Siegel says, "Interpreting the 2017 agreement, the court does not conclude that it expressly intended to relocate the utility easements." So what Mr. Yip and Ms. Lynn want you to infer is that there was a utility easement in the middle of the garden, but that's not what the judge says.

(03:52:27):

He's just saying, "Hey, it didn't intend to relocate a utility easement. It didn't address that. " And I shared that 2017 agreement here where just describes the driveway easement.

(03:52:47):

So I want you to just understand that the notion that there's res judicata or collateral estoppel as if this issue has already been adjudicated is completely false and misleading. Indeed, back in 2021, when this other litigation over the driveway took place, there was none of this landscaping in the first place. And in fact, at the start of that, Ms. Lind didn't even know where her waterline was. So it's disingenuous to argue that, "Hey, this issue's already been addressed by the court when there wasn't landscaping done at the time. They didn't know where the waterline was at the time." So this order does not mean what they're saying it means. All it was was, "Yep, the driveway easement was moved by agreement of the parties." And this is effectively dicta with the court saying, "Hey, it doesn't conclude..." Unfortunately, it's got a lot of double negatives in there, but Judge Siegel said, "Interpreting the 2017 agreement, the court does not conclude that it expressly intended to relocate the utility easements, which it cannot infer from that statement is that there was a utility easement in the middle." That wasn't before Judge Siegel.

(03:54:07):

If it was, I would've shown, or my colleague actually was litigating it, would've shown them, Judge Siegel, the short plat and the declarations, and even that survey that erroneously says and utilities in the middle, even though those aren't described in the verbal descriptions of the existing easement. So with that said, here, so I'm going to stop screen share. With that said, I'm asking that you find that the city correctly granted the permit, that you affirm the permit. Insofar as you're willing, I think you may make a finding that there is not a utility easement existing through the garden area and that any utility easement exists only on the northern and southern boundaries. And I'm asking that you affirm the city's approval of the permit and allow my clients to finish landscaping their yard. Thank you for your time.

Examiner Olbrechts: (03:55:17):

Okay. Yeah, just a quick question for you. The survey that first showed that middle easement as the appellant calls it, what was that attached to again? What part of the document?

Mr. Wais: (03:55:30):

Sure thing. So it's in the record a couple different times. So it is applicant's ... So Exhibit 2004 as submitted by applicant, Mercer Island also submitted it, I think, as Exhibit 45. And so what it is, Mr. Ulbrich, is the survey was attached as Exhibit A to the declarations. So it's attached to the 1981

declarations as Exhibit A. Now, what's important is there was other boundary line adjustments, I think one in 81 and one in 83. And when they did those, they used the same survey to do the boundary line adjustments and they never essentially put whiteout strip over the and utilities in the middle. And so that same survey was utilized a couple different times when there was minor amendments. And so it exists in the historical record of these properties in a couple different recorded documents, but it's the same easement that was ... Or I'm sorry, it's the same survey that was conducted, I want to say in May of 79.

(03:57:03):

So that's the problem is when your first survey has an error on it and then it's recorded, recorded, recorded multiple times on multiple documents, people think that that becomes the history of it, but

(03:57:20):

Everything else is consistent except for that notation of and utilities, but it does exist on the subsequent times that same survey is recorded with other boundary line adjustments.

Examiner Olbrechts: (03:57:29):

So when it was first put in the declaration, how was it incorporated by a reference? I mean, did the reference say that all the exhibits are as depicted in attached Exhibit A? Or that's what I was going towards there.

Mr. Wais: (03:57:47):

Fair question here. So I have it open here.

Examiner Olbrechts: (03:57:52):

Okay.

Mr. Wais: (03:57:57):

So this is the declarations and ... Oh, I just saw it. So it says incorporation by reference. So you're on point with your question. It says ... Oh, sorry. "Attached hereto as Exhibit A are various legal descriptions of each of which refers to the property. Exhibit A and the descriptions contained thereon are incorporated herein by reference." So that Exhibit A, which is that survey, is incorporated by reference, but the ambiguity occurs because ... So this is paragraph one, two, three, and then when you get to paragraphs four, these are the ones that I've highlighted in my slides to

Examiner Olbrechts: (03:58:39):

You. Okay.

Mr. Wais: (03:58:41):

When you get to paragraph four, paragraph 4A, 4B and 4C, because of their verbal descriptions of the easement are inconsistent with what is Exhibit A. Sorry, I'm scrolling down to that because it's affixed at the end.

Examiner Olbrechts: (03:59:05):

Okay.

Mr. Wais: [\(03:59:07\)](#):

So it's incorporated by reference essentially in paragraph one of the declarations, but then the verbal descriptions describe only the driveway easement in the middle, utility and utility easements to the south, utility easement to the north, but the declarations do not describe utilities in the middle.

Examiner Olbrechts: [\(03:59:30\)](#):

Okay.

Mr. Wais: [\(03:59:32\)](#):

Okay. So it creates an ambiguity, but my position and the case law and the RCWs and everything, I think support the notion that an easement has to be created by agreement of the parties signed by the parties. And notably, the survey isn't signed by the property owners at the time and the declarations are, but not the survey itself. It's only signed by the surveyor.

Examiner Olbrechts: [\(03:59:57\)](#):

But those signed declarations incorporate by reference exhibit A, but as you pointed out, that they're not legally described in declaration, not the middle easement, so that's the problem. So what was the issue that was subject to resolution in the summary judgment ruling? I mean, what were the parties trying to accomplish there or disputing?

Mr. Wais: [\(04:00:21\)](#):

Well, I think it was extinguishing the prior ... I'll say this, I didn't handle that, so I'm not in the best position to answer that question. My understanding is the part, and I'd be happy to have Ms. Liu talk about it, but my understanding is the driveway ... In 2017, the city approached my clients and said, "Although you have moved the driveway easement, you didn't actually extinguish the previous easement." And so I believe that there was the 2021 litigation was to extinguish the previous driveway easement. And my clients had believed they did so when they entered into the agreement in 2017, the prior landowner, Mr. Ma, to move the driveway easement. So they were litigating whether the driveway easement through the middle had been terminated or not. Okay. And I may be incorrect on that. I'm not going to die on that or hill because again, that wasn't my argument.

[\(04:01:46\)](#):

It was actually my partner, Matt Kennedy argued it. Ms. Lynn's shaking her head, but I'll say the pleadings were submitted by the city and so that they are in the record here and that's the-

Ms. Lin: [\(04:02:05\)](#):

Molden, you said it was not right. I'm sorry, I have to cutting you. Sorry,

Ms. Yip: [\(04:02:08\)](#):

Sorry, sorry, sorry. Let him finish. Sorry, Molina. I'm very sorry about that. Let him finish. I can rebut them later. Sorry.

Mr. Wais: [\(04:02:16\)](#):

Go ahead. Yeah, Mr. Albright, like I said, I didn't handle it. The pleadings are in the record, but what I think what's most important is the order just essentially it defers on the issue of the utility easements.

Examiner Olbrechts: [\(04:02:36\)](#):

Okay. All right. Sounds good. All right, thanks, Mr. Ways. All right, now Ms. Kiefer, and then after you, we'll take our little 15-minute break and let Mr. Yip finish it off.

Ms. Kiefer: [\(04:02:47\)](#):

Thank you, Mr. Examiner. I'm going to start with the easy parts of the case, which is the critical area review. There appears to be absolutely no dispute that the city appropriately issued a critical area to review. So that portion of this appeal, I think, can be handily dismissed. We have heard from testimony from the city's code compliance planner today that the building permit complies with the Mercer Island City Code as to the setbacks. So the structures right now, they don't necessarily meet Mercer Island City Code. As approved on the plans, they will. This will be verified by inspection prior to finalization of the building permit. So the issue as to compliance with the setbacks, that can also be dismissed. And so finally, to the bigger question, the easement issue, the record has shown, if nothing else, a tortured property rights history as between these two parcels, frankly, the city struggled with the property record as it stands because it is, like I said, long and tortured.

[\(04:03:59\)](#):

And the city's interest in this proceeding is simply to have a clean permit decision. So really the question is whether the examiner sees that the property rights issue, whether he agrees with the applicant or with the appellant. So if the hearing examiner agrees with the appellant that the middle easement exists and doesn't permit encroachment, then the appropriate remedy is to remand the decision for the applicant to revise their building permit application to move the retaining wall out of the easement area. However, if the hearing examiner agrees with the applicant, then the correct decision for the examiner is to uphold the city's permitting decisions in its entirety and dismiss this appeal in its entirety. And that concludes our closing statement. Thank you.

Examiner Olbrechts: [\(04:04:52\)](#):

Okay. All right. A little briefer than the last one.

Ms. Kiefer: [\(04:04:55\)](#):

Yes.

Examiner Olbrechts: [\(04:04:56\)](#):

Okay. Well, let's take a little break until 2:40 for Mr. Yip to do his final then. We'll see you then. Appeals, February 27th, 2026, 2:40 PM. At this point, we are at the final, final closing argument from Mr. Yip. So go ahead, Mr. Yip.

Ms. Yip: [\(04:05:20\)](#):

Thank you, Mr. Hearing Examiner. And just thank you almost. Thank everybody for being here today. Now I will give a brief presentation as well, but I'll try to keep it short. I will start from the decision that we are appealing, because the language of the decision is very important. The decision primarily addresses critical areas, which as the city correctly notes, we are not appealing. However, what it does say with regards to the issues that we are appealing as follows. It says 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, recording number 20170329001022. And just for the

hearing examiner's reference, this is page 192 from the city's exhibits. So right off the bat, there are at least two facial mistakes on this particular decision.

(04:06:26):

The first, as the city has helpfully described, is that this decision was not based on the 2021 order, did not even address the 2021 order. And the reason for that is because at the time this decision was made, the applicant has not provided the 2021 order or provided it. And this is so even though the applicant in her testimony indicated that she was aware that there was such an order.

(04:06:59):

So on its face, this decision is at the very least incomplete. But moreover, this order is directly contrary to the previous order issued by Judge Siegel of the King County Superior Court by finding that the previous easement for ingress, egress, and utility has been relocated to follow the existing driveway. Now I shall move to the city's exhibit number 44, which is the order. And I circled the area at issue. And I will get to these recording numbers shortly, but it says here, it says that there's three documents. It says, "Inclusive 12-foot easement for ingress, egress, and utilities, easement number one."

Mr. Wais: (04:07:46):

I'm sorry to interrupt. Is Mr. Yip presenting something?

Examiner Olbrechts: (04:07:49):

Yeah, I was, Mr. Yip, are you sharing your screen or try to not geting anything?

Ms. Yip: (04:07:53):

My apologies.

Examiner Olbrechts: (04:07:54):

There

Ms. Yip: (04:07:54):

You go. Thank you. Okay. So originally I was talking about the document 192 and I talk about this. So now I'm talking about the order here.

Examiner Olbrechts: (04:08:07):

Right.

Ms. Yip: (04:08:08):

Okay. And the order says included that there's these three documents and that they include a 12-foot easement for ingress, egress, and utilities, easement number one, which remains in effect and as a matter of law was not modified or terminated by the party's private 2017 driveway relocation easement. And it mentions the recording number. And this is directly contrary to what is in the city's decision, which says that that easement was relocated to follow the existing driveway. And the order controls because it is already issued by the judge and it has already been confirmed by the parties. And we know this because the parties, after this order was entered on November 5th, 2021, the parties stipulate that all claims in this action have been fully and finally resolved by orders of the court. So this is a final order. It has not been appealed and there's no pending appeal.

[\(04:09:12\)](#):

And being that it's a 2021 order and a 30-day period for appeal has long passed, this cannot be appealed. So on its face, the decision is incorrect based on an incorrect premise, and it should be reversed. I also just want to talk about the background for the order. The applicants would say that the order only addresses whether the driveway has been relocated. Actually, this is incorrect because if you look at exhibit number 42, which is the actual motion for summary judgment, it presents the following issues. Number one, does Ms. Lin have utility easement rights in the area shown on the 1979 plat amendment and the 1983 plat amendment? Just the first question. Second question, did this 2017 driveway relocation agreement terminate the utility easements shown on the 1979 plat amendment and the 1983 plat amendment? So on the face of the motion for summary judgment, it is directly targeted whether or not she has utility rights.

[\(04:10:19\)](#):

This is already fully litigated in the prior action culminating in the 2021 order. And these are not mysteries that need to be resolved now and they are resolved previously.

[\(04:10:36\)](#):

And we also notice that under the legal doctrine of res judicata as established in various cases such as Oakster versus WSBA 198 winnabton 758 from a 2017 case and also other cases like it, it applies to not only issues that were litigated, but also issues that could have been litigated. So while we appreciate the applicant taking the time to comb through all the documents to see what they say and whatnot or not say, ultimately, if all those factual issues have already been resolved in this motion for summary judgment, which was granted in its entirety, this motion. And so those issues are not outstanding. If the applicant believes that the order was in error, then the applicant's recourse would be to appeal it at the time. But again, the applicant did not appeal the order. And so therefore the order is final on these issues. So does Ms. Linn have utility easement rights in the area shown on the 1979 plat amendment and the 1983 plat amendment?

[\(04:11:45\)](#):

Yeah. And was it relocated by the 2017 document? No. And we also see this again, it says it remains in effect this easement for ingress, egress and utilities, and as a matter of law was not modified or terminated by the party's private 2017 driveway relocation easement. Just also want to just briefly touch upon the underlying documents because there were three that are mentioned, which I'll call this 1978 document, the 1979 document, and the 1983 document. These documents, the contents are not really disputed, and I understand the applicant's already gone through them. I just will briefly touch upon them. The 1978 document shows a drive and utility easement that curves towards the south of the property. But when you look at the 1979, they amended the easement and it says revised location. So it's expressly a revision. It's revised location of 12-foot easement for ingress, egress and utilities.

[\(04:12:47\)](#):

And this document is the exhibit 43 from the city, page number 335. And this is exactly what we're calling the Middle Eastment. The middle easement is established by the 78 document, the 79 document, and the 83 document that I'm about to talk about, and also confirmed by the 21 order.

[\(04:13:11\)](#):

The middle easement is not established by conjecture and nor is it established by mere speculation, but rather by documents that are long recorded. So moving on to the 1983 document, that 1983 document was apparently signed by the respective, what appears to be the respective owners of the properties, and also it seems to have been approved by Mercer Island. This seems to be a stamp here. And this is,

again, for your reference, it's document 337, page 337 from the city's exhibits. And this one is probably the final word on the easement at issue, and it also shows that easement running down the middle of the property. Now, one thing that I would like to clarify, which is a bit unfortunate, but I understand it has created quite a bit of confusion, is that there is the 1981 declaration, and that 1981 declaration did create a driveway easement apparently in the same location.

[\(04:14:18\)](#):

And I understand that is unfortunate and somewhat confusing, but that was a separate document, the 1981 declaration. I would note that the court's order did not rely on the 1981 declaration, but rather just on these three documents that we just talked about, these short plats, these survey drawings. So because of that, the 1981 declaration, quite frankly, is irrelevant as to the middle easement. And so because of that, the terminology, the phrasing in that one, allowing some landscaping, it's not applicable here. And in any case, it also mentions that retaining walls generally for enclosing property needs out consent anyway. But again, I don't want to distract from the main point, which is that those terms are about the north and south easement, not the middle easement. The middle easement was not from that document. So because the middle easement is well established, the question then is whether there are structures constructed there.

[\(04:15:34\)](#):

And for that, I would like to turn to the city code. This is Mercer Island City Code 192020H. And it says here, part two, "No structure shall be constructed on or over any easement for water." And it also goes on to mention utilities, but even this water is the key to what we're talking about here. And this is a pretty absolute provision. It does not require that the easement be in use. It does not require that the easement be fully used, and it also does not require a showing of actual interference. It just says that if there is an easement, then you cannot build structures on top of it. And the definition of structure in the Mercer Island City Code 19.16.010 is also very broad to mean that which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

[\(04:16:34\)](#):

Moreover, the issue of a retaining wall has already previously been determined by the city to be a structure. And we noticed from the Lin Exhibit 1001, which was for the 2011, 2012 construction of the applicant's house. And at that point, the city told them that they cannot put any retaining walls and that they cannot put any retaining walls in the ... I think at the point it was in the setback area and also on the easements in the side yards. So the fact that retaining walls are structured, this is also established and the definition of structure is very broad. So really, coming back to this ordinance, there's really only two elements that needs to be shown. One, is there an easement? And as we just discussed, there is indeed a middle easement. It's established by those three documents confirmed by the court. That's res judicata and it cannot be re-litigated.

[\(04:17:35\)](#):

The time for appeal is also passed. So the question then is, is the structure being constructed on that easement? And the answer also is yes, because if you look at City Exhibit number nine, you will see that this drawing, it shows this easement here, and we see that there are at least several parts here of hardscaping that are on this easement. And the city, from what I understand, if I understand the testimony correctly, is that if in fact there is a hardscaping, these structures on the easement, they have to be abated. In the more recent and the approved plans, the applicant for reasons are known, just omitted the easement. However, they did not alter the structure at all. The structure remains in that location, and we know that to be the location of the easement. And finally, with regards to that, we also

have the recent photographs to show, yes, in fact, in the waterline area, there are these types of retaining walls.

[\(04:18:45\)](#):

Again, the point of this photograph is not to show actual interference or even the degree of actual interference because that's not a required showing under the ordinance, but it's to show that, yes, this retaining wall actually does exist and it does exist on the easement area. And because of that, it is an actual structure on an easement that needs to be abated. And because in sum, what we request is that the hearing examiner reversed the decision and remanded back to the city to require the full abatement of any structures on the middle easement. I also understand that there was an issue with the north eastment, but this site plan, the approved site plan 23 already removed the calls for the removal of those encroachments, which is great. And we appreciate the city's help on that and work in requiring that revision. But again, the Middle East retaining walls that remain in that location, they also need to be removed.

[\(04:19:57\)](#):

And finally, with regards to the setback, I understand that the city will require the applicant to follow this approved site plan and will do such surveys or inspections or require such permits, maybe demolition permits or the like, to make sure that this work is done correctly. If there's anything more to be said about that point, it's just that the decision didn't really address the setback, so if some provisions can be included, that might be okay, but otherwise we trust the city to enforce that code. So in sum, again, the main points that we request that the retaining wall and any structures be removed from the Middle Eastment, which is established by the 2021 order. Thank you.

Examiner Olbrechts: [\(04:20:42\)](#):

Okay. Thank you, Mr. Yip. All right. I think council have covered everything really well. So the major issue, I think for me in review of this is whether the summary judgment order recognized that middle utility easement or not. And that seems to be how the applicant is, their position that that summary judgment ruling doesn't apply. So that's what I got to figure out there. The fact that it does mention that 12-foot easement seems to be something that weighs pretty heavily in favor of the appellants there. So that's going to be the major issue I look at. I mean, I think if the summary judgment order does cover this and does essentially require that we recognize that middle easement, I think that the appellants will likely prevail. I mean, there's the issue about how to apply the code, about whether the structures are intended or had the purpose of preventing, I think it was vehicular access or something, but beyond that, it's the summary judgment ruling that's going to be key.

[\(04:21:45\)](#):

So that's what I'll be looking at real close. I don't know off the top of my head where I'm headed on this one yet, but like I said, those are the major issues I'll be looking at. So I think we covered it. Mr.

Mr. Wais: [\(04:21:55\)](#):

Obert, can I be heard on something just very briefly?

Examiner Olbrechts: [\(04:21:57\)](#):

Okay. All right, go ahead.

Mr. Wais: [\(04:21:59\)](#):

I appreciate it. I didn't handle that previous case. I talked to my client about it in the little break we had, and I guess I would ask that I'd be able to supplement with, insofar as the prior litigation is determinative or important for your decision making that I'd be able to provide you with briefing and other pleadings in that case because I want you to be aware that the complaint in that case was filed by my clients against Ms. Linn, and it had to do with waterfront access to the water was the main issue in that case. And my clients prevailed and eventually got a \$42,000 judgment for attorney's fees against Ms. Linn on it. And so the primary issue in that litigation was my client's ability to use Ms. Linn's driveway to access Lake Washington. It was not the driveway up on my client's property.

(04:22:49):

So Ms. Lindner and counsel are trying to pull the wool over her eyes on that. And I don't think that's intentional. I don't think Mr. Yip, in fairness to him, was involved in that, but it's not what it seems. There was multiple summary judgment orders because in April, I'm sorry, May of that year, Judge Spector granted my client's motion for summary judgment on a separate issue. So they're trying to pick and choose bits and pieces and just piecemeal them to you because there is one order that has one ambiguous piece of information and they're trying to make it rule here. So you really don't have the full picture here. I want you to understand that. And I'm happy to provide the full picture, but frankly, I didn't know that that's what this case was going to be about because Judge ... Oh, sorry, who was it?

(04:23:36):

Judge Notlapin who issued that order. He didn't have the full picture either because he was just rolling on a narrow, discreet issue, which didn't include the placement of the utility easement.

Examiner Olbrechts: (04:23:50):

But he did, I mean, in the order that the portion that was identified by Mr. Gipp, he did expressly identify that 12-foot easement there. So it looks like he did understand that to be the utility easement that wasn't being displaced.

Mr. Wais: (04:24:04):

Well, it presupposes it exists in the first place. That's the problem is that there was a presumption that it existed in the first place. He didn't go into this analysis of what I've explained to you and argued already, which is, "Hey, the deed and the declarations create the easement." That really wasn't before Judge Siegel in 2021. I know that sounds strange, but this is a long convoluted history.

Examiner Olbrechts: (04:24:34):

No, I get it. Okay. Well, yeah, okay. I'll allow it. Of course, Mr. Yip will have an opportunity to respond. I mean, give you a week to provide that. Is that enough time?

Mr. Wais: (04:24:44):

Yeah, and so I could provide it by the end of the day. And I don't intend to make any argument or anything. If you're going to look at the pleadings in that case, I think just looking at one or two pleadings in a vacuum is a disservice.

Examiner Olbrechts: (04:25:01):

All right. Yeah. Yeah,

Ms. Yip: (04:25:03):

Sure. May I say a few words?

(04:25:05):

Yeah. Okay. I said a few comments. First, these documents were provided by the city as the city's exhibits, and this was provided a couple weeks ago. So everybody has already has the time to provide any additional documents that may be necessary to provide the quote unquote the full picture. And since they have not provided anything to provide now is untimely, that's the first thing. Number two, to the extent that they can provide any additional documents, and we're not agreeing to providing any, we do not think that they should be allowed to provide additional argument. If one they're trying to provide are documents that already exist in the docket, that may be a different issue. That's a matter of public record. And I believe that maybe you could even take judicial notice of whatever it is in the public record, but we would not agree and we do not think it's fair for them to try to provide supplemental briefing to essentially re-argue the 2021 motion for summary judgment.

Mr. Wais: (04:25:52):

That's not my intention, just to be clear. I'm just talking about just providing pleadings so that you have a more comprehensive picture. So because I understand respect what Mr. Yip is saying, I don't intend to argue anything more. I just think context is necessary.

Examiner Olbrechts: (04:26:06):

Well, I guess Mr. Hipp, you're saying the city gave that a week ago, but I mean, that was when all the exhibit lists were due, correct? And so that the applicants weren't aware that the summary judgment ruling was going to play a central role until the exhibit list and prehearing briefs were submitted a week ago, isn't that correct?

Ms. Yip: (04:26:27):

No. So what happens is the city actually provides the materials two weeks ago, I believe, on the 13th, and we provided us one week ago. So if they think that they needed more documents, they could have provided it. They would have known that the order was in there.

Examiner Olbrechts: (04:26:41):

Sorry. Yeah, yeah. Yeah, dealing with three dozen jurisdictions and most of them, everything's done at the same time. Okay. No, I'll stick to the record that I have then, I guess. Yeah, that's a problem. So we'll just leave it at that. And like I said, I mean, it looks like there's enough information to make some conclusions there, so that's what I'll do. So anyway, but yeah, I think everything has been covered really well. It's given me a lot to work on here, and I got about a couple weeks to issue that decision. So we'll stick to that schedule. Thanks everybody for participating today and we're adjourned, so have a great weekend.

Mr. Wais: (04:27:18):

Okay. Thank you for your time. Thank you.

Ms. Liu: (04:27:19):

Thank you. Okay. Thank you very much.

Ms. Lin: (04:27:22):

Thank you, Judge and everybody.