



MEMORANDUM

Date:	February 21, 2024	Project #:	23-023
To:	Grace Manahan, Assistant Planner City of Mercer Island, Community Planning & Development		
From:	Roger Cecil, P.E., Cecil & Associates		
cc:	Janet Fischer, property owner		
Subject:	Tax Parcel 545360-0380 - Fischer Property Pre-Application Mtg PRE23-081 Follow Up on Legal Lot Status		

This memo provides the technical analysis and historical background to demonstrate that the subject property meets the criteria as a legal, developable residential lot in accordance with the intent of the current MICC and Development Regulations. Previous documentation has been provided to the City that addresses the legal lot status of this property. Please refer to attached letter from Katie Knight of Gordon Thomas Honeywell dated December 11, 2009. At the request of the City, we are providing some clarifying analysis that relates this information to the current development regulations in the MICC. The memo demonstrates that the subject parcel meets the criteria of a Lot as opposed to a Tract in the MICC. Documents shown in blue text are provided in the Reference section at the end of this document. Simply click the live links in the reference section, and you will be taken to that document online.

Nature and Use of the Parcel

- The parcel was a part of the Mercer Terrace subdivision which was platted in 1963. The parcel was designated as Tract "A" in the original Mercer Terrace plat, zoned R-9.6. There was no specific definition of "Tract" at that time.
- The Mercer Terrace Plat document contains no restrictions on the "Tract" and does not contain any description of the purpose or the nature of the "Tract" within the subdivision.
- The parcel has been used at times in years past, by the owner, for their recreational horses. For multiple years it was fenced, and a barn was constructed and used to house horses and store hay. These improvements were subsequently removed years later.

King County Parcel Information

The King County Records indicate the following information about this parcel:

- Parcel No. 545360-0380
- Property Type: R (Residential)
- Assigned Levy Code: 1031 Mercer Island Code which covers Conservation Levy, City Levy, School Levy, Library Levy, EMS Levy, Flood Levy, and RST Levy.
- Highest & Best Use: Single-Family
- Present Use: Vacant (Single-Family)

Mercer Island City Code (MICC) Information Relative to Definition of Lot and Tract

[1965 City of Mercer Island Zoning Code](#), See Pg 2, Section 2. Definitions. “Tract” and “Lot” were the same.

Lot: *“Land held as a unit, regardless of whether platted or unplatted, and regardless of whether described on plats or in documents of title as one or several tracts, blocks, lots, parcels or portions thereof. Land is held as a unit if contiguous...”*

Tract: no separate definition

[1975 Mercer Island Zoning Codes](#), See Section 2 Definitions.

Tract: no definition

[1985 City of Mercer Island Zoning Ordinance No. A-37](#) (March 27, 1985). See Pg 3, Section 19.04.020 Definitions.

Tract: no definition

[1999 City of Mercer Island Ordinance No. 99C-13](#) (November 24, 1999). See Pg 236, Chapter 19.16

Tract: This is the first City document where Tract is defined. The definition in this document is identical to what is now found in the current MICC. No changes have been made to the definition of “Tract”. See below for that definition.

[Current City of Mercer Island City Code](#) See Chapter 19.16 Definitions. Contains current Definitions related to lots and tracts in the MICC development regulations:

Lot: A designated parcel, tract or area of land established by plat, subdivision, or as otherwise permitted by law to be used, developed, or built upon as a unit.

Tract: 19.16.010 A piece of land designated and set aside as either public or private open space. No dwelling shall be constructed on the tract, and only those structures that are in keeping with the tract's use as open space shall be allowed.

Conclusions

The subject parcel, named “Tract A” in 1963, resulting from the Mercer Terrace plat, has the following characteristics that distinguish it as a “Lot” as opposed to a “Tract”, as defined by the MICC starting in approximately 1999:

- ✓ It does not have undivided interest by Lot owners; it is (and always has been) owned and used entirely by a single party, which has been since 1963 and currently is, the Fischer’s.
- ✓ It has no special designation for a different purpose than the other lots in the Mercer Terrace Plat.
- ✓ It is not owned and maintained by multiple owners for the purpose of either ingress/egress, utility facilities, or open space.
- ✓ It has been developed, built on, and used in past years for the care of horses, by the lot owners, the Fischer’s.
- ✓ King County records designate the parcel as a Residential Lot, R-9.6.
- ✓ King County assigned the parcel a residential parcel number and has assessed taxes to the owners consistent with other adjacent residential lots, 1963 through current.

Our conclusion is that the subject parcel was labeled as a “tract” in 1963 when a tract was a building lot. Subsequently, single-family development and construction is allowed on the property by the City of Mercer Island in accordance with the code and regulations of the MICC.

References

Mercer Island Documents defining Tract and Lot
Researched by J. Fischer, 2.10.24.

<https://www.mercerisland.gov/cpd/page/historic-zoning-codes-and-maps>

1965 page 2 of this one has definition of Lot which includes “tracts”

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/21874/04-26-1965-cityzoningcode1.pdf

1962 page 2 of this one definition of Lot

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/21874/04-09-1962-subdivisionregulations.pdf

1960 page 8

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/21874/09-26-1960-zoningcode.pdf

1987 page 5, do not see definition of Tract yet

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/21874/12-16-1987-zoningcode.pdf

1999 page 241, finally defined Tract

https://www.mercerisland.gov/sites/default/files/fileattachments/community_planning_amp_development/page/21874/11-15-1999-zoningcode.pdf

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December 11, 2009

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Steve Lancaster, Director
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Re: Mercer Terrace - Tract A

Dear Ms. Knight and Mr. Lancaster:

We represent Viola Fischer, the owner of Tract A in the Plat of Mercer Terrace. Our client will be submitting applications for residential development on this tract in the near future and we want to confirm its status as a lawful residential tract available for development consistent with the current zoning. We are writing this letter because our client has heard informally from the City that the property is considered some kind of open space or other restricted tract.

The Plat of Mercer Terrace was recorded in 1963 when the property was in unincorporated King County. The property was owned by Mrs. Fischer and her husband, Leo Fischer, now deceased. They lived in the property on what became Lot 18. In addition to the lots, the Plat of Mercer Terrace created Tract A, which includes a pipe stem connecting the balance of the tract to Southeast 76th Street. At that time, the property lying west of Mercer Terrace was undeveloped, and the owners' recollection is that Tract A was reserved because it made more sense to develop that tract in conjunction with a future development of that adjacent property. That is why the pipe stem was included. For some reason lost to memory, the joint development that did not occur, and Tract A was left undeveloped from 1963 to the present.

Reply to:
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There is absolutely no indication whatsoever that Tract A was intended as an open space, buffer area or other restricted property. Certainly no such language is found in the plat nor was any open space or buffer required by the zoning and subdivision rules in effect at the time. We have reviewed all available files and found no hint of a restriction. Nor was the property conveyed in undivided interests to the individual lot purchasers, or to an association. It was retained by the developers of the plat, further supporting the intention that future development was expected. We have reviewed a number of plats recorded in King County in this same time frame. Where parks or open spaces were intended, appropriate restrictive terms were used on the plats, and the properties were conveyed to the lot owners. We have found no other example where a tract was created without any restrictive language, and was retained by the developer.

It should be alone enough that there is no restriction on this property on the face of the plat. Clearly no restriction can be implied from the fact that this was created as a "tract" rather than a "lot". All that meant is that it was not at that time developed as a residential lot as were the other "lots" created by Mercer Terrace. The fact that Mercer Island current uses the term "tract" in some other way in conjunction with restrictions is of no relevance. What does matter is what was done in 1963 by King County.

By law, the absence of a restriction means that none can be inferred. *Hobart v. Marque*, 5 Wn.App. 222, 486 P.2d 1140 (1971). If a restriction is intended, it must be expressed.

"The basic rule in land use law is still that, absent more, an individual should be able to use his land as he sees fit.

Norco Construction, Inc. vs. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982).

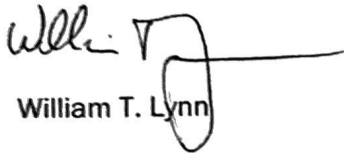
Although the fact that there is no restrictive language should be dispositive, we note a number of other factors that do confirm the viability of this land for residential development. The property has been carried on King County's tax records as residential property consistently since the 1960's. Certainly the fact that King County (which created the tract in the first place) regards it as residential land (and not some kind of park or open space area) is persuasive evidence that was always the intent.

Moreover, the property was included as a part of a ULID created in King County to provide sewer utility service to the area. Under statutory and constitutional law, that ULID process very specifically requires that each parcel be assessed to confirm that the utilities will add a value consistent with the assessments made against the property. Bringing utilities would obviously not have enhanced the value of open space at all. Therefore, this represents a further recognition by King County that this property was and is appropriately designated for residential development.

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This property is and always has been intended for residential development and we have seen nothing in the record to suggest in any way, shape or manner that a restriction was even intended let alone imposed. We would welcome an opportunity to discuss this with you face to face. We will be requesting that the City make a final and appealable decision on this matter so that it can be resolved formally and finally through whatever processes may be appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read "William T. Lynn", with a long horizontal line extending to the right from the end of the signature.

William T. Lynn

WTL:fto

cc: ~~Viola Fischer~~
Brett Allen

