BEFORE the HEARING EXAMINER for the
CITY of MERCER ISLAND

DECISION

FILE NUMBER:	APL21-006 (Reference File No. 2105-227)
APPELLANT:	Steve & Sophy Yang C/o Cassidy Ingram/Ryan Sternoff, Attorneys at Law Ahlers Cressman & Sleight, PLLC 1325 4th Avenue, Suite 1850 Seattle, WA 98101 (206) 287-9900 cassidy.ingram@acslawyers.com/ryan.sternoff@acslawyers.com
RESPONDENT:	City of Mercer Island Fire Marshal's Office C/o Eileen M. Keiffer, Attorney at Law Madrona Law Group, PLLC 14205 SE 36th Street, Suite 100 PMB 440 Bellevue, WA 98006 eileen@madronalaw.com
APPLICANT:	Christopher & Nicole Niederman C/o Mark Rosencrantz, Attorney at Law Carney Badley Spellman, P.S. 701 5th Avenue, Suite 3600 Seattle, WA 98104 rose@carneylaw.com
TYPE OF CASE:	Appeal from approval of an automatic electric gate permit
EXAMINER DECISION:	DENY
DATE OF DECISION:	October 1, 2021

INTRODUCTION [1]

Steve & Sophy Yang ("Yang" [2]) appeal from a Construction Codes decision of the City of Mercer Island ("City") Fire Marshal's Office ("Fire Marshal") issued on July 21, 2021. The Fire Marshal approved an automatic electric gate application requested by Christopher & Nicole Niederman ("Niederman"). (Exhibit 31 [3])

Yang filed the appeal on July 26, 2021. (Exhibit 34)

The subject property is located at 6800 96th Avenue SE. Its Assessor's Parcel Number is 3024059098 ("Parcel 9098"). (Exhibit 1019, PDF 2)

The Hearing Examiner ("Examiner") held an open record appeal hearing on September 20, 2021. The hearing was conducted remotely using the "Zoom" program due to assembly restrictions attendant to the current COVID-19 pandemic. Notice of the hearing was given as required by the Mercer Island City Code ("MICC"). (Exhibit 36)

Pursuant to Hearing Examiner Rule of Procedure ("RoP") 224(c), the Examiner entered the following administrative exhibits into the hearing record:

Exhibit 9001:	E-mail, Larson to Hearing Examiner, July 28, 2021 (dating appeal receipt)
Exhibit 9002:	E-mail, Sternoff to Park, July 22, 2021 (revocation of permit) with copy of *Evan's Addition* (2 pages)
Exhibit 9003:	Letter, Hearing Examiner to Principal Parties, July 28, 2021
Exhibit 9004:	E-mails, July 30 – August 24, 2021 (Scheduling)

Pursuant to RoP 224(d), Respondent Fire Marshal pre-filed Exhibits 1 - 36 and provided an index listing of those exhibits; the Fire Marshal also filed a Staff Report, catalogued by the Examiner as pre-filed Exhibit 37. Neither Yang nor Niederman objected to entry of those exhibits. The Examiner entered those exhibits into the hearing record.

Pursuant to RoP 224(e), Appellant Yang pre-filed Exhibits 1001 - 1020 and provided an index listing of those exhibits; Yang also filed a Prehearing Memorandum, catalogued by the Examiner as pre-filed Exhibit

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1 Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

2 In order to simplify grammar and punctuation, the Examiner will refer to both the Appellants and the Applicants in the singular: "Yang" and "Niederman." No disrespect is intended to either of the husbands or wives. Use of the singular conveys no meaning regarding the status of property ownership.

3 Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. The record contains multiple copies of some documents. Only one source will be cited; the Examiner's choice of which copy to cite has no significance. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

1021. The Fire Marshal objected to entry of pre-filed Exhibits 1001, 1002, 1004, 1009, 1010, 1013 – 1018, and 1020. After entertaining brief oral argument, the Examiner entered Exhibits 1003, 1004 (with "Exhibits" A, B, and C [4] only), 1005 – 1008, 1011, 1012, and 1016 – 1021 into the hearing record. Pursuant to RoP 224(i), during the hearing the Examiner accepted additional exhibits from Yang as follows:

Exhibit 1022: Yang PowerPoint Closing Argument presentation

Pursuant to the Examiner's guidance, Applicant Niederman pre-filed Exhibits 2001 - 2019 and provided an index listing of those exhibits; Niederman also filed a letter-form Hearing Brief, catalogued by the Examiner as pre-filed Exhibit 2020. The Fire Marshal objected to entry of Exhibits 2002 - 2019. After entertaining brief oral argument, the Examiner entered Exhibits 2001 – 2005, 2009, and 2012 - 2020 into the hearing record.

The City has the record copy of the exhibits and the exhibit index lists.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Yang owns and resides on Lot 5 of *Evan's Addition* ("Lot 5"), a 1976 "REPLAT OF LOT C OF THE DOGAN SHORT PLAT." [5] (Exhibit 1003, PDF 1, all-caps in original; and Yang testimony) Niederman owns and resides on Parcel 9098, approximately the east half of which abuts the south property line of Lot 5. (Exhibit 1019, PDF 4; and Niederman testimony [6])

2. The *Evan's Addition* plat created a meandering 10-foot wide private road and utility easement across *Evan's Addition* Lots 1 – 4 which terminated in a more-or-less "Y"-shaped turnaround on Lot 5, the south leg of which terminated against the north boundary of Parcel 9098. (The ends of the "Y"-shaped turnaround were each 10-feet wide, but the center of the turnaround was wider than 10 feet because of the curvature of the turnaround's edges. [7]) The plat included the following grant on its

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4 Exhibit 1004.C was initially excluded, but was admitted later during the hearing.

5 Some hearing participants referred to *Evan's Addition* as a "short plat." That is incorrect. *Evan's Addition* was a five-lot plat ("long plat" in some people's terminology) of one parcel in a prior short plat. In 1976 – 77 when *Evan's Addition* was being reviewed and approved, state law required that a division of property into more than four lots had to be processed as a subdivision ("long subdivision"), not as a short subdivision. Thus, the graphic depiction of that subdivision is a plat, not a short plat. [Official notice: The Examiner has been involved with the land use regulatory process in Washington State since 1971, first as a county planner (1971 – 1978), then as a Hearing Examiner (1978 – present).]

6 Although a prehearing brief is not sworn testimony, Niederman's brief includes a clip from a King County Parcel Viewer image which depicts the physical relationship between Lot 5 and Parcel 9098 without a lot of detail clouding the basic relationship. (Exhibit 2020, PDF 2)

7 The width of the north end of the "Y"-shaped turnaround is stated adjacent to the north line on the plat. The width of the south end of the "Y"-shaped turnaround is noted as 5-feet on each side of centerline. (Exhibit 1003, PDF 1)

face: "THE OWNER AND GUESTS OF THE RESIDENCE AT 6800 96TH STREET SE HAVE THE RIGHT TO USE THE 10' ROAD EASEMENT FOR INGRESS AND EGRESS PURPOSES". (Exhibit 1003, quote from PDF 1; all-caps in original) 6800 96th Street SE is Parcel 9098.

3. The Yang family bought Lot 5 in 1989 and members of the Yang family have resided thereon since. (Yang testimony) The Niederman residence on Parcel 9098 was built in 1974. (Niederman testimony) Niederman moved into the residence on Parcel 9098 in 2015. (Yang testimony)

4. An asphalt paved, private road exists more or less within the 10-foot private road easement in *Evan's Addition*. A drawing of *Evan's Addition* Lots 4 and 5 prepared by a licensed land surveyor in September, 1994, clearly shows that as of that time the paved private road did not follow the legal easement across Lot 4 nor was the turnaround located anywhere near its location as established in the plat. (Exhibit 2002, PDF 1)

5. In 1994 the Yang family and the Evans family (presumed owners at the time of *Evan's Addition* Lot 4) executed a Boundary Line Adjustment ("BLA") within *Evan's Addition* Lots 4 and 5 (the "1994 BLA"). The 1994 BLA made a substantial change to the location of the common boundary between Lots 4 and 5; completely relocated the north and south legs of the "Y"-shaped turnaround; created an apparent north edge of the 10-foot wide easement through what had been the center of the original turnaround; and labelled the new turnaround as "NEW VEHICLE TURN AROUND EASEMENT." (Exhibit 2002, PDF 1; all-caps in original) The 1994 BLA was executed only by Evans and Yang. (Exhibit 2002, PDF 2)

6. In May, 2021, Wang (the then owners of *Evan's Addition* Lot 4) and Yang executed a second BLA affecting *Evan's Addition* Lots 4 and 5 (the "2021 BLA"). The purpose of the 2021 BLA was "TO CHANGE THE LOCATION OF THE VEHICLE TURNAROIUND AREA." (Exhibit 1004, PDF 10, all-caps in original) The 2021 BLA shifted the north leg of the turnaround westerly to partially straddle the common boundary between Lots 4 and 5 as created in the 1994 BLA; renamed the new turnaround area as "NEW FIRE VEHICLE TURNAROUND AREA PER CITY CODE 19.09.040" (Exhibit 1004, PDF 10, all-caps in original); and completely eliminated the turnaround area created by the 1994 BLA, thus leaving only the 10-foot wide easement terminating at the Niederman boundary as the south leg of the turn-around. The 2021 BLA, again prepared by a licensed land surveyor, showed that the actual private road does not follow the easement created in *Evan's Addition*. (Exhibit 1004, PDF 10) The 2021 BLA was executed only by Wang and Yang. (Exhibit 1004, PDF 11)

   Yang claims that Niederman has no right to use the new, north leg of the turnaround. He believes that it is for emergency vehicle use only and that any other use must receive his tacit or overt approval. (Yang testimony)

7. Aerial photographs from 2007 (Exhibit 2003), 2017 [8] (Exhibit 1019, PDF 2), 2019 (Exhibit 2009), and (apparently) 2021 (Exhibits 1016; 1018) indicate that the private road leading to the Niederman property line has not appreciably changed width or location over that time period. Parts near the Lot 5/Parcel 9098 common property line were re-paved (apparently) in 2021, but in the same location and same width. Yang has changed other paved areas on Lot 5 that are away from the easement and turnaround.

   Exhibit 1019, PDF 2, clearly shows a more-or-less east-west aligned wall bracketing the road/driveway as it enters Parcel 9098. A survey of Parcel 9098, prepared in March, 2015, by a licensed land surveyor, drawing updated in September, 2016, shows that the pavement on the south leg of the "Y"-turnaround at the point where it enters Parcel 9098 was 16.81 feet wide (Call-out L4) and that the driveway from that point onto Parcel 9098 passes between two columns which were 21.47 feet apart (Call-out L3). [9] (Exhibit 12)

8. The survey for the 2021 BLA indicates that approximately the westerly 5 feet of the paved road leading to Parcel 9098 is within the original 10-foot wide easement, with the remainder located east (outside) of the easement. (Exhibit 1004, PDF 11)

9. On May 18, 2021, Niederman filed a City Fire Permit Application for "Gates and Barricades Across Fire Access Roads." (Exhibit 2, initial caps in original) The Fire Marshal issued the requested permit on July 21, 2021. (Exhibit 31) Yang timely appealed. (Exhibit 34)

10. Niederman proposes to construct a gate across the existing driveway where it enters Parcel 9098. The gate will be on Parcel 9098, more-or-less parallel with the common boundary between Lot 5 and Parcel 9098, and will have two arms which will swing into Parcel 9098. The gate will be about 40 feet from the Niederman residence. The gate will be equipped with a Fire Marshal-approved automatic opening system for use by emergency personnel if access to Parcel 9098 were required. The proposed gate meets zoning requirements. (Exhibits 5 – 11, 13, 14, 16 – 27, and 29 - 32; and Hicks and Leon testimony)

11. In 2020 Niederman filed suit against Yang in King County Superior Court for: a prescriptive easement to match the location of the current private road as it approaches the Lot 5/Parcel 9098 common boundary; the right to use the turnaround on Lot 5; and the right to place garbage and recycling containers on Lot 5. Niederman also alleges that Yang's actions constitute a private nuisance and asks that Yang be required to restore the south arm of the turnaround to a prior condition. (Exhibits 1021, PDF 1; 2020, PDF 11)

12. In this appeal Yang objects to the gate not lining up with the recorded 10-foot wide easement. Yang asserts that the City failed to follow its established procedures in processing the Niederman

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[8] This photograph is on a plan set initially prepared in July, 2017. The aerial could have been taken at any time prior to that date.

[9] An undated "Yang Residence Driveway Plan" depicts the driveway as 15 feet wide at the Lot 5/Parcel 9098 common boundary and the two columns as 15 feet apart. (Exhibit 2004)

application, that the proposed gate will obstruct the Yang property and cause Niederman to trespass on the Yang property, that the City should not have approved a gate which does not align with the original 10-foot wide private road easement, and that the City should not have acted on the Niederman application until conclusion of the current civil litigation between Yang and Niederman. (Exhibits 34; 1021; see also Exhibit 1022; and Yang testimony)

Niederman asserts that he has a prescriptive easement over the private road/driveway as it has existed since 1974. He further asserts that his gate will not block Yang's use of Yang's property. (Niederman testimony)

13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK [10]

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority
"Appeals of orders, decisions and determinations of the building or fire code official issued pursuant to MICC Title 15 or [Title 17 MICC] that do not constitute enforcement actions shall be heard and decided by the city of Mercer Island [Examiner] pursuant to this section and Chapter 3.40 MICC." [MICC 17.14.020(A)(1)] The Examiner holds an open record appeal hearing and renders a final decision which is subject to the right of reconsideration and appeal to Superior Court. [MICC 17.14.020(G); MICC 3.40.100 & .110]

> An appeal shall be based on a claim that the true intent of this chapter or the technical codes adopted in this title (the "technical codes") or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed. The hearing examiner shall have no authority relative to interpretation of the administrative provisions of this code nor shall the hearing examiner have the authority to waive requirements of either this code or of other codes, appendices and referenced code standards adopted by or through this code.

[MICC 17.14.020(B), ¶ 1]

Standard of Review
The standard of review is preponderance of the evidence.

> The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision

[10] Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action.

[MICC 19.15.130(C)]

Scope of Consideration
The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. Although not expressly stated in the pleadings, the Yang appeal rests on assertions that "the rules legally adopted [under Title 17 MICC] have been incorrectly interpreted". [See MICC 17.14.020(B), ¶ 1, quoted above] The Yang appeal is thus within the Examiner's scope of authority to adjudicate.

2. Neither the Examiner nor any other City official can adjudicate the civil dispute between Niederman and Yang. The Examiner offers no opinion or conclusion regarding any of the issues involved in their litigation.

3. The Examiner knows of no statute, ordinance, or case law preventing a city from issuing permits to a party who is in civil litigation with an abutting property owner, to which litigation the city is not a party, over a matter related to the subject of the permit. Nor was any statute, ordinance, or case law presented in support of that position. [11]

   Yang argued that were the Examiner to sustain issuance of the Niederman gate permit, he would be influencing the Court in the pending private civil litigation. The Examiner declines to accept the proposition that a Superior Court judge would be swayed in civil litigation by a Hearing Examiner decision.

4. The City has prepared a public hand-out document entitled "Fire Department Development Standards Guide," subtitled "New Construction Fire Code Applications Guide for One- and Two-Family Residential Development," excerpts from which are included in the record as Exhibit 1008 (the "Guide;" Initial caps in original). The intent of the Guide is "to assist applicants in attaining compliance and to ensure that privately owned roadways identified for emergency response will be available for use at all times." (Exhibit 1008, PDF 2) The Guide is not an adopted regulation of the

[11] Yang's Prehearing Memorandum cites *Halverson v. City of Bellevue*, 41 Wn. App. 457, 461, 704 P.2d 1232 (1985) in support of this argument. The Examiner finds that case to be inapposite. *Halverson* was a subdivision case where a neighboring property owner asserted ownership by adverse possession of part of the property proposed to be subdivided. The *Halverson* court held that since the city had no authority to resolve an adverse possession claim and since a subdivision created lots the title to which would be transferred to others, the city had to delay approval of the final subdivision until the adverse possession claim had been resolved so that it would not be creating future title disputes. That is not what is happening here. Niederman is building a fence on his own property, lots are not being created for sale to others; no title is changing hands as a result of approval of the fire security gate permit.

City. (Hicks testimony) But the Guide does include quoted provisions from/citations to the MICC and the International Fire Code ("IFC").

Yang believes that the Guide is a regulation requiring mandatory compliance. It is not a regulation; mandatory compliance with it is not required. Obviously, where it quotes MICC or IFC provisions, those provisions require compliance, but not because they are in the Guide.

5. A fundamental problem with the Yang appeal is that Yang misunderstands the actual nature of the permit issued by the City: Niederman did not request and the City did not grant a permit to erect a gate across a fire access road. Niederman requested and the City granted a permit to construct an electrically operated security gate at the entrance to Parcel 9098 – essentially a gate beyond the end of the fire access road. Thus, much of Yang's argument is misplaced.

   A "fire access road" has "an unobstructed driving surface width of not less than 20 feet … and an unobstructed vertical clearance of not less than 13 feet 6 inches" according to IFC 503.2.1. (The Fire Marshal may approve a narrower width pursuant to IFC 503.2.2.) A fire access road is required to extend to "within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building or facility" according to MICC 17.07.020. If the length of the fire access road (to the point where it is 150 feet from the building) exceeds 150 feet, then a turnaround must be provided. (Exhibit 1008, PDF 5)

   In the present case, the private road within (or more-or-less within) the 10-foot easement created in the *Evan's Addition* plat is a fire access road up to the point where it is not less than 150 feet from all sides of the Yang and Niederman residences. Anything beyond that point is not a fire access road – it is just a driveway. The 150-foot distance is reached before one reaches the common boundary of Lot 5 and Parcel 9098. Therefore, a gate within Parcel 9098 across the driveway is not a gate across a fire access road. MICC and IFC requirements for gates across a fire access road do not apply to such a gate.

6. The Guide includes a section covering "Auto Security Gates." (Exhibit 1008, PDF 25 & 26) That section begins by indicating that gates across fire access roads must comply with two sections of the IFC whose text it provides. (Exhibit 1008, PDF 25)

   The Fire Marshal testified that the City's interest in gates across driveways which are not fire access roads is to ensure that fire personnel can pass through the gate to respond to an emergency. The City is not worried about the width of the driveway or gate, as its vehicles would not need to traverse that driveway or pass through that gate. Thus, the City's primary interest is assurance that it has a means to open the gate in an emergency (and that it complies with zoning regulations). (Hicks testimony)

7. Yang focused on the first part of a statement in the Guide requiring Auto Security Gate application plans to include "access easement width if applicable". (Exhibit 1008, PDF 26) Yang pointed out that Niederman's plans did not depict the 10-foot easement leading up to the property line. Thus, Yang argues that the plans were incomplete and that the application was likewise incomplete.

Yang is correct that Niederman's plans did not depict the easement on Lot 5. But throughout the hearing Yang omitted the words "if applicable" when arguing that the plans were incomplete. Since the proposed gate is not across a fire access road, the width of the fire access road is not applicable. The City did not err in not requiring depiction of the easement.

8. The City's Fire Permit Application form lists 20 "Construction Types" for which a Fire Permit could be required. An applicant for a Fire Permit is required to choose one or more of the 20. Niederman selected "Gates and Barricades Across Fire Access Roads." (Exhibit 2, PDF 1) That is the only choice which is remotely close to what Niederman was proposing. Niederman cannot be blamed for an application form which did not include the precise choice that he needed. Further, the Fire Marshal testified that he construed the choices as "broad spectrum" listings to be interpreted generously. (Hicks testimony) Niederman did not err in the box he checked on the application.

9. The Construction Codes are in Title 17 MICC. However, the procedural provisions of Chapter 19.15 MICC are linked to the Construction Codes. [MICC 19.15.010(C)(4)(b) & (e)] The scope of that linkage is not entirely clear. For example, "Nonmajor single-family dwelling building permits" are classified as Type I applications, but fire permits are not listed as any permit type. [MICC 19.15.030(E), Table A] The remainder of this Conclusion of Law assumes, *arguendo*, that the provisions of Chapter 19.15 MICC apply to fire permit applications.

One of the sections in Chapter 19.15 MICC is MICC 19.15.060, Applications. Yang points out that MICC 19.15.060(A)(8) requires an application to include "consent of all owners of the affected property". (Exhibit 1022, Slide 17) Since Yang did not sign Niederman's application, Yang contends it was incomplete. The Examiner disagrees. Construction of a gate within Parcel 9098 whose arms swing into Parcel 9098 does not in and of itself "affect" Lot 5. (The question of Niederman's right to exit his property through the entire width of that gate is a subject of the on-going private litigation and is not before the Examiner.)

Similarly, Yang asserts that the Niederman application was incomplete because no title report was filed with it. (Exhibit 1022, Slide 17) The requirement for a title report is contained in MICC 19.15.060(A)(9), but submittal of a title report is required only "[f]or Type II, III, and IV reviews". At best the Niederman fire permit is a Type I application (assuming *arguendo* that it is subsumed within the "building permits" heading), not a Type II, III, or IV application. Therefore, the title report requirement simply does not apply.

Based on the above two arguments, Yang asserts that the Niederman application was incomplete and should not have been accepted under MICC 19.15.070:

> The city will not accept an incomplete application for processing and review. An application is complete only when all information required on the application form and all submittal items required by the development code <u>have been provided to the satisfaction of the code official</u>.

[MICC 19.15.070(A), emphasis added] The Examiner concludes that the Niederman application was not incomplete. Based on the preceding analyses, the alleged omissions were not omissions.

Yang asserts the the proposed gate violates MICC 19.02.050(E)(1)(b)(ii)(c): [12] "The proposed fence or gate will not create a traffic, pedestrian, or public safety hazard." This assertion is based on a statement made by Niederman in a September 2, 2021, Declaration in the on-going civil litigation. [13] According to Yang, Niederman said:

> Recently the City of Mercer Island granted us a permit to put up a car gate across our driveway, something we have long planned, and soon there will be no safe way for cars and trucks to turn around at the bottom of the private lane."

(Exhibit 1022, Slide 15, bold omitted, underlining as in Exhibit 1022) Niederman testified that Yang had taken his statement out of context. He said that the situation he was describing was caused by Yang's frequent blockage of the turnaround arms, not his proposed gate *per se*. The Examiner finds no basis in the record to conclude that a gate across Niederman's driveway would cause any safety issue.

10. Yang asserts that Niederman's failure to depict the easement that is on Lot 5 is a violation of MICC 6.10.110. (Exhibits 1021, PDF 6; 1022, Slides 2 & 17) The text cited by Yang in MICC 6.10.110 is part of the definition of "Permit." The subject matter of Chapter 6.10 MICC is code enforcement. The Examiner concludes that the definition of "permit" in the City's code enforcement chapter has no bearing on the propriety of the fire permit issued to Niederman.

11. Finally, Yang asserts that "Chris Niederman Lied." (Exhibit 1022, Slide 7; initial caps in original) This assertion is based on the fact that Niederman signed the fire permit application under penalty of perjury, that the attestation included the statement that "I further certify that all easements, deed restrictions or other encumbrances restricting the use of the property are shown on the site plans submitted with this application" (Exhibit 2, PDF 2), and that Niederman's site plan did not depict the access easement on Lot 5. (Exhibit 14)

    The Examiner concludes that Niederman did not lie. The attestation is for easements "restricting the use of the property," not for easements benefitting the use of the property. The easement on Lot 5 does not restrict use of Parcel 9098, it benefits such use.

12. In summary, the Examiner concludes that the City did not err in issuing Fire Permit 2105-227.

13. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

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[12] Yang has a typographical error in his citation: There is no MICC 19.02.050(E)(1)(b)(i)(c). It is obvious from the context that he meant (ii)(c).

[13] The referenced Declaration is pre-filed Exhibit 1013, a document which was excluded from entry into the record. The Examiner has relied only on the evidence and testimony in this hearing record in considering this aspect of the case.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **DENIES** the appeal of Steve & Sophy Yang regarding Fire Permit 2105-227.

Decision issued October 1, 2021.

\s\ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS [14]

Eileen Keiffer, unsworn counsel
Mark Rosencrantz, unsworn counsel
Jeromy Hicks
Andrew Leon
Ryan Sternoff, unsworn counsel
Steve Yang
Tim McHarg
Chris Niederman

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Department of Community Planning & Development a written request for reconsideration within ten calendar days following the issuance of this Decision in accordance with the procedures of MICC 3.40.110. Any request for reconsideration must allege one or more of the following errors: "1. The decision was based in whole or in part on erroneous facts or information; 2. The decision when taken failed to comply with existing laws or regulations applicable thereto; or 3. An error of procedure occurred that prevented consideration of the interests of persons directly affected by the decision." [MICC 3.40.110(A)] See MICC 3.40.110 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

"Any judicial appeal of the hearing examiner's decision shall be filed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act ('LUPA'). The land use petition must be filed within 21 days of the issuance of the hearing examiner's decision." [MICC 3.40.100, ¶ 2]

[14] The official Parties of Record register is maintained by the City's Hearing Clerk.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."