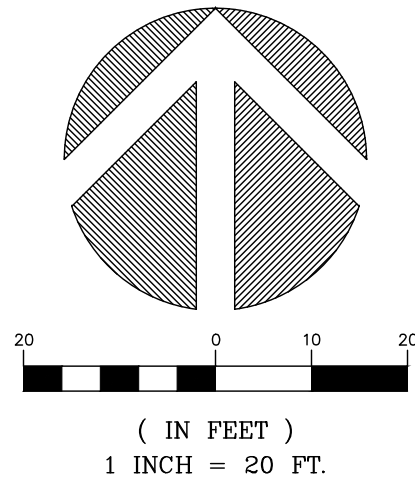


TOPOGRAPHIC & BOUNDARY SURVEY

INDEXING INFORMATION			
SE 1/4 SE 1/4		SECTION: 25	
TOWNSHIP: 26N		RANGE: 04E, W.M.	
COUNTY: KING			



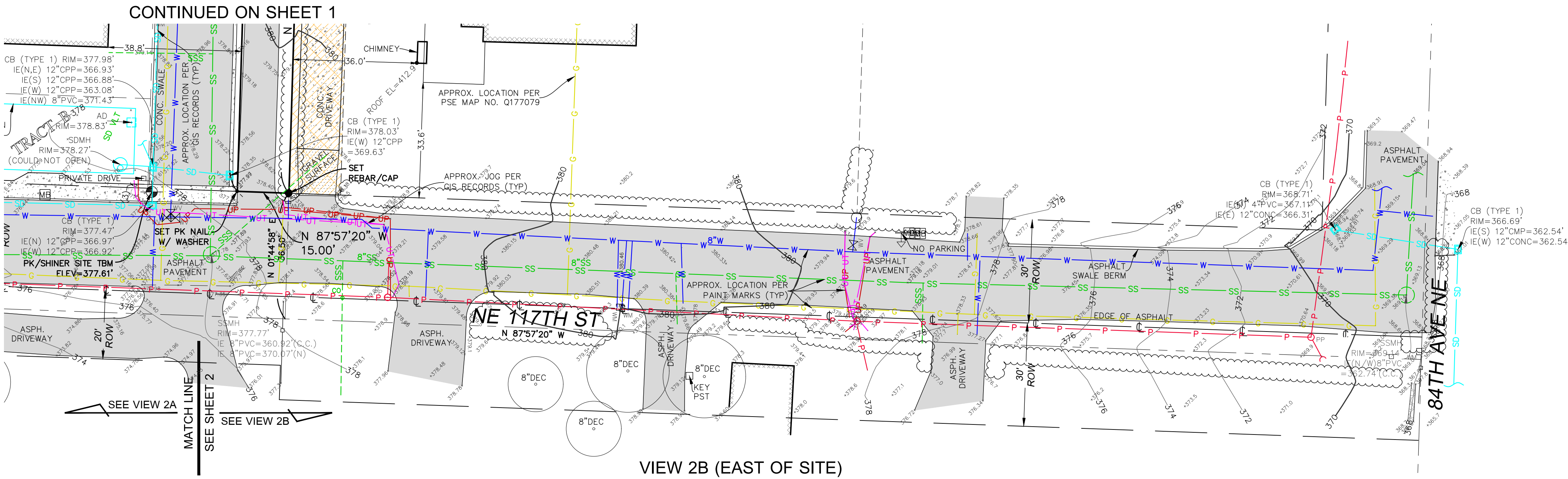
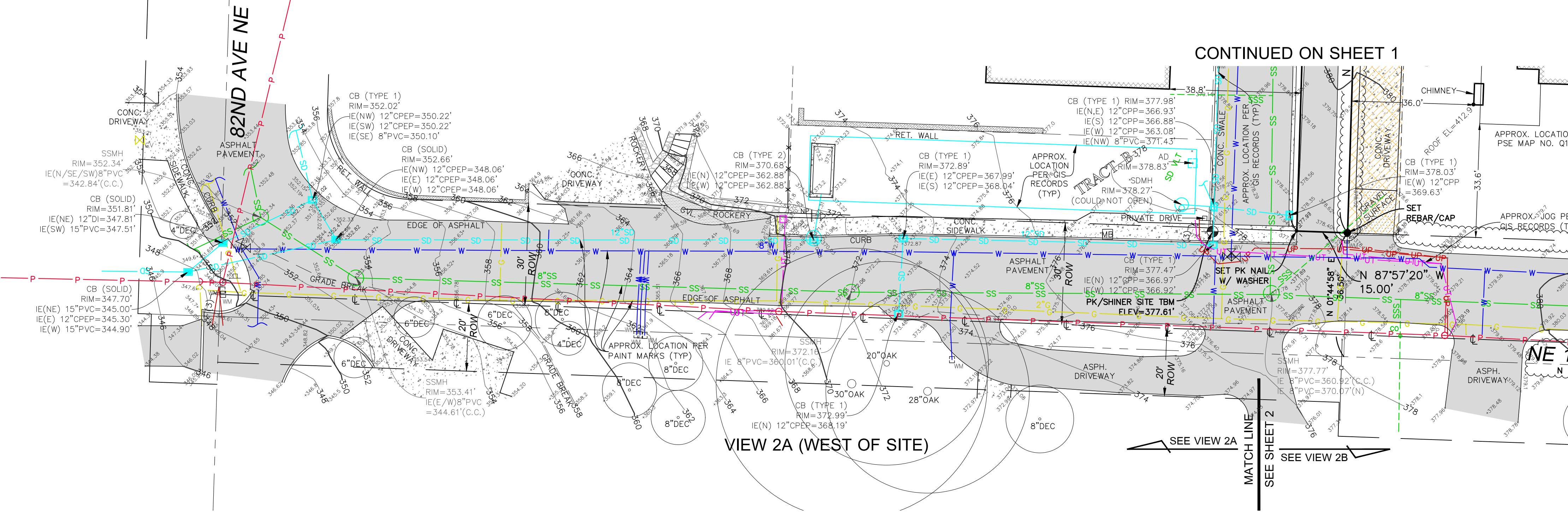
LEGEND

- BRASS DISC (FOUND)
- BENCHMARK
- ASPHALT SURFACE
- BUILDING
- CENTERLINE ROW
- CLEANOUT
- CONCRETE SURFACE
- RETAINING WALL
- DECK
- FENCE LINE (WOOD)
- FIRE HYDRANT
- GAS LINE
- GAS METER
- GAS VALVE
- GRAVEL SURFACE
- HEDGE FOLIAGE LINE
- INLET (TYPE 1)
- NAIL AS NOTED
- MONUMENT IN CASE (FOUND)
- POWER METER
- POWER POLE
- REBAR AS NOTED (FOUND)
- REBAR & CAP (SET)
- SEWER LINE
- STORM MANHOLE
- STORM DRAIN LINE
- STORM DRAIN VAULT
- TREE (AS NOTED)
- WATER LINE
- WM
- BLDG
- C.C.
- CALC'D
- CB
- CONC
- COR
- DEC
- ELEV
- EVG
- FF
- G
- LS#
- MEAS
- MON
- PROP
- (R)
- ROS
- SD
- SSMH
- SSS
- SF

SCHEDULE B LEGEND

- INGRESS, EGRESS & UTILITY EASEMENT PER REC. NO. 84121806071.
- ELECTRICAL EASEMENT PER REC. NO. 9312142193.
- DRAINFIELD EASEMENT, REC. NO. 9309240776.

STEEP SLOPE/BUFFER DISCLAIMER:
THE LOCATION AND EXTENT OF STEEP SLOPES SHOWN ON THIS DRAWING ARE FOR INFORMATIONAL PURPOSES ONLY AND CANNOT BE RELIED ON FOR DESIGN AND/OR CONSTRUCTION. THE PITCH, LOCATION, AND EXTENT ARE BASED SOLELY ON OUR GENERAL OBSERVATIONS ON SITE AND OUR CURSORY REVIEW OF READILY AVAILABLE PUBLIC DOCUMENTS; AS SUCH, TERRANE CANNOT BE LIABLE OR RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF ANY STEEP SLOPE INFORMATION. ULTIMATELY, THE LIMITS AND EXTENT OF ANY STEEP SLOPES ASSOCIATED WITH ANY SETBACKS OR OTHER DESIGN OR CONSTRUCTION PARAMETERS MUST BE DISCUSSED AND APPROVED BY THE REVIEWING AGENCY BEFORE ANY CONSTRUCTION CAN OCCUR.



measure success

TOPOGRAPHIC & BOUNDARY SURVEY

PARCEL NO. 3767300055

Legacy - NE 17th St

8230 NE 17th St

KIRKLAND, WA 98034



Terrane
10801 Main Street, Suite 102, Bellevue, WA 98004
phone 425.458.4488 support@terrane.net
www.terrane.net

JOB NUMBER:	211496
DATE:	09/24/21
DRAFTED BY:	JK
CHECKED BY:	EJG/TMM/RLS
SCALE:	1"= 20'
REVISION HISTORY	
09/27/21	FRONTAGE UTILITIES
11/24/21	FRONTAGE TOPO
SHEET NUMBER	
2 OF 2	

Commitment for Title Insurance

Title Officer: Team Kristi - Seattle Residential/Builder
Email: TeamKristi@ctt.com
Title No.: 0229241-TK

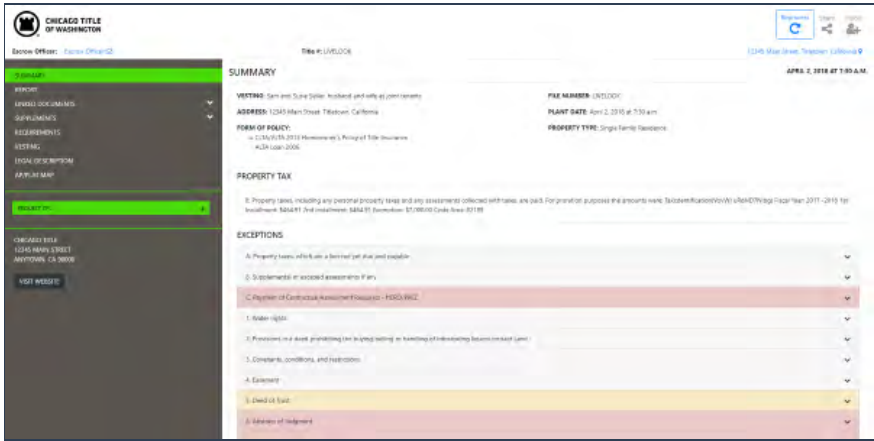
Property Address: 8230 NE 117th St Kirkland, WA 98034 END OF

Introducing LiveLOOK

LiveLOOK title document delivery system is designed to provide 24/7 real-time access to all information related to a title insurance transaction.

Access title reports, exception documents, an easy-to-use summary page, and more, at your fingertips and your convenience.

[To view your new Chicago Title LiveLOOK report, Click Here](#)



Effortless, Efficient, Compliant, and Accessible

SUBDIVISION

Issued By:



CHICAGO TITLE INSURANCE COMPANY

Guarantee/Certificate Number:

0229241-TK**CHICAGO TITLE INSURANCE COMPANY**

a corporation, herein called the Company

GUARANTEES

Eric Ward

herein called the Assured, against actual loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.
2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth in Schedule A.

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the Company for further information as to the availability and cost.

Chicago Title Company of Washington
701 5th Avenue, Suite 2700
Seattle, WA 98104

Countersigned By:

Kristi Stevenson
 Authorized Officer or Agent

**Chicago Title Insurance Company**

By:

Randy Quirk, President

Attest:

Marjorie Nemzura, Secretary

CHICAGO TITLE INSURANCE COMPANY**GUARANTEE/CERTIFICATE NO. 0229241-TK****ISSUING OFFICE:**

Title Officer: Team Kristi - Seattle Residential/Builder
 Chicago Title Company of Washington
 701 5th Avenue, Suite 2700
 Seattle, WA 98104
 Phone: 206-628-5630
 Main Phone: (206)628-5630
 Email: TeamKristi@ctt.com

SCHEDULE A

Liability	Premium	Tax
\$1,000.00	\$350.00	\$35.88

Effective Date: December 27, 2021 at 08:00 AM

The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matter relative to the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Title to said real property is [vested in:](#)

DKWozniak Design Build LLC, a Washington Limited Liability Company and Finneight LLC, a Washington Limited Liability Company

subject to the matters shown below under Exceptions, which Exceptions are not necessarily shown in the order of their priority.

END OF SCHEDULE A

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 376730-0055-05

LOT X OF BOUNDARY LINE ADJUSTMENT NO. L05L0057, RECORDED OCTOBER 11, 2005, UNDER RECORDING NUMBER 20051011900023, IN THE OFFICIAL RECORDS OF KING COUNTY, WASHINGTON;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

SCHEDULE B**GENERAL EXCEPTIONS:**

H. Reservations and exceptions in United States Patents or in Acts authorizing the issuance thereof.

SPECIAL EXCEPTIONS:

1. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat of Lambert & Carr's Juanitacrest, an addition to King County, Washington:

[Recording No: 3689502](#)

2. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: December 18, 1984

[Recording No.: 8412180671](#)

3. Reimbursement Agreement for water facilities and the terms and conditions thereof:

Recording Date: March 22, 1988

[Recording No.: 8803220285](#)

4. Notice of Adoption of Sewer and Water Facilities Charges and the terms and conditions thereof:

Recording Date: July 30, 1992

[Recording No.: 9207300895](#)

5. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Boundary Line Adjustment :

[Recording No: 9307190818](#)

SCHEDULE B

(continued)

6. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Purpose: Sewage Drain Field Easement
 Recording Date: September 24, 1993
[Recording No.: 9309240776](#)
 Affects: includes other property

7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Puget Sound Power & Light Company
 Purpose: Underground Electric System
 Recording Date: December 14, 1993
[Recording No.: 9312142193](#)
 Affects: portion of said premises

8. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Survey:

[Recording No: 9708189008](#)

9. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Survey:

[Recording No: 9709029006](#)

10. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Survey:

[Recording No: 20040426900019](#)

11. Covenants, conditions, restrictions, recitals, reservations, easements, easement provisions, dedications, building setback lines, notes, statements, and other matters, if any, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on Boundary Line Adjustment No. L05L0057:

[Recording No: 20051011900023](#)

SCHEDULE B

(continued)

12. Memorandum of real estate purchase and sale agreement, and the terms and conditions thereof:

Recording Date: August 25, 2021
Recording No.: [20210825002013](#)

13. General and special taxes and charges, payable February 15, delinquent if first half unpaid on May 1, second half delinquent if unpaid on November 1 of the tax year (amounts do not include interest and penalties):

Year: 2021
 Tax Account Number: 376730-0055-05
 Levy Code: 1708
 Assessed Value-Land: \$650,000.00
 Assessed Value-Improvements: \$175,000.00

General and Special Taxes: Billed: \$8,106.42
 Paid: \$8,106.42
 Unpaid: \$0.00

14. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$1,323,400.00
 Dated: September 20, 2021
 Trustor/Grantor: DKWozniak Design Build LLC, a WA limited liability company and Finneight LLC, a WA limited liability company
 Trustee: Chicago Title Company of Washington
 Beneficiary: Legacy Group Capital LLC
 Loan No: CAP210104
 Recording Date: September 27, 2021
Recording No.: [20210927000034](#)

15. An assignment of all moneys due, or to become due as rental or otherwise from said Land, to secure payment of an indebtedness, shown below and upon the terms and conditions therein

Amount: \$1,323,400.00
 Assigned By: DKWozniak Design Build LLC, a WA limited liability company and Finneight LLC, a WA limited liability company
 Recording Date: September 27, 2021
Recording No.: [20210927000035](#)

16. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$500,000.00
 Dated: September 20, 2021
 Trustor/Grantor: DKWozniak Design Build LLC, a WA limited liability company and Finneight LLC, a WA limited liability company
 Trustee: Chicago Title Company of Washington, a Washington Corporation
 Beneficiary: Legacy Opportunity Fund, LLC
 Loan No: CAP210105
 Recording Date: September 27, 2021
Recording No.: [20210927000036](#)

SCHEDULE B

(continued)

The Deed of Trust set forth above is purported to be a "Credit Line" Deed of Trust. It is a requirement that the Trustor/Grantor of said Deed of Trust provide written authorization to close said credit line account to the Lender when the Deed of Trust is being paid off through the Company or other Settlement/Escrow Agent or provide a satisfactory subordination of this Deed of Trust to the proposed Deed of Trust to be recorded at closing.

17. Any unrecorded leaseholds, right of vendors and holders of security interests on personal property installed upon the Land and rights of tenants to remove trade fixtures at the expiration of the terms.

END OF EXCEPTIONS**NOTES**

The following matters will not be listed as Special Exceptions in Schedule B of the policy. There will be no coverage for loss arising by reason of the matters listed below because these matters are either excepted or excluded from coverage or are not matters covered under the insuring provisions of the policy.

Note A: Note: FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per Amended RCW 65.04.045. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document:

LT. X BLA NO. L05L0057, REC NO. 20051011900023

[Tax Account No.: 376730-0055-05](#)

Note B: Note: The Public Records indicate that the address of the improvement located on said Land is as follows:

8230 NE 117th St
Kirkland, WA 98034

END OF NOTES**END OF SCHEDULE B**

When Recorded Return To:

James W. Draper
5600 14th N.W.
Seattle, WA 98107

84/12/18 #0671 D
RECD F 4.00
CRSHSL ****4.00
55

DECLARATION OF EASEMENT & RESTRICTIVE COVENANTS

We the undersigned David C. Hansen and Verlene P. Hansen, formerly known as Verlene P. Tadlock, being fee owners of the following described parcels of real property:

PARCEL A

The South 120 feet of Lot II, JUANITACREST, according to the plat recorded in Volume 44 of Plats, page 18, in King County, Washington

PARCEL B

Lot II, less the South 120 feet thereof, JUANITACREST, according to the plat recorded in Volume 44 of Plats, page 18, in King County, Washington

do hereby grant the following described easement on, over, under and across Parcel A to be appurtenant to and benefit Parcel B, and make the following declaration as to limitations and restrictions on Parcel A hereby specifying that said declaration shall constitute covenants to run with Parcel A to benefit Parcel B. This easement and declaration are designed for the purpose of establishing a right of ingress, egress, utilities and all other residential uses on, over, under and across Parcel A for the benefit of Parcel B and to preserve and protect the view of Parcel B. The duration of said easement and declaration shall be perpetual.

EASEMENT

There shall be an easement for ingress, egress and utilities and all other residential uses, on, over, under and across the following described portion of Parcel A:

The West 15 feet of the South 120 feet of Lot II, JUANITACREST, according to the plat recorded in Volume 44 of Plats, page 18, in King County, Washington.

RESTRICTIVE COVENANTS

No building, structure, plant or tree, built or placed or growing on Parcel A shall exceed that height restriction established by the King County

EXCISE TAX NOT REQUIRED
King County Assessor

-1-

By David C. Hansen, Deputy

8412180671

8412180671

Code for the zone classification of Parcel A, as now existing or as hereinafter amended. As a point of reference, Parcel A is presently zoned "SR - Suburban Residential" as defined in King County Code 21.20.010 et seq. and the maximum height limitation is 30 feet as established by King County Code 21.20.090. Compliance with this restrictive covenant shall be determined in accordance with the definitions and standards contained in the King County Code, including but not limited to King County Code 21.040.050 "Building Height" and King County Code 21.04.162 "Grade", as now existing or as hereinafter amended. It is the intent of the undersigned that no variance from the height limitation established by the King County Code shall be granted and that any variance would be a violation of this restrictive covenant.

DATED: 12-14, 1984.

David C. Hansen
David C. Hansen

Verlene P. Hansen
Verlene P. Hansen

STATE OF WASHINGTON)
COUNTY OF KING)ss.

On this day personally appeared before me David C. Hansen and Verlene P. Hansen, formerly known as Verlene P. Tadlock, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14 day of Dec, 1984.

DEC 18 12 45 PM '84
DIVISION OF
RECORDS & ELECTIONS
KING COUNTY

Lamora H. Gue
NOTARY PUBLIC in and for the
State of Washington, residing at:
Seattle

RECEIVED THIS DAY

Review Comments				
Address: 8230 NE 117th St		Project #: SUB22-00036		
Reviewers: Martha Rubardt (Planning)		Date of Comments: June 27, 2022		
<u>Comment #</u>	<u>Sheet/Location</u>	<u>Comment</u>	<u>Engineer Response</u>	<u>Date</u>
Planning Department Comments				
1	N/A	Drain field easement: Submit a copy of the drain field easement recorded under number 9309240776. Revise the submitted development plans to include that easement. Coordinate with the King County Health Department and ensure that the development layout will comply with their requirements as well as the recorded easement requirements.	The drain field easement documentation is now submitted. Sheets that show the proposed development now show the easement as well. Coordination is ongoing with the neighbor and king county regarding the development.	7/25/2022
2	N/A	Access easement: Please submit a copy of the access easement under recording number 84121806071. Show that the subject property has legal access to utilize that ingress egress easement. The 8300 NE 117th St property's driveway is located within that easement area, so please coordinate with that property owner for their access.	The access easement documentation is now submitted. Sheets that show the proposed development now show the easement as well. Coordination is ongoing with the neighbor regarding this development.	7/25/2022
3	N/A	Electrical easement: Include the electrical easement on the subject property under recording number 9312142193 in the development plans. Identify how the plans are in compliance with this easement.	The electrical easement documentation is now submitted. Sheets that show the proposed development now show the easement as well.	7/25/2022
4	N/A	Proposed lot layout plan: The submitted proposed lot layout plan that shows the access easements and the gross and net lot areas is not a readable file. The site is not scaled to the marked scale on the plan. Please submit a clear and accurately scaled proposed lot layout site plan for review.	it is believed there may have been an upload error. Please find the submitted lot layout plan for review.	7/25/2022
1	Recommendation	Submit a responsive letter to the items (including garbage receptacles, drainage easement, etc.) included in the submitted public comments to be included in the record. Public comments are attached to this letter.	Provided as requested.	7/25/2022
Urban Forestry Comments				
1	C03	Tree removal is not allowed as part of the Short Plat Permit. Tree removal will be confirmed with the Building Permits. Add note to this Preliminary Tree Retention Plan stating that no tree removals shall occur during the short plat phase. Please revise all plan sheet to show retention and protection of all significant trees.	Noted. A large note was added to the tree inventory and protection plan. All plan sheets now show the trees as well (there is no longer a "wipeout" covering the trees). A note was added to each sheet that shows the proposed layout that says to protect all trees and that no tree removal can occur during the short plat permit.	7/25/2022

Review Comments				
Address: 8230 NE 117th St		Project #: SUB22-00036		
Reviewers: Martha Rubardt (Planning)		Date of Comments: June 27, 2022		
<u>Comment #</u>	<u>Sheet/Location</u>	<u>Comment</u>	<u>Engineer Response</u>	<u>Date</u>
2	C03	Incorrect Tree Density Calculations. Tree density credits, as shown on the site plan, were calculated for the parcel as one (1) lot; however, the project proposal is to subdivide the lot and redevelop into four (4) new lots. Required tree density credits must be calculated per lot for all short plats. Prior to submittal for Building Permits, please revise the Tree Retention Plan to reflect accurate existing and needed tree density credits as follows: i. Lot #1: Retained tree credits = 9; proposed additional credits needed = 0 ii. Lot #2: Retained tree credits = 0; proposed additional credits needed = 4 iii. Lot #3: Retained tree credits = 0; proposed additional credits needed = 5 iv. Lot #4: Retained tree credits = 2; proposed additional credits needed = 3	Updated as requested.	7/25/2022
3	C03	The following is required for supplemental tree plantings: i. The required minimum size of the supplemental tree worth one (1) tree credit shall be six (6) feet tall for Thuja/Arborvitae or four (4) feet tall for native or other conifers and 2-inch caliper for deciduous or broad-leaf evergreen tree. Additional credits may be awarded for larger supplemental trees. The installation and maintenance shall be pursuant to KZC 95.50 and 95.51 respectively.	This was added as general note 3.	7/25/2022
4	C03	Arborist monitoring will be required as a condition of the subsequent permits for the retained trees.	Noted. A general note has been added to all sheets that show the site plan that reflect this comment.	7/25/2022

Hon. Susan Drummond
City of Kirkland Hearing Examiner

BEFORE THE LAND USE HEARING EXAMINER
IN AND FOR THE CITY OF KIRKLAND, WASHINGTON

In re Appeal of

OVERLOOK AT FINN HILL
HOMEOWNERS ASSOCIATION AND
IRENE GIUSTINA,

From City of Kirkland' Approval of the Finn
Hill 8 Short Plat

Department File:
SUB 22-00036

**APPELLANTS' COMBINED
RESPONSE TO MOTIONS TO
DISMISS**

I. INTRODUCTION

This appeal is brought by Appellants Overlook at Finn Hill Homeowners Association and Irene Giustina. The Overlook HOA is a small homeowners association representing four houses at 8210, 8216, 8220, and 8226 NE 117th Street in Kirkland, Washington, located to the immediate west of the proposed Finn Hill 8 project site. Ms. Giustina resides in her home at 8300 NE 117th Street in Kirkland. Her property is located to the immediate south of the bulk of the project site, and to the immediate east of the narrow strip of land within the project site that connects to NE 117th Street.

This appeal challenges ten elements of the city's decision approving the Finn Hill 8 Short Plat and Integrated Development Plan ("IDP"), raising issues ranging from the Applicant's plan to illegally use Ms. Giustina's property for access to the Finn Hill 8 project site, to illegal density, to traffic and parking impacts. The City has filed a narrow motion to dismiss our claims challenging the Applicant's

1 plan to illegally use Ms. Giustina’s property for access (“City Mot.”). The Applicant has filed a broader
 2 motion seeking to dismiss this appeal in its entirety (“Appl. Mot.”). For the reasons below, both
 3 motions should be denied.

4 **II. EVIDENCE RELIED UPON**

5 This response relies on the accompanying declarations of Irene Giustina, Mike Hurley, and
 6 Bryan Telegin, and on the pleadings and filings herein.

8 **III. OVERVIEW OF THE CASE**

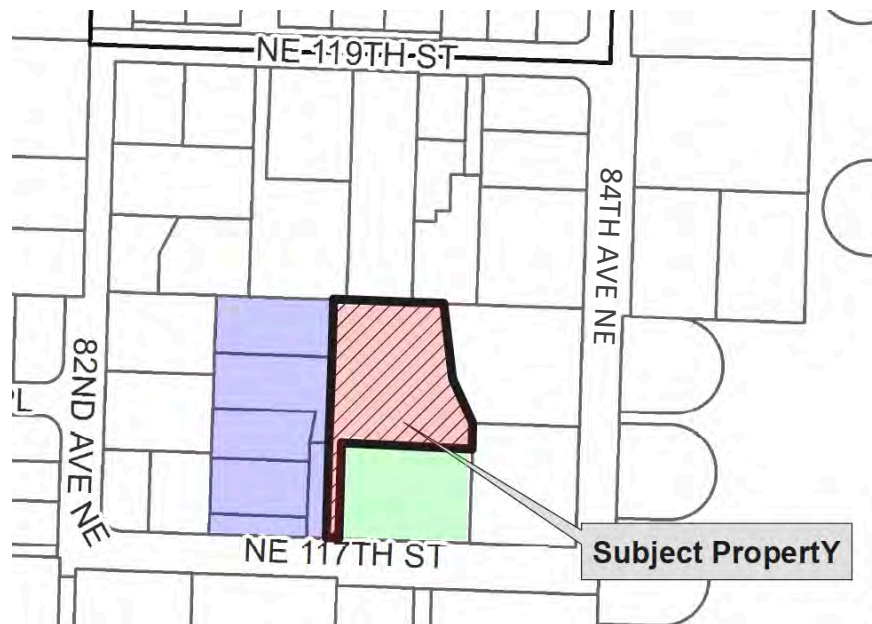
9 This appeal concerns the proposed Finn Hill 8 Short Plat and IDP, approved by the City of
 10 Kirkland on March 1, 2023. A copy of the city’s decision—and other documents circulated to the
 11 public with the city’s decision—may be found at Exhibit A to the Declaration of Bryan Telegin.

12 The proposed Finn Hill 8 project would subdivide a 30,591 square-foot parcel into four
 13 parcels, each planned to contain two single family dwelling units—one traditional unit and one
 14 Accessory Dwelling Unit or “ADU”—for a total of eight units (hence the name, “Finn Hill 8”). The
 15 Applicant’s plan to build eight dwelling units on the project site is part of the Preliminary Short Plat
 16 Plans/IDP submitted to and approved by the City of Kirkland. *See, e.g.,* Telegin Decl., Ex. A at 162
 17 (Sheet C05 of Preliminary Short Plat Plans). Documents circulated with the city’s notice of decision
 18 indicate that the traditional units will range in size from 2,015 to 2,832 square feet, and the ADUs will
 19 range in size from 1,023 to 1,262 square feet. *Id.* at 59.

20 There are many issues in this appeal, all of which have been challenged by the Applicant in its
 21 motion to dismiss. However, one set of issues in particular requires a somewhat extended discussion
 22 of the facts—namely, issues surrounding the purported access easement to the project site across Ms.
 23 Giustina’s property.
 24
 25
 26

The project site is situated roughly at the center of a residential block bounded by NE 119th street to the north, 84th Avenue NE to the east, NE 117th Street to the south, and 82nd Avenue NE to the west. The project site would be entirely landlocked but for a narrow, 15-foot strip of land within the project parcel connecting it to 117th Street to the south. Giustina Decl., ¶15.

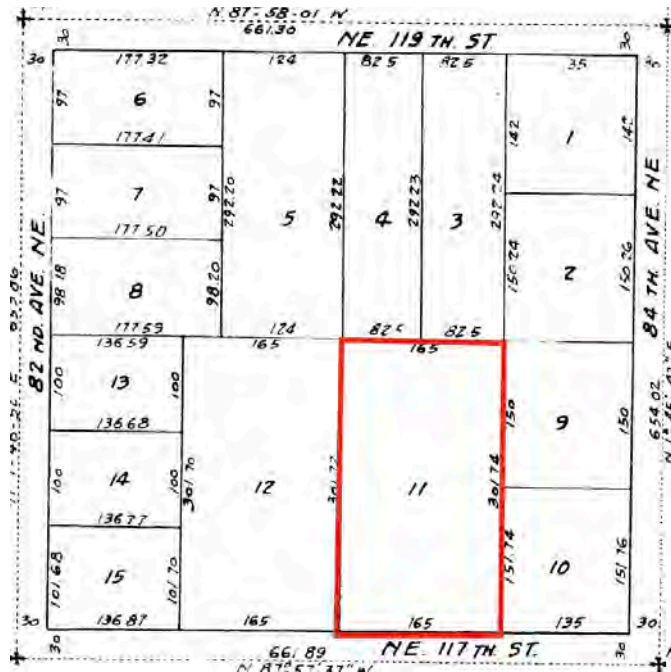
Appellants live immediately adjacent to the project site—the Overlook HOA to the west and Ms. Giustina to the south. Below is an excerpt from the city’s decision approving the short plat and IDP, where we have highlighted the Overlook HOA properties in blue, the project site in red, and Ms. Giustina’s property in green.



Source: Telegin Decl., Ex. A at 16 (colors added).¹

The majority of the project site and all of Ms. Giustina’s property were originally part of a single legal parcel denoted as Lot 11 of the Juanita Crest Plat dated May 16, 1947. Below is an excerpt from the Juanita Crest Plat showing the original Lot 11, which we have outlined in red.

¹ The original image from the city’s decision omits the name of 84th Avenue NE. We have added it here for clarity.

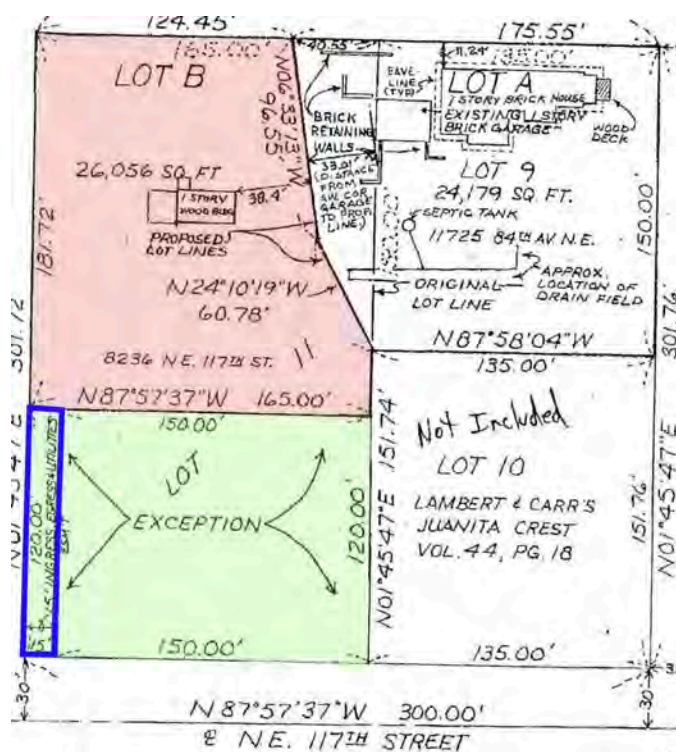


Source: Giustina Decl., Ex. A

In 1984, the then-owners of Lot 11—David and Verlene Hansen—purported to create an easement 15 feet wide across the south half of Lot 11, to provide access to the north half of that same lot. The location of this easement was described as “The West 15 feet of the South 120 feet of Lot 11, JUANITACREST, according to the plat recorded in Volume 44 of Plats, page 18, in King County, Washington.” Giustina Decl., Ex. B (“Declaration of Easement”). The Declaration of Easement purporting to create this easement was recorded with King County in 1984 and assigned recording no. 8412180671.² *See id.* However, we are not aware of any evidence that, at the time this document was executed, the south half of Lot 11 was a separate legal parcel from the north half of Lot 11. Nor were the two halves under separate ownership. Instead, the Declaration of Easement appears to represent an attempt by the owners to create an easement across one half of Lot 11 to serve the other half of that very same lot, both held under common ownership.

² Throughout the record, the city and applicant repeatedly misidentify the recording number for this document, placing an extra zero between the “6” and the “7”. *See, e.g.,* Telegin Decl., Ex. A at 152, 159, 160, 162, 163, 165. *See also* Haughian Decl., Ex. G at 3 (city comments).

By 1989, the south half of Lot 11 was a separate legal parcel owned by Ms. Giustina and her husband (Erik Goldbeck), and the north half of Lot 11 was owned by Mr. and Mrs. Hansen. In 1991, the Hansens executed a boundary line adjustment altering the western boundary of their property. Below is an excerpt from the Hansens' 1991 boundary line adjustment, a true and correct copy of which may be found at Exhibit C to Ms. Giustina's declaration. Again, we have shaded Ms. Giustina's property in green and Mr. Hansen's property (now the majority of the Finn Hill 8 project site) in red. We have also outlined the easement purportedly created by the 1984 Declaration of Easement in blue.



Source: Giustina Decl., Ex. C.

In 1993, Mr. Christopher Hatch purchased what is now the proposed Finn Hill 8 project site from the Hansens (Lot B of the short plat depicted above). Giustina Decl., Ex. D. For several years thereafter, Mr. Hatch did indeed use the area described in the 1984 Declaration of Easement to access his property. Giustina Decl., ¶12. However, his use of that area—which coincided physically with the location of Ms. Giustina's driveway—was problematic. He often drove too fast on Ms. Giustina's

1 property, endangering her and her young child. *Id.*, ¶13. Mr. Hatch also wanted his own private
 2 driveway so that he could stop sharing Ms. Giustina's driveway. *Id.*

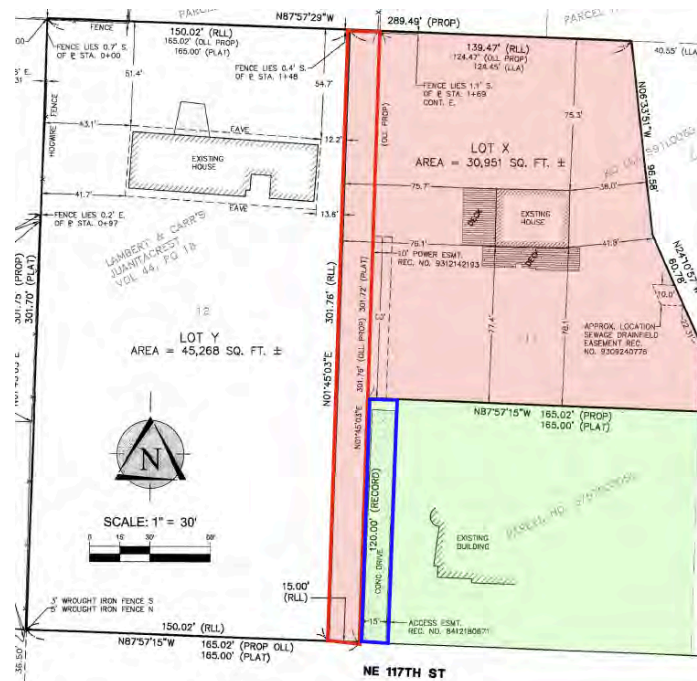
3 In 2005, Ms. Giustina, her husband, and Mr. Hatch devised a solution that would put an end
 4 to Mr. Hatch's use of the easement purportedly created in 1984, and which would also give Mr. Hatch
 5 his own personal driveway to access his land (now the Finn Hill 8 project site). This solution was to
 6 give Mr. Hatch a strip of land owned by Ms. Giustina and her husband—to use as his own private
 7 driveway—in exchange for his agreement to relinquish all easement rights across their land.

8 Several years earlier—in 1996—Ms. Giustina and her husband had purchased Lot 12 of the
 9 Juanita Crest Plat, pictured in the first image above. Giustina Decl., ¶14. This was a large, one-plus-
 10 acre parcel to the immediate west of the property on which Ms. Giustina and her husband built their
 11 home (and to the immediate west of Mr. Hatch's property, too). *Id.* In 2005, Ms. Giustina and her
 12 husband decided to sell Lot 12 to a developer (Chaffey Homes, Inc.), after which Chaffey would
 13 ultimately build the four houses now comprising the Overlook HOA. However, before that sale went
 14 through, Ms. Giustina, her husband, and Mr. Hatch executed a boundary line adjustment, the purpose
 15 of which was to (a) carve out a portion of Lot 12 for Mr. Hatch to use as his own private driveway,
 16 (b) in exchange for Mr. Hatch relinquishing the easement across their land. *Id.* The boundary line
 17 adjustment gave Mr. Hatch 4,500 square feet of land out of Lot 12. *Id.*

18 This new boundary line adjustment was executed on September 9, 2005, approved by King
 19 County on October 4, 2005, and recorded with King County on October 11, 2005 (Rec. No.
 20 20051011900023). A true and correct copy of the 2005 boundary line adjustment may be found at
 21 Exhibit F to Ms. Giustina's declaration. In essence, this boundary line adjustment shifted the border
 22 between Lots 11 and 12 of the Juanita Crest Plat to the west by 15 feet, in order to create the narrow
 23 strip of land that now connects the proposed Finn Hill 8 project site to NE 117th Street. Giustina Decl.,
 24
 25
 26

¶15. This strip is the “flag pole” or “panhandle” referenced at Paragraph 8 of Ms. Haughian’s declaration.

An excerpt from the 2005 boundary line adjustment is depicted below. In this excerpt, we have shaded Ms. Giustina’s property in green and Mr. Hatch’s property in red. The easement purportedly created in 1984 is outlined in blue. We have also outlined the 4,500 square feet of Lot 12 that Ms. Giustina and her husband gave to Mr. Hatch in red. Again, the reason they gave this land to Mr. Hatch is that he agreed, in exchange, to relinquish the easement across their land. Giustina Decl., ¶14.



Source: Giustina Decl., Ex. F

Following the execution and recording of the 2005 boundary line adjustment, Ms. Giustina, her husband, and Mr. Hatch exchanged deeds to clarify who would own what in the new lot configuration, and what their respective rights would be. On December 23, 2005, Ms. Giustina and her husband executed a deed conveying “Lot X” of the 2005 boundary line adjustment to Mr. Hatch (effectively conveying the “panhandle” of that lot to him). See Giustina Decl., Ex. G. A day earlier (on December 22, 2005, two months after the 2005 boundary line adjustment was recorded), Mr.

Hatch executed a deed conveying “Lot Y” of the 2005 boundary line adjustment to Ms. Giustina and her husband, a true and correct copy of which may be found at Exhibit H to Ms. Giustina’s declaration.

Importantly, Mr. Hatch’s deed of Lot Y to Ms. Giustina and her husband conveyed to them his interest in the easement crossing their property, purportedly created in 1984. This can be seen in the second clause of the legal description of conveyed property in that deed, quoted below:

THE GRANTOR(S) Christopher Hatch for and in consideration of one dollar *conveys* and *quit claims* to Erik & Irene Goldbeck the following described real estate, situated in the County of King state of Washington, together with all after acquired title of the grantor(s) therein:

Lot Y, King County Boundary Line Adjustment No. L05L0057, recorded under King County Recording No. 20051011900023; ***TOGETHER WITH that Declaration of Easement & Restrictive Covenants recorded under King County Recording No. 8412180671***

Giustina Decl., Ex. H at 1 (emphasis added).

Here, the phrase “TOGETHER WITH that Declaration of Easement & Restrictive Covenants recorded under King County Recording No. 8412180671” refers to the 1984 document purportedly creating the easement across Ms. Giustina’s land. Moreover, the text of the deed states that it was Mr. Hatch’s intent to “convey” and “quit claim” that easement to Ms. Giustina and her husband, relinquishing the easement entirely.

Indeed, there is no rational explanation for Mr. Hatch’s reference to the easement in this deed except to state his intent to relinquish it. The easement purportedly created in 1984 did not serve any portion of Lot 12 of the Juanita Crest Plat, or Lot Y of the 2005 boundary line adjustment. Thus, when Mr. Hatch executed the deed conveying Lot Y of the 2005 boundary line adjustment—the entirety of which is located within Lot 12—there would have been no reason for him to include mention of the easement except to relinquish it to Ms. Giustina and her husband. There is no

1 rational explanation for Ms. Giustina and her husband to give Mr. Hatch a 15-foot-wide strip of
 2 Lot 12—totaling 4,500 square feet in size—except to remove his easement from their land, pursuant
 3 to their agreement. Nor was there any rational reason for Mr. Hatch to execute this deed except to
 4 relinquish the easement. Having never held any ownership interest in any part of Lot 12 of the
 5 Juanita Crest Plat, or Lot Y of the 2005 boundary line adjustment, the only property interest he had
 6 to convey in that deed was the easement itself.

8 Finally, the excise tax affidavit accompanying Mr. Hatch’s deed to Ms. Giustina and her
 9 husband clearly states the purpose of the 2005 boundary line adjustment. That affidavit—signed
 10 by Mr. Hatch’s agent—states that the transfer was to “clear title after a boundary line adjustment
 11 *to move driveway.*” Giustina Decl., Ex. I (emphasis added). Indeed, that was the whole point of the
 12 deal—to move Mr. Hatch’s driveway off Ms. Giustina’s land and onto the land given to him out of
 13 Lot 12, and in exchange for him to relinquish the easement entirely. Ms. Giustina and her husband
 14 gave Mr. Hatch his new driveway. He gave up the easement. That was the deal.

16 In the months and years following Mr. Hatch’s relinquishment of the 1984 easement, he
 17 clearly evidenced his intent to fully and completely abandon that easement. For example:

- 18 • Mr. Hatch soon constructed a new private driveway to his property on the land given
 19 to him by Ms. Giustina and her husband out of Lot 12. Giustina Decl., ¶ 21.a. This new driveway
 20 can be seen in several of the photographs depicted in Exhibit E to Ms. Giustina’s declaration.
- 22 • Following construction of Mr. Hatch’s new driveway on land given to him by Ms.
 23 Giustina and her husband, Mr. Hatch never again crossed Ms. Giustina’s property to access his
 24 property. *Id.*, ¶21.c. He completely ceased using the purported easement across their land.
- 25 • Following Mr. Hatch’s abandonment of the easement, he constructed a retaining
 26 wall at the end of Ms. Giustina’s driveway and planted several large trees at the north end of the

1 purported easement. These improvements by Mr. Hatch completely blocked any usage of the
2 easement to access his property. *Id.*, ¶21.d.

3 • Finally, Mr. Hatch did not object to significant improvements that Ms. Giustina
4 constructed on her side of their mutual property line, further blocking him from using the easement
5 purportedly created in 1984. These improvements included a fence that Ms. Giustina paid to have
6 built along the mutual property line, costing her nearly \$6,000.00, and landscaping on Ms.
7 Giustina's side of the fence costing her nearly \$8,000.00. *Id.*, ¶21.e.

9 The image below is a photograph that Ms. Giustina took looking down her driveway from
10 a point adjacent to NE 117th Street toward the proposed Finn Hill 8 project site (formerly owned
11 by Mr. Hatch). The dark blue lines depict the location of the easement purportedly created in 1984
12 (coinciding with her driveway). The red lines outline the retaining wall that Mr. Hatch built across
13 the easement after Ms. Giustina and her husband gave him his new driveway out of Lot 12. The
14 yellow lines outline the fence that Ms. Giustina built, blocking the easement without objection from
15 Mr. Hatch. The blue dashed line outlines the trees that Mr. Hatch planted after Ms. Giustina and
16 her husband gave him a portion of their property, also blocking any use of the purported easement.
17
18 Giustina Decl., ¶21.f.

19 ///

20 ///

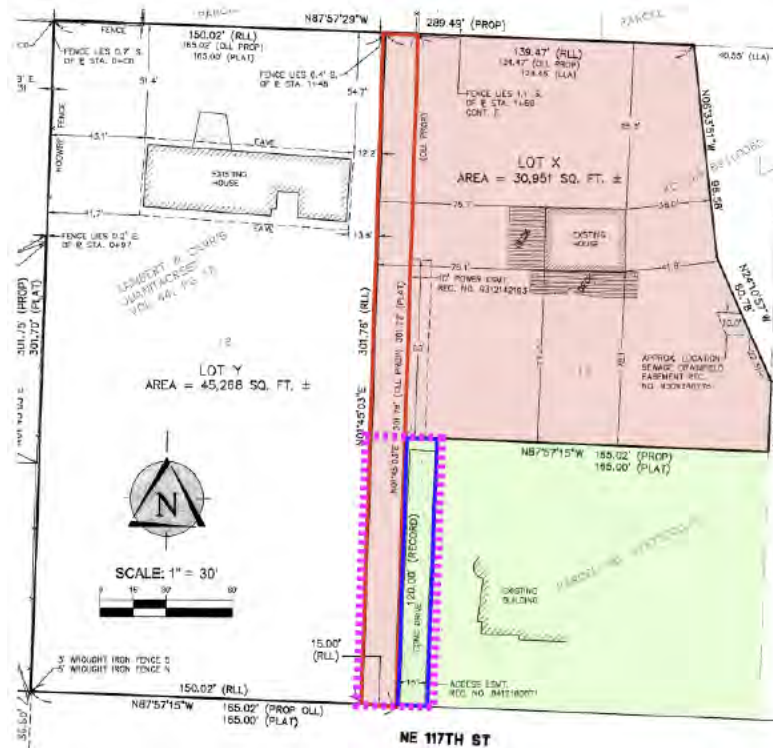
21 ///



Source: Giustina Decl., Ex. L

Notwithstanding all this, the Applicant now plans to utilize the easement purportedly created in 1984 to access the proposed Finn Hill 8 project. This is acknowledged in the city's notice of decision. *See* Telegin Decl., Ex. A at 4. It is also depicted at sheets C09 and C10 the Applicant's Preliminary Short Plat Plans, where the applicant states its intent to pave over the purported easement area, destroying Ms. Giustina's property in the process. *Id.* at 165–66.

In essence, the Applicant plans to use two strips of land for access—(1) the strip of land conveyed by Ms. Giustina and her husband to Mr. Hatch in 2005, in exchange for his agreement to relinquish the easement, and (2) the purported easement that Mr. Hatch relinquished in his 2005 deed to Ms. Giustina and her husband. Below is another excerpt from the 2005 boundary line adjustment depicting the area that the Applicant plans to use for access (inside the pink dashed line).



Source: Giustina Decl., Ex. F

The Applicant's ability to use the entirety of this area for access is critical to the city's approval. The strip of land that Ms. Giustina and her husband gave to Mr. Hatch—the "panhandle" or "flag pole" connecting the project site to NE 117th Street—is only 15 feet wide. Giustina Decl., ¶20. The easement purportedly created in 1984 also is only 15 feet wide. Giustina Decl., Ex. B at 1. Yet, Section 105.10 of the Kirkland Zoning Code ("KZC") requires the roadway providing access to the plat to contain at least "16 feet of unobstructed pavement in a 21-foot-wide easement or tract." KZC 105.10.1.a. In order to meet this requirement, it is necessary for the Applicant to use both the "flag pole" and the purported 1984 easement, since neither alone is wide enough to construct the necessary 16-foot-wide access road, let alone to provide a 21-foot-wide easement or tract.

We, of course, do not believe the Applicant has a right to use the purported easement created in 1984, because that easement has long since been relinquished and abandoned—it no longer exists, if it ever did—as stated in our notice of appeal. *See* Notice of Appeal at 2–3, ¶(2). We also challenge

the city’s approval of the short plat and IDP on the basis that the Applicant cannot meet the roadway-width requirement at KZC 105.10, precisely because, without the easement, the Applicant cannot construct a 16-foot-wide access road in a 21-foot-wide easement or tract. *Id.* at 3, ¶(5).

In its motion to dismiss, the City observes that Ms. Giustina “did not challenge the easement across her property” during the public comment period for this project. City Mot. at 2 (emphasis in original). As Ms. Giustina explains in her declaration, the simple reason for this is that she did not know of the Applicant’s intent to make use of the purported 1984 easement—an intent buried in the plan sets. Giustina Decl., ¶24. She only became aware of this recently when it was called to her attention by a neighbor. *Id.*

Nevertheless, the city was obviously on notice during its project review that the Applicant’s right to make use of the purported easement was in doubt. For example, the image below is from the Applicant’s arborist report, depicting the fence that Ms. Giustina built across the easement as discussed above, and the trees planted by Mr. Hatch blocking any use of the easement. You can also see the retaining wall built by Mr. Hatch at the base of the trees.



Source: Telegin Decl., Ex. A at 140 (Arborist Report)

The next image is from comments submitted by Richard and Janice Orr, depicting Ms. Giustina's driveway from NE 117th Street. At the end of her driveway, you can see the landscaping that Ms. Giustina installed, again blocking the easement (circled in red).



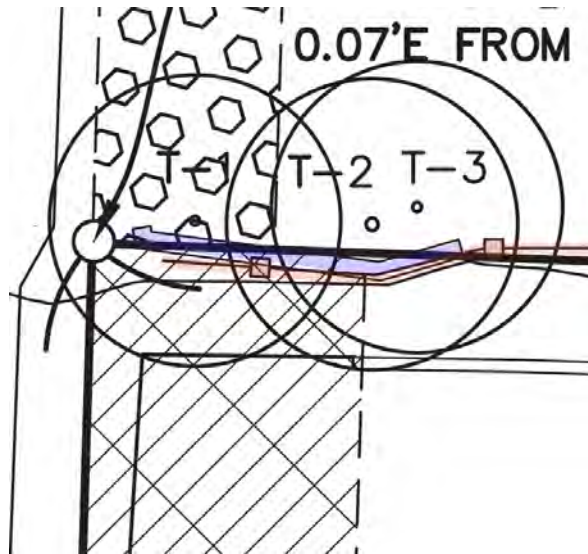
Source: Telegin Decl., Ex. A at 75

The next image is an excerpt from the Applicant's geotechnical report. In this image, you can see the landscaping and trees blocking the easement (circled in red) and the alternative access used by Mr. Hatch on the land conveyed to him by Ms. Giustina and her husband in 2005 (located in the "panhandle" or "flag pole").



Telegin Decl., Ex. A at 100

Finally, the Applicant's topographic survey of existing conditions—excerpted below—depicts the fence that Ms. Giustina constructed across the purported easement (outlined below in red) and the retaining wall that Mr. Hatch constructed across the easement (in blue).



Source: Telegin Decl., Ex. A at 19

All of this information should have alerted the city that the Applicant's right to use the easement was in doubt. And indeed, the city *was* concerned about that issue. On June 27, 2022, the city sent a correction letter to the Applicant with several "plan review comments," a copy of which may be found at Exhibit G to the Declaration of Moira Haughian (May 11, 2023). In those comments, the city made *two* requests relating to the easement.

First, the city directed the Applicant to "submit a copy of the access easement under recording number 84121806071."³ Haughian Decl., Ex. G at 3. In this request, the city clearly desired to obtain a copy of the Declaration of Easement recorded in 1984.

Second, the city directed the Applicant to "[s]how that the subject property has legal access to utilize that ingress egress easement." *Id.* In other words, the city wanted not only a copy of the

³ As noted above, this is the wrong recording number. The actual recording number does not contain a zero between the "6" and the "7".

1 Declaration of Easement itself, but also proof that the Applicant still had the right to “utilize that
2 easement.” The relevant language from the city’s correction letter is quoted below:

3 Access easement: Please submit a copy of the access easement under
4 recording number 84121806071. ***Show that the subject property has***
5 ***legal access to utilize that ingress egress easement.*** The 8300 NE
6 117th St property’s driveway is located within that easement area, so
7 please coordinate with that property owner for their access.

8 Haughian Decl., Ex. G at 3. As seen in this block quote, the city also directed the Applicant to
9 coordinate with Ms. Giustina regarding access. To date, the Applicant has made no attempt to do so.
10 Giustina Decl., ¶25.

11 Through the Declaration of Moira Haughian, the Applicant now testifies that it responded to
12 the first of these requests by providing a copy of the Declaration of Easement recorded in 1984.
13 Haughian Decl., ¶16 (“In response to the correction, the Applicant provided a copy of the Access
14 Easement to the Department using the mybuildingpermit.com portal.”). However, we are not aware
15 of any evidence—and the Applicant does not present any—that the Applicant responded to the city’s
16 *second* request by offering proof that it still has a legal right to “utilize” that easement, which is now
17 a primary point of contention in this appeal.

18 The Applicant’s failure to offer such proof was a significant omission, given that (a) the
19 Applicant’s use of the easement is necessary to meet the city’s minimum 16-foot-wide driveway
20 requirement at KZC 105.10, and (b) the Applicant bears the burden of proof on all elements necessary
21 to secure its requested short plat and IDP approval. KZC 145.35.

22 Finally, just today we received documentation from the city that strongly supports our position
23 that (a) Mr. Hatch relinquished and abandoned the purported 1984 easement as part of his deal with
24 Ms. Giustina and her husband in 2005, and (b) the city has been fully aware that the easement no
25
26

1 longer exists—or should have been fully aware that it no longer exists based on documents in its
2 possession.

3 Attached as Exhibit C to the Declaration of Bryan Telegin is an email produced by the city in
4 partial response to our pending discovery requests.⁴ The email is dated April 13, 2011, and is from
5 Jeremy McMahan—Planning Supervisor for the City of Kirkland—to Christopher Hatch, the former
6 owner of the Finn Hill 8 project site. This email appears to be a part of a conversation with Mr. Hatch
7 regarding his then-plans to subdivide and develop his property.

8 The email from Mr. McMahan to Mr. Hatch reads, in its entirety:

9
10 Hi Chris – as I mentioned in my voice mail, I did discuss the short plat
11 potential of your property with Public Works and Fire ***based on the***
12 ***limited 15' wide panhandle for access.*** Both Departments thought it
13 would be feasible to use the access if there were no alternatives. As
14 part of the review, we would work with you to see if there was ***any***
15 ***opportunity to share access*** with the Chaffey subdivision ***or***
16 ***consolidate driveways with the neighbor to the east.*** In any case, the
17 new homes would likely require fire sprinklers.

18 When you are ready, the next step would be a presubmittal meeting
19 with various City Departments. You can review the presubmittal
20 application and short plat application forms and fees on the Planning
21 Department webpage. Do call me with any additional questions.

22 Att. A (emphasis added).

23 The text and context of this email strongly supports two propositions: (1) Mr. Hatch knew, in
24 2011, that he no longer had an easement across Ms. Giustina's property, and (2) as of 2011, the city
25 knew there was no easement across her property.

26 If Mr. Hatch or the city believed the easement still existed at that time, it would have made no
sense to refer to the Hatch property as having only a “limited 15’ wide panhandle for access.” If the

⁴ Our discovery requests may be found at Exhibit B to the Telegin declaration.

1 easement still existed, then the Hatch property would have had an additional path fifteen feet wide on
2 Ms. Giustina's property for access (totaling 30 feet in width).

3 Nor would it have made sense for the city to inquire about "any opportunity to share access"
4 or to "consolidate driveways" with Ms. Giustina or the developer of the Overlook property (the
5 "Chaffey subdivision" as it is called in the block-quote above). If the city or Mr. Hatch believed in
6 2011 that the 1984 easement still existed, then Mr. Hatch would not have needed to ask the Overlook
7 property to share driveways—he could have simply forced Ms. Giustina to share her driveway, or
8 ripped up her property and paved a new driveway across her land as the Applicant is attempting to do
9 in this case.

11 In addition to all the other facts in this case showing that the easement no longer exists—of
12 which the city was fully aware—the city also should have been aware of this email, which strongly
13 indicates that in 2011, both the city and Mr. Hatch understood that no easement existed on Ms.
14 Giustina's land, because Mr. Hatch gave it up, relinquished it, and abandoned it completely.

16 IV. ARGUMENT ON EASEMENT CLAIMS

17 Joined by the Applicant, the city moves to dismiss our claim that there is no easement across
18 Ms. Giustina's land, and therefore that the Applicant's proposed use of the easement area is illegal.
19 *See generally* City Mot. at 3–7. The city appears to be confused by our claims, characterizing them as
20 "quiet title" claims arising from "adverse possession" or "prescriptive easement." To clarify, below
21 we (a) describe our easement-related claims, (b) explain how our claims relate to the city's short plat
22 approval criteria, and (c) explain why these claims are within the Examiner's jurisdiction.⁵

25 ⁵ In part, the city chides us for not asserting "facts" in our notice of appeal. City Mot. at 2:40.
26 But our notice of appeal clearly went above and beyond what is required by the Kirkland Zoning Code,
which requires only that we include "a statement of the specified elements of the Planning and
Building Director's decision disputed by the person filing the appeal." KZC 145.60. The code does

1 Later, we address the Applicant’s motion to dismiss the non-easement-related claims in this
2 case in Section V below.

3 **A. The Easement Claims**

4 In our notice of appeal, we allege several reasons why there is no easement across Ms.
5 Giustina’s property—and as such, no easement for the Applicant to utilize for access to the proposed
6 Finn Hill 8 project and to meet the access-width requirements at KZC 105.10. *See* Notice of Appeal
7 at 2–3, ¶(2). We explain these claims below.

8 **1. The Easement Was Expressly Relinquished.**

9 First and foremost, the 1984 easement no longer exists (if it ever did) because Mr. Hatch
10 expressly relinquished the easement in his deed to Ms. Giustina and her husband dated December 22,
11 2005 (Exhibit H to Ms. Giustina’s declaration). In that deed following the 2005 boundary line
12 adjustment, Mr. Hatch conveyed Lot Y to Ms. Giustina and her husband, “TOGETHER WITH that
13 Declaration of Easement & Restrictive Covenants recorded under King County Recording No.
14 8412180671.” Giustina Decl., Ex. H. This deed expressly conveyed the easement to Ms. Giustina,
15 relinquishing any future rights to use the easement to access what is now the proposed Finn Hill 8
16 project site. This deed was also recorded with King County and can be found with a simple
17 “grantor/grantee” search using Mr. Hatch’s last name.

18 Indeed, as discussed above, there is no rational explanation for why reference to the 1984
19 easement appears in this deed, except to express Mr. Hatch’s clear intent to relinquish the easement to
20 Ms. Giustina and her husband, pursuant to their agreement and in consideration for their conveyance
21

22
23
24
25 not require us to allege facts. It does not even require us to provide any form of explanation for why
26 we are challenging particular elements of the city’s decision. To the extent we provided additional
explanation in our Notice of Appeal for why we are challenging those elements, that was gratuitous
and we reserve the right to raise any and all issues and arguments relating to the challenged elements
of the city’s decision. *See* Notice of Appeal at 2 (discussing the city’s minimal pleading requirements).

1 to him of 4,500 square feet of Lot 12. The easement never served any land within Lot Y of the 2005
 2 boundary line adjustment. Thus, the only possible reason for the inclusion of this language conveying
 3 Lot Y to Ms. Giustina and her husband was to expressly relinquish the easement. This is the first—
 4 and most direct—reason why the easement no longer exists and the Applicant has no right to utilize
 5 that easement to access the project site.
 6

7 **2. The Easement Was Abandoned.**

8 Second, in Washington, easements may terminate through abandonment. In general, proof of
 9 abandonment requires a showing that the easement holder has ceased to use the easement, plus
 10 evidence of “express or implied intention of abandonment.” *Heg v. Alldredge*, 157 Wn.2d 154, 161,
 11 137 P.3d 9 (2006) (quoting *Netherlands Am. Mortgage Bank v. E. Ry. & Lumber Co.*, 142 Wash. 204,
 12 210, 252 P. 916 (1927)). Abandonment has been found where the easement holder constructed an
 13 alternate route of ingress and egress to the dominant estate, used the alternate route instead of the
 14 original easement consistently over time, and made improvements inconsistent with the purpose of
 15 the easement. *Barnhart v. Gold Run, Inc.*, 68 Wn. App. 417, 422, 843 P.2d 545 (1993).
 16

17 Here, even if Mr. Hatch had not expressly relinquished the easement in his 2005 deed to Ms.
 18 Giustina and her husband, he clearly abandoned the easement through his subsequent actions. As
 19 discussed above, Mr. Hatch constructed a new private driveway on the land conveyed to him by Ms.
 20 Giustina and her husband. He ceased using the 1984 easement at that time. He acquiesced in a fence
 21 and landscaping installed by Ms. Giustina, blocking the easement. And he constructed a retaining wall
 22 and planted large trees across the easement, blocking its use. All of this clearly evidences his intent to
 23 abandon the easement. For this reason, too, the easement no longer exists.
 24

25 Moreover, during its review of the proposed Finn Hill 8 project, the city was aware of facts
 26 that would put a reasonable person on notice that the easement was abandoned. The city knew of the

1 trees that Mr. Hatch planted and the retaining wall that he constructed, as depicted in the Applicant's
 2 arborist report. The city knew of Ms. Giustina's fence, as depicted in the Applicant's topographic
 3 survey. The city had at least one photograph showing the landscaping that Ms. Giustina installed
 4 blocking the easement, as shown in the comments by Richard and Janice Orr. It is not surprising
 5 therefore, that the city directed the Applicant not only to provide a copy of the recorded easement, but
 6 also to show proof that it still had a legal right to utilize the easement. Haughian Decl., Ex. G at 3. As
 7 discussed above, the Applicant did not respond to that request.

9 Further, if the city had actually required the Applicant to coordinate with Ms. Giustina over
 10 access to the project site—as purportedly required in the city's June 27, 2022 correction letter attached
 11 to Ms. Haughian's declaration—Ms. Giustina obviously would have objected at that time. Thus, the
 12 city had constructive notice of her claim, too.

14 **3. The Easement Was Lost Through the Doctrine of Part Performance.**

15 Next, even if Mr. Hatch's 2005 deed to Ms. Giustina and her husband were found not to
 16 expressly relinquish the easement, the entire point of the 2005 boundary line adjustment was to
 17 effectuate an agreement between Mr. Hatch and Ms. Giustina and her husband, whereby (a) Ms.
 18 Giustina and her husband agreed to give Mr. Hatch a 15-foot-wide strip of land out of Lot 12 for Mr.
 19 Hatch to use as his own private driveway, (b) in exchange for Mr. Hatch's relinquishing of the
 20 easement in its entirety. *See* Giustina Decl., ¶¶13–20.

22 In Washington, even non-written real estate contracts may be enforced through the doctrine of
 23 “part performance,” proof of which requires: (1) an oral promise to convey; (2) the promisee's
 24 payment of any agreed purchase price, in whole or in part; (3) the promisee's taking possession of the
 25 land; and (4) the promisee's making of substantial, valuable improvements to the land that are
 26

1 referable to the alleged agreement. *See, e.g., Richardson v. Taylor Land & Livestock Co.*, 25 Wn.2d
 2 518, 528–29, 171 P.2d 703 (1946).

3 Here, Ms. Giustina has testified that there was indeed a contract consisting of her promise to
 4 convey a strip of Lot 12 to Mr. Hatch in exchange for his agreement to relinquish the easement.
 5 Giustina Decl., ¶¶13–20. Ms. Giustina and her husband paid the purchase price for the relinquishment
 6 of the easement by conveying approximately 4,500 square feet to Mr. Hatch out of Lot 12 of the
 7 Juanita Crest Plat. *Id.* And Ms. Giustina clearly took possession of the easement area and made
 8 substantial, valuable improvements in the form of a fence costing nearly \$8,000, and landscaping
 9 costing nearly \$6,000. Giustina Decl., ¶21.e. These facts are sufficient to enforce the real estate
 10 contract and to show that the easement no longer exists, having been given up by Mr. Hatch in 2005.

11 **4. The Easement Was Lost Through Equitable Estoppel.**

12
 13 Next, the easement was lost through equitable estoppel. “Extinguishing an easement based on
 14 equitable estoppel requires a showing that the easement holder (1) engaged in conduct that was
 15 inconsistent with his or her later claim, (2) the other party relied on the conduct, and (3) the other party
 16 would suffer injury if the easement holder were allowed to contradict or repudiate the earlier
 17 inconsistent conduct.” *Bressler v. Sullivan*, 188 Wn. App. 1034, 2015 WL 4064135, *3 (June 29,
 18 2015) (citing *Heg*, 157 Wn.2d at 165).

19
 20 Here, the Applicant’s predecessor in interest—Mr. Hatch—clearly engaged in conduct
 21 inconsistent with the continued existence of the easement. Ms. Giustina relied on that conduct
 22 (principally in giving him approximately 4,500 square feet out of lot 12 of the Juanita Crest Plat). Ms.
 23 Giustina would clearly suffer injury if the Applicant could now repudiate, destroy her land, and use
 24 her land to access eight new single family dwellings on the project site.
 25
 26

1 **5. The Easement Was Lost Through Adverse Possession.**

2 In Washington, easements may be lost through adverse possession. *See* 17 Wash. Prac., Real
 3 Estate §2.12 (2d ed.). Here, Ms. Giustina erected and maintained a fence across the easement area in
 4 2010, and installed landscaping that has blocked any use of the easement since that time. Giustina
 5 Decl., ¶21.e & Ex. K. This states a valid claim of adverse possession of the easement area. Moreover,
 6 the city was on notice of facts giving rise to Ms. Giustina’s adverse possession claim—including her
 7 fence and landscaping as discussed above.
 8

9 **6. No Valid Easement Was Ever Created.**

10 Finally, the easement was never valid to begin with. First, RCW 64.04.010 requires that
 11 “[e]very conveyance of real estate, *or any interest therein* . . . shall be by deed” (emphasis added).
 12 Yet, the document purporting to create the 1984 easement was not in the form of a deed, but in a
 13 “Declaration of Easement and Restrictive Covenants.” Further, because all of Lot 11 of Juanita Crest
 14 was held under common ownership at the time of its execution, the Declaration of Easement did not
 15 convey any property interest from one person to another—the very essence of a deed. *See, e.g.,* Black’s
 16 Law Dictionary (11th ed. 2009) (defining “deed” as “[a] written instrument by which land is
 17 conveyed”) (emphasis added). As such, the easement does not meet the requirements of RCW
 18 64.04.010 and was never valid.
 19

20 Second, it is axiomatic that “one cannot have an easement in one’s own property.” *Radovich*
 21 *v. Nuzhat*, 104 Wn. App. 80, 805, 16 P.3d 687 (2001). “To assume the existence of an easement
 22 appurtenant to land there *must* be presupposed *two* tracts of land in *separate* ownerships.” Restatement
 23 of the Law of Property, Ch. 41, § 497, cmt. a (1947) (emphasis added). “[A] landowner *cannot* burden
 24 her own land with an easement benefiting *herself*.” *Adams v. Deen*, 177 Wn. App. 1032, 2013 WL
 25 6044379, *4 (Nov. 13, 2013) (emphasis added). In other words, to have a valid easement, there must
 26

1 be two separate tracts of land—the servient estate and the dominant estate—and the two cannot be
2 owned by the same person or persons.

3 Here, the 1984 Declaration of Easement described the servient estate as “the south 120 feet of
4 Lot 11, JUANITACREST, according to the plat recorded in volume 44 of Plats, page 18, in King
5 County, Washington.” Giustina Decl., Ex. B. That same document described the dominant estate as
6 “Lot 11, less the South 120 feet thereof, JUANITACREST, according to the plat recorded in Volume
7 44 of Plats, page 18, in King County, Washington.” *Id.* In other words, the dominant and servient
8 estates were simply two halves of the same Lot 12 of the Juanita Crest Plat of 1947. And both halves
9 of that lot were owned at that time by the same owners—David C. Hansen and Verlene P. Hansen.
10 Because the easement purportedly created in 1984 did not serve two separate legal tracts of land—and
11 because the two halves of Lot 12 were owned by the same owners—no valid easement was created in
12 1984. Hence, no valid easement could exist today and the Applicant has no right to use the purported
13 easement area on Ms. Giustina’s land to access the proposed Finn Hill 8 project site.
14

15
16 **B. The Easement Claims Are Directly Relevant the City’s Short Plat Approval**
17 **Criteria**

18 The relevance of these claims to the city’s short plat approval criteria should be obvious,
19 especially to the city, which opines in its motion that the purported easement across Ms. Giustina’s
20 property “is *necessary* to provide access to the plat.” City Mot. at 1:32 (emphasis added). This is
21 clearly backed up by the code.

22 Under Section 22.20.140(a) of the Kirkland Municipal Code (“KMC”), one of the primary
23 approval criteria for a short plat is that it make “adequate provisions for . . . rights-of-way” and
24 “easements.” This clearly implicates the width of the access road serving the proposed Finn Hill 8
25 project. And it is a valid issue whether this project does (or does not) make adequate provision for
26 rights of way and easements where the Applicant can construct, at most, a 15-foot-wide roadway on

1 the “flag pole” or “panhandle” connecting the project site to NE 117th Street, and cannot make use of
 2 the additional 15-foot easement claimed to exist on Ms. Giustina’s land.

3 In turn, under KZC 145.45.2.a, all “Process I” decisions—including short plats—must comply
 4 with “all applicable development regulations.” This implicates KZC 105.10, which sets minimum
 5 width requirements for access roads. That provision requires, at a minimum, that the road serving a
 6 four-dwelling-unit development be 16-feet wide, within a 21-foot-wide easement or tract. *See* KZC
 7 105.10.1.a. *See also* Telegin Decl., Ex. A at 7 (city decision referencing KZC 105.10); *id.* at 24 (city’s
 8 “Short Plat Development Standards List,” referencing provision). And indeed, for a development
 9 consisting of five or more detached dwelling units—such as the proposed Finn Hill 8 project with its
 10 eight units—the access road pavement must be 20 feet wide and consist of “a dedicated and improved
 11 public right-of-way.” KZC 105.10.1.b. It is clear here that, without the easement across Ms. Giustina’s
 12 property, the Applicant cannot meet any of these requirements—it cannot construct a 16-foot-wide
 13 road in a 21-foot-wide easement or tract, and it cannot “dedicate” land to the public that it does not
 14 own.
 15

16 Finally, short plats must “serve the public use and interest” and be “consistent with the public
 17 health, safety and welfare.” KMC 22.20.140.b. Here, because the Applicant’s plans involve the illegal
 18 use and destruction of land that the Applicant does not own and has no right to use—based on an
 19 easement that never existed, and no longer exists if it ever did—the short plat is not in the public
 20 interest and is not consistent with public health, safety, and welfare.
 21

22 Simply put, without the purported easement across Ms. Giustina’s land, the Applicant cannot
 23 meet code requirements for access to the proposed Finn Hill 8 project. The easement-related issues
 24 raised in our appeal are, therefore, directly relevant to the city’s approval criteria.
 25
 26

C. The Easement Claims Are Within the Examiner's Jurisdiction.

Despite that our easement claims bear directly on the city's short plat approval criteria, the city argues that they are all beyond the Examiner's jurisdiction and should be dismissed. The Applicant joins the city in this motion. Both are misguided.

First, the city cites no principled reason or authority for why the city (or the hearing examiner) can determine that an easement exists through recorded documents—as the city did when it approved the plat after viewing the 1984 Declaration of Easement—but cannot determine that an easement does *not* exist due to on-the-ground facts establishing that the easement has terminated. If the city can determine that an easement exists for purposes of plat review, it can determine that an easement does not exist for that very same purpose. The city cites no authority to the contrary.

Second, regarding our claim that no valid easement was ever created, city staff obviously may review the face of the purported easement to see if it was ever valid to begin with. Here, the easement is facially invalid because it did not involve two separate tracts under separate ownership. If city staff and the Examiner can review the Declaration of Easement to determine if an easement exists, they can review that same document to determine it is facially invalid.

Third, regarding our other claims sounding in relinquishment, abandonment, partial performance, adverse possession, and equitable estoppel, regardless of whether the Hearing Examiner may formally issue a declaration resolving “quiet title issues” as the city calls them—in the same way a court would do in a quiet title lawsuit—the Examiner may adjudicate whether city staff correctly determined that the Applicant met its burden of proof to demonstrate compliance with the city's short plat approval criteria. As discussed above, the Applicant bears the burden of demonstrating

1 compliance with all applicable criteria.⁶ Several of those criteria involve the width of the access road,
 2 which cannot be met unless (a) the easement across Ms. Giustina’s property actually exists, and (b)
 3 the Applicant has the legal right to utilize that easement to access the project.⁷ Thus, one relevant
 4 question in this appeal is: In light of the history surrounding the easement discussed above, and all of
 5 the facts tending to show that the easement no longer exists, did the Applicant meet its burden of proof
 6 to demonstrate that it can meet the access requirements of the Kirkland Zoning Code?

8 Resolving this question does not require the Examiner to issue a “quiet title” order formally
 9 and finally deciding who owns what. Rather, resolving this question only requires the Examiner to
 10 view the facts in their totality and, if it appears that credible facts have been established showing that
 11 the easement no longer exists, then it would be appropriate for the Examiner to determine (a) that the
 12 Applicant did not meet its burden in front of city staff to demonstrate that it has a legal right to use
 13 Ms. Giustina’s land for access, and (b) as a result, city staff erred in approving the short plat and IDP.
 14 We have alleged many facts showing that the easement no longer exists, that the Applicant did not
 15 meet its burden, and thus that the city erred in this way.

17 An instructive case here is *Halverson v. Bellevue*, 41 Wn. App. 457, 704 P.2d 1232 (1985),
 18 cited at page 5 of the city’s motion. In *Halverson*, the City of Bellevue approved a subdivision
 19 involving, in part, a small portion of land claimed by a third-party through adverse possession. The
 20 city was aware of the adverse possessor’s claimed ownership interest before the subdivision was
 21 approved by the city’s highest decision-making authority (in that case, the city council). And
 22 applicable approval criteria provided that the subdivision could not be approved without the
 23

25 ⁶ See KZC 145.35 (titled “burden of proof,” and providing: “The applicant has the
 26 responsibility of convincing the Planning and Building Director that, under the provisions of this
 chapter, the applicant is entitled to the requested decision”).

⁷ See, e.g., KZC 105.10.1.a (requiring a minimum 16-foot-wide paved surface in a 21-foot-
 wide easement or tract).

1 application bearing the signature of “all parties having any ownership interest in the land subdivided.”
 2 *Halverson*, 41 Wn. App. at 459. When the city council approved the plat over the adverse possessor’s
 3 protest, the adverse possessor challenged the plat in court. The superior court reversed the city’s
 4 approval. The Court of Appeals affirmed.

5 Relevant here, the Court of Appeals provided guidance on how local governments should
 6 proceed with land use decisions, the validity of which may be affected by private real property
 7 disputes. The Court recognized that “[t]he statutes applicable here do not provide a direct answer to
 8 the question of how a city, town, or county should proceed in cases of disputed ownership of a portion
 9 of the property to be platted.” *Id.* at 459. Nevertheless, because the ownership issue was directly
 10 implicated by statutory approval criteria, the Court concluded that the plat should have been denied
 11 pending resolution of the underlying property dispute. In the Court’s words:
 12

13 Because the merit of an adverse possession claim cannot be determined
 14 by the city prior to adjudication, caution in approving plats in such
 15 cases is warranted. . . . ***Once the city was put on notice of Halverson’s***
 16 ***claim, approval of the plat as submitted was improper.***

17 *Halverson*, 41 Wn. App. at 460 (emphasis added).

18 The same reasoning applies here. During project review, city staff were aware of many facts
 19 tending to show that the claimed easement no longer exists, including the fence and landscaping
 20 installed by Ms. Giustina, and the trees and retaining wall installed by Mr. Hatch. The city also
 21 possessed documentation showing that, in 2011, Mr. Hatch and the city both knew that the easement
 22 no longer existed. Thus, even though Ms. Giustina did not explicitly raise her concern about use of
 23 her land during the public comment period—because the Applicant’s intent was largely hidden—the
 24 city was aware of facts showing that the Applicant had no right to use her land. The application should
 25 have been denied.
 26

Indeed, even if city staff were not aware of any facts tending to show that the easement no longer exists (and they were), we have now raised our claims in this appeal—and hence, the city’s final decision-making authority (the Hearing Examiner) is aware of the dispute and many facts showing that the easement no longer exists. As in *Halverson*, it would be error to affirm the city’s approval knowing that the Applicant’s use of the easement to meet code-required access standards is highly questionable at best, and flat-out illegal at worst.

Against this commonsense reasoning, the clear relevance of our easement claims to the city’s short plat approval criteria, and the holding of *Halverson*, the city cites a smattering of irrelevant authorities for the proposition that our easement claims should be dismissed. We discuss these very briefly below:

- First, the city cites Article 4, Section 6 of the Washington Constitution and RCW 7.28.020. City Mot. at 3–4. To be sure, these authorities vest the superior courts with original jurisdiction over quiet title disputes. But they say nothing about divesting other forums of jurisdiction. Nor do they address how the city should process or react to land use applications, the validity of which depends on the resolution of underlying real property disputes. The plain language of these authorities do not say that a city may simply ignore potential or actual disputes over real property when deciding whether an applicant has a current, legal right to use another person’s property.

- Next, the city cites KMC 3.04, RCW 35A.21.160, and RCW Chapter 58.17. *See* City Mot. at 4. But again, these provisions are completely silent on how the city (or the Examiner) should treat land use applications that depend on potentially illegal use of another person’s property. Thus, they are irrelevant.

1 • The city cites to the approval criteria for short plats and Process 1 decisions at KMC
2 Chapter 22.20 and KZC Chapter 145, stating that “[n]one of these provisions grant the city
3 authority to determine disputed title to real property between two private parties.” City Mot. at 5.
4 The city ignores that its approval criteria involve access width, which in this case cannot be met if
5 the easement no longer exists (or never existed in the first place).

7 • Curiously, the city cites Washington’s Land Use Petition Act (“LUPA”), claiming
8 “there is no provision of the LUPA that confers authority on the City or hearing examiners to
9 determine the merits of an adverse possession claim.” City Mot. at 5. This, of course, is not
10 surprising. LUPA provides a cause of action for challenging local land use decisions in superior
11 court and establishes procedures for doing so. LUPA does not “confer” on any city or any hearing
12 examiner the authority to do anything—it is not that type of statute.

14 • The city cites a group of laws to the effect that the Examiner has authority to decide
15 matters assigned to Examiner by the code, and to render a final decision. *See* City Mot. at 5–6
16 (citing RCW 35A.63.170(2), RCW 58.17.330(1)(c), and KMC 3.34.030). As the city observes,
17 these authorities do not expressly give the examiner the authority to resolve title to real property.
18 But they clearly do give the examiner authority to determine compliance with the city code, which
19 in this case can only be satisfied if the Applicant may lawfully use Ms. Giustina’s property for
20 access.

22 • Finally, the city cites *Chaussee v. Snohomish County*, 38 Wn. App. 630, 689 P.2d
23 1084 (1984) for the proposition that hearing examiners may not consider defenses sounding in
24 equitable estoppel. But in *Chausee*, the appellant was resisting the application of local code
25 requirements to his plat, arguing that the city was equitably estopped from applying those rules to
26 him. *See Chausee*, 38 Wn. App. at 638. The *Chausee* decision does not address how a city or

1 hearing examiner should treat a land use application, the validity of which hinges on the applicant's
2 legal authority to use another person's land. On that issue, the *Halverson* case is more relevant—
3 when the validity of a land use decision hinges on resolution of an underlying real property dispute,
4 the application should be denied.

5 For its part, the Applicant “supplements” the city’s motion on these issues, noting that it
6 provided a title report to the city and that the purported easement across Ms. Giustina’s land is
7 depicted on the 2005 boundary line adjustment whereby Ms. Giustina and her husband gave Mr.
8 Hatch 4,500 square feet out of Lot 12 of the Juanita Crest Plat. *See* Appl. Mot. at 8. The Applicant
9 asserts that these documents show that the city “had the requisite information for the Director to
10 determine that—for the purposes of the review of the Short Plat application—the Applicant could
11 provide necessary access.” *Id.* at 8–9. But none of those documents cited by the Applicant contain
12 the 2005 deed from Mr. Hatch whereby he expressly relinquished the easement across Ms.
13 Giustina’s property. Nor do they speak to the on-the-ground facts tending to show that the easement
14 no longer exists because it has been abandoned—facts many of which the city was fully aware
15 when it approved the short plat and IDP.

16 Finally, more documents may come to light showing that the city knew of other facts tending
17 to show that the easement no longer exists. For example, did the city know about the 2005 deed from
18 Mr. Hatch relinquishing the easement? Were there any other communications where it was revealed
19 that Mr. Hatch intended to abandon the easement in exchange for 4,500 square feet of Ms. Giustina’s
20 land? On May 12, 2023, we served the city and applicant with discovery requests pursuant to Rule 15
21 of the Rules of Procedure for Appeals Before the City of Kirkland Hearing Examiner, requesting
22 documents relating to the easement, and requesting a response by June 12, 2023. *See* Telegin Decl.,
23 Ex. B. It would be unfair to dismiss these claims when we have outstanding discovery requests that
24
25
26

1 may further show what the city knew about the easement. *Cf* Civil Rule 56(f) (allowing court to deny
2 summary judgment motion in order to allow time for necessary discovery to be conducted).

3 In conclusion on this issue, the easement claims should not be dismissed. Those claims bear
4 directly on the Applicant's compliance with access width standards in the Kirkland Zoning Code.
5 The city was aware of facts tending to show that the easement no longer exists (and so now is the
6 Hearing Examiner) but approved the plat regardless of the Applicant's doubtful right to use the
7 purported easement area. It was error for the city to approve the plat. It would be error for the
8 Examiner to uphold the city's decision. The motions to dismiss these issues should be denied.
9

10 **V. ARGUMENT ON NON-EASEMENT CLAIMS**

11 In addition to joining the city's motion to dismiss our easement-related claims, the Applicant
12 moves to dismiss all other claims in this appeal—either because they are beyond the Examiner's
13 jurisdiction, or, the Applicant says, because there is no evidence to support them. Below, we respond
14 to those arguments.
15

16 **A. Dwelling Units Per Lot**

17 One of the issues in this case is whether the Applicant may legally build eight residences on
18 the four lots created by the proposed Finn Hill 8 project. Resolution of that issue hinges on whether
19 the proposed ADUs qualify as “dwelling units” within the meaning of the city's density limits, both
20 on a per-lot and per-acre basis. In our public comments on this project, we argued that the ADUs are
21 “dwelling units” for purposes of the city's per-acre density limits, and as a result, given the total size
22 of the project parcel eight units are not allowed. *See* Telegin Decl., Ex. A at 37–39.
23

24 The city's decision on the short plat and IDP directly addresses this issue, and in an extended
25 discussion of the city's density limits, concludes that eight units are allowed on the project site,
26 concluding: “Under the current Zoning Code provisions (KZC Chapter 15 and Chapter 115), each lot

1 may contain one principal detached dwelling unit and up to two ADUs (and any detached ADUs may
 2 be independently owned or rented).” Telegin Decl., Ex. A at 3–4. *See also id.* at 6 (concluding
 3 “Therefore, based on the language in KZC 115.07 noted above, ADUs are not ‘dwelling units’ and
 4 are not considered in the density analysis of KZC 15.30 (DD-17) for this proposal”).

5 In our Notice of Appeal, we challenged these conclusions. *See* Notice of Appeal at 2, ¶(1). The
 6 Applicant moves to dismiss this claim, arguing that “[w]hether or not the Applicant will be allowed
 7 to construct a detached accessory dwelling unit on each lot will be determined as a result of the
 8 Department’s review of an application for a building permit authorizing such development,” and that
 9 “[t]he approval of the Short Plat does not by itself authorize such development because it is not an
 10 element of the subdivision approval.” Appl. Mot. at 9:11–15.

11 Whether the city *could* have passed over this issue without deciding it in the context of the
 12 short plat and IDP application, and saved it for another day, is a valid question. But in reality, the city
 13 concluded affirmatively in its decision that “Under the current Zoning Code provisions (KZC Chapter
 14 15 and Chapter 115), *each lot may contain one principal detached dwelling unit and up to two ADUs*
 15 (and any detached ADUs may be independently owned or rented).” Telegin Decl., Ex. A at 3–4
 16 (emphasis added). This is an element of the Director’s decision and as such we should be allowed to
 17 challenge it here.

18 The proposed houses are a critical component of the city’s IDP process, given that short
 19 plat/IDP applications “must include both horizontal and vertical information for houses and utilities
 20 (e.g. - 70% engineering).”⁸ The Applicant cites no authority for the proposition that certain issues are
 21 “off limits” in a short plat/IDP appeal simply because the city could have, theoretically, passed over
 22

23
 24
 25
 26 ⁸ *See* <https://www.kirklandwa.gov/Government/Departments/Planning-and-Building/Trees/Integrated-Development-Plan-IDP#panel-1-3>.

those issues in silence and saved them for resolution at a future date. The city made a ruling on this issue within the four-corners of the city's decision. We should be able to challenge the city's ruling regarding the allowable number of dwellings in the context of an appeal of that very same decision, in which the city squarely addressed this issue.

B. Road Conditions and Inadequate On-Site Parking

During the public comment period for this project, numerous comments were submitted by area residents—including Ms. Giustina and the residents of the Overlook HOA—raising concerns about increased traffic and lack of on-site parking for residents and guests of the eight new homes that are planned for construction on the project site. We also raised these concerns in our Notice of Appeal, challenging the director's conclusions concerning traffic, road conditions, and lack of on-site parking. See Notice of Appeal at 3, ¶¶(3), (4). The Applicant seeks to dismiss these claims, arguing variously that (a) lack of on-site parking is not germane to the approval criteria for a short plat (see Appl. Mot. at 9:21 – 10:2), (b) that increased traffic and traffic hazards are not “necessarily” within the “scope of review of a short subdivision application” (*id.* at 12:3–4), and (c) that there is no evidence to support any claims based on increased traffic, traffic hazards, or lack of on-site parking (*id.* at 12:1–20). The applicant is wrong on all counts.

First, increased traffic, traffic hazards, and lack of on-site parking are all relevant and germane to the city's approval criteria. Notably, KMC 22.20.140(b)—approval criteria for short plats—provides that no short plat may be approved unless the applicant demonstrates that “[i]t will serve the public use and interest and is consistent with the public health, safety and welfare.” Likewise, KZC 145.45.2.b—approval criteria for all Process 1 decisions, including short plats—provides that no Process 1 application may be approved unless the applicant demonstrates that “[i]t is consistent with the public health, safety and welfare.” These are broad criteria, encompassing any element or

consequence of the short plat that may adversely affect public health, safety, and public welfare, consistent with the city's fundamental duty to protect the public from such effects. *See, e.g., Seattle v. Hinckley*, 40 Wash. 468, 471, 82 P. 747 (1905) (observing "[t]here is no such thing as an inherent or vested right to imperil the health or impair the safety of the community. But, to be protected against such impairment or imperilment is the universally recognized right of the community and all civilized governments—a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power."). The Applicant cites zero authority for the proposition that when reviewing any division of land, consequent increases in traffic and traffic hazards can be ignored. These issues are squarely within the Examiner's jurisdiction in her review of the proposed Finn Hill 8 project.

As for the Applicant's argument that these claims should be dismissed for lack of evidence, again, the Applicant is dead wrong. Indeed, a simple review of the record before the city when it made its decision shows there was ample evidence that this project will endanger public health, safety and welfare through increased traffic and lack of on-site parking. Numerous public comments spoke to these issues—from people with first-hand experience of traffic and traffic hazards on the roads surrounding the project site—several of which we quote below:

NE 117th is a substandard road with no sidewalks. There are tons of kids riding their bikes, families pushing strollers, people walking their dogs. I can only imagine the heavy traffic increase from eight new houses jammed into a super small space. Its already too crowded with lots of cars coming and going. Where would people park? There isn't any room in the development for guests. They can't park on NE 117th because that is a no parking street and marked as such. This hasn't been properly thought through. The development should not be allowed to happen. Finn Hill is still a rural area with insufficient roads and sidewalks and we cannot fit in any more homes. Allowing this to go ahead will totally ruin the already overpacked Finn Hill area at the end of 84th Ave NE.

Telegin Decl., Ex. A at 45 (comments by Ken Williams).

The current proposal would allow 7 additional homes on that access road with a potential total of 24 additional cars with ZERO additional street parking planned for. There is technically ZERO street parking on 117th and it's already a problem when folks in the neighborhood hold BBQ's and parties. If the City approves this, you are actively and knowingly exacerbating that issue. . . . And since the garbage trucks can't navigate the access street, how is the Fire Department going to handle this- on a night where folks are parking on the streets illegally as they already do?

Id., at 48 (comments by Joe Hauck).

Currently, due to the increasing density of the neighborhood, associated traffic has risen creating safety concerns. The area in question has a "blind" road that crests the hill at 84th Ave NE as well as a sharp corner on NE 177th St. Adding an estimated 15-24 cars to the roadways compounds an already stressed situation. Access to the current roads from the parcel are currently provided with the assistance of mirrors, privately hung, given the precarious nature of access to main roads.

Id. at 50 (comments by Brendan Curran).

There is no parking available or allowed on either 84th Ave NE, which is the north-south roadway shown, nor on NE 117th Street, which is the east-west roadway shown. Both of these roads are narrow and hilly, with numerous blind spots. These roads are also frequented very regularly by neighbors walking with small children, dogs, etc. as it is a circular loop that affords nice vistas. Having cars parked along these streets would certainly be a public health issue, as the roads are too narrow to allow cars to pass one another if cars are parked along the road. Again, all of the cars associated with the proposal, not just the estimated 20 that would be the residents, but also visitors, service providers, etc. have to be parked somewhere. Where exactly they are parked would be a constant battle for all current and future residents of the neighborhood. The plat map also clearly illustrates the total lack of street frontage for a proposed eight home development. The only street frontage is the actual narrow access road.

Id. at 55 (comments by Mike Hurley).

Take a close look and think about the logistics of cramming 8 houses in this space. We all know that these homes will be purchased by families like all of ours. Families with kids that will ultimately be teenagers with cars of their own. A conservative estimate of 24 people,

1 most likely each with a car eventually. Look at the site map and ask
 2 yourself where in the world are 24 cars going to go? And where will
 3 their guests park? NE 117th Street is supposed to be a no parking zone,
 4 but we all know that overflow parking is going to spill all over NE
 5 117th Street and around the corner on to 82nd Ave NE, making an
 6 already tight and potentially dangerous situation much worse. Given
 that there is zero street frontage for the lot in question, where are 24
 garbage cans going to go on Tuesdays? The list of potential issues goes
 on and on.

7 *Id.* at 61 (comments by Leah Connachan).

8 At the least this development will add an additional eight cars to our
 9 mostly sidewalk-less narrow streets. In reality there will probably be
 10 more than 16 additional cars added. In addition to the limited guest
 11 parking the development offers, if one were to investigate the
 accessibility of street parking, one would discover that there is very
 little street parking available.

12 *Id.* at 67 (comments by Irene Giustina).

13 Our homes are part of a closed, circular block that many families and
 14 active residents utilize for walking and other activities all year round,
 15 day and night, even though the streets are narrow, have minimal
 16 sidewalks, and lack parking. Additionally, this neighborhood is fully
 17 vehicle dependent; there is no easily available alternative
 18 transportation or other infrastructure to reside here without owning one
 19 or more cars. The combination of foot traffic, car traffic, delivery
 20 vehicles, service vehicles, and guest parking has already created a
 21 congested environment (as well as frequent trespassing of delivery,
 22 service, and guest vehicles on our HOA's private road). It is also
 23 important to note that there are currently two other short plat proposals
 24 posted and one under development on the same closed loop in which
 25 we reside. This specific proposal seeks to build a shocking EIGHT
 26 single-family homes on a small lot with currently only one house that
 borders ten existing homes. The lot is enclosed within the block and is
 only accessible via a single narrow easement that immediately parallels
 our private drive. It is impossible to imagine the construction of EIGHT
 homes being achieved without constant disruption to existing residents,
 danger to school-aged children and others who ride bikes, walk, and
 run in the area, and damage to our private road which we must pay out
 of pocket to maintain. Even after the construction phase, approval of
 this permit will not only drastically impact the safety of the entire
 neighborhood, but substantially alter the lives of the people in all ten
 of these homes as well as surrounding neighborhoods.

1 *Id.* at 69 (comments by Molly Malouf).

2 NE 117th Street is narrow as it was originally built to access acreages.
 3 There are no sidewalks, the road is not flat (there is a hill at both ends)
 4 with mature hedges bordering, which makes sight distances
 5 challenging. There are no parking signs along the whole north side of
 6 the street and there are many driveways on the south side, which makes
 7 parking options limited and not ideal. When a car is parked on the
 8 street, only one other can pass by. There is little public transportation
 opportunities, with the closest bus stop being over a mile away. One
 cannot live in this area without a vehicle. There is no parking all along
 the whole of this end of 84th Ave NE which is the main access route
 to NE 117th ST.

9 NE 117th Street is used extensively by vehicles accessing all of the
 10 houses at this end of the hill. We are at the southern tip of a dead-end
 11 portion of the broad Finn Hill neighborhood, at the far southern end of
 12 the main route of 84th Ave NE which traverses Finn Hill. It offers
 13 lovely views of Lake Washington, the Cascade and Olympic
 14 Mountains and downtown Seattle and are enjoyed by pedestrians and
 15 cyclists from dusk to dawn due to the “circular” nature of this dead-
 end route. This includes families with small children and strollers, dog-
 walkers, and children use this route for walking to Sandburg
 Elementary and Finn Hill Middle School. Once again, there are no
 sidewalks on this route; not on NE 117th ST, nor on this southern end
 of 84th ST NE.

16 If this lot is subdivided, there needs to be adequate space remaining for
 17 parking for residents and guests, turn-around space for delivery
 18 vehicles, and space for recreation opportunities for families living there
 19 WITHIN the property. The closest public area for recreation is
 Sandburg Elementary at 1 mile (which is not usable by the public
 during school hours) or Finn Hill Park at 1.7 miles.

20 There is only enough room for one car to traverse the distance into and
 21 out of the main section of the property. And the immediate entrance to
 22 the property has very limited sight distance due to the neighbor’s 20”+
 23 hedge. I have lived here for almost 10 years and I have witnesses
 24 several close calls with vehicles almost t-boning each other. It will be
 difficult for construction vehicles to access the main portion of the
 property too.

25 *Id.* at 71 (comments by Janice Orr).

26 We have lived in our house for 10 years (the house has been here since
 1980) and in that 10 years I cannot believe the overcrowding that is

1 developing within such a small infrastructure. Not a day goes by that I
 2 don't worry that I am going to come around one of our blind corners
 3 and plow into the many pedestrians that enjoy making the walk down
 4 84th, across 119th and up the other side of the block part of their day.
 5 We have no sidewalks and a blind corner where 84th intersects 119th.
 6 My husband must get sick of hearing me say "Someone's going to get
 7 killed up here" when I come inside after parking!

8 Just the sheer amount of extra cars that can come along with 4 bedroom
 9 homes with additional 2 bedroom units makes the hair on my arms
 10 stand up. We just don't have the kind of neighborhood that can support
 11 the type of traffic it's already getting and this is only going to make
 12 things worse. Eight homes on .7 acres is not the image I had of Kirkland
 13 when we moved to Kirkland, but image aside, this is just a bad idea.

14 *Id.* at 80 (comments by Ann Fin Detlefs).

15 The two roads that will provide access to this subdivision are narrow,
 16 have a high level of foot traffic, no sidewalks (for the most part) and
 17 have a number of blind corners. The addition of 8 homes, potentially
 18 16-32 vehicles, would add a significant amount of traffic to this
 19 neighborhood that already faces safety concerns for the
 20 aforementioned reasons.

21 There is a blind spot at the top of 84th Ave NE where the road crests
 22 over a hill. There was a fatal car accident at this point in the road 15-
 23 20 years ago. It is very difficult to see oncoming foot and vehicle traffic
 24 and has been an ongoing concern for neighbors throughout the years.

25 *Id.* at 86 (comments by Tracy Bates).

26 We have lived here for over 60 years and it's already way too crowded
 and Northeast 117th street is actually dangerous with all the traffic.
 Adding that many new homes is complete folly, there is no place for
 them to park, Northeast 117th not even a full-size road and we will just
 have increased traffic from construction, visitors, deliveries, etc. and
 it's just completely unacceptable.

Id. at 90 (comments by Dale Snow).

Our homes are part of a closed, circular block that many families and
 active residents utilize for walking and other activities all year round,
 day and night, even though the streets are narrow, have minimal
 sidewalks or parking nearby. Additionally, this neighborhood is fully
 vehicle dependent; there is no easily available alternative
 transportation or other infrastructure to reside here without owning one

1 or more cars. The combination of foot traffic, car traffic, delivery
 2 vehicles, service vehicles, and guest parking has already created a
 3 congested environment. It is also important to note that there are
 4 currently two other short plat proposals posted and one under
 development on the same closed loop in which we reside.

5 *Id.* at 92 (comments by Matthew and Shelly Cohen).

6 Currently, most of the homes in the vicinity have two driveway parking
 7 spaces which is inadequate to accommodate visitors. If you visit 117th
 8 St most days of the week you will see illegal parking by landscapers
 and more. Because in this case the planned ADUs will be sold
 separately to the main dwellings, we can expect both a doubling of cars
 per 'lot' and a doubling of visiting vehicles also.

9 Given that parking and illegal parking is already a problem here [street
 10 parking not allowed due to safety concerns] implore the city to require
 11 the developer to modify their plans so that they include additional
 visitor parking space so as not to compound these issues.

12 *Id.* at 98 (comments by Fay Swift).

13 Finally, many of these concerns and observations are summed up in the accompanying
 14 declaration of Mike Hurley.

15 Year-round, all of the streets surrounding the Finn Hill 8 project site
 16 draw a lot of pedestrian foot-traffic from the surrounding area. Many
 17 people take walks here, frequently with their spouses or friends, pets,
 18 and small children (walking and in strollers). In part they come because
 there are great views—of the water, Mt. Rainier, and the Space Needle.

19 But traffic is also already a major problem in this area. The roads are
 20 very narrow and there are few sidewalks. With so many sharp corners
 21 and blind spots created by the topography, it can be very difficult for
 cars to see oncoming traffic and pedestrians on the road. This problem
 is exacerbated by street parking. On NE 117th Street, street parking is
 22 prohibited on the north side of the road, but frequently there are many
 cars parked on the south side of the road. This creates a lot of problems,
 23 because the street is too narrow for two cars to pass each other around
 a parked car or cars. When residents have guests over, parking can fill
 up, making it very difficult to navigate NE 117th Street. Nor is it
 24 uncommon for people to park illegally on the north side of NE 117th
 Street, exacerbating these problems.
 25
 26

1 There is also just a lot of traffic on NE 117th Street. After conversing
 2 with the other homeowners in the Overlook at Finn Hill HOA, we
 3 estimate that our four houses alone generate five to ten service vehicle
 4 trips per week (landscaping, dog grooming, gutter cleaning, plumbers,
 5 HVAC, utility vehicles, etc.), 20 to 30 delivery vehicles (USPS, UPS,
 6 Amazon, food delivery, etc.), and 15 to 20 additional friend and family
 7 vehicles (we are always discussing with our kids about how they and
 8 their friends can park, but it still causes bottlenecks). That is just the
 9 amount of traffic that we generate. There is also traffic that bleeds onto
 10 our private street from our neighbors because there is no street parking
 11 close by. It is not uncommon for cars to trespass on our property due
 12 to the extreme lack of street parking.

13 With eight new homes, the proposed Finn Hill 8 project would
 14 dramatically increase the number of daily and weekly vehicular trips
 15 on NE 117th Street and surrounding roads. Given the prices of the
 16 proposed new homes and the demographics of the families that would
 17 ultimately purchase these homes, as well as considering that in our four
 18 home HOA, there are currently a total of 12 cars with 2 more expected
 19 to be added by the end of the year, it is likely that 25 or more cars will
 20 be added to the streets. With service, delivery, and guest trips, and
 21 based on the estimate for our four home HOA, it would not be
 22 unreasonable to assume that the project could generate 100 or more
 23 additional trips in and out of our neighborhood on a weekly basis.

24 This may not seem like much in the abstract, but as many area residents
 25 have commented in this matter (many of whose comments were
 26 circulated with the city's decision), the roads here already feel
 dangerous with so many cars, blind spots, obstacles, and pedestrians.
 Frankly, it feels very much like our roads are already way "over
 capacity," and any more traffic is very likely to make a bad situation
 worse, exacerbating existing traffic hazards.

Hurley Decl., ¶¶9–13.

In its motion to dismiss, the Applicant blithely asserts that "there can be no legitimate dispute that the Director was wrong in determining that the Short Plat adequately provides for rights of way and this Appeal Challenge should be dismissed on summary judgment." Appl. Mot. at 12:11–14. In support, the Applicant says that NE 117th Street "meets the roadway requirements for the neighborhood (i.e., R-20)." *Id.* at 12:8. Yet, as many area residents have noted, NE 117th Street lacks

sidewalks, as required by the code.⁹ The Applicant also says that it “will construct right-of-way improvements as a condition of its LSM and/or building permits,” and that “[o]ther mitigation, if necessary, will be considered at the time of development permitting.” *Id.* at 12:9–12. Yet, the Applicant does not say what these “improvements” and “other mitigations” are, let alone how they will address traffic hazards caused by the Finn Hill 8 project in light of the many concerns raised above.

We are not aware of any analysis of potential traffic and traffic safety impacts caused by this project, flowing both from increased traffic in an already problematic area and through the lack of adequate on-site parking. Yet, these issues are directly relevant to the city’s short plat approval criteria since they implicate public health, safety and welfare. There is ample evidence creating triable issues on these claims. The Applicant’s motion to dismiss our traffic, traffic-safety, and parking claims should be denied.

Finally, we note that among the discovery requests we served on the Applicant and city on May 12, 2023, we also requested “[a]ny and all documents relating to potential vehicular traffic associated with the proposed Finn Hill 8 Short Plat.” Telegin Decl., Ex. B. At the very least, these claims should not be dismissed until discovery has been completed.

C. Destruction of Property Owned by Overlook HOA

In Paragraph 10(c) of our Notice of Appeal, we challenged the Applicant’s right to dig up portions of the private roadway owned by the Overlook HOA.¹⁰ The Applicant argues without

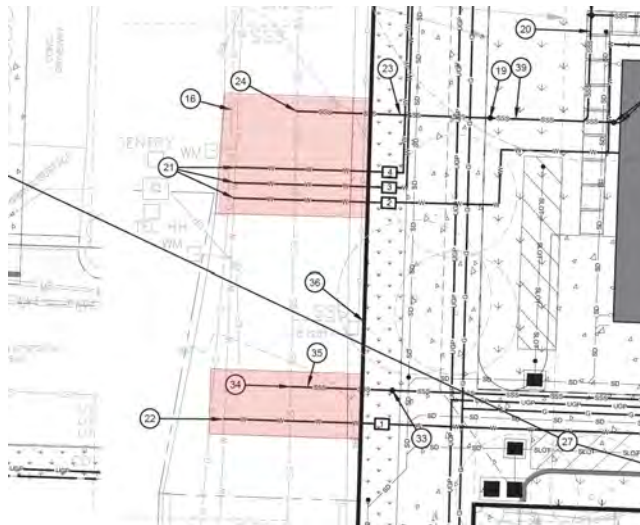
⁹ See KZC 110.30 (“5-foot-wide sidewalks [are] required on both sides of the street unless otherwise specified in the Comprehensive Plan, the Nonmotorized Transportation Plan, a design report for the specific street, elsewhere in this code, or as a special condition of development”).

¹⁰ See Notice of Appeal at 4 (alleging “the short plat plans submitted by the applicant indicate that the applicant intends to dig up portions of the private roadway owned by the Overlook at Finn Hill Homeowners Association. Yet, the applicant has no authority to damage property owned by the HOA, or to dig up, modify, or otherwise physically alter any part of the HOA’s private access road”).

1 authority that this issue is outside the Examiner's jurisdiction. *See* Appl. Mot. at 10:3–10. But this
 2 issue relates specifically to the city's short plat approval criteria.

3 First, as discussed above, a short plat may only be approved if “[i]t will serve the public use
 4 and interest and is consistent with the public health, safety and welfare.” KMC 22.20.140(b). To the
 5 extent this short plat requires the Applicant to trespass and destroy property owned by the HOA, it is
 6 not in the public interest.
 7

8 Furthermore, the Applicant's plan sets indicate that it intends to dig up a portion of the HOA's
 9 private roadway precisely to install water lines. The image below is from Sheet C09 of the Applicant's
 10 preliminary short plat plans. We have shaded the portions of the HOA's road which the Applicant
 11 intends to dig up in order to install these water lines, in red.



Source: Telegin Decl., Ex. A at 166

22 If the Applicant has no right to trespass upon the HOA's road, then it cannot install these water
 23 lines. Thus, this issue directly implicates the short plat criteria at KMC 22.20.140.a, which requires
 24 every short plat to make “adequate provisions” for “water supplies.” This issue is clearly within the
 25 Examiner's jurisdiction. The Applicant's motion to dismiss this issue should be denied.
 26

D. Construction Impacts

We agree to dismissal of our construction impacts claim at Notice of Appeal, page 3, paragraph (6).

E. Open Space and Parks

We agree to dismissal of our open space/parks claim at Notice of Appeal, page 3, paragraph (7).

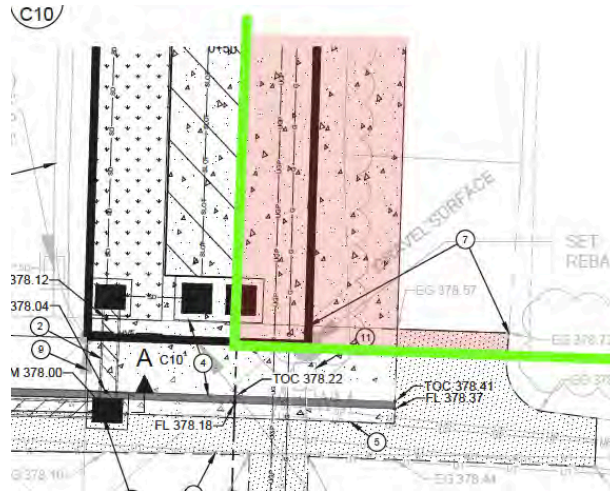
F. Compliance with Criteria

In Paragraph (8) of our Notice of Appeal, we included a short paragraph challenging Section IV.B of the decision, reiterating prior claims in the context of the city’s specific analysis of short plat approval criteria. For all of the reasons stated above, this claim should not be dismissed as it relates to use of the purported 1984 easement, access width, transportation safety, and street parking. We agree to dismissal of this claim as it relates to construction impacts and open space.

G. Development Regulations—Right-of-Way Improvement Plan

In our Notice of Appeal, we challenged the city’s approval of the Applicant’s Right-of-Way Improvement Plan because that plan contemplates physical improvements on Ms. Giustina’s property—improvements that the Applicant has no legal authority to construct. *See* Notice of Appeal at 4, ¶(9). The Applicant moves to dismiss this claim, arguing that the only improvements contemplated will be located in the right-of-way or on the project site. Appl. Mot. at 13:21 – 14:5.

Below is an excerpt from Sheet C10 of the Applicant’s Preliminary Short Plat Plans—titled “Right-of-Way Improvement Plan.” We have shaded the areas that the Applicant intends to pave in red, and outlined Ms. Giustina’s property line (as depicted on that sheet) in green. Clearly, the Applicant’s Right-of-Way Improvement Plan contemplates paving over Ms. Giustina’s property.



Source: Telegin Decl., Ex. A at 167

Because the Applicant's Right-of-Way Improvement Plan contemplates physical improvements to land the Applicant does not own, we should be allowed to challenge this issue and the city's decision approving that plan.

H. Proper Applicant

In Section IV.C.8 of its motion, the Applicant contests our argument that it violated KZC 145.15 by applying for a land use permit regarding land that it does not own. The applicant contests this allegation, arguing that since it is not proposing to subdivide land that it does not own, it did not violate this rule. Appl. Mot. at 14.

KZC 145.15—tilted “Applications”—provides, in part: “Who May Apply – Any person may, personally or through an agent, apply for a decision *regarding* property he/she owns” (emphasis added). Notably, this provision does not say that a person may apply for a short plat “dividing” property that he/she owns. Rather, it says that a person may apply for a decision “regarding” property that he/she owns.

Here, it is true that the Applicant is proposing to subdivide only land that the Applicant owns. But it is equally clear that the validity of the short plat also requires a finding that the Applicant can

1 meet the access width requirements of the Kirkland Zoning Code, which can only be met here by using
 2 Ms. Giustina's property for access. The term "regarding" is exceedingly broad, meaning "in relation
 3 to" or "about." See <https://dictionary.cambridge.org/us/dictionary/english/regarding>. And the city's
 4 notice of decision notes specifically that the short plat will need to gain access through the alleged
 5 easement across Ms. Giustina's property. See Telegin Decl., Ex. A at 4.

7 Because the short plat is contingent on use of the purported easement across Ms. Giustina's
 8 property, the city's decision is a decision "regarding" her property. The Applicant has no right to use
 9 her property. This issue is within the Examiner's jurisdiction. The Applicant's motion to dismiss this
 10 issue should be denied.

11 **I. Proper Signatures**

12 Appellants agree to dismissal of the signature requirement raised in Paragraph 10(b) of the
 13 Notice of Appeal.
 14

15 **VI. CONCLUSION**

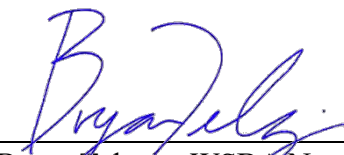
16 With the exceptions noted above, the motions to dismiss should be denied.

17 Dated this 19th day of May, 2023.

18 Respectfully submitted,

19 TELEGIN LAW PLLC

20
 21
 22 By:


 Bryan Telegin, WSBA No. 46686
 175 Parfitt Way SW, Ste. N270
 Bainbridge Island, WA 98110
 (206) 264-2884
 bryan@teleginlaw.com

*Counsel for Appellants Overlook at Finn Hill
 Homeowners Association and Irene Giustina*


20070713000754

 NORTHSHORE UTILITY DISTRICT
 PAGE 001 OF 009
 07/13/2007 10:41
 KING COUNTY, WA

40.00

Carol Cameron
 Northshore Utility District
 6830 NE 185th Street
 Kenmore, WA 98020-0489

Please print or type information – Recorder's Cover Sheet as per RCW 65.04

Document Title(s) (or transactions contained therein):	EASEMENT – WATER GOLDBECK (W2006028)
Grantor(s) (Last name first, then first name and initials): <input type="checkbox"/> Additional names on page ____ of document.	NORTHSHORE UTILITY DISTRICT
Grantee(s) (Last name first, then first name and initials): <input type="checkbox"/> Additional names on page ____ of document.	CHAFFEY HOMES, INC.
Legal Description (abbreviated: i.e., lot, block, plat or section, township, range): <input type="checkbox"/> Additional legal description is on page ____ of document.	LOT "Y" KCBLA# L05L0057 AF 20051011900023 RECORDS OF KING COUNTY, WAS SITUATED IN THE SE ¼ OF THE SE1/4 OF SECTION 25, TOWNSHIP 26 N, RANGE 4 E, W.M. KING COUNTY, WASHINGSTON.
Assessor's Property Tax Parcel or Account Number at the time of recording:	376730-0060
Reference Number(s) of Documents assigned or released: <input type="checkbox"/> Additional references on page ____ of document.	

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

EXCISE TAX NOT REQUIRED

 By King Co. Records Deputy

WATER EASEMENT

THIS INSTRUMENT is made this 5 day of July, 2007
by and between Charley Hines Inc. and;
and; _____ and; _____

herein called the "Grantor", and NORTSHORE UTILITY DISTRICT, a municipal corporation of King County, Washington, herein called "Grantee".

1. For and in consideration of value paid by Grantee, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its successors and assigns, a non-exclusive perpetual easement for water lines with necessary appurtenances over, across, along, in, upon, under and through, the following described real property in King County, Washington, more particularly described as follows (The "Real Property"):

SEE EXHIBIT "A"

2. This Easement consists of all that portion of the above-described Real Property described as follows (The "Easement"):

SEE EXHIBIT "B"

3. Grantor does further convey and grant to Grantee a temporary construction easement for all purposes during the construction of said water lines with necessary appurtenances over, across, along, in, upon, under and thorough the above described property, together with the right of ingress to and egress from said described property for the foregoing purposes. Said temporary construction

I:\Engineering\Master Documents\Easement Forms\Originals\FinalVersions\Water Easement 04-26-04.DOC

easement to commence on the date of this instrument and to terminate at such time the water lines and appurtenances have been accepted for maintenance and operation by Grantee. The legal description of the Temporary Construction Easement is as follows:

SEE EXHIBIT "C"

4. Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to enter upon said property for the purpose of installing, constructing, operation, maintaining, repairing, altering, making connections or reconstructing said water lines and appurtenances, without incurring any legal obligation or liability therefor; provided that if the area within the easement is disturbed by such installation, constructing, operating, maintaining, repairing, altering, making connections or reconstruction of said water lines and appurtenances, Grantee shall restore the easement to a condition equal to or better than the condition prior to construction.
5. Grantor shall retain the right to use the surface of said easement, so long as such use does not interfere with the installation, construction, operation, maintenance, repair, alteration, connection to or reconstruction of the water lines and appurtenances. Grantor, Grantor's heirs, successors and assigns shall not place or have placed upon the easement obstructions such as a building(s) /structure(s) of a permanent nature, building / structure overhangs, rockeries, retaining walls, trees or shrubs.

I:\Engineering\Master Documents\Easement Forms\Originals\FinalVersions\Water Easement 04-26-04.DOC

6. Grantee shall indemnify, defend and hold harmless Grantor, Grantor's heirs, successors and assigns from any and all claims for injuries and / or damages suffered by any person which may be caused by exercise of the rights herein granted, provided, that Grantee shall not be responsible for any injuries and / or damages to any person caused by Grantor.
7. This Easement and the covenants herein shall be equitable servitudes or covenants running with the Real Property described herein and shall be binding upon the successors, heirs, and assigns of both parties hereto.
8. The Grantor warrants that the Grantor has clear title to the Real Property and the Easement and warrants the Grantee title to and quiet enjoyment of the Easement conveyed herein.
9. If either party is required to bring legal action to enforce or enjoy the covenants and rights granted by the Easement, the prevailing party shall have the right to recover all attorney's fees, witness fees and expense associated with the legal pursuit of these rights, whether in mediation or arbitration, at trial and on appeal, and in any bankruptcy proceeding.

Grantor:

Signature _____

Print Name _____

Grantor:Signature CHAPPEY HOMES INCPrint Name IAN D SLATER**Grantor:**

Signature _____

Print Name _____

Grantor:

Signature _____

Print Name _____

I:\Engineering\Master Documents\Easement Forms\Originals\FinalVersions\Water Easement 04-26-04.DOC

CORPORATE OWNERSHIP

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

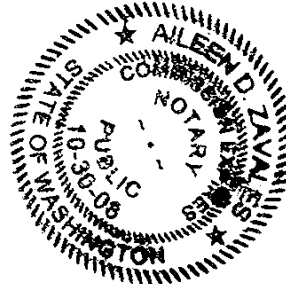
I certify that I know or have satisfactory evidence that Jan Slater
 is the person who appeared before me, and said person acknowledged that he/she
 signed this instrument, on oath stated that he/she was authorized to execute the
 instrument and acknowledged it as the Director / President (title or position) of
Chaffey Homes (name of corporation) to be the free and voluntary act of
 such corporation for the uses and purposes mentioned in the instrument.

Dated July 3 2007

(Signature)

(Print Name)

Notary Public in and for the State of Washington
 Commission Expires: 10 30-08

**GENERAL PARTNERSHIP OWNERSHIP**

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

I certify that I know or have satisfactory evidence that
 _____ (name of managing general partner) is the person who
 appeared before me, and said person acknowledged that he/she was authorized to
 execute the instrument as the Managing General Partner of
 _____ (name of partnership), the general partnership
 that executed the foregoing instrument, and acknowledged the said instrument to be the
 free and voluntary act and deed of said corporation and general partnership, for the
 uses and purposes therein mentioned.

Dated _____

(Signature)

(Print Name)

Notary Public in and for the State of Washington
 Commission Expires: _____

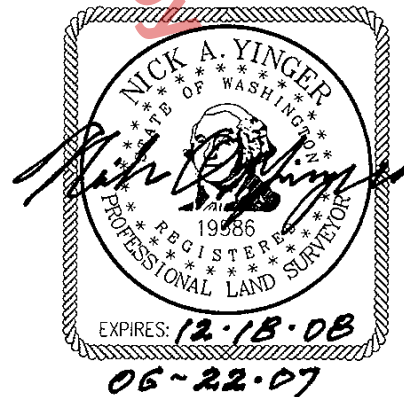
I:\Engineering\Master Documents\Easement Forms\Originals\Final Versions\Water Easement 04-26-04.DOC

EXHIBIT A**LEGAL DESCRIPTION OF GRANTOR PROPERTY**

LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057 RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY, WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

Written by: SEB
Checked by: NAY

Unofficial Copy



12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRSPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-GRANTOR-062107.doc

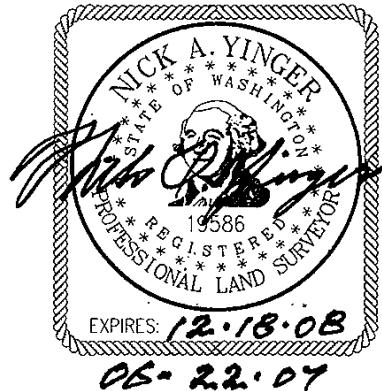
Land Development Consultants

EXHIBIT B**PERMANENT WATER LINE EASEMENT**

A PORTION OF LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057
RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY,
WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26
NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT Y:
THENCE NORTH 87°57'15" WEST ALONG THE SOUTH LINE OF SAID LOT Y 20.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 44.09 FEET;
THENCE NORTH 88°14'57" WEST 11.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 8.00 FEET;
THENCE SOUTH 88°14'57" EAST 11.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 97.21 FEET;
THENCE NORTH 88°14'57" WEST 5.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 20.00 FEET;
THENCE SOUTH 88°14'57" EAST 5.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 97.28 FEET;
THENCE NORTH 88°14'57" WEST 5.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 8.00 FEET;
THENCE SOUTH 88°14'57" EAST 5.00 FEET;
THENCE NORTH 01°45'03" EAST PARALLEL WITH THE EAST LINE OF SAID LOT Y 27.18 FEET;
THENCE SOUTH 87°57'29" EAST 20.00 FEET TO THE EAST LINE OF SAID LOT Y;
THENCE SOUTH 01°45'03" WEST ALONG THE EAST LINE OF SAID LOT Y 301.76 FEET TO THE
POINT OF BEGINNING.

Written by: SEB
Checked by: NAY



12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRSPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-WA-
ESMT-062107.doc

Land Development Consultants

EXHIBIT C**TEMPORARY CONSTRUCTION EASEMENT**

THE WEST 11.00 FEET OF THE EAST 31.00 FEET OF LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057 RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY, WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

Written by: SEB
Checked by: NAY

Unofficial Copy



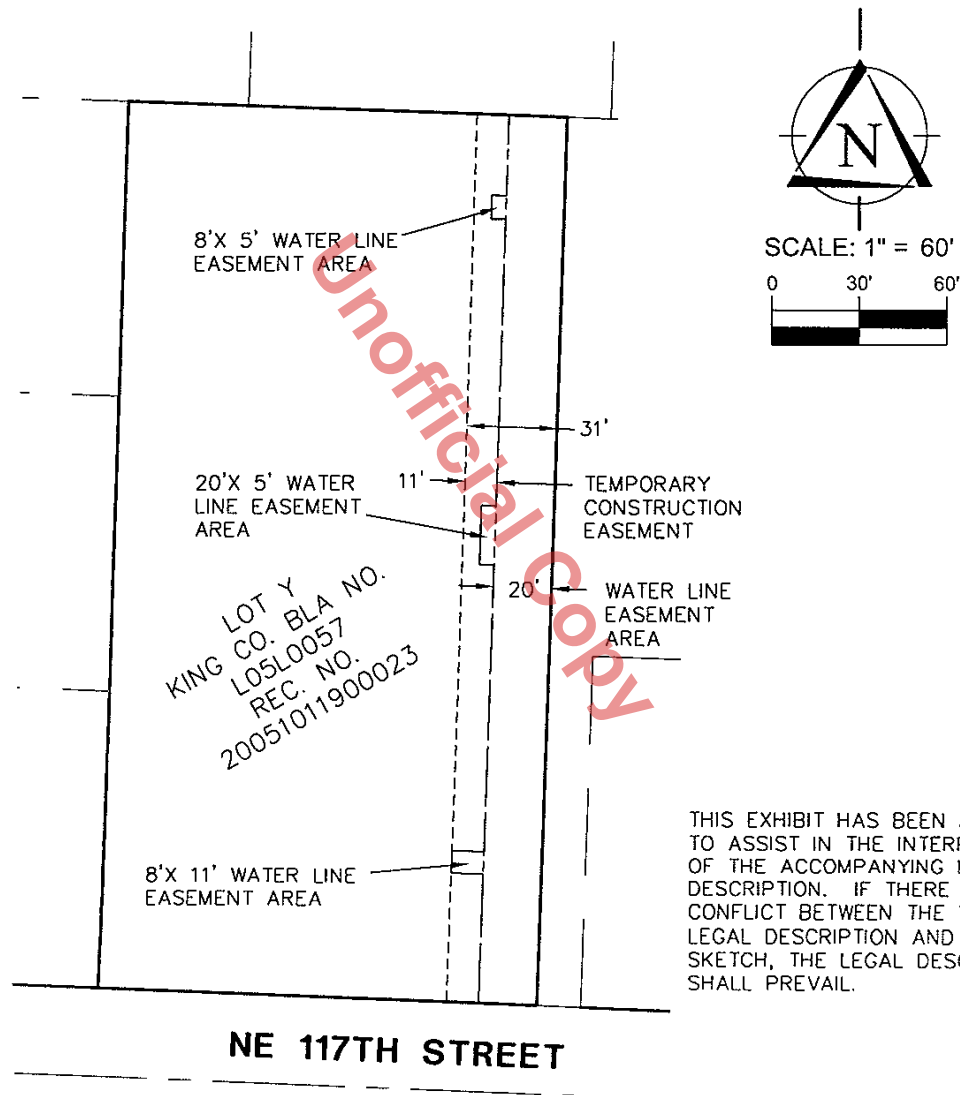
12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRESPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-
TEMP CONST-ESMT-062107.doc

Land Development Consultants

EXHIBIT ____
WATER EASEMENT

TRIAD JOB # 04-129
JUNE 20, 2007



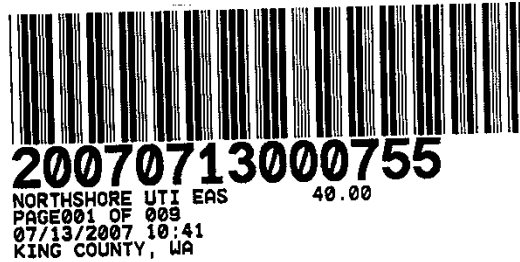
THIS EXHIBIT HAS BEEN PREPARED TO ASSIST IN THE INTERPRETATION OF THE ACCOMPANYING LEGAL DESCRIPTION. IF THERE IS A CONFLICT BETWEEN THE WRITTEN LEGAL DESCRIPTION AND THIS SKETCH, THE LEGAL DESCRIPTION SHALL PREVAIL.



12112 115th Avenue N.E. Kirkland, Washington 98034-6929
425.821.8448 - 800.488.0756 - Fax 425.821.3481
www.triadassoc.com

04129EX-WA-ESMT-062907.DWG SEB

and Development Consultants



Carol Cameron
 Northshore Utility District
 6830 NE 185th Street
 Kenmore, WA 98020-0489

Please print or type information – Recorder's Cover Sheet as per RCW 65.04

Document Title(s) (or transactions contained therein):	EASEMENT – SEWER GOLDBECK (S2006028)
Grantor(s) (Last name first, then first name and initials): <input type="checkbox"/> Additional names on page ____ of document.	NORTHSHORE UTILITY DISTRICT
Grantee(s) (Last name first, then first name and initials): <input type="checkbox"/> Additional names on page ____ of document.	CHAFFEY HOMES, INC.
Legal Description (abbreviated: i.e., lot, block, plat or section, township, range): <input type="checkbox"/> Additional legal description is on page ____ of document.	LOT "Y" KCBLA# L05L0057 AF 20051011900023 RECORDS OF KING COUNTY, WAS SITUATED IN THE SE ¼ OF THE SE1/4 OF SECTION 25, TOWNSHIP 26 N, RANGE 4 E, W.M. KING COUNTY, WASHINGSTON.
Assessor's Property Tax Parcel or Account Number at the time of recording:	376730-0060
Reference Number(s) of Documents assigned or released: <input type="checkbox"/> Additional references on page ____ of document.	

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

EXCISE TAX NOT REQUIRED

King Co. Records
 By [Signature], Deputy

SEWER EASEMENT

THIS INSTRUMENT is made this 5 day of July, 2007
by and between Chaffay Home Dr. and;
and; _____ and; _____

herein called the "Grantor", and NORTSHORE UTILITY DISTRICT, a municipal corporation of King County, Washington, herein called "Grantee".

1. For and in consideration of value paid by Grantee, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its successors and assigns, a non-exclusive perpetual easement for sanitary sewers with necessary appurtenances over, across, along, in, upon, under and through, the following described real property in King County, Washington, more particularly described as follows (The "Real Property"):

SEE EXHIBIT "A"

2. This Easement consists of all that portion of the above-described Real Property described as follows (The "Easement"):

SEE EXHIBIT "B"

3. Grantor does further convey and grant to Grantee a temporary construction easement for all purposes during the construction of said sanitary sewers with necessary appurtenances over, across, along, in, upon, under and thorough the above described property, together with the right of ingress to and egress from said described property for the foregoing purposes. Said temporary construction

I:\Engineering\Master Documents\Easement Forms\Originals\Final Versions\Sewer Easement 04-26-04.DOC

easement to commence on the date of this instrument and to terminate at such time the sanitary sewers and appurtenances have been accepted for maintenance and operation by Grantee. The legal description of the Temporary Construction Easement is as follows:

SEE EXHIBIT "C"

4. Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to enter upon said property for the purpose of installing, constructing, operation, maintaining, repairing, altering, making connections or reconstructing said sanitary sewers and appurtenances, without incurring any legal obligation or liability therefor; provided that if the area within the easement is disturbed by such installation, constructing, operating, maintaining, repairing, altering, making connections or reconstruction of said sanitary sewers and appurtenances, Grantee shall restore the easement to a condition equal to or better than the condition prior to construction.
5. Grantor shall retain the right to use the surface of said easement, so long as such use does not interfere with the installation, construction, operation, maintenance, repair, alteration, connection to or reconstruction of the sanitary sewers system and appurtenances. Grantor, Grantor's heirs, successors and assigns shall not place or have placed upon the easement obstructions such as a building(s) /structure(s) of a permanent nature, building / structure overhangs, rockeries, retaining walls, trees or shrubs.

1:\Engineering\Master Documents\Easement Forms\Originals\FinalVersions\Sewer Easement 04-26-04.DOC

6. Grantee shall indemnify, defend and hold harmless Grantor, Grantor's heirs, successors and assigns from any and all claims for injuries and / or damages suffered by any person which may be caused by exercise of the rights herein granted, provided, that Grantee shall not be responsible for any injuries and / or damages to any person caused by Grantor.
7. This Easement and the covenants herein shall be equitable servitudes or covenants running with the Real Property described herein and shall be binding upon the successors, heirs, and assigns of both parties hereto.
8. The Grantor warrants that the Grantor has clear title to the Real Property and the Easement and warrants the Grantee title to and quiet enjoyment of the Easement conveyed herein.
9. If either party is required to bring legal action to enforce or enjoy the covenants and rights granted by the Easement, the prevailing party shall have the right to recover all attorney's fees, witness fees and expense associated with the legal pursuit of these rights, whether in mediation or arbitration, at trial and on appeal, and in any bankruptcy proceeding.

Grantor:

Signature _____

Print Name _____

Grantor: CHAFFEY HOMES/NC

Signature _____

Print Name JAN D SLATER**Grantor:**

Signature _____

Print Name _____

Grantor:

Signature _____

Print Name _____

I:\Engineering\Master Documents\Easement Forms\Originals\Final Versions\Sewer Easement 04-26-04.DOC

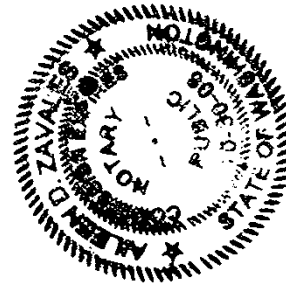
CORPORATE OWNERSHIP

STATE OF WASHINGTON)
COUNTY OF KING) SS

I certify that I know or have satisfactory evidence that Don Slater
is the person who appeared before me, and said person acknowledged that he/she
signed this instrument, on oath stated that he/she was authorized to execute the
instrument and acknowledged it as the Director of Land (title or position) of
Chaffey Homes (name of corporation) to be the free and voluntary act of
such corporation for the uses and purposes mentioned in the instrument.

Dated July 5 2007
Aileen Zavales
(Signature)
Aileen Zavales
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: 10-30-08

**GENERAL PARTNERSHIP OWNERSHIP**

STATE OF WASHINGTON)
COUNTY OF KING) SS

I certify that I know or have satisfactory evidence that
_____ (name of managing general partner) is the person who
appeared before me, and said person acknowledged that he/she was authorized to
execute the instrument as the Managing General Partner of
_____ (name of partnership), the general partnership
that executed the foregoing instrument, and acknowledged the said instrument to be the
free and voluntary act and deed of said corporation and general partnership, for the
uses and purposes therein mentioned.

Dated _____

(Signature) _____

(Print Name) _____

Notary Public in and for the State of Washington
Commission Expires: _____

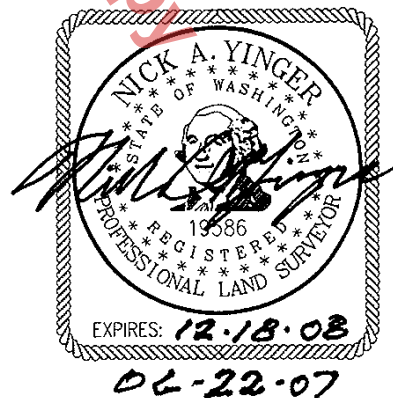
I:\Engineering\Master Documents\Easement Forms\Originals\Final\Versions\Sewer Easement 04-26-04.DOC

EXHIBIT A**LEGAL DESCRIPTION OF GRANTOR PROPERTY**

LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057 RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY, WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

Written by: SEB
Checked by: NAY

Unofficial Copy



12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRSPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-GRANTOR-062107.doc

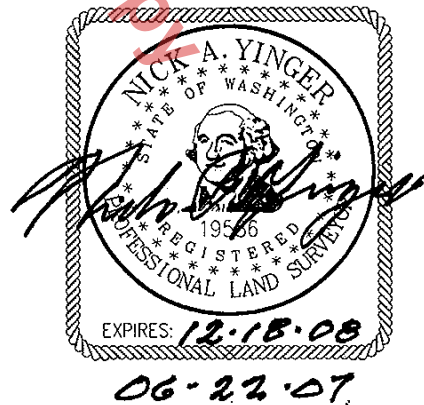
Land Development Consultants

EXHIBIT B**PERMANENT SANITARY SEWER EASEMENT**

THE EAST 20.00 FEET OF LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057
RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY,
WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26
NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

Written by: SEB
Checked by: NAY

Unofficial Copy



12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRSPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-SS-
ESMT-062107.doc

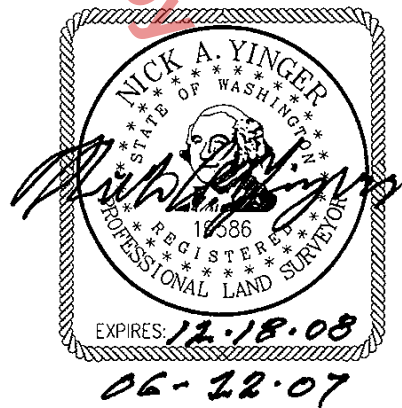
Land Development Consultants

EXHIBIT C**TEMPORARY CONSTRUCTION EASEMENT**

THE WEST 11.00 FEET OF THE EAST 31.00 FEET OF LOT Y, KING COUNTY BOUNDARY LINE ADJUSTMENT NO. L05L0057 RECORDED UNDER RECORDING NO. 20051011900023, RECORDS OF KING COUNTY, WASHINGTON, BEING SITUATED IN THE SE 1/4 OF THE SE 1/4 OF SECTION 25, TOWNSHIP 26 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, KING COUNTY, WASHINGTON.

Written by: SEB
Checked by: NAY

Unofficial Copy



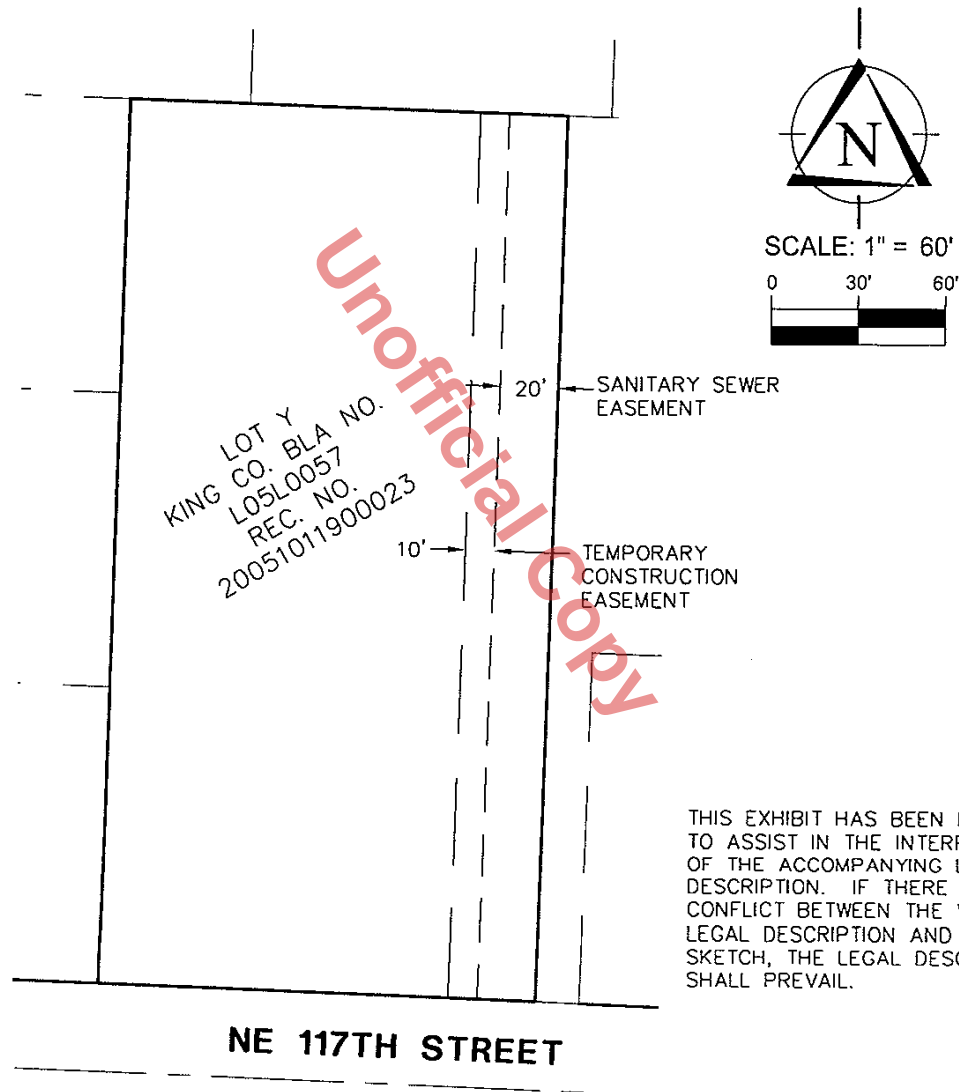
12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.8448 • 800.488.0756 • Fax 425.821.3481
www.triadassoc.com

S:\PROJECTS\04129\CORRSPNC\LEGALS-EASEMENTS-062007\04129-LEGAL-
TEMP_CONST-ESMT-062107.doc

Land Development Consultants

EXHIBIT ____
SANITARY SEWER EASEMENT

TRIAD JOB # 04-129
JUNE 20, 2007



12112 115th Avenue N.E. Kirkland, Washington 98034-6929
425.821.8448 - 800.488.0756 -- Fax 425.821.3481
www.triadassoc.com

04129EX-SS-ESMT-062907.DWG SEB

Land Development Consultants