

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN THE COUNTY OF KING

CHRISTOPHER A. NIEDERMAN and  
NICOLE L. NIEDERMAN, husband and  
wife, and the marital community composed  
thereof,

Plaintiffs,

v.

STEVE YANG and SOPHY YANG, husband  
and wife, and the marital community  
composed thereof; UMPQUA BANK, a  
foreign bank corporation,

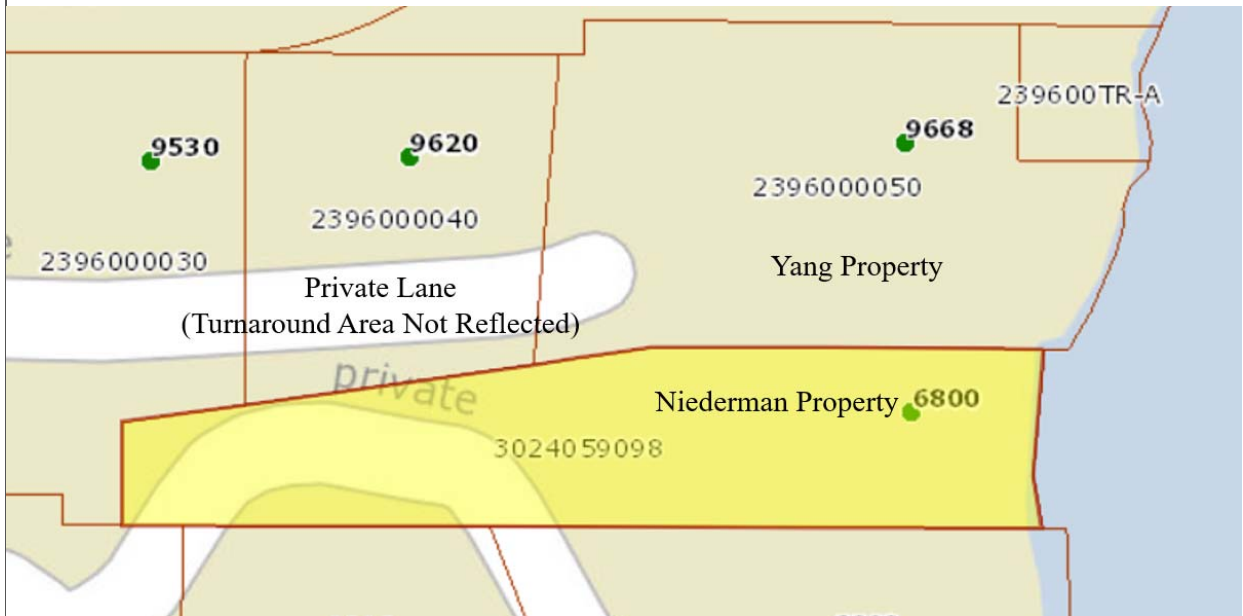
Defendants.

NO. 20-2-08679-7 SEA  
DECLARATION OF CHRISTOPHER  
NIEDERMAN IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

I, Christopher Niederman, declare under penalty of perjury, under the laws of the State of Washington, that the following is true and correct.

- 1. I am over the age of 18, make this declaration based upon my personal knowledge, and am competent to testify on the matter stated herein.
- 2. My wife Nicole Niederman and I own and reside at the real property located at 6800 96<sup>th</sup> Ave. SE, Mercer Island, WA (the “Niederman Property”) with our two children.
- 3. Defendants Steve and Sophy Yang reside at the real property located immediately to the north of us, 6660 E Mercer Way (9668 SE 68<sup>th</sup> Street), Mercer Island, WA (the “Yang Property”).
- 4. Both the Niederman Property and the Yang Property border Lake Washington, and the entire neighborhood slopes steeply down towards the water.

1 5. The following annotated map from the King County parcel viewer shows the parties'  
2 property:



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13 6. The Niederman Property is King County Parcel No. 30240-59098 on the above map.  
14 The other road shown on the map to the south of the Private Lane that crosses the Niederman  
15 Property is at the top of an extremely severe slope that bisects the Niederman Property, and as  
16 such cannot be used to access the Niederman Property.

17 7. The Yang Property is referred to as Lot 5 in the Short Plat Dedication. As illustrated  
18 by the Short Plat Dedication, the Niederman Property borders the Evans Addition, but pre-  
19 existed and was not a part of the Evan's Addition.

20 8. The five lots that make up the Evan's Addition, as well as the Niederman Property,  
21 can only be accessed by "THE 10' PRIVATE ROAD & UTILITY ESMT" that runs from 68<sup>th</sup>  
22 Street SE down the hill towards Lake Washington as reflected on the face of the Short Plat  
23 Dedication, and consists of a private lane and a hammerhead shaped turnaround area at its  
24 bottom. The private lane, as it comes down the hill, is 10 feet wide. That the hammerhead  
25 shaped turn around area was included makes sense, as without it there is no safe way for  
26

1 emergency vehicles, garbage trucks, delivery vehicles, and anyone else who drives to the  
2 bottom of the private lane to turn around.

3 9. Without use of “THE 10’ PRIVATE ROAD & UTILITY ESMT” created in the Short  
4 Plat Dedication, our home would not be accessible by automobile.

5 10. The turnaround easement is absolutely necessary for emergency vehicles, delivery  
6 trucks, garbage and recycling trucks, and cars to safely turn around at the bottom of the  
7 private lane in front of the Niederman Property and the Yang Property.

8 11. My wife Nicole and I purchased the Niederman Property in 2015 with the intention of  
9 remodeling the existing home due to its age and condition. At time of our purchase, as now,  
10 the property had a driveway that is approximately 15 feet wide that has traditionally been used  
11 by the owners of our property to access the turnaround area and private lane. I base these  
12 conclusions on multiple factors. First, the existing concrete driveway was quite old, and in  
13 bad enough shape that we were forced to tear it up and replace it as part of our construction  
14 project. Second, I have spoken to the previous owners of the Niederman Property who  
15 informed us they had traditionally used the entire driveway. Third, until we were well into our  
16 remodeling project, we used the entire 15-foot-wide driveway to access the turnaround area  
17 and private lane. It was not until, as described more fully below, that we objected to the  
18 Yangs’ building permit application that falsely represented our driveway in another position  
19 than it is, that the Yangs took the position we did not have the right to use our entire 15-foot-  
20 wide driveway to access the turnaround area and private lane.

21 12. In 2017, prior to beginning construction on our remodeling project, we applied for and  
22 obtained all required building permits from the City of Mercer Island. The permit application  
23 submittals included, among other things, plans that reflected the location of our driveway as  
24 being exactly where it had been located for decades, and certainly where it was located at the  
25 time we purchased our home. The Yangs had a 30-day period between August 21, 2017 and  
26 September 19, 2017 to submit a public comment addressing or objecting to the driveway’s

1 location. The Yangs submitted no comments. The Yangs also failed to file an appeal with the  
2 City of Mercer Island or file a LUPA petition within the required deadlines.

3 13. The Yangs subsequently submitted an application to the City to tear down the existing  
4 residence on Steve’s property and to build a new home. My wife and I examined the Yangs’  
5 permit materials during the 30-day open comment period prior to the permit being issued –  
6 just as the Yangs could have done with our application – and noticed that the Yangs’ plans  
7 were problematic.

8 14. In sum, the Yangs’ plans, without explanation or notice to us, called for relocating and  
9 reducing the width of our pre-existing and already by the City of Mercer Island approved  
10 driveway away from where it has long been located. As a result, the Yangs’ plans presumed  
11 that our property did not have direct access to the “NEW VEHICLE TURN AROUND  
12 EASEMENT,” which directly contradicted the very document Steve’s parents had signed and  
13 recorded years earlier as part of the Lot Line Adjustment. In fact, the Yangs’ architect  
14 included in the proposed plans submitted to the City a paved road where no such road ever  
15 existed in contradiction to a survey previously prepared by our surveyor Terrane. The Yangs’  
16 architect further stated in his plans that the Yangs intended to remove a portion of the existing  
17 road to give back permeable space while incorrectly showing a driveway to the Niedermans’  
18 house as “existing paved road” that has never existed. The Yangs apparently did this to  
19 comply with permeable lot coverage requirements. Attached as Exhibit A is a true and correct  
20 copy of the relevant portion of the submittal plans we reviewed in this regard.

21 15. For many years predating our purchase of the Niederman Property, a short stone wall  
22 existed on the west side of our driveway bordering the Yang Property. That wall blocked use  
23 of the 10-foot easement the Yangs now claim we should be required to use. Thus, on a  
24 practical level, the Yangs seemed to want to relocate our driveway such that it would run into  
25 a then existing concrete block wall located on our property and not line up with the location of  
26 the our pre-existing and newly City-approved and permitted driveway, intentionally cutting

1 off access to our house.

2 16. We then filed an official comment with the City pointing out these inaccuracies and  
3 conflicts. After a review, the City required the Yangs to correct their plans and reflect the  
4 Niedermans' driveway in its current, approved location. The City also granted the Yangs an  
5 exception to their lot coverage requirement such that the Yangs no longer needed to remove  
6 additional non-permeable surface to meet City building code requirements.

7 17. In apparent retaliation, the Yangs began a campaign to persistently block our driveway  
8 with cars, pots, cones, construction tape, and other obstacles. And the Yangs' architect  
9 admitted to the City that the Yangs still intended to tear up the road in front of the  
10 Niedermans' driveway, thus cutting off access. Attached as Exhibit B is a true and correct  
11 copy of correspondence between my wife and I, the City, and the Yangs' architect Richard  
12 Fisher discussing such issues. The City again investigated the situation, and ultimately  
13 instructed the Yangs that doing so would not be permitted, that the Yangs could not perform  
14 any "construction activity" in front of our driveway, and that the paved road must remain as  
15 drawn on the permit plan set during the project and after completion of the Yangs' house.  
16 Attached as Exhibit C is a true and correct copy of correspondence between my wife and I,  
17 the City, and Richard Fisher discussing such issues.

18 18. The City then suspended the Yang's building permit until they properly reflected our  
19 driveway in its current location as constructed and access to it on new plans, removed all  
20 language to the contrary, and agreed that the paved access road in front of the Niedermans'  
21 driveway was not to be touched. No good reason existed for the Yangs' behavior or actions,  
22 and it certainly appears their actions were driven by spite to continue to harass us for simply  
23 calling out inaccuracies in the Yangs' original plans. A true and correct copy of an October  
24 24, 2019 letter I and others received from then City of Mercer Island Senior Planner Nicole  
25 Gaudette is the last page of Exhibit C.

1 19. Unfortunately, the City’s directives to the Yangs have had limited effect. The Yangs  
2 have persisted in a pattern of activity directed at us in which they have blocked access to our  
3 driveway, parked cars in all portions of the turn-around easement, and routinely park cars in  
4 the north arm of the turn-around easement. And to make matters worse, even if we did want to  
5 tear out landscaping we installed and relocate our driveway (and we do not), the Yangs have  
6 now landscaped in front of the area they allege we should use for ingress and egress, which on  
7 a practical level means either that they agree we should be able to use our entire driveway, or  
8 they want to prevent us from having any access for automobiles whatsoever.

9 20. In the Spring of 2021, the Yangs submitted an application to the City of Mercer Island  
10 seeking approval to revise their building plans so they could remove the entire existing  
11 turnaround area, relocate the north arm, and permanently eliminate the south arm and replace  
12 it with irrigated landscaping. Worse, despite still not having final approval from the City of  
13 Mercer Island for their permit revision, and despite the existence of this lawsuit, the Yangs  
14 went ahead and implemented their plan. We were never asked to agree, nor did we agree, to  
15 this alteration of our easement rights.

16 21. The Yangs also relocated the location of the north arm of the turn-around easement,  
17 again without so much as seeking our approval. While the relocation alone would not be a  
18 tremendous problem, the fact that the Yangs now routinely park in the north arm and  
19 otherwise block it means that they have completely eliminated any use of the turn-around  
20 easement.

21 22. The end result is that cars and trucks are now forced to routinely use our driveway to  
22 safely turn around despite the fact that no easement rights exist for anyone to do so. This  
23 seems to be the Yangs’ intention in eliminating and blocking the Turn Around Area.

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



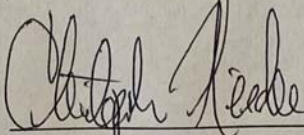
1 Short Plat Dedication and the Lot Line Adjustment. And although the Yangs have filed an  
2 appeal of the decision, their only basis is that the portion of the gate that opens should not be in  
3 front of our driveway, but rather to the west of our driveway where the Yangs allege our  
4 driveway should be located. Attached as Exhibit D is a true and correct copy of the Yangs'  
5 appeal as provided to us by the City.

6 24. As part of our remodeling project, we removed the old block wall on the west  
7 side of our driveway and replaced it with landscaping. However, despite being fully aware of  
8 our actions in this regard, the Yangs' only objection was that, because the old block wall  
9 encroached onto the Yang Property by a few inches, removing it allegedly constituted a  
10 trespass. Following our removal of the block wall, and as part of their construction project, the  
11 Yangs landscaped their property in front of what was the block wall, meaning that they have  
12 now blocked the location in which they allege our driveway should be located.

13 25. Without at least the north arm of the turnaround area being free and clear for  
14 vehicles to turn around, the only way for fire trucks, ambulances, delivery vehicles, and  
15 automobiles to safely turn around at the bottom of the private lane is to use our driveway. But  
16 no one has easement or other rights to do so other than us and the landowners, and even then,  
17 it is extremely difficult for a car, much less a large truck, to safely turn around.

18 26. Attached as Exhibit E is a true and correct copy of email correspondence dated  
19 August 27, 2019 between, among others, myself and the Yangs' architect Richard Fisher.

20 DATED this 2<sup>nd</sup> day of September, 2021 at Mercer Island, Washington.

21   
22 \_\_\_\_\_  
23 Christopher Niederman

24  
25  
26

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of  
3 Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years,  
4 not a party to nor interested in the above-entitled action, and competent to be a witness herein.  
5 On the date stated below, I caused to be served a true and correct copy of the foregoing  
6 document on the below-listed attorney(s) of record by the method(s) noted:

- 7  Electronic mail and first-class United States mail, postage prepaid, to the following:
- 8  Legal messenger service, for delivery on \_\_\_\_\_,  
9 to the following:
- 10  First-class United States mail, postage prepaid, to the following:
- 11  Via court e-filing website, which sends notification of such filing to the following:

12 **Attorneys for Attorneys for Defendants Yang**  
 13 Ryan Sternoff  
 14 Lawrence S. Glosser  
 15 AHLERS CRESSMAN & SLEIGHT, PLLC  
 16 1325 Fourth Avenue, Suite 1850  
 17 Seattle, WA 98101  
 18 Tel: (206) 287-9900  
 19 ryan.sternoff@acslawyers.com  
 20 larry.glosser@acslawyers.com

- 21  Federal Express, for delivery on \_\_\_\_\_, to the  
22 following.

23 DATED this 2<sup>nd</sup> day of September, 2021.

24 /s/ Lana Ramsey  
 25 Lana Ramsey, Legal Assistant



# Exhibit A



# Exhibit B



**From:** Evan Maxim <evan.maxim@mercergov.org>  
**Date:** Thursday, October 24, 2019 at 3:09 PM  
**To:** "rafisher@richardafisher.com" <rafisher@richardafisher.com>, Nicole Gaudette <nicole.gaudette@mercergov.org>  
**Cc:** Sophy Yang <yangsophy@hotmail.com>, Steve Yang <steve1yang@gmail.com>, "'Reimers, Milt A.'" <MReimers@SCHWABE.com>, Nicole Niederman <Nicole@niederman.com>, Chris Niederman <Chris@niederman.com>, 'Alan Wallace' <awallace@williamskastner.com>, Bio Park <Bio.Park@mercergov.org>, Mona Davis <Mona.Davis@mercergov.org>, Patrick Yamashita <Patrick.yamashita@mercergov.org>, Don Cole <Don.Cole@mercergov.org>, Anthony Myers <anthony.myers@mercergov.org>  
**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Dear Richard Fisher,

Thank you for the clarifying questions. We share the goal of clarity - in the order you raised each item:

- I understand no grading activity is proposed. We are seeking to ensure that the plans do not reflect any construction activity within the disputed area; we understood from your email yesterday that you believed the plans did authorize construction activity. My parenthetical "e.g." in this morning's email was intended to provide examples of construction activity.
- The referenced code section is included below my signature. The question regarding the "disputed area", is whether a prescriptive easement exists outside of the area reflected in the current recorded easement. If an easement exists, the easement is an ownership interest for a portion of the property, subject to the highlighted section of the code below my signature. A couple of salient facts to consider:
  - I recognize that we have a title report in the file, issued by WFG National Title Company on 2/25/2019. Schedule B, Part II of the Title Report identifies several exceptions; notably exceptions 5 and 7 appear relevant.
  - The City received a copy of the letter from Williams Kastner asserting that a prescriptive easement may exist, after the title report was issued.
  - The City does not have the authority to resolve the question of whether a prescriptive easement exists.
  - Please note that the reference to MICC 19.15.060 was "in addition to" the legal advice from the city attorney. I recommend that everyone consult with their respective legal counsel.
- The email below was not intended to provide any comment regarding improvements built without required permits.
  - There has been no recent change to the City's administration of code compliance and / or non-conforming rules. These rules were last updated in 2018.
  - If you believe a code compliance situation exists, please report it online at our website here: <http://www.mercergov.org/Page.asp?NavID=2802>.
- The City will review the Neiderman's permit to determine if construction activity was authorized within the disputed area; if the City has done so, we will require a similar correction to the Neiderman permit.

The City recognizes that there is a dispute regarding the driveway and possible ownership interests (i.e. a prescriptive easement) between the property owners. Unfortunately, until the dispute is resolved between the property owners, I believe there are only two options to move forward on this permit (in my original email this morning).



Regards,

**Evan Maxim**

Director

City of Mercer Island - Community Planning & Development

206.275.7732

[mercergov.org/CPD](http://mercergov.org/CPD) |

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<https://mercerisland.nextrequest.com/>.

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MICC 19.15.060(A)8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirements of this subsection;

**From:** [rafisher@richardafisher.com](mailto:rafisher@richardafisher.com) <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Sent:** Thursday, October 24, 2019 12:20 PM

**To:** Evan Maxim <[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)>; Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>

**Cc:** 'sophy yang' <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); 'Reimers, Milt A.' <[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; 'Nicole Niederman' <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; 'Chris Niederman' <[Chris@niederman.com](mailto:Chris@niederman.com)>; 'Alan Wallace' <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>; Bio Park

<[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Mona Davis <[Mona.Davis@mercergov.org](mailto:Mona.Davis@mercergov.org)>; Patrick Yamashita

<[Patrick.Yamashita@mercergov.org](mailto:Patrick.Yamashita@mercergov.org)>; Don Cole <[Don.Cole@mercergov.org](mailto:Don.Cole@mercergov.org)>

**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Hi Evan,

A couple of notes to clarify on your statement below. There is no grading involved, the area of the driveways is flat and the Neiderman's construction vehicles have used the full 50 feet of the common property line to access their project and more than often parked on the Yangs property. The current driveway access and rock wall (that was removed) was built without a permit, and built 6 feet to the east of the recorded ingress/egress driveway easement. The code you reference below states that the Owner has to provide verification that they have the legal right to develop the property and has the legal "such as an easement" right to develop. The Yangs have provided a title report and survey stating and showing that they do have the right to develop. The question, with reference to this code, did the Neidermans have the right to build beyond the easement and make the easement wider. Also, is it now the city's policy that if something is built without permit, that it becomes a legally non-conforming. To be fair on this, will the Neiderman's permit also be put on hold until this is resolved?

Sincerely, Richard A Fisher

**From:** Evan Maxim <[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)>

**Sent:** Thursday, October 24, 2019 8:56 AM

**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>; Richard Fisher <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Cc:** sophy yang <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); Reimers, Milt A.

<[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; Chris Niederman

<[Chris@niederman.com](mailto:Chris@niederman.com)>; Alan Wallace <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>; Bio Park

<[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Mona Davis <[Mona.Davis@mercergov.org](mailto:Mona.Davis@mercergov.org)>; Patrick Yamashita



<[Patrick.Yamashita@mercergov.org](mailto:Patrick.Yamashita@mercergov.org)>; Don Cole <[Don.Cole@mercergov.org](mailto:Don.Cole@mercergov.org)>

**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Dear Richard Fisher et al.,

I thought a bit of additional clarification and context may be useful as you work with Nicole to revise the permit drawings.

As noted in Nicole's email this morning, the land use planning approval for permit 1902-005 has been withdrawn, pending submittal of revised site and civil drawings. This withdrawal is based on the City's understanding that the applicant team believes the approved plans authorized construction activity (e.g. grading, removal of existing pavement, etc) within the disputed easement area.

The withdrawal was not done lightly. Nicole, myself, the planning manager, and the city attorney discussed this permit and various approaches yesterday afternoon before coming to this decision. Based upon the City's code ([MICC 19.15.060\(A\)\(8\)](#)) and the legal advice we have received from the City Attorney, I have concluded that we cannot authorize construction activity within the disputed easement area until the dispute is resolved.

I believe there are effectively two "high level" approaches to re-issuing the permit:

1. Resolve the ownership question related to the disputed area and provide documentation of the resolution to the City; or,
2. Revise the site and civil plans such that no construction activity is proposed within disputed area.

Our initial approval of the permit was based upon the belief that option "2." was reflected in the permit drawings.

Please continue to work with Nicole and Mona Davis (Planning Manager) on the review of this permit.

Regards,

**Evan Maxim**

Director

City of Mercer Island - Community Planning & Development

206.275.7732

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<https://mercerisland.nextrequest.com/>.

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**From:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>

**Sent:** Thursday, October 24, 2019 8:33 AM

**To:** Richard Fisher <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Cc:** sophy yang <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); Reimers, Milt A. <[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>; Alan Wallace <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>

**Subject:** Withdrawal of Building Permit Approval for 1902-005

Richard,

Please see the attached notice that withdraws Planning approval of building permit 1902-005.

Regards,

Nicole

Nicole Gaudette

Senior Planner

City of Mercer Island – Community Planning & Development

206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

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**CITY OF MERCER ISLAND**

9611 SE 36<sup>th</sup> Street • Mercer Island, WA 98040-3732  
(206) 275-7605 • FAX (206) 275-7726  
[www.mercergov.org](http://www.mercergov.org)

October 24, 2019

Richard Fisher  
1932 1<sup>st</sup> Ave, Suite 601  
Seattle, WA 98101  
[rafisher@richardfisher.com](mailto:rafisher@richardfisher.com)

*Sent: via email*

RE: 1902-005 – Yang Building Permit  
6660 E Mercer Way (9640 SE 68<sup>th</sup> St), Mercer Island, WA 98040; King County Tax Parcel  
# 239600-0050

Dear Mr. Fisher:

During a telephone conversation yesterday, we discussed a note located on Sheet A1.0 of the building permit plans. Said note states "NOTE: RECORDED EASEMENT – DRIVEWAY ACCESS TO REMAIN WITHIN EASEMENT." You stated that your intention of this note is to allow the property owners to remove the portion of the neighbors driveway that is located outside of the access easement that is recorded with the plat. I disagree with your interpretation of this note. To avoid any misunderstandings, I am withdrawing approval of Planning review of building permit 1902-005 until said note is removed from the plans. The building permit is not active until this matter is resolved and Planning approval has been granted.

I may be contacted with questions by phone at 206-275-7719 or via e-mail at [nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org).

Sincerely,

Nicole Gaudette, Senior Planner  
City of Mercer Island Community Planning & Development

# Exhibit C



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**From:** Chris Niederman <Chris@niederman.com>

**Date:** Tuesday, August 27, 2019 at 5:59 PM

**To:** Nicole Gaudette <nicole.gaudette@mercergov.org>, Nicole Niederman <Nicole@niederman.com>

**Cc:** "SJJames@williamskastner.com" <SJJames@williamskastner.com>, ePermit Tech <epermit.tech@mercergov.org>, "awallace@williamskastner.com" <awallace@williamskastner.com>, "rafisher@richardafisher.com" <rafisher@richardafisher.com>

**Subject:** Re: Comment Letter: MI Project Number: 1902-005 6660 East Mercer Way, Mercer Island, WA 98040

Great! As long as the drive (location and width) remain the same, and she truly does ensure that the drawings are modified as she committed to you, per the highlighted section in your email below, then I will approve.

However, the problem is that their architect, whom I see copied on this email, just came back to us with a plan to reduce the width of the existing drive which is not acceptable, nor does this sound consistent with what Sophy told you. I copied you on that email from their architect as well.

As I recall from our building permit process, they can relocate their buffer plantings to another part of their property to meet the City requirements which sounds like the most expeditious solution. If they did that and kept our driveway and access to our driveway as it currently exists, then that would certainly solve everything.

Btw, my attorney addresses all of this in his original letter to the City which confirms our legal position. I realize you don't get involved in Civil matters regarding easements, so let's leave it to the Yangs and their attorney to do their homework as we have already done as detailed in the letter. I think they will ultimately come to the same conclusion that they are better off just finding another location for their buffer plantings, and leaving our driveway access alone.

Thanks,  
--Chris

---

**From:** Nicole Gaudette <nicole.gaudette@mercergov.org>

**Date:** Tuesday, August 27, 2019 at 5:16 PM

**To:** Nicole Niederman <Nicole@niederman.com>, "Niederman, Chris" <niedermc@amazon.com>, Chris Niederman <Chris@niederman.com>



**Cc:** "SJJames@williamskastner.com" <SJJames@williamskastner.com>, ePermit Tech <epermit.tech@mercergov.org>, "awallace@williamskastner.com" <awallace@williamskastner.com>, "rafisher@richardafisher.com" <rafisher@richardafisher.com>  
**Subject:** RE: Comment Letter: MI Project Number: 1902-005 6660 East Mercer Way, Mercer Island, WA 98040

I would like to clarify my previous statement about ensuring that the site post-project must match the survey as to driveway width and location. After setting aside some additional time to review the plans, I noticed that your driveway is partially located outside of the access easement. The City will not get involved with this type of private property issue where a driveway is not located within the easement provided for that purpose. It is a civil issue that must be worked out between the affected parties.

With that said, I spoke to Sophy Yang yesterday and for reasons of permit expediency, she is going to ensure that the drawings are modified to move the buffer replanting outside your existing driveway and provide additional clarification that the driveway is not being relocated as part of this project. She has made a verbal commitment. I will check for these changes upon the next submittal of plans.

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Nicole Niederman <Nicole@niederman.com>  
**Sent:** Monday, August 26, 2019 11:01 AM  
**To:** Niederman, Chris <niedermc@amazon.com>; Nicole Gaudette <nicole.gaudette@mercergov.org>; Chris Niederman <Chris@niederman.com>  
**Cc:** Gillian Hagstrom <Gillian.Hagstrom@mercergov.org>; SJJames@williamskastner.com; ePermit Tech <epermit.tech@mercergov.org>; Kari Sand <kari.sand@mercergov.org>; awallace@williamskastner.com  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 6660 East Mercer Way, Mercer Island, WA 98040

Thank you!  
Cheers,

*Nicole*



**RODAN+FIELDS**  
DERMATOLOGISTS  
Independent Consultant

**Nicole L. Niederman**  
[nniederman.myrandf.com](http://nniederman.myrandf.com)

p: 773.301.6419

---

**From:** Chris Niederman <niedermc@amazon.com>  
**Date:** Monday, August 26, 2019 at 10:59 AM  
**To:** Nicole Gaudette <nicole.gaudette@mercergov.org>, Chris Niederman <Chris@niederman.com>  
**Cc:** Gillian Hagstrom <Gillian.Hagstrom@mercergov.org>, "SJJames@williamskastner.com"

<[SJames@williamskastner.com](mailto:SJames@williamskastner.com)>, ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>, Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>, "[awallace@williamskastner.com](mailto:awallace@williamskastner.com)" <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>, Nicole Niederman <[nicole@niederman.com](mailto:nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Thank you!

---

**From:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Date:** Monday, August 26, 2019 at 10:59 AM  
**To:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>, "[SJames@williamskastner.com](mailto:SJames@williamskastner.com)" <[SJames@williamskastner.com](mailto:SJames@williamskastner.com)>, ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>, Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>, "[awallace@williamskastner.com](mailto:awallace@williamskastner.com)" <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>, Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** RE: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

“Matching the survey” means all of that.

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Sent:** Monday, August 26, 2019 10:56 AM  
**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>; [SJames@williamskastner.com](mailto:SJames@williamskastner.com); ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>; Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>; [awallace@williamskastner.com](mailto:awallace@williamskastner.com); Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Nicole,

I don't mean to be a pain on this, but just want to confirm/clarify your statement below....you say that you “won't approve anything until plans match the survey in regards to the driveway location”. Did you mean to say “location and width”. Is that accurate? I want to make sure they don't draw it in the right location, but reduce the width from how it exists today. I realize this might sound like a nit, but important to have 100% clarity now to avoid any confusion or conflicts later.

My attorney will review the alternate codes information you sent, and we will let you know if we have any comments or questions.

Thanks,  
--Chris

---

**From:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Date:** Monday, August 26, 2019 at 10:47 AM  
**To:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>, "[SJames@williamskastner.com](mailto:SJames@williamskastner.com)"

<SJames@williamskastner.com>, ePermit Tech <epermit.tech@mercergov.org>, Kari Sand <kari.sand@mercergov.org>, "awallace@williamskastner.com" <awallace@williamskastner.com>, Nicole Niederman <Nicole@niederman.com>  
**Subject:** RE: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

I won't approve anything until the plans match the survey in regards to driveway location. I have attached a handout about code alternates.

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Chris Niederman <Chris@niederman.com>  
**Sent:** Monday, August 26, 2019 10:42 AM  
**To:** Nicole Gaudette <nicole.gaudette@mercergov.org>  
**Cc:** Gillian Hagstrom <Gillian.Hagstrom@mercergov.org>; SJames@williamskastner.com; ePermit Tech <epermit.tech@mercergov.org>; Kari Sand <kari.sand@mercergov.org>; awallace@williamskastner.com; Nicole Niederman <Nicole@niederman.com>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Nicole,

Just to confirm, the end result will be a drive with the exact same width in the same location as the existing drive....is that an accurate statement? I'm just not sure what "code alternates to address the driveway width issue" means, and want to make sure that such "code alternates" aren't allowing them to reduce the width of the existing drive. Please confirm that the width will remain exactly the same as it is today running from column to column, and the code alternates aren't allowing them to reduce that width at all.

Btw, it's more than just removing the plantings from our driveway area, they need to redraw it correctly on every page to accurately reflect the drive as it exists today. Simply removing the proposed plantings doesn't accurately reflect the driveway as it should be drawn unless they reposition and widen it on the plan drawings where it is incorrectly drawn. There are multiple pages where it needs to be fixed.

Thanks,  
--Chris

---

**From:** Nicole Gaudette <nicole.gaudette@mercergov.org>  
**Date:** Monday, August 26, 2019 at 10:29 AM  
**To:** Chris Niederman <Chris@niederman.com>  
**Cc:** Gillian Hagstrom <Gillian.Hagstrom@mercergov.org>, "SJames@williamskastner.com" <SJames@williamskastner.com>, ePermit Tech <epermit.tech@mercergov.org>, Kari Sand <kari.sand@mercergov.org>, "awallace@williamskastner.com" <awallace@williamskastner.com>, Nicole Niederman <Nicole@niederman.com>  
**Subject:** RE: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

I see that part of the driveway issue now. I will have them correct their buffer mitigation plans to “remove” the proposed plantings from your driveway area.

As I stated in the previous email the applicant will be using code alternates to address the driveway width issue. These are commonly applied when there is an existing driveway in place.

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Sent:** Monday, August 26, 2019 10:05 AM  
**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>; SJames@williamskastner.com; ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>; Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>; awallace@williamskastner.com; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Nicole,

Here are the errors and inconsistencies I noted in their plans:

- Pages 1 and 2 (A1.0, A1.2) – this incorrectly shows a drive that does not exist today.
- Page 13 (Topographic and Building Survey from Terrane) – this accurately reflects the drive on their property and my driveway as it exists today, and how it should remain in the future.
- Page 14 (Existing Conditions) – this accurately reflects the drive on their property and my driveway as it exists today, and how it should remain in the future.
- Page 15 (Impacts Assessment) – this incorrectly shows a drive that does not exist today, and actually moves and reduces the size of the existing drive. This isn’t consistent with the architects comments on A1.0 stating, “NOTE: ACCESS DRIVEWAY TO REMAIN AND NOT REMOVED”.
- Page 16 (Mitigation Plan) – this clearly shows the new drive running straight into an existing column.
- Page 17 (Site Preparation Plan) – this clearly shows the new drive running straight into an existing column.
- Page 18 (Planting Plan) – this clearly shows the new drive running straight into an existing column.
- Page 21 (Erosion Control Plan) – this accurately reflects the drive on their property and my driveway as it exists today, and how it should remain in the future.
- Page 23 (Drainage / Civil Plan) – this clearly shows the new drive running straight into an existing column.

Once all drawings accurately and consistently reflect the architects statement (“ACCESS DRIVEWAY TO REMAIN AND NOT REMOVED”) such that it does not shrink in width or change location, then you will have resolved this issue. Until then, this remains an open comment to be properly addressed by the City of Mercer Island.

I also didn’t see anything in their plans about how they are going to meet the legal requirements for private lanes accessing 3 or more households. Please confirm.

Feel free to call me if you would like to talk live (773-991-4992). I also left you a voicemail a half hour ago.

--Chris

---

**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Date:** Monday, August 26, 2019 at 9:27 AM

**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>, Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>, "SJJames@williamskastner.com" <[SJJames@williamskastner.com](mailto:SJJames@williamskastner.com)>, ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>, Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>, "awallace@williamskastner.com" <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>, Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Nicole,

I just checked the plans, and the driveway issue is NOT resolved!

Please go back and review my attorney's comments letter carefully as well as all the drawings and photographs he included, then closely check the Yang's plans from their architect. The drive leading up to our driveway as they have it drawn does not exist today as their architect drew it, nor has it ever existed as they have it drawn. Please go do a site visit to see it for yourself. If you look closely at their plans, you will see that the drive they have drawn on their plans goes straight into a wall that has been on our property for over 20 years. The real drive leading up to our driveway lines up perfectly in between the two posts that are on their drawing. Their current drawing shifts our driveway over by at least 12 feet from its current state, and the state it's been in for over 20 years. They do not have the legal right to move my driveway as my lawyer has detailed in his letter to you, and his letter also calls out that PSE has installed a power transformer such that the drive on their plans is not even possible. In order for this to be resolved, their architect must redraw the drive on their property to line up exactly with our driveway as it currently exists today the exact width between the two posts. What they have drawn in their plans is fiction and does not exist, nor has it ever existed. If they redraw the plans such that it accurately reflects the drive leading up to our driveway as it exists today and indicate on the plans that it will remain that way, then that will resolve this issue.

Also, please provide an update on the other comment in our attorney's letter to you regarding the city code requiring the Yangs to widen the private lane. We would like confirmation from you on exactly what the City is requiring the Yangs to do on this in order to comply with City and Fire codes and their legal obligations outlined in my attorney's letter.

--Chris

---

**From:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Date:** Monday, August 26, 2019 at 8:44 AM  
**To:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Subject:** FW: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Your server rejected my first email because the plans were too big. I have removed the plans from the email and am providing this link where you can view the plans. The most recent plans are in the folder titled "SUB3":  
<https://mieplan.mercergov.org/public/1902-005/>

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

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**From:** Nicole Gaudette  
**Sent:** Monday, August 26, 2019 8:32 AM  
**To:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Subject:** RE: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

The review is still in process. The driveway issue has been resolved. It was an unfortunate use of words that led to the misunderstanding. The portion of your driveway located on the Yang's property is not being removed. The architect meant to say that the portion of driveway used for access to your home has not been counted towards the amount of lot coverage allowed on the lot. I have attached the recently submitted plans. The architect has added a note about the driveway on the first page, Sheet A1.0. As for the driveway width, the applicant is using code alternates as allowed by code.

Nicole Gaudette  
Senior Planner  
City of Mercer Island – Community Planning & Development  
206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Sent:** Sunday, August 25, 2019 6:46 PM  
**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Cc:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>; SJames@williamskastner.com; ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>; Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>; awallace@williamskastner.com; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Hi Nicole,

Can you please let us know the status of this? In particular, we would like to understand how our comments are being resolved prior to any permits being approved.

Thanks,  
--Chris

Sent from my iPhone

On May 3, 2019, at 8:58 AM, Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)> wrote:

I acknowledge receipt of your letter on April 30, 2019.

**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Sent:** Tuesday, April 30, 2019 2:22 PM  
**To:** Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)>  
**Cc:** SJames@williamskastner.com; Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>; ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>; Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>; awallace@williamskastner.com; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Hi Gillian,

We just want to make sure you acknowledge receipt of this letter within the comment period timeframe since today is the last day. I will also drop off a hard copy today.

Thanks,  
--Chris

Sent from my iPhone

On Apr 30, 2019, at 2:19 PM, Gillian Hagstrom <[Gillian.Hagstrom@mercergov.org](mailto:Gillian.Hagstrom@mercergov.org)> wrote:

Hi Chris and Sean,

The project contact for this permit is Nicole, so the comment letter will be received by her. I monitor the [epermittech@mercergov.org](mailto:epermittech@mercergov.org) email address and will be taking no action with the letter.

Thank you,

**Gillian Hagstrom** | Permit Coordinator  
City of Mercer Island Community Planning & Development  
9611 SE 36th Street, Mercer Island, WA 98040  
(206)275-7715  
[Gillian.Hagstrom@MercerGov.org](mailto:Gillian.Hagstrom@MercerGov.org)

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**From:** Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Sent:** Tuesday, April 30, 2019 2:12 PM  
**To:** [SJames@williamskastner.com](mailto:SJames@williamskastner.com); Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>  
**Cc:** ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>; Kari Sand <[kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)>; [awallace@williamskastner.com](mailto:awallace@williamskastner.com); Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>  
**Subject:** Re: Comment Letter: MI Project Number: 1902-005 – 6660 East Mercer Way, Mercer Island, WA 98040

Copying Nicole Gaudette.

Thanks,  
--Chris

Sent from my iPhone

On Apr 30, 2019, at 2:02 PM, James, Sean <[transferadmin@williamskastner.com](mailto:transferadmin@williamskastner.com)> wrote:

On behalf of Chris and Nicole Niederman, please see the attached comment letter regarding MI Project Number 1902-005.

Thank you.  
Sean James  
(206) 233-2989

Click on the below link - a login window will appear  
Enter the email address to which this message was sent  
Click "Authorize"  
A SECOND validation email will be sent to you from  
"[liquidfiles.williamskastner.com](https://liquidfiles.williamskastner.com)"  
(you may need to check your SPAM or JUNK folder, depending on your  
security settings)  
Open the SECOND email and click on the Attached Files link

---

### Files attached to this message

Filename	Size	Checksum (SHA1)
Comment Letter MI Project Number 1902- 005 - 6660 East Mercer Way Mercer.._.pdf	716 KB	6cb62e870d0c084e8052834c7afabed29af4c781b4f60a8bccf:
Tab A-E.pdf	9.26 MB	b701146fc1e3d7accf430719f8c80e32af31749246c4a699618!

Please click on the following link to download the attachments:  
<https://transfer.williamskastner.com/message/Y9HNN6iZTExOSIQuhvVy83>

The attachments are available until: **Tuesday, 28 May.**

Message ID: Y9HNN6iZTExOSIQuhvVy83

---

LiquidFiles Appliance: <https://transfer.williamskastner.com>

# Exhibit D

**From:** Andrea Larson <Andrea.Larson@mercergov.org>

**Date:** July 28, 2021 at 2:04:53 PM PDT

**To:** John Galt <jegalt755@gmail.com>

**Cc:** cassidy.ingram@acslawyers.com, ryan.sternoff@acslawyers.com, sarah.king@acslawyers.com, Bio Park <Bio.Park@mercergov.org>, Mary Swan <Mary.Swan@mercergov.org>, Jeff Thomas <jeff.thomas@mercerisland.gov>, Tim McHarg <tim.mcharg@mercerisland.gov>, Jeromy Hicks <jeromy.hicks@mercergov.org>, Andrew Leon <andrew.leon@mercerisland.gov>, Eileen Keiffer <Eileen@madronalaw.com>, Tori Harris <tharris@360legalsupport.com>, Chris Niederman <Chris@niederman.com>

**Subject:** Appeal Received - ALP21-006

Hello Mr. Galt,

The City received the attached appeal of a permit decision for permit 2105-227, a fire protection permit for an access gate. We received the appeal application on Monday, 7/26 and we received payment for it to be considered complete, yesterday 7/27. The permit being appealed was issued on 7/15.

Please let me know if you need any further information.

Kind Regards,



Andrea Larson  
Senior Administrative Assistant  
City of Mercer Island – Community Planning & Development  
206.275.7791 | [mercerisland.gov/cpd](http://mercerisland.gov/cpd)

*Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no “walk in” permit service; staff are working remotely and services are being continued via remote operations. More information is available on the City’s website: [mercerisland.gov/cpd](http://mercerisland.gov/cpd). Please contact us by phone for general customer support at 206-275-7626.*

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW)*

**From:** Cassidy Ingram <[cassidy.ingram@acslawyers.com](mailto:cassidy.ingram@acslawyers.com)>  
**Sent:** Monday, July 26, 2021 4:28 PM  
**To:** Mercer Island ePermit Tech <[epermit.tech@mercergov.org](mailto:epermit.tech@mercergov.org)>  
**Cc:** Ryan Sternoff <[ryan.sternoff@acslawyers.com](mailto:ryan.sternoff@acslawyers.com)>; Sarah K. King <[sarah.king@acslawyers.com](mailto:sarah.king@acslawyers.com)>  
**Subject:** Appeal re Permit No. 2105-227 - Automatic Electric Gate - Niederman

Good afternoon,

Please see attached.

Sincerely,

Cassidy Ingram

**Cassidy J. Ingram**  
[cassidy.ingram@acslawyers.com](mailto:cassidy.ingram@acslawyers.com)

**AHLERS CRESSMAN & SLEIGHT PLLC**  
(P) 206.287.9900 | (F) 206.934.1139 | (D) 360.280.8379  
1325 4th Ave Suite 1850  
Seattle WA 98101  
[www.acslawyers.com](http://www.acslawyers.com)

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercer.gov](http://www.mercer.gov)



### CITY USE ONLY

PROJECT#	APPEAL#	FEE

Date Received:

## APPEAL

Received By:

Name Steve and Sophy Yang, C/O Ahlers Cressman & Sleight PLLC; Cassidy Ingram

Address 1325 4th Ave, Suite 1850, Seattle, WA 98101

Phone 206-287-9900

Email cassidy.ingram@acslawyers.com

### What is the decision that you are appealing? Include any applicable project file number.

Christopher and Nicole Niederman have submitted Permit No. 2105-227 for an Automatic Electric Gate at their residence. The final portion of this permit has been approved as of July 15, 2021.

### What are your reasons for appealing this decision?

*(You must indicate specifically that there were substantial errors, the decision is unsupported by the facts presented, the decision is in conflict with the standards for review of the action or there were irregularities in the procedure. Attachments or supporting information may be included.)*

While the physical construction may be on the Niederman Property, the proposed gate installation is being installed in a manner that obstructs the deeded access easement and forces the Niedermans to access their property through the Yang Property, in areas where the Niedermans do not have a deeded easement.

Approval of this permit violates the purpose of the Mercer Island Code, including but not limited to

Section 19.150.060(8). The Yangs are involved in active litigation with the Niedermans, and the City, by approving the permit, may have some role in determining the outcome of the litigation, which is inappropriate and runs contrary to Washington State caselaw.

### What is the outcome or changes in the decision that you are seeking?

The status quo should be preserved and the permit application should be revoked.

Signature:

*Cassidy Ingram*

Date: 07/26/2021

**From:** [Jeff Thomas](#)  
**To:** [Ryan Sternoff](#)  
**Subject:** RE: Permit No. 2105-227 – Automatic Electric Gate – Niederman  
**Date:** Thursday, July 22, 2021 1:18:46 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Mr. Sternoff,

Your email below has been forwarded to me by the City Attorney's Office for response.

Should you believe this permit was issued in error by the City, please refer to the administrative appeal provisions contained within the Mercer Island Municipal Code for additional information.

Best regards, Jeff Thomas

**From:** Ryan Sternoff <[ryan.sternoff@acslawyers.com](mailto:ryan.sternoff@acslawyers.com)>  
**Sent:** Thursday, July 22, 2021 9:16 AM  
**To:** Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Andrew Leon <[andrew.leon@mercerisland.gov](mailto:andrew.leon@mercerisland.gov)>  
**Subject:** Permit No. 2105-227 – Automatic Electric Gate – Niederman

Dear Mr. Leon and Mr. Park:

I am counsel for Steve and Sophy Yang. As the City is aware, I represent the Yangs in an active litigation adverse to Christopher and Nicole Niederman that is pending under King County Cause Number 20-2-08679-7 SEA.

The subject of the litigation is the Niedermans' construction of a driveway during their 2018-2019 construction project in a location that was inconsistent with the access rights set forth on the attached short plat. Due to the location of the driveway, as constructed by the Niedermans, the Niedermans are trespassing on the Yangs' Property in order to access the Niederman property. Part of the relief requested in the Lawsuit, is that the Yangs will seek to limit the Niedermans access rights to the areas reflected in the recorded documents.

Notwithstanding the foregoing, the Niedermans have submitted Permit No. 2105-227 for an Automatic Electric Gate. The final portion of this permit has been approved as of 7/15/21. While it is understood that the physical construction may be on the Niederman Property, the proposed gate installation is being installed in a manner that obstructs the deeded access easement and forces the Niedermans to access their property through the Yang Property, in areas where the Niedermans do not have a deeded easement.

We believe that approval of this permit violates the purpose of the Mercer Island Code, including but not limited to Section 19.15.060(8) which requires consent of all owners of the "affected property." While the Niedermans have creatively tried to limit the physical construction activity to their own property, because the construction of this gate forces access across the Yang Property, the Yang Property is very much an "affected property." This is particularly true when a Court may be reluctant to require demolition of improvements made

as a matter of economic waste. Thus, by the City approving the permit it may have some role in determining the outcome of the litigation through permit approval, which is not appropriate, and runs contrary to the legal authority of *Halverson v. City of Bellevue*, 41 Wash. App. 457, 461, 704 P.2d 1232, 1235 (1985).

If the Niedermans had submitted a survey with this application, it would show that the gate obstructs the legal access. If such a survey has not been required, we believe that requiring such a survey to demonstrate the inappropriate nature of the Niedermans application, is appropriate.

We believe the status quo should be preserved and the permit application should be revoked. Please respond to this email confirming that the permit approval will be revoked.



**Ryan W. Sternoff**

[ryan.sternoff@acslawyers.com](mailto:ryan.sternoff@acslawyers.com)

**AHLERS CRESSMAN & SLEIGHT PLLC**

(P) 206.287.9900 | (F) 206.934.1139 | (D) 206.529.3001 | Conference: 1.888.827.9225 Code: 147245

1325 4th Ave Suite 1850

Seattle WA 98101

[www.acslawyers.com](http://www.acslawyers.com)



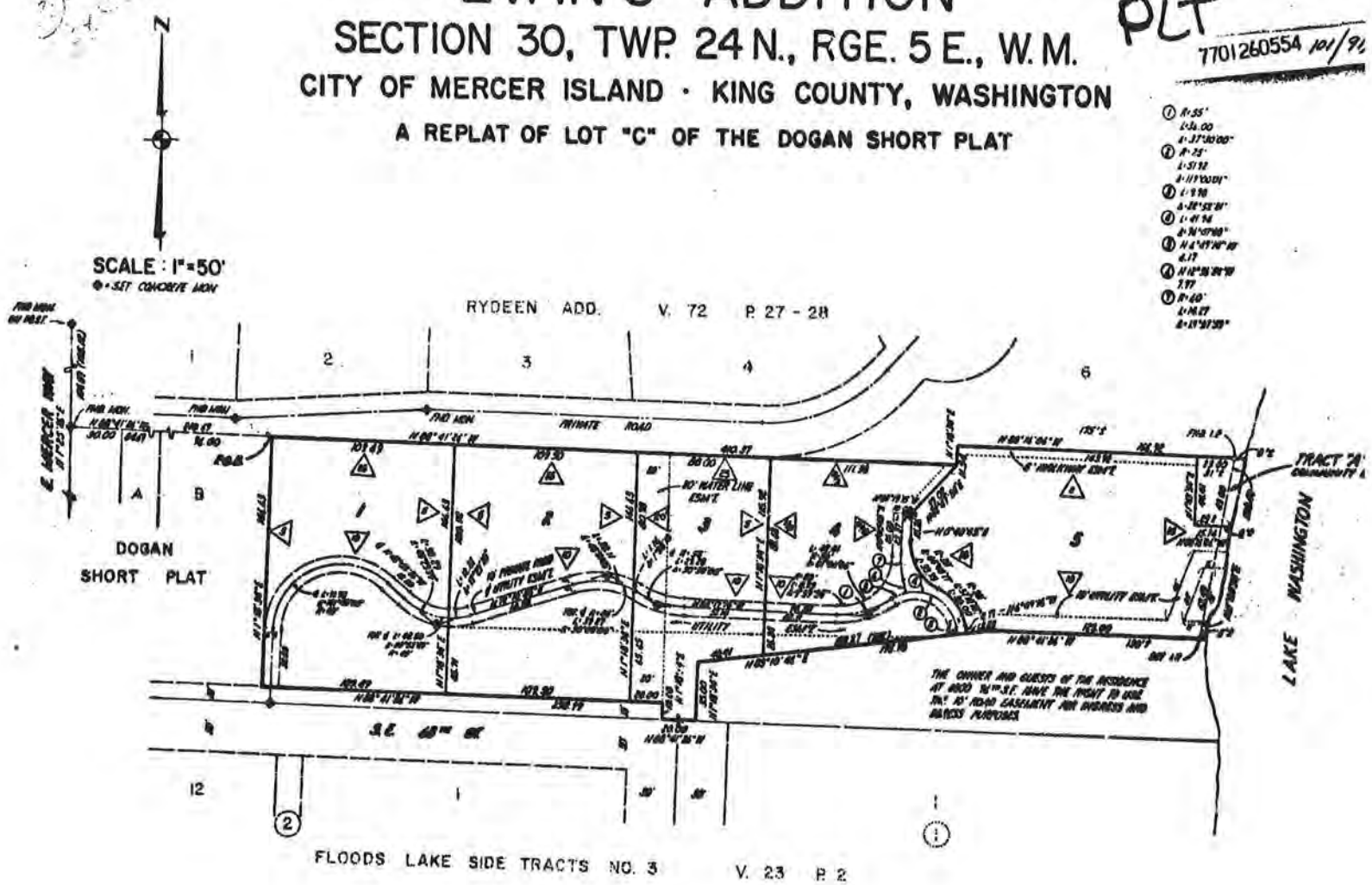
# EVAN'S ADDITION

## SECTION 30, TWP. 24 N., RGE. 5 E., W.M.

### CITY OF MERCER ISLAND · KING COUNTY, WASHINGTON

#### A REPLAT OF LOT "C" OF THE DOGAN SHORT PLAT

7701260554  
PLT  
7701260554 10/1/91



- ① 1'-55"
- 1'-34.00"
- 1'-37'00"
- ② 1'-25"
- 1'-51.52"
- 1'-17'00"
- ③ 1'-19"
- 1'-25'52"
- ④ 1'-41.54"
- 1'-21'00"
- ⑤ 1'-1'47"40"
- 4.17
- ⑥ 1'-12'24"20"
- 1.97
- ⑦ 1'-10"
- 1'-14.17"
- ⑧ 1'-17'30"

### DESCRIPTION

This Plat of Evan's Addition is a replat of Lot "C" of the Dogan Short Plat, located in Section 30, Township 24 North, Range 5 East, W.M., filed with the City of Mercer Island in May, 1974, more particularly described as follows:

Commencing at a brass monument marked with an "X" on the intersection of E. Mercer Way and the north property line of the said Dogan Short Plat extended westerly, thence S 88° 41' 26" E along the south line of the Plat of Rydeen Addition, recorded in Volume 72, pages 27 and 28, records of King County, Washington, a distance of 210.69 feet to the northeast corner of Lot "B" of said Dogan Short Plat, and the Point of Beginning; thence continuing along the south line of said Rydeen Addition S 88° 41' 26" E a distance of 410.37 feet; thence N 01° 18' 34" E a distance of 11.54 feet; thence S 88° 16' 06" E a distance of 166.92 feet to an existing iron pipe; thence continuing thence southwesterly along said shoreline to the southerly line of said Dogan Short Plat extended easterly; thence along said southerly line N 88° 41' 26" W a distance of 5.0 feet more or less to an iron pipe; thence continuing N 88° 41' 26" W a distance of 125.00 feet; thence S 83° 10' 44" W a distance of 176.78 feet; thence S 01° 18' 34" W a distance of 35.00 feet; thence N 88° 41' 26" W a distance of 20.00 feet; thence N 01° 18' 34" W a distance of 10.00 feet; thence N 88° 41' 26" W along the north right-of-way of S.E. 68th St. a distance of 238.99 feet to the southeast corner of said Lot "B"; thence N 01° 18' 34" E along the east line of said Lot "B" a distance of 146.63 feet to the Point of Beginning.

Together With the second class shorelands adjoining and lying between the northerly and southerly lines of the above described plat produced easterly.

### RESTRICTIONS

- Maintenance and repair of the private road, the community beach tract "A" and all storm drainage facilities located within the utility easement, shall be the responsibility of the owners of each lot herein and each lot owner shall pay one fifth (1/5) of the cost thereof. In the event that maintenance and repair of the storm water drainage facilities is not performed to the satisfaction of the City Engineer, after a timely demand has been made for such action, the City shall have the right to enter upon the premises and perform the necessary maintenance and repair and charge the owner of each lot for his pro rata share of the total cost of such maintenance and repair. In addition, the City or the owner of any lot shall have the right to bring an action in superior court to require such maintenance and repair to the storm water drainage facilities as is deemed necessary by the City Engineer.
- The engineered street, water, sanitary sewer, and storm drainage designs are on file with the City of Mercer Island.
- All footing and roof drains shall be tightlined directly to the storm drainage system.
- Access to all lots shall be limited to the 10' private road easement.
- No land clearing permits will be issued prior to the issuance of building permits for individual single family houses.
- No land clearing, filling, or building construction shall be allowed in that portion of land lying south of the 10' private road easement except with the expressed approval of the Planning Commission.

All lots in this plat are subject to the protective covenants as recorded in Volume \_\_\_\_\_ page \_\_\_\_\_ Auditor's File No. \_\_\_\_\_ Records of King County, Washington.

# EVAN'S ADDITION

## SECTION 30, TWP. 24 N., RGE. 5 E., W.M.

### CITY OF MERCER ISLAND · KING COUNTY, WASHINGTON

#### A REPLAT OF LOT "C" OF THE DOGAN SHORT PLAT

7701260554 101/91/9

**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS that I, the undersigned, owner in fee simple of the land hereby platted, hereby declare this plat and dedicate to the public forever all roads and ways shown hereon, except Tract A and the 10 foot private road, with the right to make all necessary slopes for cuts and fills and the right to continue to drain said roads and ways over and across any lot where water might take a natural course, in the original reasonable grading of the roads and ways shown hereon.

Jon Evans                      James Dogan  
Joyce C. Evans

**PLANNING COMMISSION**

Examined and approved this 15<sup>th</sup> day of December, 1976.  
 Chairmen Sam Fry                      Secretary Richard A. ...

**ACKNOWLEDGMENTS**

STATE OF WASHINGTON  
 COUNTY OF KING

This is to certify that on the 9<sup>th</sup> day of December, 1976, before me, the undersigned a Notary Public, personally appeared JON EVANS and JOYCE EVANS his wife, to me known to be the individuals who executed the within dedication and acknowledged to me they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

T. F. ...  
 Notary Public in and for the State of Washington residing at ...

**CITY COUNCIL**

Examined and approved this 10<sup>th</sup> day of January, 1977.  
 Mayor ...                      Assent Clerk ...

**TREASURER'S CERTIFICATE**

I hereby certify that all city assessments on the property herein contained are paid in full. This 11<sup>th</sup> day of January, 1977.  
 City Treasurer ...



STATE OF WASHINGTON  
 COUNTY OF KING

This is to certify that on the 9<sup>th</sup> day of December, 1976, before me, the undersigned, a Notary Public, personally appeared JON EVANS to me known to be the individual who executed the within dedication and acknowledged to me she signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

J. ...  
 Notary Public in and for the State of Washington residing at ...

**DEPARTMENT OF ASSESSMENTS**

Examined and approved this 12<sup>th</sup> day of January, 1977.  
 King County Assessor Harley H. Hoppe                      Deputy King County Assessor A. Martin

**LAND SURVEYOR'S CERTIFICATE**

I hereby certify that this plat of Evan's Addition is based upon an actual survey and subdivision of Section 30, TWP 24N, RGE. 5 E. W.M., that the courses and distances are shown correctly thereon; that the monuments will be set, and the lot and block corners staked correctly on the ground as construction is completed, and that I have complied with the provisions of the platting regulations.

Howard C. Cornell  
 Professional Land Surveyor  
 Certificate No. 10927



**COMPTROLLER'S CERTIFICATE**

I hereby certify that all property taxes are paid, that there are no delinquent assessments certified to this office for collection and that all special assessments, certified to this office for collection on any of the property contained, dedicated as streets, alleys or for other public use, are paid in full. This 11<sup>th</sup> day of Jan, 1977.  
 King Co. Comptroller Hugh L. James                      Deputy King Co. Comptroller W. B. ...

**RECORDING CERTIFICATE**

Filed for record at the request of the Mercer Island City Council this day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ minutes past \_\_\_\_\_, and recorded in Volume \_\_\_\_\_ of Plats, page \_\_\_\_\_, records of King County, Washington.

**DEPARTMENT OF RECORDS AND ELECTIONS**

Manager \_\_\_\_\_                      Superintendent of Records \_\_\_\_\_

**DEPARTMENT OF SYSTEMS ENGINEERING**

Examined and approved this 1<sup>st</sup> day of January, 1977.  
 City Engineer Philip D. ...



**From:** [Cassidy Ingram](#)  
**To:** [Mercer Island ePermit Tech](#)  
**Cc:** [Ryan Sternoff](#); [Sarah K. King](#)  
**Subject:** RE: Appeal re Permit No. 2105-227 - Automatic Electric Gate - Niederman  
**Date:** Monday, July 26, 2021 5:02:02 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[Original Plat 1976.pdf](#)

---

Hello,

The permit allows installation of a gate which will obstruct the Yangs from their deeded access, as shown in the attached original plat. We request this permit application be revoked.

We look forward to hearing from you.

Sincerely,

Cassidy Ingram



**Cassidy J. Ingram**  
[cassidy.ingram@acslawyers.com](mailto:cassidy.ingram@acslawyers.com)

**AHLERS CRESSMAN & SLEIGHT PLLC**  
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Seattle WA 98101  
[www.acslawyers.com](http://www.acslawyers.com)

**From:** Cassidy Ingram  
**Sent:** Monday, July 26, 2021 4:28 PM  
**To:** [epermittech@mercerisland.gov](mailto:epermittech@mercerisland.gov)  
**Cc:** Ryan Sternoff <[ryan.sternoff@acslawyers.com](mailto:ryan.sternoff@acslawyers.com)>; Sarah K. King <[sarah.king@acslawyers.com](mailto:sarah.king@acslawyers.com)>  
**Subject:** Appeal re Permit No. 2105-227 - Automatic Electric Gate - Niederman

Good afternoon,

Please see attached.

Sincerely,

Cassidy Ingram



**Cassidy J. Ingram**

[cassidy.ingram@acslawyers.com](mailto:cassidy.ingram@acslawyers.com)

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Seattle WA 98101

[www.acslawyers.com](http://www.acslawyers.com)

# Exhibit E



---

**From:** Chris Niederman <Chris@niederman.com>

**Date:** Tuesday, August 27, 2019 at 3:57 PM

**To:** Richard Fisher <rafisher@richardafisher.com>

**Cc:** "nicole.gaudette@mercergov.org" <nicole.gaudette@mercergov.org>, "awallace@williamskastner.com" <awallace@williamskastner.com>, Nicole Niederman <Nicole@niederman.com>

**Subject:** Re: Niederman Driveway Easement

I suggest they get an attorney if you plan to try to deviate from the letter of the law.

Thanks,  
--Chris

Sent from my iPhone

On Aug 27, 2019, at 3:53 PM, Richard Fisher <rafisher@richardafisher.com> wrote:

Hi Chris,

Actually Nicole and the city are not in agreement with you, they just would like this resolved. I will forward this to the Yangs.

Thanks, Richard

Sent from my iPhone

On Aug 27, 2019, at 3:48 PM, Chris Niederman <Chris@niederman.com> wrote:

Richard,

Per the letter to the City from my attorney, Al Wallace (copied), the Yangs cannot legally move the drive and access to my driveway that has been in place for over 20 years. It's clearly outlined in the letter in accordance with the law.

You also clearly stated on page A1.0 of your plan submitted to the City that the "ACCESS DRIVEWAY TO REMAIN AND NOT REMOVED". The Terrane survey accurately depicts the existing drive that you said is to remain as it currently exists. Nicole Gaudette also confirmed in writing yesterday that the City will not approve the Yang's permit until the plans match the survey in regards to the existing driveway location.

Anything other than plans that show the drive exactly as it exists today (width and location) is absolutely unacceptable!

I suggest you either redraw your plans correctly in compliance with the law, or the Yangs should get an attorney and we can take this to court since the City (Nicole Gaudette) is in agreement with my attorney.

Thanks,  
--Chris

Sent from my iPhone

Begin forwarded message:

**From:** <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>  
**Date:** August 27, 2019 at 2:36:52 PM PDT  
**To:** <[Chris@niederman.com](mailto:Chris@niederman.com)>  
**Subject:** RE: Niederman Driveway Easement

Hi Chris,

I'm responding to your letter to the City of Mercer Island concerning the driveway easement from the Yangs to your property. The survey of the Yang's property by Terrane, same company that did your survey, clearly shows that you have a 10 foot ingress and egress easement through the Yang's property. You may call Terrane if you'd like to verify this easement. They also have a turnaround easement shown with the fire department to access both of your properties. The permit submitted site plan shows your driveway access as per the recorded easement. The property east of this easement is needed for a buffer to the watercourse easement. The Yangs are willing to move the 10 foot access easement to the east to accommodate your desired access to your property. Attached is the proposed revisions to the site plan. Please let me know if this new revision is acceptable to you, and in the future the Yangs would appreciate, if you have any questions concerning your properties, that you would contact them directly. If you would wish to discuss this you may contact me either at my office or on my cell.

Sincerely,, Richard A Fisher  
Project Architect

Richard A Fisher Architects  
1932 First Avenue  
Suite 601  
Seattle, WA 98101  
(206) 441-0442  
Cell: (206) 484-9963

<A1.0 SITE PLN - 18020.pdf>