

**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@mercercisland.gov](mailto:andrew.leon@mercercisland.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

9002

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)

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# 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

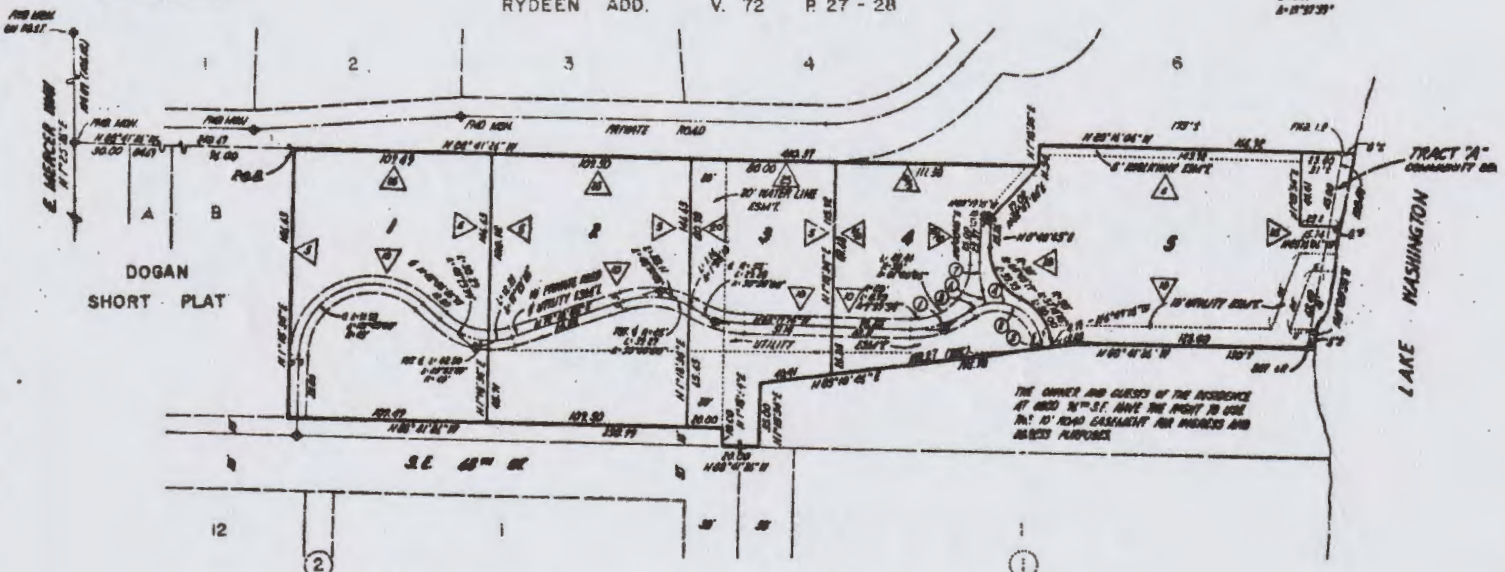
7701260554 10/1/92

- ① 1'-55"
- 2'-00"
- 4'-37'00"
- ② 1'-51"
- 1'-51'52"
- ③ 1'-19'
- 4'-28'52"
- ④ 1'-41'36"
- 2'-14'00"
- ⑤ 4'-1'49'40"
- 4'-17'
- ⑥ 4'-12'58'20"
- 1'-17'
- ⑦ 1'-40'
- 4'-14'27"
- 4'-18'30'30"

SCALE: 1"=50'  
 ○ SET CONCRETE MARK

RYDEEN ADD. V. 72 P. 27-28

FLOODS LAKE SIDE TRACTS NO. 3 V. 23 P. 2



THE OWNER AND GUESTS OF THE RESIDENCE AT 4000 24<sup>TH</sup> ST. HAVE THE RIGHT TO USE THE 10' ROAD EASEMENT FOR BUSINESS AND PRIVATE PURPOSES.

### 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 S 88° 16' 06" E a distance of 7.0 feet more or less to the shoreline of Lake Washington; 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' 46" 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 S 01° 18' 34" W a distance of 70.00 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.

X35

