

Travis Saunders, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

April 26, 2015

RECEIVED
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CITY OF MERCER ISLAND
DEVELOPMENT SERVICES

RE: File Nos.: CAO15-001 and SEP15-001
5637 East Mercer Way
Mercer Island, WA 98040
SEPA Determination of Non-Significance

Applicant: Bill Summers of MI Treehouse, LLC

I'm writing to oppose the City of Mercer Island's approval of a SEPA Determination of Non-Significance for the above referenced property.

I also request that all file information dating back to 1977 be included in the file for this determination as my inspection of the file in the Planning Department did not include the significant amount of information, reports, letters of opposition, City correspondence, City determinations, etc... from the years 1999 through 2014 (which are in a separate online file with the City) and the original short plat approval in 1977. I request that this historical information be made part of the public record for this critical and important determination. As noted in my letter to the Mercer Island Development Services Group dated July 8, 2004, The Critical Area Study and Mitigation Plan submitted by the Applicant in 2004 stated on page 3, "Runoff is rapid, and the erosion hazard and slippage is severe." Let's make sure the City doesn't permit developers to continue shopping for more favorable reports over time.

My opposition is very simple.

- 1) The City and the Corps of Engineers determined between 2000 and 2004 that this parcel, in its entirety, is a Category III Wetlands and it contains a Critical Type 2 Watercourse and it is bordered on the south and north by Critical Steep Slopes. The Mercer Island Code during that time prohibited the installation of any impervious surfaces in a Wetland under 19.07.040 (C) SITE COVERAGE where it stated, "**Impervious surfaces shall not be permitted within a wetland area.**" There were no variances to this code. And the new code establishes minimum buffer zones from the edge of the wetland. The Applicant is requesting approval to build the entire structure within the delineated wetland area with no buffer from the wetland. This is a request to ignore the wetland designation and is not a minor variance request.

- 2) The current site plan provided by the Applicant shows the house foundation, deck, backyard area, driveway, and retaining wall with siltation fence are all inside the 50' setback buffer requirement from the Type 2 Watercourse which is not permitted under MICC 19.07.070 Watercourses.
- 3) The City is responsible for protecting the City and its citizens from unreasonable hazards or threats to public health, safety, and welfare. Development of this wetland poses a serious risk of destabilizing the steep hillside on the south side of this development site (5637 East Mercer Way) where there are five homes on top of the steep slope adjoining this proposed development site.
- 4) To the north there are two homes on top of the steep slope that may be put at risk by development of this wetland if it changes the course of the Type 2 Watercourse over time and undermines the north-slope stability.
- 5) There are several homes to the east and downhill from the development site that will be negatively impacted if the wetland is developed and it causes an increase in water runoff downhill to the east toward the lake. There has already been an increase in water flow since the City filled in the culvert on the west side of East Mercer Way for a bike lane. This eliminated a culvert that permitted water to percolate into the ground. Now that water runs down the asphalt surface of East Mercer Way into the collection drain that has increased the flow under East Mercer Way to the Lake.
- 6) There is a Catch 22 risk in developing the proposed wetland ravine site. There are many approximate 160'+ tall trees on neighboring property to the south of the site which are a hazard to the proposed residence as they tend to fall to the north or northeast as the prevailing winds are from the southwest. If any of the trees are removed to reduce that risk then it decreases the stability of the steep slopes adjacent to the proposed home and increases the risk of a landslide. If the trees are left in place, as they should be, then there is a serious risk of injury and destruction of the proposed home from a falling tree.

Since the 2000 to 2004 variance request by a prior owner, MICC section 19.07.080 Wetlands, replaced the former section 19.07.040 and nowhere in the new section 19.07.080 does it permit the installation of impervious surfaces in a Category III wetland, or any wetland. The new code establishes two categories of Buffer Zones which set forth buffer widths established from the outer edge of wetland boundaries. In this case a 50' buffer from the wetland is required, or with approved Enhancements the "Minimum" buffer is 25'. You can't maintain a buffer from the wetland if you build a house completely inside the wetland. If one could build completely inside the wetland then there is no need for a buffer, or for that matter a need for a wetland designation – but the code requires a minimum buffer from the wetland!

19.07.080 Wetlands (2). Reduction of Wetland Buffer Widths then further states, "The code official may allow the standard wetland buffer width to be reduced (*note this says "reduced"*,

not eliminated or waived) to not less than the minimum buffer width in accordance with an approved critical area study when he/she determines that a smaller area is adequate to protect the wetland functions, the impacts will be mitigated consistent with MICC 19.07.07(B)(2), and the proposal will result in **no net loss of wetland and buffer functions.**” In other words, one cannot reduce the area of the wetland with impervious surfaces and must maintain at least the minimum buffer, in this case 50’ or potentially 25’ with enhancements.

Section 19.07.080 (D) Alterations states, “Category III and IV wetlands of less than one acre in size (*this development site falls into this definition*) may be altered if the Applicant can demonstrate that the wetland will be **restored, enhanced, and/or replaced** with a wetland area of equivalent or greater function. In cases where the Applicant demonstrates that a suitable on-site solution does not exist to enhance, restore, replace or maintain a wetland in its existing condition (*it is very evident that the development site in question does not permit the Applicant to comply with this requirement – it is physically impossible to do as concluded in the Sewall Wetland Consulting, Inc. report dated March 5, 2015*), the city may permit the Applicant to provide off-site replacement by a wetland with **equal or better functions**. The off-site location must be in the same drainage sub-basin as the original wetland. (ord. 05C-12 5).” There is no area within the same drainage sub-basin to create a new wetland without destabilizing the surrounding slopes. This is acknowledged and is the conclusion of the Sewall Wetland Consulting, Inc. study date March 5, 2015 as submitted by the Applicant.

I understand that MI Treehouse, LLC is applying for a SEPA Determination of Non-Significance (DNS) under MICC section 19.07.030 (B) Reasonable Use Exception. **First point** under 19.07.030(B), the City and/or Hearing Examiner must determine whether constructing a house entirely in a Category III Wetland is a “reasonable use”. I submit that doing so is a very unreasonable use that threatens the health, safety, and welfare of the residents living around and adjoining this development site.

Second point under 19.07.030(B), the City and/or Hearing Examiner must determine under 19.07.030(B)(3)(f.) that the, “Inability of the Applicant to derive reasonable use of the property is not the result of actions by the Applicant after the effective date of this chapter.” The fact is, the Applicant purchased the property for \$32,094.00 on 9/24/2014 after reviewing the MICC regulations pertaining to development of this site, after reading the prior variance application file of 2000 through 2014, and understanding that the entire site is a Category III Wetland with a Type 2 Watercourse bordered by critical slopes. On April 22, 2015, the Applicant, Bill Summers of MI Treehouse, LLC, held a meeting in my home to address 7 neighbors regarding his development plan and explained that he acquired the site after reading our objection letters written in 2000 and 2004 because he believed he could overcome the objections and build a cost effective home. This lot sold in 1999 for \$210,000 and failed from 2000 to 2014 to obtain a

building permit because of the sensitive environmental and safety issues related to development of this site. The Applicant in this case “took deliberate” action to acquire this site for \$32,094, a historically and significantly low price for a residential lot on Mercer Island, because he was willing to gamble on getting approval to build a house on this site which I submit is an unreasonable use of the Wetland. The highest and best use and most reasonable use of this property is as a Wetland and the Applicant paid a low price to gamble on changing that. He could have talked to the City and neighbors before taking this risk and he could have negotiated a contingency in his Purchase of the Property subject to getting a building permit. The low price reflects the low probability of getting approval.

Third point under 19.07.030(B), the City and /or Hearing Examiner must consider the potential lost economic value of the surrounding 18 neighbors who are within 300’ of the development site when considering the potential lost economic value to the Applicant who paid \$32,094 for the property. The surrounding 18 homes are all valued over \$1,000,000 each and several over \$1.5 million. The question is, what is the welfare and safety of the 18 surrounding homeowners versus the uninhabited development lot that is a designated Category III Wetland and what is the potential economic loss to the surrounding neighbors?

MICC 19.07.040(D) Variances states, “Variances pursuant to MICC 19.01.070 are not available to reduce any numeric requirement of this chapter. However, the allowed alterations and the reasonable use exception allowed pursuant to MICC 19.07.030 may result in city approvals with reduced numeric requirements.” The word “reduced” is very clear. It does not say “eliminated” or “waived” numeric requirements which would give the City and/or Hearing Examiner the ability to waive or ignore the Wetland buffer requirements, or the requirement to restore, enhance, and/or replace the impacted wetland within the same drainage sub-basin as the original wetland.

The DNS application does not include, 1) a proposed critical area monitoring plan, 2) a storm water and erosion control management plan, or a description of impacts to the functions of critical areas (the Wetland) as required by 19.07.050 Critical Area Study.

Geotechnical Engineering Study by GEO Group Northwest, Inc.:

The Geotechnical Engineering Study by GEO Group Northwest, Inc. dated March 12, 2015 is an updated study completed by the same firm on September 24, 1999. The new study contains the same shortcomings of the original 1999 study in that it only addresses the feasibility of constructing a home on the proposed development site. It fails to address impacts on the steep slopes to the south and to the north of the development site and it doesn’t address impacts to water migration from the slope above the development site, through the site, and downstream to the lake. There is no data on current hydrostatic pressure in the slope above the site and

onsite currently and no baseline data during 4 typical seasonal conditions. Without baseline data there is no way to measure impact on the slope and residences above resulting for development of the site and without a monitoring plan there is no way to determine compliance and potential increased risk. The same holds true for downhill water flows - there is no current data as a baseline to measure against. The primary focus of this report is solely on what type of foundation system will support the proposed structure. The impact on the surrounding 18 neighbors was not addressed.

The GEO Group Northwest, Inc. study dated Sept. 24, 1999 contained the following conclusion which was omitted from the recent March 12, 2015 study. "The main geotechnical considerations for the proposed development will include the existence of wet, loose sandy soils at the site and the presence of steep slopes exhibiting ground water seepage south of the proposed building locations. There exists a potential for settlements of the proposed buildings and driveways due to the presence of wet, loose soils to depths of 15 to 20 feet at the site. **There also exists a potential that development-related disturbance of the soils at the base of the steep slopes along the south part of the site may adversely affect stability of the site and the neighboring property to the south.**" Nothing has changed since 1999 to reduce or eliminate this risk resulting from the proposed development. Why has GEO Group Northwest not included this conclusion in their current report?

My recommendation is the City needs to order a peer review of all technical reports submitted by the Applicant to ensure an unbiased analysis.

The GEO Group Northwest report states that, "Saturated soils were encountered in boring B-2 from near ground surface to approximately 20 feet deep, ..." This boring was done in 1999! The 2015 report performed reconnaissance of the site to update their knowledge of current site conditions and to review and update their 1999 findings. First, I suggest the City require current borings to test saturated water depths. Why should we accept 16 year old data? Second, I believe that 20' of water saturated soil is not a reasonable location to build a house.

Given that the site is a designated Wetland, will the City require post construction delineation of the remaining wetland and post it as an environmentally sensitive area? Will the residents of the home be prohibited from utilizing their backyard that will be a wet bog with 20' of saturated soil? Will there be a prohibition against further cutting into the toe of the steep slope to build retaining walls to provide a level backyard for outdoor enjoyment by the residents?

The Sewall Wetland Consulting, Inc. Report:

The Sewall Wetland Consulting, Inc. report dated March 5, 2015 is also lacking hard data and contains too many statements that are not supported by facts. The statement, "The proposed construction of a home on the site will not impact public health or safety and will utilize the

latest construction techniques to minimize impacts to critical areas.” This statement is not supported by any facts or evidence. It’s just a statement!

The report notes that, “Soil pits excavated in the upland portion of the site were found to have dry, gravelly loam soils with soil colors of 10YR 3/3-3/4. Soils were found to be dry within the upper 16” during our wet season observations.” This anecdotal comment lacks data and facts. It does not say how many pits were excavated or exactly where on the site. It’s nice to know that the soil was dry in the upper 16 inches of the soil but we are not as concerned about a hillside slide of the top 16” as we are of a potential slide of the top 16 feet. What are the soil conditions and saturation levels below the top 16 inches?

The report does clearly conclude as stated on page 10 that it is not possible to restore any wetlands or buffer impacted or lost temporarily as the construction of a home is a permanent impact. In response to the requirement to, “Restoring a former wetland and provide buffers at a site once exhibiting wetland characteristics to compensate for wetlands lost:” the response is, “This is not possible as there is no room to create new wetlands, or buffers on the site.”

The Wetland report further fails to provide any measurement of the functional performance of the existing wetlands and to provide a projection as to the measurable loss of function resulting from the construction of a house on this site. This is not very helpful but understandable after reading the conclusion that this existing wetland can’t be replaced or its function restored.

Site Plan Observations

- 1) The Geotechnical and Wetlands reports referenced above note that the home will be constructed on pin piles so, “The residence could be built essentially at-grade or on an above-grade pile-supported deck,” and “The site plan utilizes pin piles, which are not considered wetland fill, to minimize actual wetland impact.” However the site plan shows the foundation walls of the home imbedded up to 8 feet into the sloped terrain (wetland) with a concrete foundation slab on top of the pin piles. This is not exactly “at or above grade” and not minimal intrusion into the functioning wetland.
- 2) The site plan shows the entire proposed residence surrounded by a siltation fence with a retaining wall that appears to be stacked boulders similar to the wall that lines the uphill driveway at 5645 East Mercer Way. There are no construction specifications on this wall, but it is clear that the wall and the residence foundation walls are cut into the toe of the south-side steep slope. Any excavation of the toe of the steep slope increases the risk of undermining the stability of the steep slope. This is a safety and welfare hazard to the residents on top of the steep slope and to the residents of the proposed home.

- 3) Given that the entire development site is a wetland with 20 feet a saturated soil, will the residents of the proposed home be prohibited from using the yard area surrounding the house? That seems unreasonable but it is a wetland and residents tend to build gardens, patios, play areas, etc. and this activity further encroaches on the wetland and decreases its function. Therefore the wetland impact area is far more than the proposed 2,200 square foot footprint of the house or the 3140 square foot roof area.
- 4) The impervious surface area coverage is stated as 2200 square feet however this does not include the driveway and sidewalks. What is the total impervious surface coverage being proposed on this site?
- 5) The house foundation, deck, backyard area, driveway, and retaining wall with siltation fence on north-side of the driveway are all inside the 50 foot buffer from the Type 2 Watercourse which is not permitted under MICC 19.07.070.

In summary, the City of Mercer Island and the Corps of Engineers has declared this proposed development site at 5637 East Mercer Way a Category III Wetlands containing a Type 2 Watercourse which prohibits development within the Wetlands, within 50' of this wetland, or within the 50' buffer from the Type 2 Watercourse. The Applicant's wetland consultant concluded that it is impossible to build the proposed home on this site without waiving the Wetlands code requirements or complying with the Type 2 Watercourse buffer. Therefore, the Applicant is requesting a complete waiver of the Wetlands code requirements and Type 2 Watercourse buffer. This would set a precedent that all wetlands can be developed without replacement, enhancement, or restoration and without regard to eliminating the function of the wetlands. A waiver of these codes would also ignore the increased risk of hazards and threats to the neighboring properties and loss of future property values resulting from a catastrophic event triggered by this development proposal. A full waiver also ignores the increased water runoff risk imposed on the downhill neighbors and the runoff and siltation impact on Lake Washington. The Applicant's \$32,094 purchase price gamble on obtaining a waiver of the MICC development codes when he had full knowledge of the history of this site does not warrant a waiver or a SEPA Designation of Non-Significance. I wish the Applicant had talked to the neighbors before committing himself financially.

Sincerely,



Gordon J. Ahalt
9204 SE 57th Street
Mercer Island, WA 98040

Note: 1 attachment King County Department of Assessments page for this property

	Valued Year	Tax Year	Omit Year	Levy Code	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total Value (\$)	New Dollars (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total Value (\$)	Tax Value Reason
192405931200	2014	2015		1031	350,000	0	350,000	0	350,000	0	350,000	
192405931200	2013	2014		1031	190,000	0	190,000	0	190,000	0	190,000	
192405931200	2012	2013		1031	176,000	0	176,000	0	176,000	0	176,000	
192405931200	2011	2012		1031	186,000	0	186,000	0	186,000	0	186,000	
192405931200	2010	2011		1031	195,000	0	195,000	0	195,000	0	195,000	
192405931200	2009	2010		1031	201,000	0	201,000	0	201,000	0	201,000	
192405931200	2008	2009		1031	250,000	0	250,000	0	250,000	0	250,000	
192405931200	2007	2008		1031	250,000	0	250,000	0	250,000	0	250,000	
192405931200	2006	2007		1031	359,000	0	359,000	0	359,000	0	359,000	
192405931200	2005	2006		1031	359,000	0	359,000	0	359,000	0	359,000	
192405931200	2004	2005		1031	330,000	0	330,000	0	330,000	0	330,000	
192405931200	2003	2004		1031	330,000	0	330,000	0	330,000	0	330,000	
192405931200	2002	2003		1031	330,000	0	330,000	0	330,000	0	330,000	
192405931200	2001	2002		1031	210,000	0	210,000	0	210,000	0	210,000	
192405931200	2000	2001		1031	183,000	0	183,000	0	183,000	0	183,000	
192405931200	1999	2000		1031	147,000	0	147,000	0	147,000	0	147,000	
192405931200	1998	1999		1031	140,000	0	140,000	0	140,000	0	140,000	
192405931200	1997	1998		1031	0	0	0	0	87,000	0	87,000	
192405931200	1996	1997		1031	0	0	0	0	80,000	0	80,000	
192405931200	1994	1995		1031	0	0	0	0	80,000	0	80,000	
192405931200	1992	1993		1031	0	0	0	0	63,700	0	63,700	
192405931200	1990	1991		1031	0	0	0	0	65,000	0	65,000	
192405931200	1988	1989		1031	0	0	0	0	40,500	0	40,500	
192405931200	1986	1987		1031	0	0	0	0	54,000	0	54,000	
192405931200	1984	1985		1031	0	0	0	0	46,000	0	46,000	
192405931200	1982	1983		1031	0	0	0	0	46,000	0	46,000	

SALES HISTORY

Excise Number	Recording Number	Document Date	Sale Price	Seller Name	Buyer Name	Instrument	Sale Reason
2692659	20140929000870	9/24/2014	\$32,094.00	BROTHERTON JOSEPH L	MI TREEHOUSE LLC	Statutory Warranty Deed	None
2682243	20140731000343	7/29/2014	\$30,539.00	MARCH MACDONALD INC	BROTHERTON JOSEPH L	Statutory Warranty Deed	None
2271039	20070314001312	3/12/2007	\$125,000.00	MARCH-MACDONALD CONSTRUCTION INC	BROTHERTON JOSEPH L	Statutory Warranty Deed	None
2076429	20041013002373	9/29/2004	\$0.00	MARCH-MACDONALD INC	MARCH-MACDONALD CONSTR INC	Quit Claim Deed	Other
1731414	20000111001468	12/31/1999	\$210,000.00	SHOWALTER STEPHEN A+REBECCA L	MARCH-MACDONALD INC	Statutory Warranty Deed	None
1552136	199706271886	6/17/1997	\$145,000.00	CONTINENTAL MARKETING CO LTD	SHOWALTER STEPHEN A+REBECCA L	Statutory Warranty Deed	None

REVIEW HISTORY

Tax Year	Review Number	Review Type	Appealed Value	Hearing Date	Settlement Value	Decision	Status
2015	1403126	Local Appeal	\$350,000	5/14/2015	\$0		Active
2009	0802419	Local Appeal	\$515,000	1/8/2009	\$250,000	REVISE	Completed
2008	0700576	Local Appeal	\$402,000	11/1/2007	\$250,000	REVISE	Completed

PERMIT HISTORY

HOME IMPROVEMENT EXEMPTION

New Search	Property Tax Bill	Map This Property	Glossary of Terms	Area Report	Print Property Detail
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