

**Seth and Celestine Davis**

4917 East Mercer Way  
Mercer Island, WA 98040

March 20, 2019

Delivered by email to addressee and copies

Ms. Nicole Gaudette, Senior Planner, Community Planning & Development  
City of Mercer Island ([nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org))  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040-3732

Re: Your File Nos. CAO17-010 and SEP19-003  
Applicant: Sang Hou  
Aka: 4825 East Mercer Way

Dear Ms. Gaudette:

We write in response to the Revised Notice of Application captioned above. We are residents and property owners of the property immediately adjacent to the lot subject to the application. We oppose the application as we believe that the SEPA Determination of Non-Significance is not warranted although your notice anticipates granting such a finding.

There are several reasons that the analysis is deficient. While the latest report from the applicant's consultant (dated 14 January 2019) responds to two questions posed by your office, it does so insufficiently, and several other matters have not been addressed.

The Critical Area Report as submitted relies on dated reports and inadequate or dated science. The reports referenced in the applicant's consultant's report relies on non-current data (only as recent as 2017, and the majority of the report is based on 2006 information). Much has changed in the immediate area in that last year directly impacting the subject property (not to mention others in the vicinity). In the upslope area immediately above East Mercer Highlands subdivision, the City of Mercer Island (City) has allowed the removal of over forty (40) large diameter trees. The result of this allowed harvesting is a noticeable increase in groundwater on the subject lot and its neighbors. We are of course concerned about an "Oso Effect" in the critical area of the slope above our properties.

Nonetheless, the existing wetlands area on the subject lot has increased in size and is not reflected in the current maps or inventory. The City itself has recognized the deficiency of its inventory and mapping of wetlands and has issued a Request for Proposal scheduled to be awarded as of the writing of this letter and completed by the end of June 2019<sup>1</sup>. Instead of a reduction on the wetlands buffer, an update of the wetland's boundary and the preservation of same should be required. We also note that as recently as last month several large trees have

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<sup>1</sup> Watercourse Inventory & Typing (RFP 19-01) Which reads, in part: ...**Wetland analysis and identification:** The City is currently has a wetland GIS layer that appears to underrepresent the actual location and extent of wetlands. The City is interested in more accurately representing the potential locations of wetlands for use during project review and planning.

fallen in the wetland on or adjacent to the subject property, evidence of the increase in groundwater and destabilization of the soil.

The arborist report (Gilles - dated January 11, 2019) accompanying the consultant's report is based on a site visit in 2018. This report is unresponsive to the question posed by the City. There is no statement that the proposed development "will not harm the trees" but instead proposes "extraordinary tree protection measures" needed to prevent the trees from suffering needlessly or dying. The suggested protection measures are "generic" and caveated with a "waiver of liability" that itself is generic (as it seems to be addressed to a different homeowner's association) and suggests a second opinion should be obtained. The concern of the City for the named trees on the subject property (exceptional trees 916 and 917) does not include or consider the exceptional trees on our property, less than thirty feet from the specified trees. Construction in such proximity to trees on our property without due consideration jeopardizes those trees and is not considered in the current or original arborist's report. Avoiding and distancing construction away from the specified trees will put in danger trees on our lot and has not been considered in any of the engineering or professionals reporting. Other trees appear to be marked for removal further worsening the situation with drainage in the lot.

The drainage concern for the lot, even though the applicant has rescinded its request for a variance from the stream buffer should be reviewed in light of the changed circumstance and the impact of the removal of large trees from the property. This lot is adjacent to a critical area of the common roadway into the subdivision. It is located at the juncture of the privately maintained road where it makes a sharp turn. The stream runs under the road at that point. There is concern that the additional runoff will exceed the capacity of the water's narrow path under the road. The additional runoff will likely have the impact of weakening the roadbed or eroding the road jeopardizing traffic into the subdivision. As the road is privately maintained by the residents (which the current owner does not contribute to) the City does not appear to have considered the impact of the reduction of wetlands buffer, the size of the building pad, or the increase in groundwater (as referenced above) in its evaluation of the plans as proposed.

There is a steep slope between the subject property and our property on the adjacent lot to the south. Digging into that slope and installing a retaining wall would be detrimental to the stability of the slope and the quiet enjoyment of our property. A retaining wall would essentially block the flow of groundwater causing the water to either turn our lot into a wetland or force the water onto the roadway without enough drainage impacting the private road along which it will run. There has been no consultation with the road maintenance association nor with the adjacent property owners on either side of the lot to review concerns and address impacts. It appears from the application(s) (historical and current) that the City's focus has solely been on the immediate property lot and not the impacted neighboring properties nor the common private roadway that the City does not maintain.

It is clear that this is a difficult property on which to build given the "eagle tree", the stream, the wetlands, the common private road, and the impacted adjacent properties. We are not saying that the owner or his contingent buyer should not be allowed to build on the lot. However, given the situation and the current circumstances, the driveway and building pad being proposed are too large to be considered for this lot. A variance of the wetlands buffer as requested should be denied. It is inconceivable to suggest that the variance being requested, given all of the above facts and concerns, would result in a SEPA determination of Non-Significance.

We stand willing to work the applicant and the City to find a mutually acceptable solution for building on this lot, but one that considers all the facts and current circumstances.

In light of the above factors, at a minimum, the City should postpone its determination until:

- The current updated Wetlands Analysis is completed by the City, and new data is available in June of this year
- Agreement in principle has been reached with the road maintenance association on membership, impacts, and road preservation<sup>2</sup>
- A second arborist's opinion has been obtained, and adjacent property trees are considered in the analysis
- Review of the impact of any proposed retaining wall on the groundwater impact on adjacent properties and roadway
- Consultation with the adjacent property owners on the proposed plans has been evidenced, and general agreement has been reached

Sincerely,



Seth Davis  
Celestine Davis

Cc:

- Julie Underwood, City Manager: [julie.underwood@mercergov.org](mailto:julie.underwood@mercergov.org)
- Debbie Bertlin (Mercer Island Mayor): [debbie.bertlin@mercergov.org](mailto:debbie.bertlin@mercergov.org)
- Evan Maxim (Community Planning & Development Director): [evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)
- Kari Sand (City Attorney): [kari.sand@mercergov.org](mailto:kari.sand@mercergov.org)
- Mercer Island City Council Members: [council@mercergov.org](mailto:council@mercergov.org)
- Rep. Tana Senn, Representative 41<sup>st</sup> District: [tana.senn@leg.wa.gov](mailto:tana.senn@leg.wa.gov)
- Brian Thomas, President, East Mercer Highlands Road Maintenance Association: [brianth59@hotmail.com](mailto:brianth59@hotmail.com)

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<sup>2</sup> The most all the owners of the lots in the East Mercer Highlands subdivision constructed and executed a Road Maintenance Agreement in June of 1987 which was properly recorded. The parties to the agreement were considered either Participating or Non-participating Lots. Participating Lots were developed, and Non-participating Lots were unimproved lots. Non-participating Lots were not liable for assessments for maintenance or improvements until such time as improvement on the lot commenced. To have the benefit of the Road Maintenance agreement and access to the common road the lot owners (or their successors) must have been signatories to the agreement. Records indicate that George Janiewicz, owner of the lot in question, at 4825 East Mercer Way, never became party to the Road Maintenance Agreement. His lot is therefore currently outside of the agreement.