

**From:** [gjahalt@gmail.com](mailto:gjahalt@gmail.com)  
**To:** [Evan Maxim](#)  
**Cc:** [davea@dahogan.com](mailto:davea@dahogan.com); [anderson9200@comcast.net](mailto:anderson9200@comcast.net); [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); [robin@sammgroup.com](mailto:robin@sammgroup.com); [vduchaine@comcast.net](mailto:vduchaine@comcast.net); "Rick Duchaine"; [Debbie Bertlin](#); [Salim Nice](#); [Lisa Anderl](#); [Bruce Bassett](#); [Wendy Weiker](#); [David Wisenteiner](#); [Benson Wong](#)  
**Subject:** RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040  
**Date:** Friday, September 27, 2019 9:07:09 AM

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Dear Mr. Maxim:

I appreciate that the SEPA review is distinct from the Reasonable Use Exception review however the two are directly linked by the City approval process that will lead to a final decision by the City. The SEPA review will determine what impacts will have to be mitigated if the City approves the RUE. The shortcoming of the current SEPA review is 1) it is not addressing the impacts on the uphill slope or the impacts of water flow on the downstream neighbors, and 2) it only addresses whether or not a residence can be constructed in a wetland, within the setback of one critical stream, and in the headwater of a second critical stream, and 3) and it fails to address the impact on the wetland and two critical streams by having a family living on this lot and the City's inability to prevent the family from using their undeveloped yard space in an impactful way, such as installing more drain lines, building more retaining walls, installing more impervious surfaces, etc... If this future activity is permitted then it is probably a forgone conclusion that the City will approve the RUE and there will be little or no mitigation requirements.

It appears that the City's process is to move this along one step at a time to the point where the City can't say no. A house in this sensitive location is not a reasonable use to the owner who paid \$32,094 for a lot that was declared a wetland with two critical streams when the prior developer tried to build on this lot. The City is misleading Treehouse by forcing them to spend more money on this approval process, increasing their cost and investment in the property and in essence making the potential economic loss to Treehouse larger.

The Hearing Examiner remanded this to the City to address the impact on the surrounding property and that has not been done. There is no supporting information in the reports by Treehouse's consultants to back up their claim that there are no negative impacts on the surrounding properties but the City does have the report from Shannon & Wilson date July 12, 2019 stating that "the proposed development does have potential adverse impacts" and "the Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, not does it provide sufficient discussion to establish that the condition in MICC 19.07.060 D(2a) is met for the current design."

The impacts on the wetland, two critical streams, the surrounding property owners, and the future occupants of this proposed house are not just confined to the building pad (footprint)

of this development. The City must address how the entire lot will be utilized by future occupants who would not be there otherwise.

Kicking the can down the road by trying to approve this application one step at a time and failing to address the impact on the surrounding property owners and future occupants on this lot and not balancing these impacts against an investment of \$32,094 by Treehouse is **Gross Negligence** on the part of the City. Please share this statement with the City Attorney because this is where this issue is headed.

Gordon J. Ahalt

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**From:** Evan Maxim <evan.maxim@mercergov.org>

**Sent:** Thursday, September 26, 2019 4:06 PM

**To:** Gordon Ahalt <gjahalt@gmail.com>

**Cc:** davea@dahogan.com

**Subject:** RE: CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Gordon Ahalt,

Thank you for taking the time to comment on the SEPA Notice of Application and on this project overall.

In your email below, you requested the definition of "Reasonable Use"; this term is defined in the [City's code](#). I also have copied the definition into my email below the signature line.

Please note that the SEPA review is distinct from the Reasonable Use Exception (RUE) review and that the City has previously recommended denial of the RUE. It is also important to note that the criteria for a SEPA review and determination are very different from the criteria associated with a RUE decision.

It is the nature of an RUE application that the project, if approved, will impact critical areas. If the City recommends approval of the RUE, it will also include recommended conditions intended to both mitigate and limit impacts.

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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Reasonable Use: A legal concept that has been and will be articulated by federal and state courts in regulatory takings and substantive due process cases. The decisionmaker must balance the public's interests against the owner's interests by considering the nature of the harm the regulation is intended to prevent, the availability and effectiveness of alternative measures, the reasonable use of the property remaining to the owner and the economic loss borne by the owner. Public interest factors include the seriousness of the public problem, the extent to which the land involved contributes to the problem, the degree to which the regulation solves the problem, and the feasibility of less oppressive solutions. A reasonable use exception set forth in MICC 19.07.140 balances the public interests against the regulation being unduly oppressive to the property owner.

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**From:** Gordon Ahalt <[gjahalt@gmail.com](mailto:gjahalt@gmail.com)>

**Sent:** Monday, September 23, 2019 8:05 PM

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

**Cc:** [davea@dahogan.com](mailto:davea@dahogan.com)

**Subject:** CAO15-001; SEP15-001; VAR18-002; Treehouse SEPA Review 5637 East Mercer Way, Mercer Island, WA 98040

Dear Mr. Maxim:

I'm responding with my comments to the Notice of Application – Project SEPA Review. Copy Attached.

I continue to oppose development of the subject lot and approval of the reasonable use exemption. The Hearing Examiner remanded this issue back to the City to address impacts on the uphill slope above the subject property and impacts on the downstream homes as a result of potential increased waterflow resulting from the destruction of the existing wetlands. The documents I have reviewed have failed to address these offsite issues and have only addressed the ability to construct a residence on this site.

The attached Geotechnical Review which the City contracted to have completed as a Peer Review of the technical reports submitted by Treehouse concluded (highlighted in yellow), "the proposed development does have potential adverse impacts, yet none are identified in the addendum." , and further states, "In our opinion, The Statement of Risk presented in that report is outdated because it was prepared before recent changes to the location and elevation of the proposed residence, nor does it provide sufficient discussion to establish that the condition in the MICC 19.07.060 D(2a) is met for the current design."

The City and Treehouse have failed to address the negative impacts on the surrounding properties and have failed to protect the health, safety, and welfare of the residents living adjacent to and downstream from the proposed development site.

The City is also failing to address further negative impacts on the subject wetlands and critical

streams that will result from having a new resident live on this site in the wetland and in the two critical streams. It is gross negligence on the part of the City to assume that a new resident will have no negative impact on the wetland, two critical streams, and the surrounding properties during the term of occupy a new home on this site. It is not reasonable to assume that a new resident will not utilize the undeveloped property to improve usage of the surrounding "yard space" which is a wetland. The City cannot reasonably restrict a new property owner from installing drainage systems to drain the wetland to create usable yard space. The wetland impacts will not be limited to only the building footprint.

I request the City to provide the surrounding property owners with a definition of "reasonable use" as it pertains to a lot the developer acquired for approximately \$32,000. Where is the dividing line in usage of this lot between reasonable and unreasonable? I contend that development of a single family residence on this lot is unreasonable and installation of a park bench on the adjacent walking trail would be the limit of reasonableness.

The lot sold for \$32,000 because it is not reasonable to build a house entirely in a wetland, within the buffer of one critical stream, and in the headwaters of the second critical stream.

I reserved my right to speak at the next scheduled Hearing Examiner meeting regarding this issue. I also ask that all of my prior letters regarding this project be incorporated as part of this response.

Gordon J. Ahalt  
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Mercer Island, WA 98040  
206-605-5234