

From: anderson9200@comcast.net
To: [Evan Maxim](#)
Subject: The recorded downstream easement
Date: Monday, January 20, 2020 12:44:14 PM

Dear Mr. Maxim,

As you are well aware, the downstream owners in the Treehouse proceedings have repeatedly raised to the City the drainage easement resulting from negotiations between James and Dorothy O'Sullivan and the City of Mercer Island. I also have made arguments based on the terms of this easement. See, e.g., Section IV of my written argument to the hearing examiner. It is my understanding from the downstream owners that the City maintains that it has no knowledge of this easement or that it does not exist. The copy of the easement in the possession of the downstream owners expressly states that the drainage easement would be recorded. Yesterday, I spent a few hours to do an online record search using the website of the King County Recorder's Office. In my search, I found the drainage easement including its complete text. The easement has a "recording number" of 199806011443. The drainage easement was recorded on June 1, 1998, at 2:36 p.m. You can easily repeat my research by using <https://recordsearch.kingcounty.gov/LandmarkWeb/search/index?theme=.blue§ion=searchCriteriaName&quickSearchSelection=> and entering the foregoing recording number. This will allow you to access a photocopy of the five-page document that was recorded. In view of the fact that this is a public record, it is difficult to see the basis for the City claiming that it does not have knowledge of the drainage easement or that the easement does not exist.

The reality of the matter is that the City is legally bound by the strict terms of the recorded drainage easement. If the City recommends to the hearing examiner the approval of a plan which violates the terms of the drainage easement, the City becomes an active participant in violating those terms. The terms of the drainage easement provide in part:

"The water which may be passed into the watercourse in existence on the Grantors' property shall be limited to water flows which result from conditions, diversions and improvements existing as of the date of the settlement agreement, May 31, 1984, including any and all siltation contained in said water flows in an amount not to exceed 50 cubic yards of siltation per calendar year."

It should be noted that this language refers to "water flows." It does not refer to "peak flows." If the parties intended the latter, they would have used the word "peak" to show that. Also it is apparent that waters flowing from this project do not result from "improvements existing as of... May 31, 1984." My son, who is a licensed civil engineer, is in a better position than I to explain how the total and cumulative volume of water flowing from the Treehouse land parcel into the stream through the downstream properties will be increased by the proposed project. It is even obvious to me, as a layman, that this would be the case. In the natural state, a certain percentage of the precipitation falling within the area of the proposed footprint would be absorbed by the ground through percolation and would never reach the stream in question. Under the proposed plan with its impermeable surfaces, all of the precipitation within the footprint would be diverted into the

stream at some point in time even if a detention vault is used.

I do not intend this short email to be a full and complete argument of all of the points to be made with respect to the recorded drainage easement. However, I do wish to stress at this point in time that the City will not be meeting its legal obligations if it recommends approval of a plan that would violate the strict terms of the easement. Thank you for your thoughtful consideration. I hope that the City will live up to its legal commitments. Peter Anderson