

**From:** [Rob Graham](#) on behalf of [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com)  
**To:** [Evan Maxim](#); [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); [Gordon Ahalt](#); "Peter Anderson"  
**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com); [garysallyhirst@gmail.com](mailto:garysallyhirst@gmail.com); [erice@stress-tek.com](mailto:erice@stress-tek.com); [Erik and Lisa Elefson](#)  
**Subject:** RE: Reply  
**Date:** Thursday, October 27, 2016 10:02:52 AM

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Mr. Maxim,

You were purposefully added to my email and will continue to be added to any part of this storm water issue that I am involved in. While I like every single person I have met at this city and don't feel there is any ill intent, I don't feel that these issue have been taken at all seriously. The fact that the city has ignored the settlement agreement it signed and has allowed this degree of burden on property owners is alarming. The fact that this city would still consider approving an application to build in this water course with several variances is simply negligent in my opinion. While I won't continue to spend my time chattering about these issues, I will be very willing to take legal action should we have consensus with neighbors along this water course. I do apologize that you are dealing with these issue being new to the city, I would ask you to understand that I've been dealing with this issue since I purchased this property. My family and I are terrified looking out our windows with water literally inches below during heavy rains. We have a beach that I can now use to walk clear out to my dock because it has been filled with mud, silt and sand. I am now simply disgusted with the matter.

Regards,

Rob Graham

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**From:** Evan Maxim [mailto:[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)]  
**Sent:** Thursday, October 27, 2016 8:54 AM  
**To:** [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); [Gordon Ahalt <gjahalt@gmail.com>](mailto:gjahalt@gmail.com); 'Peter Anderson' <[anderson9200@comcast.net](mailto:anderson9200@comcast.net)>  
**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com); [garysallyhirst@gmail.com](mailto:garysallyhirst@gmail.com); [erice@stress-tek.com](mailto:erice@stress-tek.com); [Erik and Lisa Elefson <elefsonlisa@comcast.net>](mailto:erikandlisa@comcast.net)  
**Subject:** RE: Reply

Hello,

I believe you have inadvertently copied me on this email (I'm letting you know in case there is more email exchange).

Regards,

*Evan Maxim*

Planning Manager

City of Mercer Island Development Services

9611 SE 36<sup>th</sup> Street, Mercer island, WA 98040

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**From:** Rob Graham [<mailto:rob@grahamtrucking.com>] **On Behalf Of** [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com)

**Sent:** Wednesday, October 26, 2016 6:03 PM

**To:** Gordon Ahalt <[gjahalt@gmail.com](mailto:gjahalt@gmail.com)>; 'Peter Anderson' <[anderson9200@comcast.net](mailto:anderson9200@comcast.net)>;

[robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com)

**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com); [garysallyhirst@gmail.com](mailto:garysallyhirst@gmail.com); [erice@stress-](mailto:erice@stress-tek.com)

[tek.com](mailto:tek.com); Erik and Lisa Elefson <[elefsonlisa@comcast.net](mailto:elefsonlisa@comcast.net)>; Evan Maxim

<[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)>

**Subject:** RE: Reply

Before I commit to spending more time on this I would like to know if everyone be willing to collectively hire an attorney and possibly file a LUPA (see below) once the city approves this application? I filed a LUPA against king county in 2012 and found it to be very effective. The City has shown that they are going to do what they want to do regardless of our chatter. This practice is not uncommon in government.

Regards

## LUPA's Filing and Service Requirements are No Joke

Published January 11, 2013

LUPA is the "land use petition act", which is the short title for the statute (RCW 36.70C) which governs judicial review of land use decisions. In 1995, the Washington State Legislature adopted LUPA to provide direct judicial review of land use decisions. Before LUPA, people affected by a land use decision had to file a writ of certiorari. The procedural pitfalls for proper filing of a writ resulted in dismissal of many writs. Another complication with writs was figuring out what the proper standard of review should be applied. LUPA provides a much simpler and faster avenue for appeals of land use decisions.

Land use decisions are defined in the statute and include the highest and final decision on many quasi judicial and administrative decisions involving land use. These decisions could include issuance of a building permit or other permits along with administrative decisions like issuance of

a stop work order. Whether a decision qualifies as a “land use decision” is often argued during LUPA appeals and is the substance of judicial dismissal for lack of jurisdiction.

In my view, the most important jurisdictional issues to get right for LUPA appeals are, when and how to file and serve a LUPA petition. These are nuts and bolts type hurdles that are significant because if the filing and service of a LUPA petition is done incorrectly it results in dismissal per RCW 36.70C.040. A LUPA petition must be filed within 21 days of the issuance of a land use decision. This requirement sounds simple but many petitions are dismissed for failure to timely file the petition. For instance, the date of issuance of a land use decision is not always obvious which can provide some anxiety when it comes to calculating the 21 days. Another situation that can arise is lack of notice that a land use decision is issued. Washington courts have not fully resolved this notice issue so, arguing lack of notice may still result in dismissal if one files their LUPA appeal after the 21 day time frame. Next, the LUPA appeal must be served on every party named in the statute and the local jurisdiction which issued the decision. Again, this also appears straight forward. Service on a local jurisdiction must be upon the county auditor or during the normal office hours, upon the deputy auditor. Petitions served later than normal office hours for the county auditor have been dismissed. Dismissal of petitions have also occurred when every party named in the statute is not served.

Rob Graham

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

**Sent:** Wednesday, October 26, 2016 3:40 PM

**To:** 'Peter Anderson' <[anderson9200@comcast.net](mailto:anderson9200@comcast.net)>; [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com)

**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com)

**Subject:** RE: Reply

Everyone:

I have scheduled a meeting with Evan Maxim for Nov. 1<sup>st</sup> at 9:00am at the City Planning Dept.

I agree with Peter, as frustrating as it has been, I think having someone from the downstream side of the MI Treehouse property at this meeting can only help your/our cause. I will carry the torch for both the uphill and downhill property owners but I think having representation at the meeting from both groups is beneficial.

I would not assume that Evan Maxim has read all of the letters and information on file in opposition of the MI Treehouse development. He is still very new to the City and is flooded in this current development cycle with project reviews.

I suggest we listen to Evan on where he is in his review process, what his current thoughts are, and in what direction he is leaning. We then would have an opportunity to present our concerns and that has to be as factual and non-emotional as possible. One goal we should have is to raise enough doubt in the City's review that all safety factors have been addressed and motivate the City to require more studies, such as downstream water and silt flows, both historical and current; uphill slope stabilization issues such as changing the hydrostatic pressure in the hillside resulting from constructing a "Catchment Wall" to protect the proposed house from slides (this wall will be 8' above ground and a yet to be determined depth below the surface with a drainage system around the wall). This Catchment Wall has the potential to both increase retained water in the above hillside and then rapidly concentrate and divert water flow around the proposed house and increase downstream water flow. There are no studies providing baseline water and siltation measurements and projections of changes resulting from construction.

I also think a soft implication of potential legal actions from surrounding homeowners may get the City's attention given that at least 3 variances are required, if not more, to construct this house. This alone should suggest that this is not a developable site and the City should be concerned about granting too many variances.

Please let me know who will be able to join me.

Thanks.

Gordon

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**From:** Peter Anderson [<mailto:anderson9200@comcast.net>]

**Sent:** Wednesday, October 26, 2016 10:20 AM

**To:** [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); 'Gordon Ahalt' <[gjahalt@gmail.com](mailto:gjahalt@gmail.com)>

**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com)

**Subject:** Reply

I can certainly appreciate the frustration of all of you downstream owners. I know that the stream is a problem for which you have been seeking action from the City for a long time. Still, I think that it is important that one or more of you be present for the first meeting with Maxim. As you know, Maxim has only been employed by the City since June. True, we can assume that he has read your letters from last year, which are now part of the MIT application file. However, the strength of your feelings can be much better demonstrated in person than by letters in a file, even though very well

written. Also the fact that one of you has taken the time to be there shows that you are very serious in maintaining your strong objections to this project. Those are just my thoughts. Peter

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**From:** Rob Graham [<mailto:rob@grahamtrucking.com>] **On Behalf Of** [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com)  
**Sent:** Wednesday, October 26, 2016 6:01 AM  
**To:** Peter Anderson; Gordon Ahalt  
**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com)  
**Subject:** RE: Terms of easement

Good morning Peter,

It occurs to me that “framing our own argument” Is what Robin has done with this letter. The City also has letters from myself and I’m betting Bob has also sent his share. In addition, my wife and I have also submitted formal complaints to Fish and wild life which has oversight of the lake and is supposed to protect it against this constant flow of mud, silt and sand. Fish and wildlife already knows of the “plumb” at our beach front and has instructed the city to address it, they have also shared that there are at least two others on the island with the same issues. They have aerial photos documenting these plumbs as well. We had several meetings with Bill Sansbury (storm water manager) and his group from the city then his successor, Glenn Boettcher once Bill left the city. I have been addressing these issues for several years as well as dawning full waders every three months to remove tons of mud silt and sand from the ponds. I also do the repairs to the ponds which are undermined every winter from water over flowing the edges of the pond. Each of us pay storm water management fees but I have never received one dollar of it for managing the storm water of everyone above me in this water course. Maybe we could get all of the property owners who contribute to the flow to also contribute to the cleaning and maintenance? I have recently discovered that the city has our water course on its “short list” and plans to address some of the issues in 2021.

Regards

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**From:** Peter Anderson [<mailto:anderson9200@comcast.net>]  
**Sent:** Tuesday, October 25, 2016 8:47 PM  
**To:** Gordon Ahalt <[gjahalt@gmail.com](mailto:gjahalt@gmail.com)>  
**Cc:** [londonimplant@gmail.com](mailto:londonimplant@gmail.com); [robertroyalgraham@gmail.com](mailto:robertroyalgraham@gmail.com); [robin@sammsgroup.com](mailto:robin@sammsgroup.com)  
**Subject:** Terms of easement

Gordon, the attached shows the easement negotiated by the O’Sullivans with the City. It appears

that the O'Sullivan's owned the property now owned by London, Graham, and Samms. By its terms, the easement "runs with the land" and thus is enforceable by any of the three present owners. By its terms, it appears to me that the City is limited to the amount of water flowing through the stream as of May 31, 1984. From my non-expert perspective, it is clear that the impervious surfaces constructed by MIT would decrease the amount of percolation of the water on the property and therefore increase the amount of water flowing through the stream. The fact that the water would be released gradually through a storage vault is irrelevant. There would still be more water running through the stream and thus violating the terms of the easement. Obviously, it would be up to the present owners to frame their own arguments, but the foregoing seems to me to reflect the actual language of the easement. Peter