

ROBIN & SHARON SAMMS

RECEIVED

APR 27 2015

CITY OF MERCER ISLAND  
DEVELOPMENT SERVICES

April 26, 2015

City of Mercer Island  
9611 SE 36<sup>th</sup> St  
Mercer Island, WA 98040-3732

Re: Reasonable Use Exception Application, 5637 E Mercer Way, tax parcel #1924059312

To Whom It May Concern:

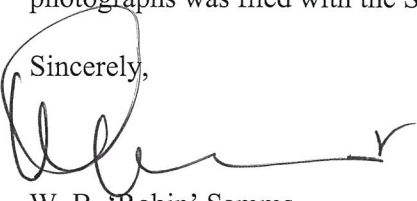
We are homeowners downstream in the direct watercourse of the above-mentioned property. As such, we have observed and been affected by significant increases in water flow, silt and mud deposited in the stream bed on our property and into Lake Washington since we acquired our property in 2001.

The consistent increases in water flow; mud and silt are in violation of the terms of the drainage easement granted to the city of Mercer Island in 1997 by the prior owners of the properties at 5632, 5634, and 5636 E Mercer Way. The drainage easement is a result of the settlement of a property damage lawsuit against the City of Mercer Island, attached as Attachment A. The terms of that settlement and easement run with the properties and are binding on the City of Mercer Island. In our observation, the City has been in breach of the terms of the settlement agreement and easement during the time we have resided here, specifically with regards to the increasing amounts of water and mud allowed into the watercourse and Lake Washington.

The proposed Reasonable Use Exception, if granted would severely disrupt springs and other aspects of the natural wetlands and watercourse during construction, and permanently thereafter. This would add additional water and siltation to the existing watercourse in further violation of the settlement agreement and drainage easement. Increases in water and siltation could cause property damage. Additionally there would be increases of mud flowing into the Lake Washington fish habitat. The lower Watercourse is already at capacity during the rainy months. I have attached photographs taken of the lower watercourse taken during a typical spring rainfall in April 2014. (Attachment B)

In closing, we would like to point out that the site notice for this Exception was posted in such a way as to be difficult to see and impossible to access by interested parties. A complaint with photographs was filed with the Senior Planner for the project, Travis Saunders on April 24, 2015.

Sincerely,



W. B. 'Robin' Samms

ATTACHMENT A: Lawsuit settlement and Drainage easement

Return Address:

PO BOX 1078  
MABEL ISLAND  
WA, 98040

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08:26:00 PM KING COUNTY RECORDS 005 TED 12:40

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 67.03)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

- 1. *Easement*
- 2.
- 3.
- 4.

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page \_\_\_\_\_ of document

Grantor(s) (Last name first, then first name and initials)

- 1. *Sullivan, James B*
- 2. *Sullivan, Dorothy*
- 3.
- 4.

Additional names on page \_\_\_\_\_ of document

Grantee(s) (Last name first, then first name and initials)

- 1. *Mabel Island #1*
- 2.
- 3.
- 4.

Additional names on page \_\_\_\_\_ of document

Legal description (abbreviated; i.e. lot, block, plat or section, township, range)

*Mabel Island #1 PL 14-0608*

Additional legal is on page \_\_\_\_\_ of document

Assessor's Property Tax Parcel/Account Number

*192405-9220*

Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein

DRAINAGE EASEMENT

COMES NOW, JAMES O'SULLIVAN AND DOROTHY O'SULLIVAN, hereinafter "Grantors", and grant to the City of Mercer Island, hereinafter "Grantee", a drainage easement over, across, along and under the following described real property, situated in King County, State of Washington, to wit:

"That portion of government lot 3, in Section 19, Township 44 north, Range 5 East, W.M. lying between lines parallel with and 2,220 and 2,350 feet north of the southerly line of said section, and lying easterly of East Mercer Way, TOGETHER WITH 2nd Class Shorelines adjoining, in King County, Washington, and commonly known as: 5636 East Mercer Way, City of Mercer Island."

The intent of the Grantors in granting the Drainage Easement herein is to fulfill the requirements of Paragraph 2.4 of the settlement agreement entitled "Agreement" between Grantors and Grantee in settlement of litigation in King County Superior Court under King County Superior Court Cause No. 82-2-02540-2. A copy of the settlement agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

The purpose of the Drainage Easement is to permit Grantee to pass waters from upstream of East Mercer Way, and from the south of the Grantors' property along East Mercer Way, into the watercourse in existence on the Grantors' property, in an easterly direction to the waters of Lake Washington.


The waters which may be passed into the watercourse in existence on the Grantors' property shall be limited to water flows which result from conditions, diversions or 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.

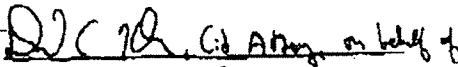
The Drainage Easement granted herein shall continue to exist so long as needed by Grantee and so long as Grantee does not divert water from any other drainage basin into the drainage course on Grantors' property other than water that was flowing into the watercourse as of May 31, 1984. Grantors agree to be responsible for the construction and installation of the stream bed improvements contemplated in Paragraphs 2.1 and 2.2 of the settlement agreement and for subsequent maintenance of the stream bed and all improvements of the stream bed on Grantors' property with the

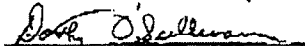
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exception of the pond constructed on the property and located west of Glenhome Road, which will be maintained by the City of Mercer Island and as part of that maintenance the City will be responsible for the removing of siltation in the siltation holding pond as necessary and assuring it remains in good and operational condition.

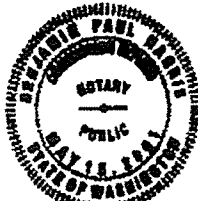
This Drainage Easement shall run with the land and shall be binding on the Grantors, their heirs and assigns, and shall be recorded in the Office of the King County Auditor.

  
James O'Sullivan  
Grantor

  
City Attorney on behalf of  
City of Mercer Island


  
Dorothy O'Sullivan  
Grantor

STATE OF WASHINGTON )  
County of King )



On this day personally appeared before me James O'Sullivan and Dorothy O'Sullivan to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of October 1997.

  
Notary public in and for the State of  
Washington, residing at King

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RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

James O'Sullivan and Dorothy O'Sullivan, being of lawful age, for the sole consideration of THIRTY-THREE THOUSAND, FOUR HUNDRED DOLLARS AND 00 CENTS (\$33,400.00), receipt whereof is hereby acknowledged, do hereby and for their heirs, executors, administrators, successors and assigns release, acquit and forever discharge THE CITY OF MERCER ISLAND and WASHINGTON CITIES INSURANCE AUTHORITY and their agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, expenses and compensation whatsoever, which the undersigned now have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen property damage and the consequences thereof resulting or to result from the discharge of surface or drainage water on or about the property of the O'Sullivans, located at 5636 East Mercer Way for any time up until the date of signing of this release. It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace. This release is the document contemplated in paragraph 1.2 of the Agreement between James and Dorothy O'Sullivan dated May 31, 1984.

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In consideration of payment of the above sum, the undersigned represents, warrants and agrees that he/she or his/her legal representative will satisfy any and all liens or claims against the above sum.

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed, and delivered this 17 day of OCTOBER, 1997.

CAUTION: READ BEFORE SIGNING BELOW

RELEASE OF ALL CLAIMS

[Signature] Tim O'Sullivan  
SIGNATURE

[Signature] Donorhy O'Sullivan  
SIGNATURE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )



I certify that I know, or have satisfactory evidence that Donorhy & Tim O'Sullivan is the person who appeared before me, and said person acknowledge that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 10/17/97, 1997

[Signature]  
Print Name: Tim O'Sullivan  
NOTARY PUBLIC in and for the State  
Washington, residing at King  
Commission Expires: 5/15/2001

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RELEASE OF ALL CLAIMS



CITY MAINTAINED SILT POND Located at 5632 E. Mercer Way





Waterfall Located at 5634 E. Mercer Way





LOWER Watercourse at 5636 E Mercer Way

