



CITY OF MERCER ISLAND

9611 SE 36th Street • Mercer Island, WA 98040-3732
(206) 275-7605 • FAX (206) 275-7726
www.mercergov.org

July 7, 2015

Seaborn Pile Driving
Attn: Ted Burns
9311 SE 36th Street, Suite 204
Mercer Island, WA 98040

RE: File No. SHL14-031/SEP14-025, Cherberg Moorage Facility at 9418 SE 33rd Street

Dear Mr. Burns:

The City of Mercer Island is currently processing the subject permit request and is ready to render a decision on the matter. As you are aware, MICC 19.07.110(D)(2)(Table B) requires an agreement between your client and the adjoining property owners, Hal and Joan Griffith. A draft of an agreement was provided to the City on January 23, 2015; however, it did not contain signatures from the Griffiths. Additionally, the City has reviewed the agreement and has several comments, which should be addressed in the final, signed agreement. Please see the attached. Please note that the City's review of the agreement does not constitute legal advice and you are encouraged to have this reviewed by your own legal counsel.

During the public comment period, the Griffiths indicated they were not in agreement with the proposed moorage facility, offering an alternative configuration. Please see the attached. It appears the two parties are at an impasse. While the City understands additional discussions between the two parties is needed, it is obligated to process permits in a timely manner, pursuant to MICC 19.015.020(H). Based on the details of the file, the City needed to issue a decision no later than July 6, 2015. If additional time is needed for your client and the Griffiths to come to agreement, please provide an extension request and propose a reasonable timeframe to complete negotiations.


If you have any questions, please do not hesitate to contact me at 206-275-7717 or via e-mail at travis.saunders@mercergov.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Travis Saunders". The signature is stylized and somewhat abstract, with a large loop at the end.

Travis Saunders, Senior Planner
City of Mercer Island Development Services Group

Enclosures: Attachment A – Joint Agreement Review
Attachment B – Griffith Comment Letter

Return Address: 
City of Mercer Island
Attn: City Attorney
9611 SE 36th Street
Mercer Island, WA 98040

RECEIVED
JAN 23 2015
CITY OF MERCER ISLAND
DEVELOPMENT SERVICES

**JOINT AGREEMENT
For
ADJACENT MOORAGE FACILITY AND BOAT LIFT**

Licensors: Griffith, Hal E. and Griffith, Joan I.
Licensees: Cherberg, James W. and Cherberg, Nan Chot


Properties Legal Description:


Ptn. Gov. Lot 4, Sec. 7, TWP 24 N., RG. 5 E., W.M.

Full legal on Exhibit A for Licensors and Exhibit B for Licensees.

Licensors' Property Tax Parcel ID No.: 413930-0360-04

Licensees' Property Tax Parcel ID No.: 413930-0405-01

THIS JOINT AGREEMENT ("Agreement") is entered into this ____ day of November , 2014. The parties ("Parties") to this Agreement are Hal E. Griffith and Joan I. Griffith, husband and wife (Licensors), and James W. Cherberg and Nan Chot Cherberg, husband and wife (Licensees).

A. Description of Properties. The Licensees own certain subject real property commonly known as Tax Parcel No. 413930-0405-01, 9418 SE 33rd Street, Mercer Island, WA 98040 and legally described in Exhibit B ("Licensees Property"). The Licensors own certain adjacent real property next to subject site commonly known as 9410 SE 33rd Street, Mercer Island, WA 98040, and legally described in Exhibit A ("Licensors Property"). 

B. Improvements. Licensees wish to construct, make alterations to or has constructed the private improvements described as a dock structure or moorage facility located as shown in Exhibit C ("Improvements"). The Improvements that currently exist or will be constructed and located according to Exhibit C on property owned by Licensees are located within 35'-0" setback of the adjacent moorage structure owned or controlled by Licensors.

MICC 19.07.080 D.2. Table B. Note B. requires 35 feet setback between adjoining moorage structures except where moorage facility (referenced herein as Improvements) is built pursuant to the joint agreement that includes the area of permitted covered moorage and moorage facilities, two adjoining single family lots. The Licensors are the property owner adjacent to the Improvements.

NOW, THEREFORE the Parties agree as follows:

- 1. Approval of Improvements.** The Licensors and Licensees hereby agree that the Improvements may remain or be constructed on the subject Property.
- 2. Termination.** This Agreement shall be valid in perpetuity. The Licensees may elect to terminate this Agreement by providing notice to Licensors.
- 3. Removal Upon Termination of the Agreement.** In the event the Improvements fail to meet requirements for moorage facility structure eligible for a joint agreement as set forth in Section 19.07.080 D.2 of the Mercer Island City Code; or threaten public health, safety or welfare, the Licensees shall remove the improvements within sixty (60) days of receiving notice from the City, at Licensees' sole cost and expense.
- 4. Maintenance of Improvements.** Maintenance of the Improvements shall be the sole cost and responsibility of Licensees. The Licensees shall maintain the Improvements according to this Agreement.
- 5. Indemnification.** The Licensees and Licensors hereby agree to indemnify and hold the City, its elected officials, officers, employees, agents and assigns harmless from any and all claims, demands, losses, actions, liabilities (including all costs and attorney fees) arising out of damages to persons or property resulting from the construction, location or removal of the Improvements. The provisions of this Section shall survive the expiration or termination of this Agreement.
- 6. Recording Requirement.** The Licensees shall record this Agreement against their Property and the Licensors' Property with the King County Recorder's Office and pay all recording fees. This Agreement shall run with the land, and therefore bind Licensees and Licensors, Licensees' and Licensors' heirs, assigns and any subsequent owners of the Properties. Conformance with the code exists when the City receives a copy of the recorded Agreement from the Recorder's Office.
- 7. Joint Agreement Review Fee.** The Licensees shall obtain approval of this Agreement from the City Attorney and pay the applicable fee for a Joint Agreement as established by the City, prior to recording.
- 8. General Provisions.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement namely the location of dock improvements on Exhibit C and the waiver of the 35-foot separation rule. This Agreement does not address any other issues between the parties, and the parties specifically

reserve all rights and remedies thereof, and specifically do not waive or release any of those other rights and remedies by entering into this Agreement, which Agreement is designed to solely complete Licensors' promise to do so and for no other purpose. No provision of the Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorney fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

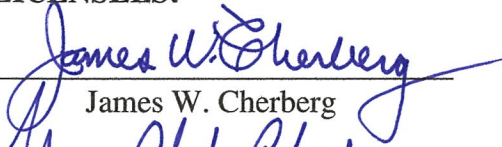
LICENSORS:



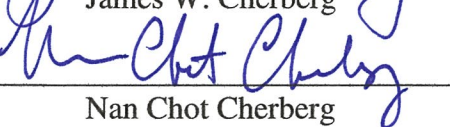
Hal E. Griffith

Joan I. Griffith

LICENSEES:



James W. Cherberg



Nan Chot Cherberg

LICENSORS:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Hal E. Griffith and Joan I. Griffith are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this ____ day of November, 2014.

(Seal or Stamp)

NOTARY PUBLIC, in and for the
State of Washington
My appointment expires _____

LICENSEES:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that James W. Cherberg and Nan Chot Cherberg are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 17 day of January 2015 November, 2014.

(Seal or Stamp)



NOTARY PUBLIC, in and for the
State of Washington
My appointment expires 05/10/2018

Exhibit A
GRIFFITH PROPERTY

Parcel 1

That Portion of Government Lot 4, Section 7, Township 24 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the South line of Government Lot 4 in said section distant North 89°57'00" West 276.00 feet from the Southeast corner of said Government Lot 4, as shown on Original Plat of Lakemont, an unrecorded Plat, said Southeast corner being distant North 89°57'00" West 1,333.64 feet from the Southeast corner of Government Lot 5 in said Section 7; and running thence North 834 feet to the True Point of Beginning of the Tract herein described;

Thence North 89°57'00" West 50.00 feet;

Thence North 695 feet, more or less, to the shoreline of Lake Washington;

Thence Southeasterly along said shoreline 70 feet, more or less, to a Point which bears North from the True Point of Beginning, hereinafter referred to as Point "A";

Thence South 650 feet, more or less, to the Point of Beginning,

Except the South 20 feet thereof for road;

Together with Second Class Shorelands adjoining.

(Also known as Tract 65, a Replat of Tracts "E", "F", "G", "H", "I", "J" and "K" of Lakemont, an unrecorded Plat.)

Parcel 2

Beginning at a Point 834 feet North and 266 feet West of the Southeast corner of said Government Lot 4, Section 7, Township 24 North, Range 5 East, Willamette Meridian, in King County, Washington, said point being 10 feet East of the Southwest corner of Lot D, Lakemont, according to the unrecorded Plat thereof;

Thence North 500 feet along a line 10 feet East of and parallel with the West line of said Lot D;

Thence at an angle to the Right, 13°26', to the Shoreline of Lake Washington;

Thence Northwesterly along said shoreline to Point "A", said Point also being the Northwest corner of said Lot D, and said Point also being the Northeast corner of Lot 65, Replat of Tracts: "E", "F", "G", "H", "I", "J" and "K" of Lakemont according to the unrecorded Plat thereof,

Thence South along the West line of said Lot D, also being the East line of said Lot 65, to a Point which is West 10 feet from the Point of Beginning, being the Southwest corner of said Lot D, said Point also being the Southeast corner of said Lot 65;

Thence East along the South line of said Lot D 10 feet to the Point of Beginning;

Except the South 20 feet thereof for road;

Together with Second Class Shorelands adjoining.

Situate in the County of King, State of Washington.

Tax Parcel ID No.: 413930-0360-04

Exhibit B
CHERBERG PROPERTY

That Portion of Government Lot 4, Section 7, Township 24 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point 834 feet North and 211 feet West of the Southeast corner of said Government Lot 4;
Thence West 65 feet;
Thence North to the Shore of Lake Washington;
Thence Southeasterly on said shore line 150 Feet, more or less, to a point which is North of the Point of Beginning;
Thence South to the Point of Beginning; together with all Second Class Shore Lands in front of said Premises;
Except The South 212.60 Feet;
Except that portion lying within the following described property:

Beginning at a Point 834 feet North and 276 feet West of the Southeast corner of said Government Lot 4;
Thence North to A Point 100 feet South of the shore of Lake Washington and which point is the true Point of Beginning;
Thence continuing North 100 feet to the shore of Lake Washington;
Thence on said shoreline Southeasterly 50 Feet;
Thence Southwesterly to a point 10 feet East of the true Point of Beginning;
Thence South to a line which is 834 feet North of the South Line of said Government Lot 4;
Thence West on said Line 10 feet;
Thence North to the True Point of Beginning;

Together with all Second Class Shorelands in front of said premises;

Situate in the County of King, State of Washington.

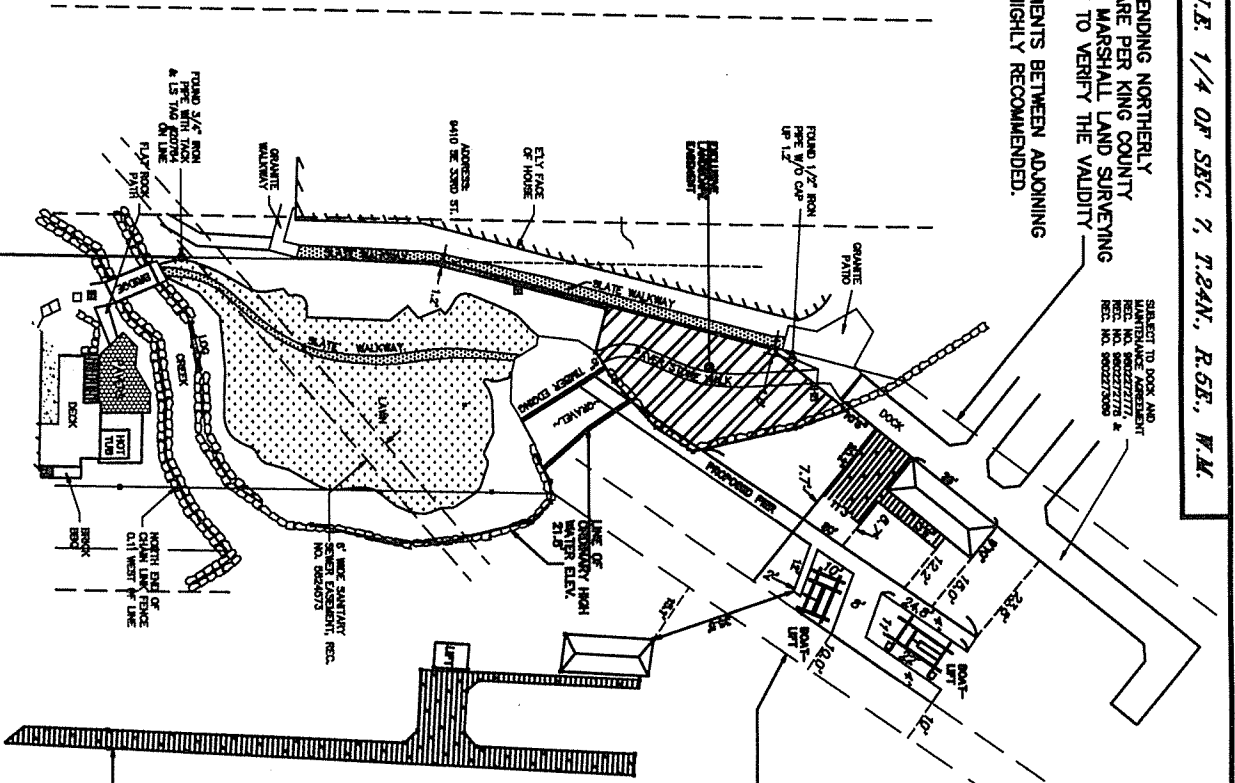
Tax Parcel ID No.: 413930-0405-01

Exhibit C
DOCK DIAGRAM

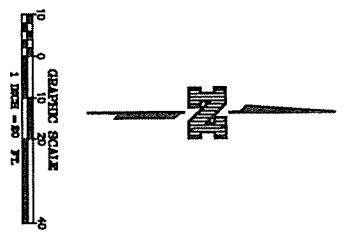
S.W. 1/4 OF THE N.E. 1/4 OF SEC. 7, T.24N., R.6E., W.M.

LATERAL LOT LINES EXTENDING NORTHERLY OF FACE OF SEAWALL ARE PER KING COUNTY 1/4 SECTION MAP, M.W. MARSHALL LAND SURVEYING HAS MADE NO ATTEMPT TO VERIFY THE VALIDITY OF THESE LINES.
BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING PROPERTY OWNERS IS HIGHLY RECOMMENDED.

SUBJECT TO DOCK AND MAINTENANCE AGREEMENT PER M.W. MARSHALL LAND SURVEYING REG. NO. 30227/2004 & REG. NO. 30227/2005



LATERAL LOT LINES EXTENDING NORTHERLY OF FACE OF SEAWALL ARE PER KING COUNTY 1/4 SECTION MAP, M.W. MARSHALL LAND SURVEYING HAS MADE NO ATTEMPT TO VERIFY THE VALIDITY OF THESE LINES.
BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING PROPERTY OWNERS IS HIGHLY RECOMMENDED.



ALL BOUNDARY AND SURVEY INFORMATION SHOWN HEREON IS PER A.L.T.A. SURVEY BY "CONCEPT ENGINEERING INC." M.W. MARSHALL LAND SURVEYING HAS MADE NO ATTEMPT TO VERIFY THE VALIDITY OF ITS CONTENTS.

LEGAL DESCRIPTION
A PORTION OF LOT D, LAKEWONT UNRECORDED

LOCATION OF DOCK BY M.W. MARSHALL, 2004 PER RECORD MAP OF SAID DOCK FROM INFORMATION OF INSTRUMENT



RECORDING CERTIFICATE

Filed for record this _____ day of _____, 2014, at _____ in Book _____ of the records of _____ County of _____ State of _____

By: _____ State of _____

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformity with the requirements of the Survey Recording Act of the Republic of _____ 2014

Outside No. 2014

M. W. MARSHALL
PROFESSIONAL LAND SURVEYOR
7034 42 3RD ST. BEND OR. 97701 TEL (503) 332-0222
TEL (503) 332-0222 FAX (503) 332-0222
E-MAIL M.W.MARSHALL@MWMARSHALL.COM

DATE	1-25	TIME	4:30 PM
BY	M.W.M.	DATE	1-25
APP'D		DATE	

RECEIVED

APR 24 2015

CITY OF MERCER ISLAND
DEVELOPMENT SERVICES

April 23, 2015

City of Mercer Island
9611 SE 36th Street
Mercer island, WA 98040

Dear City:

This is a comment on the application of James Cherberg to construct a dock at 9418 SE 33rd Street, Mercer Island, WA. The Project Numbers are SHL 14-031 and SEP 14-025.

We live immediately next door to the project site, at 9410 SE 33rd Street, and currently have a dock on our property.

We have supported the Cherbergs' goal of obtaining a dock, so long as it is in scale and does not unreasonably limit the use of our dock. The proposal that has been filed, unfortunately, is out of scale for the small amount of waterway in that area. In addition, due to its size and configuration, the proposed dock would come very close (approximately 6 feet) to our existing dock and boat lift. The proposed Cherberg dock would be so close that it would make a significant part of our dock unusable. In addition, the dock would be so long that it would block use of the mooring area on the southeast side of our dock.

We previously proposed an alternative dock configuration for the Cherbergs' consideration. A copy is attached to this letter. The alternative proposal would provide a dock large enough to moor a large powerboat with a boatlift, to moor a wave runner with a lift, and to have adequate space for a diving board. It would not severely impact the use of our dock. Although it is not ideal from our family's perspective, in the spirit of neighborly cooperation, we would agree that it would serve as a basis for entering into an Adjacent Dock Use

Agreement for this alternative dock layout.

In short, the dock as proposed by the Cherbergs severely impacts the use of our own dock, is out of proportion to the available space and is far beyond any installation that we have ever contemplated. We believe, however, that a dock of suitable size and configuration can meet all reasonable requirements of the Cherbergs. We have expended effort, time and money to generate what we believe is a fair solution.

Thank you for your consideration of this comment and alternative proposal.

Sincerely,

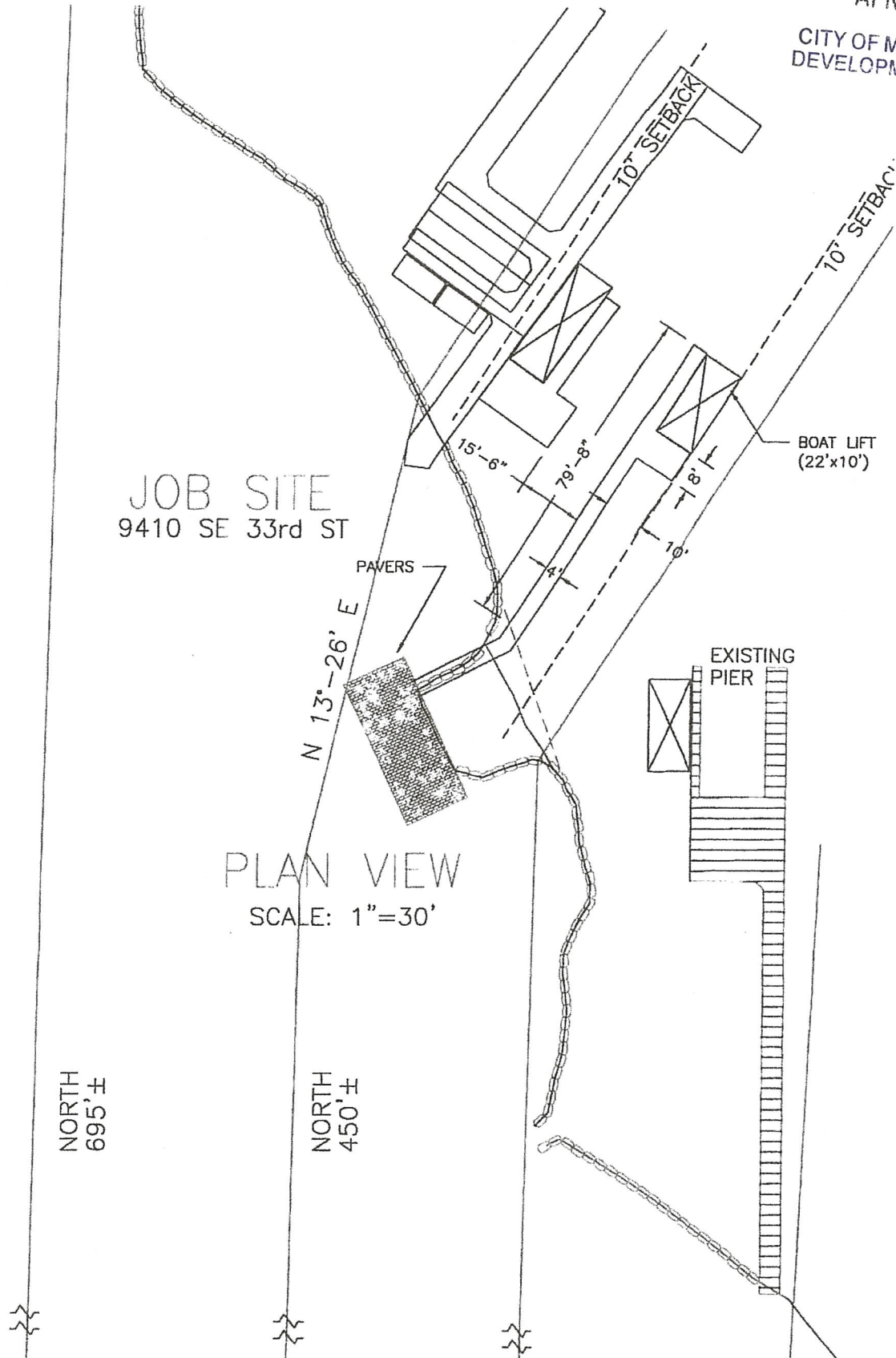
 4/23/15

Hal Griffith

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APR 24 2015

CITY OF MERCER ISLAND
DEVELOPMENT SERVICES



JOB SITE
9410 SE 33rd ST

PLAN VIEW
SCALE: 1"=30'

Handwritten signature and date: 4/23/15