

# McCULLOUGH HILL LEARY, PS

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July 27, 2015

Travis Saunders, Senior Planner  
Development Services Group  
City of Mercer Island  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

Re: Cherberg Dock  
SHL 14-031

Dear Travis:

This letter is on behalf of Hal and Joan Griffith. As you know, the Griffiths' property is immediately adjacent to the Cherbergs. The Griffiths are willing to sign a Joint Use Agreement for a dock that does not impede access to the Griffiths' dock. Unfortunately, the Cherberg proposal substantially impedes access. This is why the Griffiths have proposed an alternative dock configuration that accommodates the Cherbergs' desire for a dock without significantly impeding the Griffiths' access. Unfortunately this "win-win" alternative is not acceptable to the Cherbergs. Instead, the Cherbergs have sued their neighbors in state court to try to force the Griffiths to sign an Agreement for the Cherbergs' access-impeding dock.

In the meantime, as you pointed out in your July 7, 2015 letter, the City must act on the current application. Because the application violates the City's land use code, the City cannot approve it. This leaves the City with two options. First, it can deny the application, leaving the Cherbergs free to submit a new, Code-complying application. Second, it can grant an extension if requested by the Cherbergs. The Griffiths have no objection to a brief extension.

However, the Cherbergs ask the City instead, in the letter sent to you on July 17 by their legal counsel, to approve the permit subject to a condition that no construction may commence until the Joint Use Agreement is signed. This makes no sense. It also violates the Code. The Cherbergs cite to MICC 19.015.020(G)(6)a(ii). Indeed, this provision does allow a permit to be approved conditionally. But such a conditioned permit refers to matters such as landscaping, overwater construction windows, and approved materials. The Code does not authorize the Code official to approve a project that is in violation of the Code. See MICC 19.05.020(G)(6)(d)(ii)(C), which provides that "the technical review of shoreline substantial development permits must ensure that the proposal complies with the criteria of the Shoreline Management Act policies and all requirements of the city of Mercer Island Unified Land Development Code." If a proposal violates the Code, it must be denied.

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The Cherbergs' July 17 letter does not stop with a discussion of Code issues. Indeed, the Cherbergs seem to want to make a federal case of the matter. Citing a musty United States Supreme Court decision, the Cherbergs threaten they will sue the City for damages and attorney fees if they don't get what they want. These are the same attitudes that the Griffiths have had to contend with. Indeed, the Griffiths are being forced to defend their use of their own property because the Griffiths have not acquiesced to the Cherbergs' unreasonable demands for an oversized dock. It is unfortunate that the Cherbergs refuse to work with the Griffiths on a compromise solution. It is unfortunate that they would prefer to engage in litigation. From the tone of their July 17 letter, it looks like the City may be next.

In any event, as stated above, the Griffiths have no objection to the City granting a brief extension to the Cherbergs. However, they would object to the permit being issued as the Cherbergs have requested. The Code does not authorize the Code official to approve an application that violates the Code.

Sincerely,



G. Richard Hill

cc: Hal Griffith  
Tyler Farmer  
Charles Klinge