

## Ryan Harriman

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**From:** Charlie Klinge <klinge@sklegal.pro>  
**Sent:** Tuesday, January 18, 2022 2:02 PM  
**To:** Jeff Thomas; Don Cole  
**Cc:** 'rich@mhseattle.com'; 'tylerf@harriganleyh.com'; 'Karen Cobb (kcobb@freybuck.com)'; Holly Mercier; 'Ted Burns'; City Atty  
**Subject:** Cherberg: Permit Extension Request, Deadline February 11, 2022, File No. SHL 14-031/SEP 14-025, Building Permit 1501-218  
**Attachments:** SK Ltr to City w att 1-18-2022.pdf  
**Importance:** High

To: City of Mercer Island  
Jeff Thomas, Interim Director, Community Planning & Development  
Don Cole, Building Official

Mr. Thomas and Mr. Cole:

Please see attached a letter and attachments to you related to the above-referenced pending permit applications for the Cherberg Dock.

The letter seeks a further extension of the applications due to ongoing litigation with the Griffiths. The current extension is due to expire February 11, 2022, so we must of necessity ask the City to review this request promptly. For full disclosure, I am copying the City Attorney Bio Park, attorneys for the Griffiths, and the attorney for the Cherbergs.

Please contact me, or have the City Attorney contact me, if you have any questions or need more information. A hard copy is being mailed.

Thank you for your prompt attention to this request.

PLEASE NOTE WE HAVE A NEW MAILING ADDRESS.

Charlie Klinge

Charles A. Klinge  
STEPHENS & KLINGE LLP  
*Skyline Tower Bellevue*  
10900 NE 4<sup>th</sup> Street, Suite 2300  
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RICHARD M. STEPHENS  
CHARLES A. KLINGE

TELEPHONE (425) 453-6206

January 18, 2022

*Via Email and U.S. Mail*

Jeff Thomas, Interim Director, Community Planning & Development  
Don Cole, Building Official  
City of Mercer Island  
9611 SE 36th Street  
Mercer Island, WA 98040

**Re: File No. SHL 14-031/SEP 14-025, Building Permit 1501-218  
Cherberg Dock at 9418 SE 33rd Street  
Extension Request: Deadline February 11, 2022**

Dear Mr. Thomas and Mr. Cole:

This letter is a follow up to my earlier letters addressed to you dated January 25, 2021, to former staff person Evan Maxim dated January 15, 2020 and January 18, 2019, to former staff person Scott Greenberg dated January 26, 2018 and May 10, 2017, to former City staff person Travis Saunders dated July 17, 2015 and June 10, 2016, along with an email to Mr. Saunders dated February 11, 2016. All those communications related to requests for extensions of the pending Cherberg Dock applications SHL 14-031/SEP 14-025 and associated building permit 1501-218, and as a result the City has granted eight prior extensions. Last February, the City approved an extension until February 11, 2022. *See* attached letter from Holly Mercier, Permit Services Manager, to me dated February 2, 2021. The reason for the extension at that time was due to pending legal proceedings. This letter seeks a further extension because the legal proceedings are still pending. The Cherbergs' counsel has informed me that the Cherbergs prevailed on appeal last year, but that the Griffiths have sought review by the Supreme Court. As a result, resolution of the lawsuit between the Griffiths and the Cherbergs is not expected for at least a few months.

As expressed in my prior letters, one issue in the court case is whether, due to a prior agreement with the Cherbergs, the Griffiths must sign the City required Joint Use Agreement (allowing less than the 35-foot dock separation). Although the King County Superior Court ruled in favor of the Cherbergs and ordered the Griffiths to sign the Joint Use Agreement, the Court of Appeals reversed and remanded the case back to Superior Court for trial on that precise issue. The case was sent back to Superior Court and Judge Steve Rosen held a trial and, again, ruled that the Griffiths are required to sign the Joint Use Agreement. *See* attached letter to me dated January 18, 2022, from Karen Cobb who is counsel for the Cherbergs in that litigation. However, Ms. Cobb reports that the Griffiths refused to sign the Joint Use Agreement and instead obtained a stay and filed an appeal. Last August, the Court of Appeals upheld the trial court's ruling that the Griffiths must sign the Joint Use Agreement. After an unsuccessful motion for reconsideration, the Griffiths filed a Petition for Review with the State Supreme Court. The Supreme Court is

scheduled to make a decision on whether to take the case next month. If the Court denies the Petition, then it is expected to be another two to four months to wrap up the litigation. Thus, we are asking for a six month extension with the expectation that the signed Joint Use Agreement can be submitted to the City during that time period and permitting can recommence.

As stated in earlier letters, this situation is highly unusual. The Cherbergs have done all they can to satisfy the City's request for the Joint Use Agreement and the Superior Court and Court of Appeals have ruled that the Griffiths are required to sign the Joint Use Agreement. The Cherbergs would have been in position to deliver a fully executed Joint Use Agreement to the City except that the Griffiths obtained a stay of the order requiring them to sign the Joint Use Agreement and appealed, and then filed the Petition for Review in the Supreme Court.

Unfortunately, as a result we must of necessity ask for a further extension of the permit applications until the case is resolved.

In my prior letters to the City, I encouraged the City to take a position that would avoid the City from becoming entangled in the issues between the Cherbergs and the Griffiths. The City's prior extensions mean that the City has taken a neutral position as to the lawsuit, and that the City would step back and await the results of the legal proceedings. The City needs to continue that neutral position by granting a further extension until the case is resolved. This approach is supported by Mercer Island Municipal Code § 17.14.010, § 105.3.2 subpart 3 which states that the building official may extend the life of an application if litigation affects the permit application.

We recognize that the City is hesitant to grant an extension with an undetermined end date. Therefore, we respectfully request that the City grant an extension for six months until July 11, 2022, to allow time for a resolution through the courts. Again, our prior requests were made with the understanding and recognition that the intent is to grant further extensions until the legal proceedings are resolved.

To ensure full disclosure, I am copying the City Attorney and the Griffiths' attorneys. Please contact me or have City Attorney Bio Park contact me if you need additional information or want to discuss this matter further.

Thank you for your prompt attention to this request.

Sincerely,

STEPHENS & KLINGE LLP

*Charles A. Klinge*

Charles A. Klinge  
[klinge@SKlegal.pro](mailto:klinge@SKlegal.pro)

Enclosures

Jeff Thomas and Don Cole

January 18, 2022

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STEPHENS & KLINGE LLP

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cc via email: Clients

Bio Park, City Attorney

Rich Hill and Tyler Farmer, Attorneys for the Griffiths

Karen Cobb, Attorney for the Cherbergs

Holly Mercier, Permit Services Manager

Ted Burns, Seaborn Pile Driving



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## Community Planning & Development

9611 SE 36TH ST., MERCER ISLAND, WA 98040

P: (206) 275-7605 F: (206) 275-7725

[www.mercergov.org](http://www.mercergov.org)

February 2, 2021

Charles A. Klinge  
Stephens & Klinge LLP  
601-108th Avenue NE, suite 1900  
Bellevue, WA 98004

*Via Email*

RE: Cherberg Dock  
9418 SE 33rd Street, Mercer Island, WA 98040; King County Tax Parcel # 413930-0405

Dear Mr. Klinge:

In response to your letter dated January 25, 2021 requesting an extension for shoreline permit SHL14-031 and building permit 1501-218 ("Permits"), you have been granted an extension until February 11, 2022. This extension has been granted due to ongoing litigation as described in your aforementioned letter, the resolution of which will have implications on the Permits.

For further questions or concerns, please contact me by phone at 206-275-7707 or via e-mail at [holly.mercier@mercerisland.gov](mailto:holly.mercier@mercerisland.gov).

Sincerely,

Holly Mercier  
Permit Services Manager  
City of Mercer Island Community Planning & Development



January 18, 2022

Charles A. Klinge  
Stephens & Klinge, LLP  
Attorneys at Law  
601 108th Ave. NE, Suite 1900  
Bellevue, WA 98004

Re: Cherberg v. Griffith –King County Cause No. 15-2-10983-9 SEA  
Our File No. 12149:034205

Dear Mr. Klinge:

I am providing you with this update as to the status of the above-referenced lawsuit involving the Cherbergs and their neighbors, the Griffiths. As you represent the Cherbergs in the permitting process at the City of Mercer Island, this letter is to advise that an additional extension will need to be requested from the City given the current status of the case.

As you know, the Cherbergs prevailed at trial, with the Court requiring the Griffiths to sign the Joint Use Agreement required by the City of Mercer Island to approve the Cherbergs' dock application, because the proposed dock is within 35 feet of the Griffiths' dock. The Griffiths refused to sign the Joint Use Agreement, obtained a stay and appealed. Last August the Court of Appeals upheld the trial court's order that the Griffiths must sign the Joint Use Agreement. After an unsuccessful motion for reconsideration, the Griffiths petitioned for Supreme Court review, their final available legal maneuver. The Supreme Court is scheduled to decide on the petition next month. If the petition is denied, it will still take two to four months to resolve all outstanding issues.

Let me know if you need any additional information.

Sincerely,

*FREYBUCK, P.S.*

Karen L. Cobb

cc: clients