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RICHARD M. STEPHENS  
CHARLES A. KLINGE

TELEPHONE (425) 453-6206

January 18, 2019

*Via Email and U.S. Mail*

Evan Maxim  
Director, Community Planning & Development Department  
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**

Dear Mr. Maxim:

This letter is a follow up to my earlier letters addressed 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 five prior extensions. Last February, the City approved an extension until February 13, 2018. See attached letter from staff person Nicole Gaudette to me dated February 5, 2018 and copied to you and Mr. Greenberg by email the same day. The reason for the extension at that time was due to pending legal proceedings, specifically an appeal pending at the Washington State Court of Appeals. This letter seeks a further extension. The Cherbergs' counsel has informed me that the case is back before the Superior Court with a trial scheduled May 13, 2019. As a result, resolution of the lawsuit between the Griffiths and the Cherbergs is not expected until later this year.

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 Court of Appeals ruled that disputed facts precluded summary judgment for either side and ordered a "remand for trial." Decision, November 20, 2017 (unpublished 2017 WL 5569211). That decision is final, and the case was sent back to Superior Court which has scheduled trial on May 13, 2019, to address the Joint Use Agreement issue among other matters.

As stated in earlier letters, this situation is highly unusual. The Cherbergs have done all they can to satisfy the City request for the Joint Use Agreement and the Cherbergs may still obtain a court order requiring the Griffiths 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 Court of Appeals has ordered additional proceedings in Superior Court, namely a trial.

Unfortunately, the Superior Court proceedings are moving forward, but incomplete with the trial set four months from now. 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.

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 one year to February 13, 2020, to allow time for a resolution. Again, our prior request was 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 Kari Sand contact me if you need additional information or want to discuss this matter further. Also, please note that for mailed correspondence, our office address has changed.

Thank you for your prompt attention to this request.

Sincerely,

STEPHENS & KLINGE LLP



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

Enclosure

cc: Clients  
Kari Sand, City Attorney  
Rich Hill and Tyler Farmer, Attorneys for the Griffiths  
Karen Cobb, Attorney for the Cherbergs



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**DEVELOPMENT SERVICES GROUP**

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February 5, 2018

Charles A. Klinge  
Stephens & Klinge LLP  
10900 NE 8<sup>th</sup> Street, Suite 1325  
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:

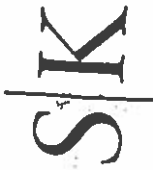
In response to your letter dated January 26, 2018 requesting an extension for shoreline permit SHL14-031 and building permit 1501-218 ("Permits"), you have been granted an extension until February 13, 2019. This extension has been granted due to ongoing litigation as described in your aforementioned letter, the resolution of which will have implications on the Permits.

For further questions or concerns, please contact me by phone at 206-275-7719 or via e-mail at [nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole Gaudette".

Nicole Gaudette, Senior Planner  
City of Mercer Island Development Services Group



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