

KLINGE LLP
AT LAW

NE, SUITE 1900
A 98004

SEATTLE
WA 980
16 JAN 20
PN 2 L



USA



FOREVER

Evan Maxim, Director, Comm. Planning & Dev.
Don Cole, Building Official
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

98040-373211





STEPHENS & KLINGE LLP
ATTORNEYS AT LAW

601 - 108TH AVENUE NE, SUITE 1900
BELLEVUE, WA 98004

RICHARD M. STEPHENS
CHARLES A. KLINGE
TELEPHONE (425) 453-6206

January 15, 2020

Via Email and U.S. Mail

Evan Maxim, 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**

Dear Mr. Maxim and Mr. Cole:

This letter is a follow up to my earlier letters addressed to Mr. Maxim dated 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 six prior extensions. Last January, the City approved an extension until February 13, 2020. See attached letter from staff person Nicole Gaudette to me dated January 28, 2019 and copied to both of you by email the same day. The reason for the extension at that time was due to pending legal proceedings. This letter seeks a further extension. The Cherbergs' counsel has informed me that the Cherbergs prevailed at trial in Superior Court last year, but that the Griffiths have vowed to appeal. As a result, resolution of the lawsuit between the Griffiths and the Cherbergs is not expected for some time.

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 last year and, again, ruled that the Griffiths are required to sign the Joint Use Agreement. See attached letter to me dated January 9, 2020, from Karen Cobb who is counsel for the Cherbergs in that litigation. However, Ms. Cobb reports that the attorney for the Griffiths reported to her that the Griffiths will not sign the Joint Use Agreement and instead will appeal, once again, when the court enters final judgment.

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 has 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 Superior Court judgment is not yet finalized and when that occurs the Griffiths have vowed to appeal.

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 eighteen months to August 13, 2021, to allow time for a resolution through the appeal. 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 Interim City Attorney and the Griffiths' attorneys. Please contact me or have Interim 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
klinge@SKlegal.pro

Enclosures

cc via email: Clients
Bio Park, Interim City Attorney
Rich Hill and Tyler Farmer, Attorneys for the Griffiths
Karen Cobb, Attorney for the Cherbergs
Holly Mercier and Kendra Hixenbaugh, Permit Services
Nicole Gaudette, Senior Planner



Community Planning & Development

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

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

www.mercergov.org

January 28, 2019

Charles A. Klinge
Stephens & Klinge LLP
10900 NE 8th 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 18, 2019 requesting an extension for shoreline permit SHL14-031 and building permit 1501-218 ("Permits"), you have been granted an extension until February 13, 2020. 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.

Sincerely,

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

Nicole Gaudette, Senior Planner
City of Mercer Island Community Planning & Development



January 9, 2020

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 recent developments in the case.

As you know, a key issue in the lawsuit was whether the Griffiths must 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. After trial, King County Superior Court Judge Steve Rosen ruled in favor of the Cherbergs and found that the Griffiths not only breached the purchase and sale agreement, but are required to sign the Joint Use Agreement to allow the Cherbergs to obtain a permit and construct their dock. There are several post trial issues still pending, so no final judgment has been entered. Nonetheless, the Griffiths' attorneys have advised me that they have no intention of signing the JUA and that upon final judgment, they will—again—appeal and seek a stay of the proceeding, which will bar the Cherbergs from moving forward. The Cherbergs prevailed originally on summary judgment and now again at trial. As such, we are confident that the appellate court will uphold Judge Rosen's judgment and findings, but we will be forced to wait for that to occur. We anticipate this could take another 12-18 months.

Sincerely,

FREYBUCK, P.S.

Karen L. Cobb

cc: clients