

Ryan Harriman

From: Charlie Klinge <klinge@sklegal.pro>
Sent: Monday, January 25, 2021 10:16 AM
To: Jeff Thomas; Don Cole
Cc: rich@mhseattle.com; tylerf@harriganleyh.com; Karen Cobb (kcobb@freybuck.com); Holly Mercier; Kendra Hixenbaugh; Ted Burns; City Atty
Subject: Cherberg: Permit Extension Request, Deadline February 11, 2021, File No. SHL 14-031/SEP 14-025, Building Permit 1501-218
Attachments: SK Ltr to City w att 1-25-2021.pdf

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 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 pending application are due to expire February 12, 2021, as discussed in the attached letter 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.

Charlie Klinge

Charles A. Klinge
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RICHARD M. STEPHENS
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January 25, 2021

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, 2021**

Dear Mr. Thomas and Mr. Cole:

This letter is a follow up to my earlier letters addressed 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 seven prior extensions. Last January, the City approved an extension until February 12, 2021. See attached letter from Building Official Don Cole to me dated January 16, 2020 and copied to others 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 appealed. 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 and, again, ruled that the Griffiths are required to sign the Joint Use Agreement. See attached letter to me dated January 22, 2021, 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.

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 Griffiths obtained a stay of the order requiring them to sign the Joint Use Agreement and appealed.

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 another year until February 14, 2022, 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 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
klinge@SKlegal.pro

Enclosures

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 and Kendra Hixenbaugh, Permit Services
Ted Burns, Seaborn Pile Driving



Community Planning & Development

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January 16, 2020

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 15, 2020 requesting an extension for shoreline permit SHL14-031 and building permit 1501-218 ("Permits"), you have been granted an extension until February 12, 2021. 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 206-275-7701 or via e-mail at don.cole@mercergov.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Cole". The signature is fluid and cursive, with a large initial "D" and "C".

Don Cole, Building Official
City of Mercer Island Community Planning & Development



January 25, 2021

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.

Unfortunately, but as anticipated, the Griffiths have again obtained a stay and appealed, which prevents 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. The final pleading is due on February 5, 2021, after which oral argument will be set.

We anticipate a final decision to take as little as 3, but as long as 9, months.

Sincerely,

FREYBUCK, P.S.

Karen L. Cobb

cc: clients