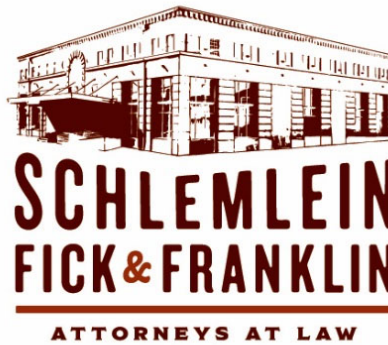


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June 6, 2023

**Via Email**

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**Re: Preliminary Short Plat Application for SUB23-001/SEP23-001  
Short Plat Applicant - Saintfield2, LLC**

Messrs. Leon and Harriman:

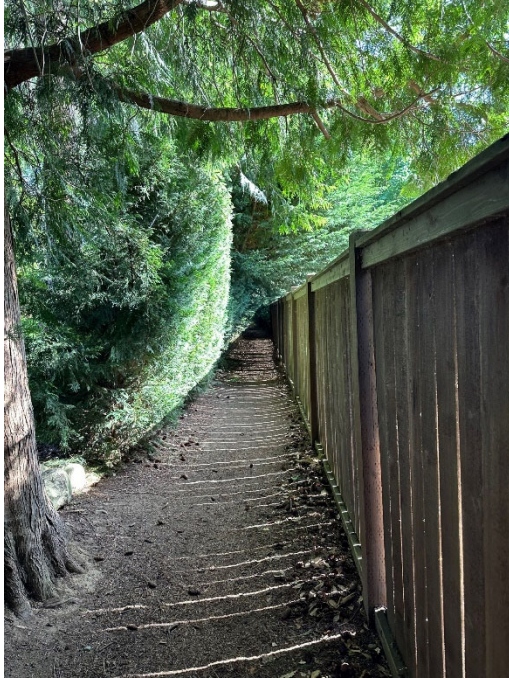
We write on behalf of the short plat applicant, Saintfield2, LLC (“Saintfield”), regarding the preliminary short plat application for SUB23-001/SEP23-001. **See attached Core Engineering Drawing.** We are assisting Saintfield in their pursuit to develop the property located at 7414 78<sup>th</sup> Ave. SE, hereinafter the (“Sears Property”). Wes Giesbrecht is the primary contact for Saintfield. Mr. Giesbrecht has been communicating with your office regarding the proposed short plat. We are primarily responding to a series of emails sent on May 18, 2023, between Mr. Giesbrecht and Andrew Leon of the City. In our opinion, there is no indication the easement was intended for vehicle access, and it has clearly been abandoned. As described more fully below, we are seeking guidance from the City on options regarding the impact of an abandoned easement.

You may recall, the Sears Property was part of a larger parcel that, in 1952, was separated and sold. In the initial sales, there was a 30’ easement granted along the eastern portion of the property. The easement language indicates it was for ingress/egress/utilities. This wording, in the most general sense, could be a grant of easement for vehicle traffic. Further, the benefitted properties to the north, south, and east have all been subdivided and sold. In the more than 71 years of existence, the 30’ easement has **never** been used for either vehicular or pedestrian access. Given the passage of time (71 years) with no vehicular use by the benefitted properties \, this easement has clearly been abandoned.

Even if one were to argue that the easement was intended for a pedestrian path, directly adjacent to the eastern edge of the Sears Property is the north/south pedestrian pathway for the Lakes at Mercer Island subdivision. In short, the easement has not been put to any use for decades.



An inspection of the area along the 30' easement provides ample evidence of abandonment and lack of intent for vehicle access. All of the properties purportedly benefitted along the 30' easement have either: (1) constructed improvements in the 30' easement; (2) constructed fences completely blocking the 30' easement; or (3) have allowed the growth of numerous significant trees within the easement.



Additional photos are included with the attachment.

As noted, along the properties purportedly benefitted from the easement are numerous significant trees. If someone wanted to use the easement for vehicular access, all of the significant trees would need to be removed. This seems entirely unworkable and counter to what the property owners would seek, or the City would allow.

As stated above, the recent email exchange between Mr. Giesbrecht and the City identifies the central issue. Specifically, the City's position, pursuant to MICC 19.16.010, is that Lot 4 of the proposed short plat cannot include the area of the 30' abandoned easement in the net lot area calculation. This is because the easements for public or private vehicular access cannot be used for calculating net lot area. As a result, the City has determined the easement area cannot be used to meet the City's calculation of net lot area for lot number 4. This rationale relies entirely on the assumption that the easement is for vehicular access when there can be no doubt it simply is not available for such use. For the reasons stated above, the City's position does not seem appropriate as it results in a use much lower than the allowable density.

Our client is looking for possible solutions to this dilemma and would like to continue discussions with the City. Some alternatives for consideration include:

(1) If the City cannot agree to use the easement in the calculation of the net lot area, then can the City classify the 30' easement as a reserve driveway access? MICC 19.16.010 allows the City to consider driveway access in the net lot size calculation. In reality, this 30' area is just as likely to be reserve driveway access as the easement ever being developed for ingress/egress vehicular access. This would allow my client to utilize the driveway square footage for the net lot size calculation; or

(2) allow the 30' easement in the calculation of the net lot calculation, and my client would allow a pedestrian pathway to connect to the North/South pathway between the proposed short plat and the Lakes at Mercer Island subdivision. This would be consistent with Mercer Island's history of developing connected trails all over the island.

Again, we are seeking guidance from the City on how to resolve this issue and allow for the most efficient development of this property. From our standpoint, the question is if there is no feasible way to bring a vehicle to this easement, how can this be a vehicular easement? The code is very specific that only an easement for public or private vehicular access cannot be included in the net lot area calculation. This is clearly not an easement for vehicles. Our client believes a meeting at the site would be helpful to see the site of the proposed short plat and the surrounding properties. Visiting the site and understanding how other properties have abandoned the 30' easement should aid in coming up with a workable solution.

Please let us know if you both are agreeable to a site inspection with our client. If you have any questions, please let us know. Thank you for your consideration.

Andrew Leon  
Ryan Harriman  
City of Mercer Island  
June 6, 2023  
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Very truly yours,

SCHLEMLEIN FICK & FRANKLIN, PLLC

*/s/ James G. Fick*

James G. Fick

cc: Saitfield2, LLC  
Garth A. Schlemlein



