

---

**From:** Evan Maxim <evan.maxim@mercergov.org>  
**Date:** Thursday, October 24, 2019 at 3:09 PM  
**To:** "rafisher@richardafisher.com" <rafisher@richardafisher.com>, Nicole Gaudette <nicole.gaudette@mercergov.org>  
**Cc:** Sophy Yang <yangsophy@hotmail.com>, Steve Yang <steve1yang@gmail.com>, "'Reimers, Milt A.'" <MReimers@SCHWABE.com>, Nicole Niederman <Nicole@niederman.com>, Chris Niederman <Chris@niederman.com>, 'Alan Wallace' <awallace@williamskastner.com>, Bio Park <Bio.Park@mercergov.org>, Mona Davis <Mona.Davis@mercergov.org>, Patrick Yamashita <Patrick.yamashita@mercergov.org>, Don Cole <Don.Cole@mercergov.org>, Anthony Myers <anthony.myers@mercergov.org>  
**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Dear Richard Fisher,

Thank you for the clarifying questions. We share the goal of clarity - in the order you raised each item:

- I understand no grading activity is proposed. We are seeking to ensure that the plans do not reflect any construction activity within the disputed area; we understood from your email yesterday that you believed the plans did authorize construction activity. My parenthetical "e.g." in this morning's email was intended to provide examples of construction activity.
- The referenced code section is included below my signature. The question regarding the "disputed area", is whether a prescriptive easement exists outside of the area reflected in the current recorded easement. If an easement exists, the easement is an ownership interest for a portion of the property, subject to the highlighted section of the code below my signature. A couple of salient facts to consider:
  - I recognize that we have a title report in the file, issued by WFG National Title Company on 2/25/2019. Schedule B, Part II of the Title Report identifies several exceptions; notably exceptions 5 and 7 appear relevant.
  - The City received a copy of the letter from Williams Kastner asserting that a prescriptive easement may exist, after the title report was issued.
  - The City does not have the authority to resolve the question of whether a prescriptive easement exists.
  - Please note that the reference to MICC 19.15.060 was "in addition to" the legal advice from the city attorney. I recommend that everyone consult with their respective legal counsel.
- The email below was not intended to provide any comment regarding improvements built without required permits.
  - There has been no recent change to the City's administration of code compliance and / or non-conforming rules. These rules were last updated in 2018.
  - If you believe a code compliance situation exists, please report it online at our website here: <http://www.mercergov.org/Page.asp?NavID=2802>.
- The City will review the Neiderman's permit to determine if construction activity was authorized within the disputed area; if the City has done so, we will require a similar correction to the Neiderman permit.

The City recognizes that there is a dispute regarding the driveway and possible ownership interests (i.e. a prescriptive easement) between the property owners. Unfortunately, until the dispute is resolved between the property owners, I believe there are only two options to move forward on this permit (in my original email this morning).

Regards,

**Evan Maxim**

Director

City of Mercer Island - Community Planning & Development

206.275.7732

[mercergov.org/CPD](http://mercergov.org/CPD) |

If you would like a public record, please fill out a public records request at

<https://mercerisland.nextrequest.com/>.

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

MICC 19.15.060(A)8. Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (A)(9) of this section shall satisfy the requirements of this subsection;

**From:** [rafisher@richardafisher.com](mailto:rafisher@richardafisher.com) <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Sent:** Thursday, October 24, 2019 12:20 PM

**To:** Evan Maxim <[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)>; Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>

**Cc:** 'sophy yang' <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); 'Reimers, Milt A.' <[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; 'Nicole Niederman' <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; 'Chris Niederman' <[Chris@niederman.com](mailto:Chris@niederman.com)>; 'Alan Wallace' <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>; Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Mona Davis <[Mona.Davis@mercergov.org](mailto:Mona.Davis@mercergov.org)>; Patrick Yamashita <[Patrick.Yamashita@mercergov.org](mailto:Patrick.Yamashita@mercergov.org)>; Don Cole <[Don.Cole@mercergov.org](mailto:Don.Cole@mercergov.org)>

**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Hi Evan,

A couple of notes to clarify on your statement below. There is no grading involved, the area of the driveways is flat and the Neiderman's construction vehicles have used the full 50 feet of the common property line to access their project and more than often parked on the Yangs property. The current driveway access and rock wall (that was removed) was built without a permit, and built 6 feet to the east of the recorded ingress/egress driveway easement. The code you reference below states that the Owner has to provide verification that they have the legal right to develop the property and has the legal "such as an easement" right to develop. The Yangs have provided a title report and survey stating and showing that they do have the right to develop. The question, with reference to this code, did the Neidermans have the right to build beyond the easement and make the easement wider. Also, is it now the city's policy that if something is built without permit, that it becomes a legally non-conforming. To be fair on this, will the Neiderman's permit also be put on hold until this is resolved?

Sincerely, Richard A Fisher

**From:** Evan Maxim <[evan.maxim@mercergov.org](mailto:evan.maxim@mercergov.org)>

**Sent:** Thursday, October 24, 2019 8:56 AM

**To:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>; Richard Fisher <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Cc:** sophy yang <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); Reimers, Milt A. <[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; Chris Niederman <[Chris@niederman.com](mailto:Chris@niederman.com)>; Alan Wallace <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>; Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Mona Davis <[Mona.Davis@mercergov.org](mailto:Mona.Davis@mercergov.org)>; Patrick Yamashita

<[Patrick.Yamashita@mercergov.org](mailto:Patrick.Yamashita@mercergov.org)>; Don Cole <[Don.Cole@mercergov.org](mailto:Don.Cole@mercergov.org)>

**Subject:** RE: Withdrawal of Building Permit Approval for 1902-005

Dear Richard Fisher et al.,

I thought a bit of additional clarification and context may be useful as you work with Nicole to revise the permit drawings.

As noted in Nicole's email this morning, the land use planning approval for permit 1902-005 has been withdrawn, pending submittal of revised site and civil drawings. This withdrawal is based on the City's understanding that the applicant team believes the approved plans authorized construction activity (e.g. grading, removal of existing pavement, etc) within the disputed easement area.

The withdrawal was not done lightly. Nicole, myself, the planning manager, and the city attorney discussed this permit and various approaches yesterday afternoon before coming to this decision. Based upon the City's code ([MICC 19.15.060\(A\)\(8\)](#)) and the legal advice we have received from the City Attorney, I have concluded that we cannot authorize construction activity within the disputed easement area until the dispute is resolved.

I believe there are effectively two "high level" approaches to re-issuing the permit:

1. Resolve the ownership question related to the disputed area and provide documentation of the resolution to the City; or,
2. Revise the site and civil plans such that no construction activity is proposed within disputed area.

Our initial approval of the permit was based upon the belief that option "2." was reflected in the permit drawings.

Please continue to work with Nicole and Mona Davis (Planning Manager) on the review of this permit.

Regards,

**Evan Maxim**

Director

City of Mercer Island - Community Planning & Development

206.275.7732

[mercergov.org/CPD](http://mercergov.org/CPD) |

If you would like a public record, please fill out a public records request at

<https://mercerisland.nextrequest.com/>.

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*

**From:** Nicole Gaudette <[nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org)>

**Sent:** Thursday, October 24, 2019 8:33 AM

**To:** Richard Fisher <[rafisher@richardafisher.com](mailto:rafisher@richardafisher.com)>

**Cc:** sophy yang <[yangsophy@hotmail.com](mailto:yangsophy@hotmail.com)>; [steve1yang@gmail.com](mailto:steve1yang@gmail.com); Reimers, Milt A.

<[MReimers@SCHWABE.com](mailto:MReimers@SCHWABE.com)>; Nicole Niederman <[Nicole@niederman.com](mailto:Nicole@niederman.com)>; Chris Niederman

<[Chris@niederman.com](mailto:Chris@niederman.com)>; Alan Wallace <[awallace@williamskastner.com](mailto:awallace@williamskastner.com)>

**Subject:** Withdrawal of Building Permit Approval for 1902-005

Richard,

Please see the attached notice that withdraws Planning approval of building permit 1902-005.

Regards,

Nicole

Nicole Gaudette

Senior Planner

City of Mercer Island – Community Planning & Development

206-275-7719 | [mercergov.org/CPD](http://mercergov.org/CPD)

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW).*



**CITY OF MERCER ISLAND**

9611 SE 36<sup>th</sup> Street • Mercer Island, WA 98040-3732  
(206) 275-7605 • FAX (206) 275-7726  
[www.mercergov.org](http://www.mercergov.org)

October 24, 2019

Richard Fisher  
1932 1<sup>st</sup> Ave, Suite 601  
Seattle, WA 98101  
[rafisher@richardfisher.com](mailto:rafisher@richardfisher.com)

*Sent: via email*

RE: 1902-005 – Yang Building Permit  
6660 E Mercer Way (9640 SE 68<sup>th</sup> St), Mercer Island, WA 98040; King County Tax Parcel  
# 239600-0050

Dear Mr. Fisher:

During a telephone conversation yesterday, we discussed a note located on Sheet A1.0 of the building permit plans. Said note states “NOTE: RECORDED EASEMENT – DRIVEWAY ACCESS TO REMAIN WITHIN EASEMENT.” You stated that your intention of this note is to allow the property owners to remove the portion of the neighbors driveway that is located outside of the access easement that is recorded with the plat. I disagree with your interpretation of this note. To avoid any misunderstandings, I am withdrawing approval of Planning review of building permit 1902-005 until said note is removed from the plans. The building permit is not active until this matter is resolved and Planning approval has been granted.

I may be contacted with questions by phone at 206-275-7719 or via e-mail at [nicole.gaudette@mercergov.org](mailto:nicole.gaudette@mercergov.org).

Sincerely,

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