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May 10, 2017

Via Email and U.S. Mail

Scott Greenberg
Director, Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: File No. SHL 14-031, Cherberg Dock at 9418 SE 33rd Street

Dear Mr. Greenberg:

This letter is a follow up to my earlier letters addressed to Former City staff person Travis Saunders dated July 17, 2015, and June 10, 2016, along with an email to him dated February 11, 2016. All those communications related to requests for extensions of the pending Cherberg Dock application SHL 14-03, and as a result the City has granted three prior extensions. Last June, you approved an extension until June 13, 2017, due to pending legal proceedings, specifically an appeal filed by the Griffiths in the Washington State Court of Appeals. This letter seeks a further extension because the appeal is still pending—the Court of Appeals set oral argument for June 1 and a decision is not expected for a three to six months beyond that date.

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). The King County Superior Court ruled in favor of the Cherbergs and ordered the Griffiths to sign the Joint Use Agreement. The Griffiths appealed and that issue is the key issue on appeal—whether the Superior Court properly ordered the Griffiths to sign the Joint Use Agreement. I am attaching my letter to the City dated June 10, 2016, which includes as an attachment a letter from Karen Cobb of the law firm Frey Buck who is the attorney representing the Cherbergs in the lawsuit. She explained that the Court ordered the Griffiths to sign the Joint Use Agreement, but that the Griffiths filed an appeal and that a stay was imminent—in fact, the Court issued the stay (see attached). The stay means that the Griffiths don't have to sign the Joint Use Agreement unless and until the appeal is decided in favor of the Cherbergs.

As stated in earlier letters, this situation is highly unusual. The Cherbergs have done all they could to satisfy the City request for the Joint Use Agreement and the Cherbergs have in fact obtained 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 Griffiths filed the appeal and have obtained a stay.

Unfortunately, as noted in the letter from Ms. Cobb from last June, the appeal will likely take 12-18 months to be processed. That is still a good estimate, namely that it is likely that the Court of Appeals will issue a decision within six months after oral argument to be held on June 1. As a result, we must of necessity ask for a further extension of the permit application until the appeal 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 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 appeal 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 eight months to February 13, 2018, to allow time for the decision plus the 30 day period following the decision before a decision becomes final. 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.

Thank you.

Sincerely,

STEPHENS & KLINGE LLP



Charles A. Klinge
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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TELEPHONE (425) 453-6206
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June 10, 2016

Via Email and U.S. Mail

Travis Saunders, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Re: File No. SHL 14-031, Cherberg Dock at 9418 SE 33rd Street

Dear Mr. Saunders:

This letter is a follow up to my letter to you dated July 17, 2015, and my email to you dated February 11, 2016, regarding the above referenced matter. In February, you approved an extension of the pending Cherberg Dock application SHL 14-03 until June 13, 2016, due to pending legal proceedings. This letter seeks a further extension. The update of the lawsuit and reasons for the extension are as follows.

As expressed in my letter to you dated July 17, 2015, 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 35 foot dock separation). The King County Superior Court ruled in favor of the Cherbergs and ordered the Griffiths to sign the Joint Use Agreement. Please review the attached letter from Karen Cobb of the law firm Frey Buck who is the attorney representing the Cherbergs in the lawsuit. She explains that, last month, the Court ordered the Griffiths to sign the Joint Use Agreement, but that the Griffiths filed an appeal and a stay is imminent. The stay will mean that the Griffiths don't have to sign the Joint Use Agreement unless and until the appeal is decided in favor of the Cherbergs.

This situation is highly unusual. The Cherbergs have done all they could to satisfy the City request for the Joint Use Agreement and the Cherbergs have in fact obtained 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 Griffiths filed the appeal and are obtaining a stay.

Unfortunately, as noted in the letter from Ms. Cobb, the appeal will likely take 12-18 months to be processed. As a result, we must of necessity ask for a further extension of the permit application until the appeal is resolved. In my letter to the City dated July 17, 2015, 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 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 appeal is resolved.

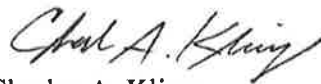
We recognize that the City is hesitant to grant an extension with an undetermined end date. Therefore, we respectfully request that the City grant an extension for one year with the understanding and recognition that the intent is to grant further extensions until the appeal is resolved.

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.

Thank you.

Sincerely,

STEPHENS & KLINGE LLP



Charles A. Klinge
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



June 9, 2016

Charles A. Klinge
Stephens & Klinge, LLP
Attorneys at Law
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004

Re: Cherberg v. Griffith –King County Cause No. 15-2-10983-9 SEA
Our File No. 12149:034205

Dear Mr. Klinge:

As you are aware, I am counsel of record for James and Nan Cherberg as Plaintiffs in the above-referenced lawsuit involving their neighbors Hal and Joan Griffith as Defendants. I am aware that you represent the Cherbergs in the permitting process at the City of Mercer Island. I am providing this update to you with the knowledge and expectation that you will forward this letter to the City of Mercer Island for review and consideration by the City.

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. King County Superior Court Judge Mariane Spearman ruled in favor of the Cherbergs on May 10, 2016, and ordered the Griffiths to sign the Joint Use Agreement. However, after a final order was entered on May 26, 2016, the Griffiths filed a notice of appeal of the order requiring them to sign the Joint Use Agreement. The Griffiths have also sought a "stay" of the enforcement of the order—freezing the status quo until the appeal is resolved. Thus, while the Court has ordered the Griffiths to sign the Joint Use Agreement, once the stay is in place the Cherbergs cannot enforce the order and must await the decision of the appellate courts, which we expect to take 12-18 months. We anticipate the Court will issue the stay order on or about June 13, 2016.

Sincerely,

FREYBUCK, P.S.

Karen L. Cobb

cc: clients

HONORABLE MARIANE C. SPEARMAN
Noted for Consideration: Friday, June 10, 2016
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES W. CHERBERG and NAN CHOT
CHERBERG,

Plaintiffs,

v.

HAL E. GRIFFITH and JOAN I. GRIFFITH,
husband and wife,

Defendants.

NO. 15-2-10983-9 SEA

~~PROPOSED~~ ORDER STAYING
ENFORCEMENT OF SPECIFIC
PERFORMANCE

HAL E. GRIFFITH and JOAN I. GRIFFITH,
husband and wife,

Counterclaim Plaintiffs,

v.

JAMES W. CHERBERG and NAN CHOT
CHERBERG,

Counterclaim Defendants.

THIS MATTER came before the Court on Defendants Hal E. Griffith's and Joan I. Griffith's Motion for Order Staying Enforcement of Specific Performance. The Court has considered the pleadings filed, the record in this case, including the testimony and exhibits

[PROPOSED] ORDER STAYING ENFORCEMENT
OF SPECIFIC PERFORMANCE - 1

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
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SEATTLE, WASHINGTON 98104
TEL (206) 623-1700 FAX (206) 623-8717

1 admitted into evidence at trial, and therefore deems itself fully advised. Based on the pleadings
2 submitted,

3 IT IS HEREBY ORDERED that:

4 Defendants' Motion for Order Staying Enforcement of Specific Performance is GRANTED
5 as provided herein; and

6 IT IS FURTHER ORDERED that:

7 Having satisfied the requirements of RAP 8.1 by filing a cash supersedeas with this court in
8 the amount of \$12,000, Defendants have superseded this Court's orders: (1) Granting Plaintiffs'
9 Motion for Partial Summary Judgment and Directing Specific Performance (Dkt. 65); and (2)
10 Granting Plaintiffs' Motion for Summary Judgment (Dkt. 94), and enforcement of those orders is
11 STAYED pending their review by the Court of Appeals.

12 DATED this 10 day of June, 2016.

13
14 *e-filed*

HONORABLE MARIANE C. SPEARMAN
KING COUNTY SUPERIOR COURT JUDGE

15
16 Presented by:

17 CALFO HARRIGAN LEYH & EAKES LLP

18 By: s/ Tyler L. Farmer

19 Arthur W. Harrigan, Jr., WSBA #1751

20 Tyler L. Farmer, WSBA #39912

21 Andrew R.W. Hughes, WSBA #49515

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25 *Attorneys for Defendants/Counterclaim
Plaintiffs*

King County Superior Court
Judicial Electronic Signature Page

Case Number: 15-2-10983-9
Case Title: CHERBERG ET ANO VS GRIFFITH ET ANO

Document Title: ORDER

Signed by: Mariane Spearman
Date: 6/10/2016 1:56:59 PM



Judge/Commissioner: Mariane Spearman

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 482A410463E582FD4584CC7D9A28D5D713932057

Certificate effective date: 7/29/2013 12:59:26 PM

Certificate expiry date: 7/29/2018 12:59:26 PM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Mariane
Spearman:pv5n4Xr44hGCKOA5YYhwmw=="