



STEPHENS & KLINGE LLP
ATTORNEYS AT LAW

10900 NE 8TH STREET, SUITE 1325
BELLEVUE, WA 98004

RICHARD M. STEPHENS
CHARLES A. KLINGE

TELEPHONE (425) 453-6206
FACSIMILE (425) 453-6224

January 26, 2018

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
Extension Request**

Dear Mr. Greenberg:

This letter is a follow up to my earlier letters addressed to you dated May 10, 2017, 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 applications SHL 14-03 and associated building permit 1501-218, and as a result the City has granted four prior extensions. Last June, the City approved an extension until February 13, 2017. See attached email from staff person Nicole Guadette to me and copied to you dated June 2, 2017. The reason for the extension at that time was due to pending legal proceedings, specifically an appeal pending at the Washington State Court of Appeals. This letter seeks a further extension. The Cherbergs' defense counsel has informed me that they expect the Court of Appeals to issue its mandate in the next few weeks and, barring a petition for review to the Supreme Court, the case will be remanded to the Superior Court for further proceedings. As a result, resolution of the lawsuit between the Griffiths and the Cherbergs is not expected until later this year, at the earliest.

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 Court of Appeals ruled that disputed facts precluded summary judgment for either side and ordered a "remand for trial." Decision, November 20, 2017 (unpublished 2017 WL 5569211). That decision is not final yet, but may become final on February 15, 2018, when the Court of Appeals is due to issue the mandate sending the case back to Superior Court.

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 may still obtain 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 Court of Appeals has ordered additional proceeding in Superior Court, namely a trial.

Unfortunately, the Superior Court proceedings are likely to take most of this year since a trial date will have to be identified on a busy calendar. 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.

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 to February 13, 2019, to allow time for a resolution. 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

Charlie Klinge

From: Nicole Gaudette <nicole.gaudette@mercergov.org>
Sent: Friday, June 02, 2017 3:27 PM
To: Charlie Klinge
Cc: Evan Maxim; Scott Greenberg; Bio Park; Don Cole
Subject: Extension of SHL14-031/SEP14-025

Mr. Klinge,

In response to your extension request letter dated May 10, 2017, you have been granted an extension until February 13, 2018. I understand that the city's Building Official, Don Cole, has granted an extension for the associated building permit, 1501-218.

Best Regards,
Nicole

Nicole Gaudette, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
(206) 275-7719
nicole.gaudette@mercergov.org