

November 19, 2024

**VIA REGULAR U.S. MAIL
AND ELECTRONIC MAIL**

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City of Burlington
City Council
833 Spruce Street
Burlington, WA 98233

Re: Wright Appeal to LUP 6-23 / Landed Gentry Development, Inc.

Mayor and Council Members,

We write on behalf of our clients, Landed Gentry Development, Inc. ("Landed Gentry") regarding the appeal filed by Ms. Kiera Wright ("Wright") to Landed Gentry's project, LUP 6-23. As you know, Landed Gentry's appeal of the City Hearing Examiner's decision dated February 29, 2024 ("Hearing Examiner's Decision") has been the subject of a Land Use Petition Act ("LUPA") appeal to the Skagit County Superior Court ("Superior Court").

Landed Gentry was hopeful that this matter was concluded when the Superior Court entered an order of remand in the LUPA appeal, directing the Hearing Examiner to correct certain errors in the Hearing Examiner's decision and issue the project permits ("Court Order"). However, when notice of the Hearing Examiner's decision implementing the Court Order was provided, it contained a fourteen (14)-day administrative appeal window.

Landed Gentry respectfully requests the City Council decline to consider Wright's appeal for three (3) reasons: (1) the Court Order already resolved the "errors" brought forth in Wright's appeal; (2) a second administrative appeal resulting in a second closed record hearing violates state law; (3) Wright failed to exhaust her administrative remedies by failing to bring forth an appeal to the initial Hearing Examiner's Decision.

First, the appeal filed by Wright addresses issues that were already decided in the Court Order. Grounds 1-4 concern the riparian buffer associated with this project, which were the subject of the LUPA appeal, and were resolved by the Skagit Superior Court in the Court Order.

Second, RCW 36.70B.050 allows a local jurisdiction no more than one (1) open record hearing and one (1) closed record appeal when reviewing a land use application. A second administrative appeal reviewing the Court Order on remand from the LUPA hearing would violate this clear mandate.

Finally, Wright's appeal is improper because although she is a "party of record," having commented on the project in the open record hearing, Wright cannot demonstrate that she exhausted her administrative remedies because she did not appeal the Hearing Examiner's Decision dated February 29, 2024, nor did she participate in the City Council appeal or the LUPA matter before the Superior Court. Washington courts have repeatedly held that there is strong public policy enforcing

administrative deadlines regarding land use actions and rules that provide certainty, predictability, and finality for landowners and the government.¹ Allowing an appeal at this stage is in direct conflict with this public policy and only serves to create confusion by setting the stage for an endless cycle of appeals.

Again, Landed Gentry respectfully requests the Council to decline this appeal. We appreciate the City's work thus far on this matter, and we look forward to a full resolution of this appeal.

Sincerely,

CSD ATTORNEYS AT LAW P.S.



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MDH/TDS/jmb

cc: Client
Adam Rosenberg – (arosenberg@kellerrohrback.com)

¹ *Durland v. San Juan Cnty.*, 182 Wn.2d 55, 340 P.3d 191 (2014) *Chelan County v. Nykreim*, 146 Wash.2d 904, 933, 52 P.3d 1 (2002).