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Via Regular Mail and Electronic Correspondence (pcd@bainbridgewa.gov and hwright@bainbridgewa.gov)

Ms. Heather Wright
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

Re: Permit Number: PLN50177 SPR
Applicant: TSENG Properties, LLC
PO Box 11765
Bainbridge Island, WA 98110

Dear Ms. Wright:

This law firm represents Tseng Properties, LLC, and it has requested that I respond to your February 21, 2017, letter regarding the above referenced Permit Number (the "Application").

In regards to the first paragraph of your letter, during the January 4, 2016, meeting with the Design Review Board, the issue of the access easement was addressed. The only concern raised by the Design Review Board was that there be a fifty foot vegetative buffer from the edge of my client's property. My client is in agreement that the thirty-foot portion of the sixty-foot easement that is on my client's property will not be developed or cleared. In addition, the City previously knew about the easement because it went through the same process on Lot B, which is owned by Mr. Christianson, and it had the title report for the property. As such, my client believes the City was fully aware of this easement.

When you contacted my client regarding Ordinance 2016-1 (the "Ordinance"), which changed the buffer to fifty feet, discussions took place between you and my client. You informed my client that it could proceed with the application for five buildings versus ten in order to expedite the approval of those five buildings through the minor site plan review process. Now, however, you have indicated that the Planning Director has opted to have the application proceed through the major site plan review process. In addition, at no time did my client inform the City that it was abandoning its application to construct ten buildings. Instead, per my client's and its architect's discussions with you, the stated intent was to proceed with obtaining approval of the five buildings through the minor site plan review process, which is why new plans were provided to you in September, 2016, per your request. Then, the impact of the Ordinance, if any,

would be addressed separately. Again, this decision was based on your recommendations to my client.

As to the Ordinance, it should not have any impact on the Application with respect to the construction of the ten buildings on the property. The Ordinance was adopted on March 22, 2016, which was after the Application had been filed with the City. Under Washington's Vested Rights Doctrine, the Ordinance should not have been applied by the City to my client's Application.

RCW 19.27.095(1) states that:

> A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of the application, and the zoning or other land use control ordinances in effect on the date of the application.

Here, my client had to apply for the site plan approval before it was allowed by the City to apply for the building permit, so the Vested Rights Doctrine applies to the Application. A complete application is one that is sufficiently complete, complies with existing ordinances and building codes, and is filed during the period the zoning ordinances under which the developer seeks to develop are in effect. *See, Snohomish County, et al. v. Pollution Control Hearings Board, et al.*, 106 Wn.2d 47, 720 P.2d 782 (2016). If a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes. *Id.*

The Application was sufficiently complete prior to the adoption of the Ordinance to be considered under the former zoning and land use controls, which means the increased 50 foot buffer is inapplicable to the Application. In fact, as you stated, the City had it reviewed by the Design Review Board in January, 2016. The Application must be reviewed under the fifteen foot buffer that was previously in effect.

In addition, there is evidence suggesting that the City, through its officials, specifically its counsel member, Sarah Blossom, improperly spearheaded the adoption of the Ordinance and or the moratorium that was adopted in 2016 to prohibit the approval of my client's Application and restrict its ability to develop its property. Ms. Blossom was or is a member of the Bainbridge Island Saddle Club, which owns properly adjoining my client's property, and her family owns commercial NSC property on Bainbridge Island. Ms. Blossom was involved in the strikeout table that was attached to Ordinance No. 2016-31. Notably, certain provisions of the moratorium that impacted my client's property did not impact the commercial property owned by Ms. Blossom's family.

The Ordinance appears to only impact my client's property, which would constitute illegal Spot Zoning. Spot Zoning is improper, and one or two building lots may not be marked

off into a separate district or zone and benefitted by peculiar advantages ***or*** subjected to peculiar burdens not applicable to adjoining similar lands. *See, Pierce v. King Cty.*, 62 Wash. 2d 324, 338–39, 382 P.2d 628, 637–38 (1963). Spot Zoning is not usually favorably regarded, because, in too many instances, such practice has been employed in order to aid some one owner or parcel or some one small area, rather than being enacted for the general welfare, safety, health and wellbeing of the entire community. *Id.* Spot Zoning merely for the benefit of one or a few ***or*** for the disadvantage of some, still remains censurable because it is not for the *general* welfare. *Id.*

In this case, it appears that the Ordinance was adopted to prohibit or restrict my client's planned development, not for the general welfare of the community. To our knowledge, there are no similarly situated commercial properties on Bainbridge Island that would be impacted in the same manner by the newly enacted fifty foot buffer. As such, it appears that the City engaged in illegal Spot Zoning.

Finally, with respect to the items you requested in your letter, my client's position on them is as follows:

(1) Shared Private Road. There is a mutual easement benefitting the parties to the private road. We also believe the terms of the existing easement provides for the parties to maintain it. Of course, even if there was no such language, under the law, each of the parties, who benefit from the private road, have an obligation to share in its maintenance. This was not an issue on Lot B, so it is hard to determine why the City now finds that it is an issue with this Application. Moreover, my client has offered to pave the portion it will be using, which would provide the assurance of all-weather surfacing that you are looking for. We believe this issue has been addressed.

(2) Soil Information. There have been numerous soil logs of the property that my client's civil engineers have, so this is not an outstanding issue. If you do not have copies of these logs, they can be provided.

(3) Modified Storm Water Report. As indicated previously, my client has had its civil engineers review the property. These engineers have been working and advising property owners on Bainbridge Island for years. They have determined that the storm water is not an issue because the storm water drains away from the wetlands.

(4) Revised Landscape Plan. The property impacted by my client's proposed development is very small compared to the overall size of the property. Except for the access to the property, my client is leaving the buffer areas in their natural state and has decided not to landscape those areas. In addition, the plans show how the buildings and parking areas will be developed. As such, there is no need for a revised landscape plan.

(5) LID Site Assessment. This is a small project and coordination is the norm on such a project. There is no need for an assessment to be conducted to

identify trees that will be retained in the work areas because, other than in the buildable areas, no trees will be removed, except for the trail we had offered to be constructed subject to approval of the Application.

(6) Kitsap Public Health. The health district approved of the septic design, which the City is aware of.

(7) SEPA Checklist. The SEPA checklist was filed with the City for the ten buildings. Since my client is seeking approval of the Application for all 10 buildings, there is no need to submit a revised SEPA checklist.

At this point, it appears that the City is simply attempting to delay the Application and provide further roadblocks to its approval. My client is requesting that the City either approve the Application, deny the Application, in which case it will appeal the decision, or agree to proceed to mediation under Bainbridge Island Municipal Code, Section 2.19. My client has appreciated your assistance in this matter and will look forward to your continued assistance. It appears that the City, for whatever reason or reasons, does not want to cooperate in approving the Application when the requirements of the Bainbridge Island's Municipal Code have been met by my client.

I will look forward to your written response regarding the City's position within fourteen (14) days from the date of this letter. I also believe this letter is responsive to your February 21, 2017, letter and is being timely submitted prior to April 24, 2017. If I do not hear from you, and the City's position remains the same or it refuses to make a decision as outlined above, my client has instructed me to proceed with legal action against the City and possibly the individual(s) who appear to have been involved in attempting to limit my client's ability to develop its property. I am hopeful this will not be necessary, and the parties can amicably resolve the matter.

Sincerely,

Christopher J. Marston

cc: Client