



R. Kyle Williams
Attorney at Law

404.373.9351 Direct Dial
kwilliams@williamsteusink.com

August 7, 2014

via Email Delivery to: steve.foote@dunwoodga.gov

Steve Foote, AICP
Director of Community Development
City of Dunwoody
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30346

Re: **AP 14-084:** Appeal of Administrative Decision for the Approval of a Revised Final Plat at 5258 Vernon Lake Drive, Dunwoody, GA 30338 (the "Property"). The Tax Parcel Number is 18 374 03 017 (the "Appeal")

Dear Director Foote:

This firm represents James Burkhalter. Mr. Burkhalter owns the Property at issue in the Appeal.

Please add this correspondence to the file of the Appeal in order to preserve the rights of Mr. Burkhalter in further support of this objection and opposition to the Appeal.

On Monday, August 11, 2014, the Honorable City Council of Dunwoody (the "Council") will consider the Appeal pursuant to Section 16-207(e) of The Code of the City of Dunwoody, Georgia (the "Code"). While Mr. Burkhalter is not a party to the Appeal, the Appeal by its very terms and prayer for relief seeks the reversal of the decision of the City Manager approving a Revised Final Plat of the Property. Mr. Burkhalter objects to and opposes the Appeal and submits that the Appeal is not justified under the facts or the Code. As such, Mr. Burkhalter respectfully requests that the Council deny the Appeal and affirm the approval of the Revised Final Plat.

Mr. Burkhalter applied to the City to subdivide the 0.896 acre parcel into two (2) lots pursuant to Section 16-207(q) based upon his "desired adjustment" to divide the Property. The City staff processed the request in accordance to the full letter of the Code and found that proposed subdivision satisfied the final plat review process and the criteria set forth in Section 16-207(q) finding that the proposed subdivision complied with "all city, zoning, environmental, and subdivision ordinances and regulations and all applicable state and federal laws". As such,

City staff approved the Revised Final Plat; however, City staff has retained the original, signed Revised Final Plat pending this Appeal.

To date, there has been no determination by City staff that the proposed subdivision did not satisfy Section 16-207(q) or that the Revised Final Plat was erroneously approved.

This Appeal seeks reversal of the approval of the Revised Final Plat based upon purely aesthetic reasons, which are improper and impermissible considerations under the Code. The Appeal does not assert any mistake of fact or error purportedly committed by City staff in its administrative review or approval of the Revised Final Plat. As such, the Appeal does not set forth any factual or legal ground justifying reversal of the decision of the City Manager approving a Revised Final Plat of the Property. Accordingly, Mr. Burkhalter respectfully requests that the Council deny the Appeal and affirm the approval of the Revised Final Plat.

Furthermore, Mr. Burkhalter possesses vested rights in the approval of the Revised Final Plat. Mr. Burkhalter relied upon the Code, including specifically Section 16-207(q), in preparing and submitting his request to subdivide the Property. Mr. Burkhalter has made a "substantial change in position by expenditures" in reliance upon the Code and the approval of the Revised Final Plat, including, but not limited to acquisition costs, surveying costs, legal and filing fees, and interest carrying costs. As such, Mr. Burkhalter has acquired vested rights in the approval of the Revised Final Plat and is entitled to pursue development of the Property as divided. See, Buckner v. Douglas County, 273 Ga. App. 765, 767-768, 615 S.E.2d 850, 852 (2005). As such, the Appeal cannot and should not reverse the decision of the City Manager approving a Revised Final Plat of the Property. For this additional reason, Mr. Burkhalter respectfully requests that the Council deny the Appeal and affirm the approval of the Revised Final Plat.

Out of abundance of caution and in keeping with applicable statutory and case law, Mr. Burkhalter respectfully asserts his constitutional objections to the Appeal. To the extent Mr. Burkhalter is prohibited and/or limited from presenting evidence and/or being heard by the Council during its consideration of the Appeal, Mr. Burkhalter objects that such prohibition would be unconstitutional and illegal, constituting a violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States. Furthermore, any decision by the Council upon this Appeal that either reverses, vacates, modifies or alters the approval of the Revised Final Plat would be unconstitutional in that such decision would: (a) unreasonably impair and destroy the property rights of Mr. Burkhalter without first paying fair, adequate and just compensation for such rights in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; (b) deny Mr. Burkhalter an economically viable use of the Property without substantially advancing legitimate state interests in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States; (c) constitute an unreasonable hardship upon Mr. Burkhalter, without advancing the public health, safety and welfare and would constitute an arbitrary and capricious act by the Council without any rational basis

therefore, constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1983, Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and, (d) unconstitutionally discriminate, in an arbitrary, capricious and unreasonable manner against Mr. Burkhalter treating him differently than other similarly situated property owners seeking property subdivision within the City in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

For the reasons set forth herein, Mr. Burkhalter respectfully requests that the Council deny the Appeal and affirm the approval of the Revised Final Plat.

Sincerely,


R. Kyle Williams

RKW/ah

cc: James Burkhalter