NO. 1036523

SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW and KAYLYNE NEWELL, Appellants

v.

PIERCE COUNTY, Respondent

PIERCE COUNTY'S ANSWER TO PETITION FOR REVIEW

Court of Appeals, Division I
No. 861620

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I. INTRODUCTION

Shortly after Matthew and Kaylyne Newell ("Newells") purchased certain real property, Pierce County received complaints from neighbors that the Newells were creating a lot more noise, dirt/dust, and traffic than the prior owners. Upon investigation, and after other enforcement actions, the County concluded that the use had unlawfully changed and on June 25, 2020, issued a final Notice and Order to Correct. The Newells appealed to the Pierce County Hearing Examiner, who upheld this enforcement action. The Newells then appealed to the Superior Court under the Land Use Petition Act ("LUPA"), RCW Chapter 36.70C, and additionally asserted two tort claims based on the County's representations made prior to the Newells' purchase. The trial court disagreed with the hearing examiner and granted the Newells' LUPA appeal. Additionally, the trial court granted summary judgment on the tort claims in favor of the County. On further appeal, the Court of Appeals, Division I, affirmed the dismissal of the tort claims and

reversed the trial court's LUPA decision thus affirming the decision of the Hearing Examiner.

The Newells urge review under RAP 13.4(b)(3) and (4), alleging that the denial of their appeal presents significant questions of law under the State and Federal Constitutions and involves issues of substantial public interest. This Court should see the Newells' petition for what it is: a final effort to reevaluate the Hearing Examiner's fact-finding to which courts deciding a Land Use Petition Act ("LUPA") petition are required to defer.

II. RESTATEMENT OF THE ISSUES

Under RAP 13.4(b), this Court accepts review only if a Court of Appeals ruling is in conflict with a decision of the Supreme Court or of the Court of Appeals, if a significant question of constitutional law is involved, or if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. This case involves the straightforward application of the Pierce County Code to facts

supported by substantial evidence. Should the Court decline review?

III. RESTATEMENT OF THE CASE

The Newells operate a delivery truck fleet business as described in the Pierce County Zoning Code as "Warehousing, Distribution, and Freight Movement" at the Property. CP 199-200, 203, 230-232. *See*, PCC § 18A.33.280(I). This is not a permitted use in the Mid County RSep zone. *See*, PCC 18A.27.020 Use Table. The determination was made in response to citizen complaints. CP 198. Initially there was some confusion about the violation. *Id*. County staff initially determined that due to the lawfully established nonconforming use of a Contractor Yard (CP 301-302) (*see*, PCC § 18A.33.280(B)), there was no outright violation, but that there may have been an unlawful expansion of the nonconforming use. CP 199. A Notice and Order to Correct based on that understanding was issued on September 6, 2019. CP 199, 334-337. It became apparent through further complaints and

investigation that the actual use was *not* that of a Contractor Yard and expansion/intensification became irrelevant. CP 198. This Notice and Order to Correct was rescinded on November 4, 2019. CP 199. There were additional trucks on-site that seemed to be operated and maintained as fleet delivery trucks. *Id*. *See, also*, CP 238-266. County staff verified that this was a new use on January 6, 2020, and issued a new Notice and Order to Correct ("NOTC") on June 25, 2020, that is the subject of this appeal. CP 199-200, 230-232.

The new NOTC informed the Newells that the delivery truck fleet business is not a permitted use on the parcel, specifically that Warehousing, Distribution, and Freight Movement is not an allowed use in the Mid County RSep zone. CP 230. The NOTC advised that they were to remove all commercial trucks from the site that are not directly related to an on-site contractor yard or otherwise bring the activities on the property in line with the lawfully established nonconforming Contractor Yard use. CP 231. Failure to

comply with the order was noted to subject the landowners to further legal proceedings where the County could pursue the recording of a Notice of Non-Compliance and/or issue civil penalties. CP 232.

On July 9, 2020, the Newells timely appealed this notice. CP 207-212. At the appeal hearing, County staff testified that the large trucks appear to be used as fleet delivery vehicles. CP 18-19. County staff provided materials that support the conclusion that the use on-site is that of Warehousing, Distribution, and Freight Movement. CP 225-227, 238-266. After some confusion on cross-examination, County staff clarified that the use was clearly fleet truck distribution. CP 42-47. Several neighbors testified about the nature of the business. CP 82-84, 91. Also provided was a letter from a concerned citizen detailing how the use changed when the Newells moved their operation to the Property. CP 221-224. The Declaration of prior owner Boyd Malyon states that he engaged in "storing and using dump truck to haul materials in support of

construction projects." CP 363. Letters from several local companies further describe the nature of the Newells' business (e.g., "They are a dump truck company in the business of importing aggregates and hauling dirt in/out of project sites all over the south Puget Sound area."). CP 367-369, 370-373, 376. Testimony from Mr. Newell was consistent with these statements and also verified that the trucks were used to deliver materials to jobs being run by other companies … as opposed to their own jobsites. CP 118-119. Notably, Mr. Newell also testified that the trucks are serviced and dispatched on-site. CP 120. On June 17, 2021, a Pierce County Deputy Hearing Examiner issued a decision denying the Newells' appeal and upholding the County's enforcement action. CP 160-177. The Newells then appealed this decision. CP 564-600.

Based on facts unrelated to the merits of the LUPA matter, the Newells asserted a claim for negligent misrepresentation against the County based on an email exchange which occurred in August and September of 2018.

On August 28, 2018, Mr. Newell sent an email to the County inquiring about the zoning of the property in question and whether he could operate his "dump truck company" at that location. He did not go into further detail regarding the "dump truck company." CP 319. On September 4, 2018, the County responded by describing the property as allowing nonconforming use as long as there has been continuous use since the non-conforming right was granted. The County added, "Please be aware there are very special circumstances about expanding a non-conforming use" and that expansions require an "Administrative Use Permit." CP 319. On September 14, 2018, Mr. Newell asked the County Planner: "If I purchase this land with the shop and the house for my dump truck company, Newell Brothers, Inc., is this nonconforming status transferable to me? Boyd has continued to run his excavating and dump truck business there and is still doing business as a contractor …." CP 320. On September 17, 2018, the County replied: "As long as they have continually run the

business since the date the nonconforming use was determined, you would be able to continue the use if you take ownership. Again, you could not expand the use without an Administrative Use Permit, but you can run the business in the same area the business currently operates." CP 320.

An appellate court's review of factual findings under LUPA considers only whether the decision is "supported by evidence that is substantial when viewed in light of the whole record before the court." RCW 36.70C.130(1)(c). Nonetheless, the Newells' Petition for Review presents a lengthy exposition of their own alternative version of numerous facts that are directly at odds with the Examiner's decision, laying bare that it is actually a request to rewrite the Examiner's findings. Through their repeated misstatements of discredited testimony rejected by the Examiner, the Newells seek to submit to this Court neither a legal question of statewide significance nor a significant question of constitutional law, but rather their belief that the Examiner got the facts wrong.

IV. ARGUMENT

A. The County Did Not Violate the Newells' Constitutional Rights

Under RAP 13.4(b), review will be accepted only if the Court of Appeals' ruling is in conflict with a decision of the Supreme Court or a published decision of the Court of Appeals, a significant question of constitutional law is involved, or the petition involves a substantial public interest that should be determined by the Supreme Court. The Newells allege that constitutional questions are at play, raising the possibility of review under RAP 13.4(b)(3).

A legal nonconforming use is one that does not conform to zoning law, but which lawfully existed at the time the law went into effect and has continued to exist without legal abandonment since that time. *Rhod-A-Zalea & 35th, Inc. v. Snohomish Co.*, 136 Wn. 2d 1, 6, 959 P.2d 1024 (1998). "[T]he initial burden of proving the existence of a nonconforming use is on the land user making the assertion." *Van Sant v. City of Everett*, 69 Wn. App. 641, 647-48, 849 P.2d 1276 (1993). The

landowner has the burden to prove that (1) the use existed prior to the contrary zoning ordinance, (2) the use was lawful at the time, and (3) the applicant did not abandon or discontinue the use for over a year prior to the relevant change. *King County Dept. of Dev. & Envtl. Servs. v. King County*, 177 Wn.2d 636, 643, 305 P.3d 240 (2013) (citing *Rhod-A-Zalea* at 6). In this matter it is not disputed that a Contractor Yard used on the parcel was previously approved by the County as a lawfully established nonconforming use. It is likewise not asserted that the unlawful activity is an expansion or even an intensification of that legally established use. The County's assertion is that the use has *changed*. Appellants assert some vague constitutional violation (citing to the review standard of RCW 36.70C.130(1)(f) rather than RAP 13.4(b)). This not only conflates the instant standard of review, but also conflates the County's underlying assertions. A Contractor Yard is still a lawfully established non-conforming use. This argument is misplaced yet takes up the majority of Newells' arguments

(along with recitations of irrelevant facts). The County does not seek to diminish or limit the Newells' nonconforming rights. The current violation is that the *new* use of Warehousing, Distribution, and Freight Movement is unlawful.

Although the Newells cite to RCW 36.70C.130(1)(a), (e), and (f), in the case before Division I, there was no distinctive argument about the Examiner's procedure, the Examiner's authority, *nor the constitutionality* of the Examiner's decision in the LUPA context (constitutionality was discussed in the context of the tort claim). But here we do not focus on the LUPA standards of review. Here we focus on the standards articulated in RAP 13.4.

Additionally, the Newells assert that they have raised "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). They have not done so. Their proposed issues for review invoke not open questions of law but application of established law to their own preferred alternative version of the facts. In considering a Petition for

Review, this Court should "decline to consider facts recited in the briefs but not supported by the record." *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 615-16 n.l, 16P.3d 31 (2007); *see, also*, *In re Dependency of Panilla P.B.*, 104 Wn.2d 643, 660, 709 P.2d 1185 (1985) ("[W]e cannot consider matters referred to in the brief but not included in the record.").

LUPA is clear that, to obtain reversal of a land use decision based on erroneous fact-finding, the Newells would have to show that the decision "is not supported by evidence that is substantial when viewed in light of the whole record before the court." RCW 36.70C.130(1)(c). "Substantial evidence is evidence that would persuade a fair-minded person of the truth or correctness of the matter." *Erection Co., Inc. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 202, 248 P.3d 1085 (2011). The Court's review "'necessarily entails acceptance of the factfinder's views regarding the credibility of witnesses and the weight to be given reasonable but competing inferences.'" *City of University Place v. McGuire*, 144 Wn.2d

640, 652, 30 P.3d 453 (2001) (quoting *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614,618,829 P.2d 217 (1992)).

The Newells share excerpts from the trial court's opinion. The trial court's opinion has no bearing on these proceedings. The Newells do not offer any analysis into the actual PCC provisions that are determinative of this case. Even if they did, questions of county code interpretation are not matters of "substantial public interest" necessitating review by the Washington Supreme Court.

B. The County Did Not Violate Newells' Substantive Due Process Rights (§ 1983 Argument)

Next, the Newells seek review of the lower courts' decisions regarding their claims for substantive due process violation. The Newells allege that County elected officials' staff involvement resulted in the rebranding of the Newells' property and subsequent land use enforcement action, which they allege violated their civil rights. This is without merit and the Newells fail to satisfy any criteria for review.

Initially, the Court of Appeals declined to address the Newells' civil rights claims because they agreed with the County on the LUPA claims citing *Mercer Island Citizens for Fair Process v. Tent City*, 4 Wn. App. 393, 232 P. 3d 1163 (2010). *Mercer* held that claims for damages based on a LUPA claim must be dismissed if the LUPA claim fails. *See, also*, *Shaw v. City of Des Moines*, 109 Wn. App. 896, 901, 37 P.3d 1255 (2002) ("If the petitioner loses the LUPA appeal, the damages case is moot, and the matter is over."). *Congdon v. Island Cnty.*, 13 Wn. App. 2d 1007 (2020). The Court of Appeals was correct.

Consideration of the merits of the Newells' civil rights claims yields the same result. The trial court properly dismissed the Newells' 42 U.S.C. § 1983 claims for civil rights violations because there was no showing that the County acted in an arbitrary or capricious fashion in deciding to issue the NOTC, and because the Newells were afforded an opportunity

to be heard regarding the validity of the NOTC in the form of a LUPA appeal.

"To succeed on a substantive due process claim, the plaintiff 'must show as a threshold matter that a state actor deprived it of a constitutionally protected life, liberty or property interest.'" *Blocktree Properties, LLC v. Pub. Util. Dist. No. 2 of Grant Cnty. Washington*, 447 F. Supp. 3d 1030, 1037 (E.D. Wash. 2020), *aff'd sub nom. Cytline, LLC v. Pub. Util. Dist. No. 2 of Grant Cnty., Washington,* 849 Fed. Appx. 656 (9th Cir. 2021), quoting *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008). Substantive due process protects fundamental interests which are created by the Constitution. *Blocktree Properties*, 447 F. Supp. 3d at 1037-38, citing *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 229, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985) (J. Powell, concurring). Property interests, however, are derived by state law and protected by procedural due process. *Blocktree Properties,* 447

F. Supp. 3d 1037–38, citing *Ewing*, 474 U.S. at 229, 106 S.Ct. 507 (J. Powell, concurring).

The rights at issue in this case—permissible use of property under local zoning ordinances—do not flow from the Constitution, but rather from state law. *See, Blocktree Properties,* 447 F. Supp. 3d 1037-38. Accordingly, where the government is engaging in land use regulation, the substantive component of a due process claim "protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures." *Yim*, 194 Wn. 2d 688-89. When a governmental permitting decision is at issue, "only "egregious official conduct can be said to be 'arbitrary in the constitutional sense"': it must amount to an "abuse of power" lacking any "reasonable justification in the service of a legitimate governmental objective."" *Shanks*, 540 F.3d at 1088-890, quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846, 118 S. Ct. 1708.

Here, there simply is no evidence the government acted arbitrarily when it issued the NOTC. The Newells informed the County of their plans to run a "dump truck company," consistent with the prior owner's use. That business consisted of a dump truck and backhoe for excavating and the property was used for "storing and using dump truck to haul materials in support of construction projects ...." CP 363. However, the Newells' business consisted of much more than that.

The Newells operated a fleet of delivery trucks. CP 238-266. The Newells moved in with five trucks, later added two more, then started to lease trucks to the point of a dozen trucks being present, and other trucking companies using the site contributing to the increased traffic. The business morphed from 9 to 5 on weekdays to 24/7. CP 82-84. The description of the business is not in dispute. CP 188-19. There was a factual and legal basis for issuing the NOTC and it certainly cannot be described as arbitrary.

The Newells' reliance on *Mission Springs, Inc., v. City of Spokane*, 134 Wn. 2d 947 (1998), and *Bateson v. Geisse*, 857 F. 2d 1300 (9th Cir. 1988), is misplaced. In *Mission Springs*, the Petitioner's application for a development was granted, which under a Spokane ordinance conferred a vested right to develop the property. After citizen complaints in the surrounding neighborhood came to the attention of the city, the Council held a public hearing, to which Mission Springs was not invited nor notified. Despite specific legal advice from their City Attorney, the Council voted unanimously to direct the City Manager and staff to refuse to further process or issue grading permits.

The Supreme Court ruled that the City Council violated Mission Springs Fourteenth Amendment rights to due process because the City Council's direction not to issue vested permits was done without authority under the law. *See, also*, *Bateson v. Geisse*, 857 F.2d 1300 (9th Cir. 1988) (City of Billings, MT, Council amended a zoning ordinance and voted to withhold

permits after a builder obtained a building permit thereby violating the builder's constitutional rights).

The right deprived in *Mission Springs / Bateson* was to engage in the very construction project for which the permit was granted creating a vested right to proceed and there was no authority for the cities of Spokane or Billings to prohibit that work as the use permit had been issued. As the *Mission Springs* court found, their "clear legal rights" were "violated by city council members acting in *excess of their lawful authority*," by a "City Manager acting in *excess of his own lawful authority*," while disregarding the "well-founded legal advice from its City Attorney." *Mission Springs*, 134 Wn. 2d at 961.

Here, the right at issue concerns the Newells' continued use of a nonconforming business being subject to reasonable regulation because they changed that use. *Mission Springs / Bateson* do stand for the proposition that subsequent reasonable regulations are precluded. Nothing in *Mission Springs* holds, for example, the City of Spokane could not come back at a later

time to investigate whether the actual work being done was in compliance with regulations. As the Supreme Court has stated on more than one occasion, "we are aware of no case law holding that property owners have a fundamental right to do what they wish on their property without being troubled by reasonable regulation." *Olympic Stewardship Foundation v. State Environmental and Land Use Hearings Office*, 199 Wn. App. 668, 720-21 (2017). *See, also*, *Yim v. City of Seattle*, 194 Wn.2d 682, 699, 451 P.3d 694, 702–03 (2019), as amended (Jan. 9, 2020).

The Newells' assertion that the County conducted investigations at the request of elected officials is not evidence of abuse of power or arbitrary conduct, nor does it put this matter in the category of *Mission Springs*. Citizens complaining to their elected officials who in turn contact the relevant agencies is how government is supposed to work. Merely that elected officials passed on complaints received for further investigation does not equate this matter to *Mission*

Springs where the City Council and City Manager acted outside the bounds of governing law while ignoring advice of their attorney.

Issuing the NOTC was simply not the same thing as taking illegal action to revoke a vested right. Rather, here, the NOTC provided an opportunity for review with the Examiner's hearing and the LUPA process and was not an arbitrary act based on illegal action. Simply put, the Newells bought the property and immediately started to modify the use of the property. Neighbors complained, alerted the government, and after investigation issued the NOTC giving the Newells three options to bring their business into compliance as well as providing appeal rights.

The Newells' substantive due process rights were not violated.[1] The case law governing this issue is settled and this

[1] The property rights involved here are purely state-created and as such are protected by procedural due process. "Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest."

case does not present a novel issue or one of significant constitutional importance. The Petition should be denied on this issue.

C. There Are No Grounds for a Negligent Misrepresentation Claim Because the County Conveyed Accurate Information

Next, the Newells assert that the County is liable under a theory of negligent misrepresentation based on pre-purchase communications with the County. Specifically, the Newells allege that these communications created a "special relationship" because the Newells were provided inaccurate statements regarding use of the property which they relied on to their detriment. The Court of Appeals decision is proper because the County did not give false information in response to a direct inquiry. There was no error and nothing about this issue satisfies RAP 13.4.

Bailey v. City of Pinellas Park, 147 Fed. Appx. 932, 935 (11th Cir. 2005), quoting *Zipperer v. City of Fort Myers,* 41 F.3d 619, 623 (11th Cir.1995). Absent arbitrary action the Newells' rights were not violated if they received due process, which of course they did and continue to do so.

The threshold determination on a claim for negligence is whether the government entity owed a duty of care to the plaintiff. *Taylor v. Stevens County*, 111 Wn. 2d 159, 163, 759 P. 2d 447 (1988). It is well-settled law that issuing building permits or zoning permits does not subject a government entity to liability under the public duty doctrine. *Taylor*, 111 Wn. 2d at 172. Accordingly, under the public duty doctrine, a government entity will not be liable for zoning decisions unless it is established that "the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general …." *Taylor*, 111 Wn. 2d at 163; *Meany v. Dodd*, 111 Wn. 2d 174, 178 (1988).

An exception to the public duty doctrine exists if a special relationship forms between the government official and the permit applicant. "A duty of care may arise where a public official charged with the responsibility to provide accurate information fails to correctly answer a specific inquiry from a plaintiff intended to benefit from the dissemination of the

information." *Taylor*, 111 Wn.2d 172, citing *Meany*, 111 Wn. 2d at 180.[2] This type of special relationship is created when: (1) there is direct contact between the public official and the plaintiff, (2) the official, in response to a *specific inquiry*, provides *express assurances*, and (3) the plaintiff justifiably relies on the express assurances. *Mull v. City of Bellevue*, 64 Wn. App. 245 (1992) (emphasis theirs).

"It is only where a *direct inquiry* is made by an individual and incorrect information is clearly set forth by the government, *the government intends that it be relied upon* and it is relied upon by the individual to their detriment, that the government may be bound." *Mull*, 64 Wn. App. at 252-53 (a builder's claim that the City planner's report, which mistakenly stated the height restriction in a particular zone was 30 feet, was

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[2] The Newells' reliance on *ESCA v. KPMG Peat Marwick*, 135 Wn. 2d 820, 826, 959 P. 2d 651 (1998) is incorrect. That case discussed the nature of negligent misrepresentation between two private entities. Liability against government officials in the regulatory context is based on an analysis of the public duty doctrine.

not an express assurance that the builder could alter plans and raise the buildings above the 20' restriction actually in place), quoting *Meany*, 111 Wn.2d 178 (County not liable for diminished property value due to noisy and dusty neighboring sawmill as there was no evidence of a specific inquiry made or false information given about noise regulations); *see, also*, *Woods View II, LLC v. Kitsap County*, 188 Wn. App. 1, 28-29 (2015) (County's response to an applicant that it "should receive the permit under the land use requirements in place at that time" was not an express assurance of timeliness adding that "an *implied* assurance, not an express one" is insufficient to create a special relationship). *See, also*, *Pierce v. Yakima County*, 161 Wn. App. 791 (2011) (court rejected claim of special relationship because the County official's "good to go" statement after inspecting the outdoor propane tank was not close to a response to an inquiry for specific approval of the indoor propane system the official never saw). Compare with *Rogers v. Toppensish*, 23 Wn. App. 554 (1979) (court

concluded that a duty was created because a zoning official – as sole source of zoning information – incorrectly told Rogers' agent that the zoning allowed construction of apartments on the property when in fact they could not).

Here, there is no evidence of an inaccurate statement made by the County. In response to Mr. Newell's inquiry about the property, the County planner outlined the special circumstances of that property, indicated in general terms that continued use of the same business would be acceptable, and that "All extensions shall require approval of an Administrative Use Permit." CP 319.

Next, on September 14, 2018, Mr. Newell asked the County Planner:

> "If I purchase this land with the shop and the house for my dump truck company, Newell Brothers, Inc., is this nonconforming status transferable to me? Boyd has continued to run his excavating and dump truck business there and is still doing business as a contractor …."

CP 320.

On September 17, 2018, the County replied:

> "As long as they have continually run the business since the date the non-conforming use was determined, you would be able to continue the use if you take ownership. Again, you could not expand the use without an Administrative Use Permit, but you can run the business in the same area the business currently operates."

CP 320.

The County's response to the Newells' various inquiries were all completely accurate. They were told they could continue the use of the property, which was true, and that any expansion would require an additional permit, which was also true. There simply is no evidence the Newells ever inquired about whether they could expand/modify (more accurately *change* use) to a fleet of a dozen or so trucks, allowing other trucking companies to use the site, etc., nor is there evidence a County official provided assurance that such practice had been lawfully established as a nonconforming Contractor Yard.

The Newells are essentially arguing that "continued use" as a dump truck company means that they cannot be subject to

regulatory enforcement action and be free to do what they want with their business as long as it is called a "dump truck company." This is without merit.

Rather, the County obviously retains its authority to investigate entities for ongoing regulatory compliance, even grandfathered businesses. Nothing about the County's representation guarantees a lack of regulatory oversight. In no way did a County official effectively tell the Newells they could do whatever they wanted as long as they called it a "dump truck business" and not be subject to further regulatory action.

V. CONCLUSION

This case presents a simple application of the Pierce County Code to a property owner's unlawful activities. Because the Newells have not shown that any of the standards under RAP 13.4(b) are met, this Court should deny their Petition for Review.

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I certify that this answer contains 4,710 words and is in compliance with the length limitations of RAP 18.17(c).

DATED this 26th day of December 2024.

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CERTIFICATE OF SERVICE

On December 26, 2024, I hereby certify that I electronically filed the foregoing PIERCE COUNTY'S ANSWER TO PETITION FOR REVIEW using the Washington State Appellate Courts Filing Portal, which will send notification of such filing to the following active parties on the case:

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