



Gary D. Huff
Attorney at Law
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
Direct: (206) 224 8024
Main: (206) 223 1313
Fax: (206) 682 7100
ghuff@karrtuttle.com

February 1, 2018

Via Electronic and Regular Mail

Barb Mock, Director
Snohomish County Planning and Development Services
3000 Rockefeller Avenue, M/S #604
Everett, WA 98201-4046

Re: Point Wells Urban Center and Related Applications
Request for Reconsideration

Dear Director Mock:

We are in receipt of your letter of January 24, 2018 denying BSRE's request for an extension of the June 30, 2018 application termination date. Your conclusion appears in part to be based on an incomplete history. It is also at odds with the express direction given to us by your staff regarding the timing and nature of our extension request. Therefore, the purpose of this letter is to highlight certain aspects of that history and to provide further information and clarification as to matters that should be considered in analyzing our extension request.

Third Party Impacts on Application Processing. We acknowledge that the BSRE Point Wells, LP Urban Center Development Application has been pending for just under seven years. We remind you, however, that much of that time frame was consumed by matters outside of BSRE's control. Here are some of the pertinent dates and events:

Filing of BSRE's Urban Center Application	March 4, 2011
Growth Management Hearing Board's ("GMHB" or the "Board") Invalidation Order Regarding Snohomish County's Urban Center Code and the designation of Point Wells as an Urban Center	April 25, 2011
King County Superior Court Order Enjoining Snohomish County from processing BSRE's application	September 12, 2011

GMHB's order finding Snohomish County in compliance with the Board's prior ruling, including the adoption of the Urban Village Code	December 20, 2012
Court of Appeals decision invalidating King County Superior Court's injunction	January 7, 2013
PDS initial review letter regarding BSRE's application	April 12, 2013
Supreme Court decision confirming Court of Appeals' ruling	April 10, 2014

The dates above show that over three years of our combined efforts were necessary to free the County from the constraints of the superior court injunction so BSRE and the County were able to resume work on the application in earnest. Those three years should not be held against BSRE in determining the appropriateness of our extension request, especially the 31 months between the superior court order enjoining the County from processing the application and the issuance of the supreme court's order resolving the vesting issues.

County Review Delay. We note that considerable time has been spent waiting for PDS staff to complete its review. By way of background, PDS requested in a letter dated November 15, 2016 that BSRE supplement its application. PDS requested that a revised submittal be made by May 15, 2017. BSRE complied with that request a month early, on April 17, 2017. Following BSRE's timely response, PDS staff did not provide its complete comments until October 6, 2017, nearly *six months* following our submittal. Despite this lengthy and much delayed County response, we were then given only three months (from October 6 to January 8) to revise our plans and engineering to address all of the issues contained in the County's 300-plus page comment letter.

Timing of BSRE's Response to the County's Comments. At our November 13, 2017 meeting with senior planning officials, as well as a representative of the Prosecuting Attorney's office, we provided a complete work plan to address the issues raised in the County's review letter. We circulated a Gant chart which demonstrated that the work necessary to appropriately respond to the County's comments could not be realistically completed and submitted to PDS by January 8. In response, County planning staff suggested that we notify the County of this delay and provide the County with a date by which the supplemented materials would be submitted. This information was provided in our letters of December 29, 2017 and January 12, 2018. As such, we have confirmed to PDS in writing that the earliest this work could be completed and submitted is April 30, 2018.

It is patently unfair and unrealistic for the County to expect that BSRE review the County's comments (contained in a 300-plus page report), define the scope of work for its consultants, approve their multi-discipline proposals (for a total cost nearing \$500,000), and to coordinate and complete this work by January 8, 2018. In addition, the assertion that BSRE's response should have been submitted piecemeal is absolutely inconsistent with and contrary to the explicit instructions of County staff as most recently expressed at our November 13, 2017 meeting.

The Timing of BSRE's Extension Request. We note that in correspondence as recent as May 2, 2017 (a date which follows our April 2017 submittal), Ryan Countryman addressed the availability of an additional extension as follows:

As the Applicant, if you wish to request a further suspension of the application expiration period pursuant to [SCC 30.70.140(1)(b)], you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to have time to evaluate the request.

Thus, this written instruction, combined with your staff's direction at the November 13, 2017 meeting, negates the assertion that our extension request was untimely.

The Length of BSRE's Extension Request. Our extension request of 18-to-24 months was based in large part on specific direction provided by your staff, as most recently discussed at our November 13, 2017 meeting. We were specifically directed by your staff *to ask for at least an 18-month extension* because of the likelihood that an additional request may not be forthcoming. The 18-month extension request was not made because that much time was necessarily required. It was made, as suggested by PDS staff, to provide ample time to submit the required information, to allow for the County's review (including any supplemental materials required by the County), and for the completion of the required SEPA process.

Expectation of Granting Extension Request. In addition to all the other reasons set forth in this letter, at the November 13, 2017 meeting, we explicitly inquired of County planning staff and your legal counsel whether there was any reason to suspect that an extension of the June 30, 2018 deadline would not be granted. The clear answer was no—no one in the room said they were aware of any issue that would result in a denial of an additional 18-month extension. In addition, our December 29, 2017 and January 12, 2018 letters were consistent with *our* understanding of the instructions of County staff as communicated to us at the November 13, 2017 meeting. The fact that we could not provide a date certain in our December 29 letter is irrelevant, as we subsequently confirmed the delivery date in our January 12, 2018 letter. In short, we were led to believe that we were responding in a timely manner, consistent with the County's expectations and requirements.

Impact of Remediation. Your letter also responds negatively to any consideration of the timing of the separate review process associated with site remediation. The issue of site

remediation was mentioned in our request in part as evidence of the timeframe necessary to actually commence construction. However, we should explain that site remediation is the contractual obligation of an independent and wholly unaffiliated third party. BSRE has limited control over the timing or handling of the remediation process. In addition, the County is not managing this process, as the State’s Department of Ecology will coordinate this work. The third party handling remediation will pursue that process on its own. Thus, the remediation planning and approval by the Department of Ecology should not be a factor in this extension request.

Commitment to Provide Responsive Documentation. BSRE has committed to provide the information and documentation necessary to respond to the County’s October 6, 2017 letter no later than April 30, 2018—a date only three months hence. Given the time and effort expended to date, allowing for such a submittal and the necessary processing thereof is a much more reasonable and justifiable outcome than a unilateral decision to utilize SCC 30.61.220 to terminate further review.

We note that all parties have, or should have, anticipated that an extension would be necessary. Had PDS provided its review comments by July 2017, as promised and as assumed by your EIS consultant, BSRE would have been able to provide its supplement by January 8, 2018. However, an extension would nonetheless have been required to allow for the completion of the EIS and the Hearing Examiner’s review and decision. Allowing BSRE to complete and submit the requested work by April 30, 2018, and to grant the requested extension is a much more productive exercise and a much more reasonable response.

The Standards of SCC 30.61.220. We understand that the County has thus far denied our extension request, in part, based on SCC 30.61.220. By its express terms, SCC 30.61.220 allows the responsible official to recommend denial of an application without the preparation of an EIS “in order to avoid incurring needless County and applicant expense” Under Subsection (2), “[a]ny such . . . recommendation of denial shall be supported by express written findings and conclusions of substantial conflict with adopted plans, ordinances, regulations or laws” This language does not describe the current situation.

For these purposes, the relevant dates are as follows:

- | | |
|-------------------|---|
| November 15, 2016 | PDS requests that BSRE supplement its Application to address outstanding County concerns. |
| April 17, 2017 | BSRE complies with PDS’ resubmittal request. |
| October 6, 2017 | PDS responds to BSRE’s April 17, 2017 resubmittal, and establishes a January 8, 2018 target for further BSRE submissions. |

November 13, 2017

BSRE provides PDS with its work plan and chart showing that its consultants cannot complete the necessary work by January 8. PDS confirms that the January 8, 2018 date is a “target” and not a statutory deadline.

January 12, 2018

BSRE commits to provide the additional work requested by PDS no later than April 30, 2018.

The invocation by PDS of SCC 30.61.220 is necessarily predicated on the assumption that BSRE’s further compliance efforts, and the County’s review thereof, are “needless expenses” and wasted efforts. It also assumes, even following BSRE’s April submittal that “substantial conflict with adopted plans, ordinances, regulations or law” will remain. Unless and until BSRE is able to complete that effort, no such determination can be made. This is especially true where BSRE has had multiple meetings with County officials over the past 8 months to discuss the changes which will be made by BSRE in its next supplement. With its extension denial, PDS is effectively stating that the problems that *currently* exist will not be addressed. To the contrary, BSRE has committed to submitting documentation to address the County’s comments by April 30, 2018.

Summary. We acknowledge that seven years represents an unusually long life for a typical land use application. But this is not a typical project. There has never before been a proposal of this magnitude in Snohomish County. We remind you that over half of those seven years have been devoted to litigation regarding the County’s Urban Center comprehensive plan and Point Wells’ Urban Center designation. We have been to the Growth Management Hearings Board numerous times and to all levels of state court, and have assisted the County in coming into compliance with the Board’s order, including the preparation of an Urban Village Environmental Impact Statement. In addition, during the four years of active work on BSRE’s application, we have undertaken a lengthy and expensive process of engagement with the City of Shoreline and its citizens in matters related to traffic impacts, all of which has informed BSRE and the City of Shoreline on how best to address traffic impacts within Snohomish County and Shoreline.

In addition, despite promises that the County’s most-recent review letter would be delivered in June 2017, PDS took until October 2017 to provide comments on BSRE’s April 2017 submittal. Thus, in sum, well over half of the seven years have had nothing to do with BSRE’s submission and/or supplementation of its Urban Center application. Given the *full* historical record, to deny BSRE’s extension request at a point where the application process is near completion would be unfair, inappropriate, and an abuse of discretion.

BSRE has already invested approximately \$10 million in the planning, design, and application submission, along with extensive community engagement and the payment of the

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County's EIS consultant fees. BSRE is not about to walk away from this investment. BSRE remains fully committed to see its Urban Center Development Application approved.

There is a better and more cooperative way forward. That way requires an opportunity for our team to refine project plans and complete the additional studies necessary to fully respond to the County's October 6 review letter. For our team to be able to respond to and address the County's comment letter in less time than it took your staff to write it is an unreasonable expectation. That task will, however, be completed and delivered no later than April 30, 2018.

Thus, we request that you grant an 18-month extension of the application deadline.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary D. Huff". The signature is stylized with large loops and a long horizontal stroke.

Gary D. Huff

Enclosure: County Denial of Extension Request

cc: BSRE Point Wells, LP
Project Team
Dave Somers
Marcia Isenberg
Eric Parks
Matt Otten
Michael Dobesh
Mike McCrary
Ryan Countryman
Paul MacCready



Snohomish County
Planning and Development
Services

3000 Rockefeller Ave., M/S 604
Everett, WA 98201-4046
(425) 388-3311
www.snoco.org

January 24, 2018

Gary Huff
Karr Tuttle Campbell
701 Fifth Avenue, Suite 3300
Seattle, WA 98104

Dave Somers
County Executive

Sent Via Email & U.S. Mail

Dear Gary:

In your letter dated January 12, 2018, you requested an extension of the June 30, 2018 permit application expiration date for File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-101007 SP (the "Applications"). The grounds cited for requesting the extension include: 1) the complexity of the Applications; 2) the time PDS spent reviewing the April 2017 resubmittal; 3) the level of project detail requested by PDS; and 4) the time required to respond to PDS's comments. BSRE requests the expiration date for the Applications be extended by a minimum of 18 to 24 months. Additionally, your January 12, 2018, letter suggests an even longer extension might be required to allow for the Department of Ecology to conduct environmental review of the site remediation.

The expiration period for applications, approvals, and permits is contained in SCC Table 30.70.140(1). BSRE's extension request was submitted under SCC 30.70.140(2)(a), which provides: "When an EIS is required, the expiration period of an application will be suspended until the FSEIS is issued. The suspension of the expiration period for an application shall not exceed 18 months unless approved by the director." The decision to extend the application expiration period beyond the standard 18-month suspension period is a discretionary decision by the PDS Director.

The Applications were submitted in February and March of 2011. BSRE requested three separate extensions to the Applications and each of those extensions were granted by PDS, resulting in a cumulative extension of 3.5 years (extension periods of 12 months, 15 months, and 15 months). BSRE was provided notice of the June 30, 2018, application expiration date on March 31, 2016. A majority of the information and materials requested by PDS in its October 6, 2017, Review Completion letter were identified over four years ago in the April 12, 2013, Review Completion Letter, but BSRE did not submit supplemental application materials resolving the issues raised in 2013.

After 3.5 years of granted extensions, BSRE has not submitted project application materials that demonstrate the project does or can meet applicable codes and regulations. The grounds cited for the current extension request do not justify an additional extension of 18 to 24 months, with potential additional requests for extension to follow based on Department of Ecology's environmental review process. To date, BSRE has provided no information regarding whether the Department of Ecology has commenced its review process. BSRE's request also must be weighed against the public's interest in having an application evaluated against regulations that currently are in effect. The granting of an additional 24-month extension would result in PDS evaluating a project application that is over nine years old. This application duration is not consistent with the balancing test required by the state's vesting laws. Your request to extend the June 30, 2018, application

expiration date under SCC 30.70.140(2)(a) for File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-101007 SP is denied.

As indicated in the PDS letter dated January 19, 2018, BSRE is not precluded from providing the resubmittal materials identified in the October 6, 2017, Review Completion Letter. While materials provided after January 8, 2018, may not be included in the PDS recommendation due to the timing of BSRE's proposed resubmittal, it does not preclude BSRE from submitting application materials that may be considered by the hearing examiner in making a determination whether the applications satisfy the County Code requirements.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Mock". The signature is written in black ink and is positioned above the typed name and title.

Barbara Mock, Director
Snohomish County Planning and Development Services