

**BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH**

In Re Point Wells Urban Center,

No. 11-101457 LU/VAR  
11-101461 SM  
11-101464 RC  
11-101008 LDA  
11-101007 SP

**HEARING EXAMINER  
RECEIVED  
08/03/2018**

FILE NO. 11-101457 LU

BSRE Point Wells LP,

R-3 Decision on  
Reconsideration issued August  
3, 2018

Applicant,

Decision Granting in Part and Denying  
in Part BSRE's Motion for  
Reconsideration and Clarification

Snohomish County Planning and  
Development Services Department,  
Respondent.

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**In Re Point Wells Urban Center**

*11-101457 LU/VAR, et al.*

Decision Granting in Part and Denying in Part BSRE's Motion for Reconsideration and Clarification

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1 **I. SUMMARY**

2 BSRE moved for reconsideration and clarification of the June 29, 2018 decision. For the  
3 reasons explained below, the motion is granted in part and denied in part. An amended  
4 decision is issued contemporaneously herewith that clarifies the denial of the development  
5 applications is without prejudice and that the appellate venue is the County Council. The  
6 remainder of the motion is denied.

7 **II. RESIDENTIAL SETBACK**

8 BSRE contends that the residential setback requirement of SCC 30.34A.040 does not apply  
9 to the buildings proposed in the Urban Plaza because the adjacent property is within the  
10 town of Woodway and county code only mandates a setback from parcels zoned by  
11 Snohomish County.<sup>1</sup>

12 SCC 30.34A.040 requires urban center buildings within 180 feet of adjacent R-9,600, R-  
13 8,400, R-7,200, Townhouse (T), or Low Density Multiple Residential (LDMR) zones be  
14 scaled down from the 90 foot height maximum otherwise allowed in an Urban Center zone.  
15 The property adjacent to the Urban Plaza is within the town of Woodway. Woodway's  
16 zoning is not identical to Snohomish County's nor does it use the same labels to identify  
17 land use zones.

18 PDS administers county code requirements that depend on adjacent zoning by matching  
19 the adjacent jurisdiction's zoning to the most similar county zoning. In this case, Woodway's  
20 large lot residential zoning is most similar to the county's R-9,600 because R-9,600 is the  
21 largest residential lot size zoning in urban areas of unincorporated Snohomish County.

22 BSRE points out that county code only lists the county zoning types and does not include a  
23 catchall provision allowing PDS to analogize the adjacent jurisdiction's zoning to the  
24 county's zoning.

25 PDS and the Hearing Examiner must implement the intent of the county code, giving  
26 meaning to all words in the ordinance, and not interpreting the code to yield absurd results  
27 that contradict the otherwise clear intent of the code. Here, the code clearly and  
28 unequivocally intends to graduate building heights from the urban center maximum to the  
29 lower maximum of adjacent residential areas. BSRE's interpretation of the code yields a  
30 result that contradicts the express desire of the code.

31 The Hearing Examiner therefore denies the petition for reconsideration of the portion of the  
32 decision relating to residential setbacks for the Urban Plaza buildings.

33 **III. ORDINARY HIGH WATER MARK**

34 BSRE argues (1) that PDS did not identify BSRE's failure to set back buildings 150 feet  
35 from the ordinary high water mark of marine waters until it filed the supplemental

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<sup>1</sup> BSRE Motion for Reconsideration, 2:22-3:22.

1 departmental report<sup>2</sup> with the Hearing Examiner on May 9, 2018<sup>3</sup> and (2) BSRE redesigned  
2 the project to eliminate intrusion into the marine water buffer.

### 3 **A. PDS NOTICE TO BSRE**

4 County code requires a 150 foot buffer from marine waters, measured from the ordinary  
5 high water mark shoreward. SCC 30.62A.320. BSRE's proposed site plan located four  
6 buildings within the buffer.

7 The use of the ordinary high water mark as the starting point to measure the buffer is not  
8 obscure; it has been clearly and unambiguously stated in county code since 2007.<sup>4</sup>

9 BSRE, not PDS, is responsible for designing a project that complies with county code.  
10 BSRE effectively argues that it should be absolved of its failure to comply with county code  
11 because PDS did not catch BSRE's failure sooner.<sup>5</sup>

12 BSRE is charged with knowledge of county code; PDS' alleged failure to catch BSRE's  
13 mistake sooner is not material to the Hearing Examiner's decision.

### 14 **B. REDESIGN**

15 BSRE argues for reconsideration because it redesigned the project to eliminate the  
16 buildings' intrusion into the marine waters' buffer.<sup>6</sup> Reconsideration is futile in this situation  
17 because BSRE's application expired on June 30, 2018 and the application is not yet  
18 approvable even if the newest site plan used the correct marine water buffer.

## 19 **IV. INNOVATIVE DEVELOPMENT DESIGN**

20 BSRE seeks reconsideration regarding its innovative development design (IDD). BSRE did  
21 not compare how its design to the prescriptive standards of county code demonstrate how  
22 the proposed IDD would result in functions and values of critical areas equal to or better  
23 than compliance with the prescriptive standards. BSRE remedied that defect and seeks  
24 reconsideration.<sup>7</sup> Reconsideration is futile in this situation because BSRE's application

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<sup>2</sup> Ex. N.2.

<sup>3</sup> BSRE realized its error before the supplemental staff report was filed because BSRE's expert testified he was charged to determine the ordinary high water mark in March 2018 and the supplemental departmental report was not filed until May 2018.

<sup>4</sup> Amended Ord. 06-061, Ex. A, 18:3-6 (adopted August 1, 2007, eff. Oct. 1, 2007).

<sup>5</sup> BSRE says "As soon as BSRE became aware of the issue with the OWHM, it authorized its consultants to begin work to determine the OWHM." Motion, 5:22-23. BSRE's designers could have, and should have, been aware that the OWHM is the demarcation for marine waters buffer because SCC 30.62A.320(1)(b)(ii) explicitly said so since 2007, several years before BSRE filed its urban center application.

<sup>6</sup> SCC 30.72.065(2)(f) (2013) ("The applicant proposed changes to the application in response to deficiencies identified in the decision.")

<sup>7</sup> *Id.*

1 expired on June 30, 2018 and the application is not yet approvable even the critical areas  
2 report corrects the deficiency.

### 3 **V. BONUS HEIGHT/HIGH CAPACITY TRANSIT**

4 BSRE petitions for reconsideration on the issue of whether it is able to claim bonus height  
5 because of proximity to high capacity transit. BSRE argues that proximity is sufficient, that it  
6 acted diligently in attempting to reach agreement with Sound Transit, that it acted  
7 reasonably to provide alternative high capacity transit via water taxi, and the Hearing  
8 Examiner erred by raising a “new issue” regarding whether the height bonus was necessary  
9 or desirable.

10 It is important to understand the procedural context. Neither BSRE nor PDS asked the  
11 Hearing Examiner to approve the project. PDS asked the Hearing Examiner to deny the  
12 application because the development application substantially conflicted with county code.  
13 BSRE asked the Hearing Examiner to remand the application and grant a fourth extension  
14 of time for the application’s expiration.

15 With respect to the “new” issue, the Hearing Examiner found that BSRE’s application  
16 substantially conflicted with county code because the application depended on building  
17 heights far taller than 90 feet and made no effort to prove additional height was desirable or  
18 necessary. County code explicitly requires proof of desirability or necessity:

19           The maximum building height in the UC zone shall be 90 feet. A building  
20 height increase up to an additional 90 feet may be approved under SCC  
21 30.34A.180 **when the additional height is documented to be necessary**  
22 **or desirable** when the project is located near a high capacity transit route  
23 or station . . . .

24 Amend. Ord. 09-079, p. 57 (adopted May 12, 2010, effective May 29, 2010) (emphasis  
25 added).

26 PDS made a prima facie demonstration that the proposal substantially conflicted with  
27 county code: 21 buildings substantially exceed the height limit. Though it had the burden of  
28 demonstrating compliance with SCC 30.34A.040 (2010), BSRE offered no evidence that the  
29 height bonus was desirable or necessary.<sup>8</sup> The Hearing Examiner must therefore conclude  
30 the proposing 21 of 46 buildings taller than 90 feet is a substantial conflict, requiring denial  
31 of the application. *Q.E.D.*

32 BSRE argues that unless PDS explicitly raised the issue of failure to prove desirability or  
33 necessity, the Hearing Examiner may not base a ruling on it. This argument fails for several  
34 reasons. First, PDS identified non-compliance with SCC 30.34A.040 (2010) as an issue,

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<sup>8</sup> “[T]he record is silent on this issue.” BSRE Motion for Reconsideration, 13:24.

1 though PDS focused on access to a high capacity transit station. Similar to a *Celotex*<sup>9</sup>  
2 motion, PDS argued that BSRE could not show compliance with .040 and BSRE did not  
3 demonstrate compliance. Second, BSRE effectively argues that the Hearing Examiner must  
4 presume compliance with county code. The Hearing Examiner cannot presume compliance  
5 with a 90 foot building height limit when the facts indisputably and unequivocally  
6 demonstrate 21 buildings substantially exceed the building height limit. Third, BSRE  
7 misapprehends the quasi-judicial process and the role of the Hearing Examiner. The  
8 Hearing Examiner's role includes determining whether an applicant's proposal complies  
9 with county code.<sup>10</sup>

10 BSRE argues that county code defines high capacity transit to include water taxis and  
11 therefore its proposal to provide water taxi service until Sound Transit provides commuter  
12 rail service satisfies the bonus height requirement of high capacity transit. Water taxi service  
13 at least requires amendment of the DNR lease and a conditional use permit. The evidence  
14 presented in the open record hearing was that a water taxi was an option that BSRE would  
15 provide if needed to obtain the height bonus. Little to no evidence was presented beyond  
16 that high level conclusion; it was a conceptual fall back plan without details. Further, a water  
17 taxi option is immaterial where, as here, BSRE presented no evidence that the bonus height  
18 was necessary or desirable.

19 PDS asked the Hearing Examiner to deny BSRE's application because the application  
20 substantially conflicted with SCC 30.34A.040 because 21 buildings exceed the 90 foot  
21 height limit. PDS made a prima facie showing of substantial conflict. BSRE had the burden  
22 of demonstrating by a preponderance of evidence that its application complies with SCC  
23 30.34A.040. It failed to do so. Therefore, its application was denied.

24 BSRE asks for a fourth extension of the expiration of its application on remand. PDS  
25 objected, in part because of a lack of demonstrated progress with Sound Transit regarding  
26 a station at Point Wells which could have triggered the building height bonus. BSRE argues  
27 that it had more communications with Sound Transit than referred to in the decision. BSRE  
28 points to testimony, however, that was general, conclusory, and notably lacking in detail and  
29 specificity. The Hearing Examiner did not find it persuasive. Considering the totality of the  
30 circumstances from the exhibits and testimony, the Hearing Examiner found that BSRE was  
31 not diligent with respect to obtaining high capacity transit service at Point Wells. This lack of  
32 diligence is one reason why the Hearing Examiner would not have granted an extension on  
33 remand.

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<sup>9</sup> "[A]fter adequate time for discovery and upon motion, [summary judgment must be entered] against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986). See also *Jackson v. Esurance Ins. Co.*, 2 Wn. App. 2d 470, 477, 412 P.3d 299, 302 (2017).

<sup>10</sup> *N.B.* Most Superior Court judges would not find for a party who has the burden of proving every element of the cause of action but fails to adduce any evidence on a required element of a cause of action.

1 **VI. LANDSLIDE DEVIATION**

2 BSRE asks the Hearing Examiner to reconsider his decision regarding BSRE's ability to  
3 obtain a deviation from the landslide hazard area regulations. BSRE submits additional  
4 information which it believes resolves the defects cited in the decision.

5 The issue presented was whether the development application as it stood in early 2018<sup>11</sup>  
6 substantially conflicted with county code, justifying early termination of the EIS process and  
7 denial of the application. Approval of the project would require the Chief Engineering Officer  
8 of PDS to grant a deviation from the landslide hazard area regulations.

9 The Hearing Examiner's decision determined that the Chief Engineering Officer was unlikely  
10 to grant a deviation based upon the application as it then stood. The improbability of a  
11 successful deviation request results in a substantial conflict with county code.

12 BSRE's post-decision attempt to increase its likelihood of a successful deviation request is  
13 immaterial where, as here, its application expired.

14 **VII. EXTENSION**

15 The Hearing Examiner does not have either original or appellate jurisdiction over a request  
16 for extension of a development application's expiration date. County code provides no  
17 mechanism to appeal the PDS Director's decision rejecting a request for an extension,<sup>12</sup> nor  
18 does it provide the Hearing Examiner with original jurisdiction to consider a request for an  
19 extension.<sup>13</sup> County code only gives the Hearing Examiner ancillary jurisdiction, i.e., the  
20 Hearing Examiner's ability to extend an expiration date is ancillary to the Hearing  
21 Examiner's decision on the development application.

22 Thus, the only circumstance under which the Hearing Examiner has the authority to extend  
23 an application's deadline is when the Hearing Examiner remands the application to PDS for  
24 further processing.

25 As indicated in the decision, however, the facts do not justify such an extension even if the  
26 Hearing Examiner remanded the application for further processing. Based on the entirety of  
27 the record, the Hearing Examiner found that BSRE had not prosecuted its development  
28 application with sufficient diligence to justify a fourth extension of the application's expiration  
29 date. Though the project is complex, the project should have been either complete or very  
30 close to complete after five years. It wasn't.

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<sup>11</sup> Five years after litigation ended and seven years after the application was filed.

<sup>12</sup> SCC 30.71.020 (2017) lists all "type 1" administrative decisions by PDS which may be appealed to the Hearing Examiner. SCC 30.71.050(2) (2013). None of the listed type 1 administrative decisions includes the Director's decision refusing to extend an application's expiration date. See *State v. LG Elecs., Inc.*, 186 Wn.2d 1, 9, 375 P.3d 636, 640 (2016) ("Under the age old rule *expressio unius est exclusio alterius*, '[w]here a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions.'")

<sup>13</sup> SCC 30.72.020 (2015).

1 **VIII. PREJUDICE**

2 BSRE asks the Hearing Examiner to clarify whether he denied BSRE’s application with or  
3 without prejudice. BSRE contends the Hearing Examiner has the authority deny its urban  
4 center application without prejudice, citing SCC 30.34A.180(2)(f) (2007) and SCC  
5 30.72.060(3). An urban center development application under chap. 30.34A SCC is a type 2  
6 decision. County code explicitly allows the Hearing Examiner to deny a type 2 development  
7 application without prejudice.<sup>14</sup> The Hearing Examiner contemporaneously reissues an  
8 amended decision denying the application and clarifying that it is without prejudice pursuant  
9 to SCC 30.72.060(3) (2013).

10 **A. SCC 30.34A.180**

11 While BSRE’s application may vest to the zoning and land use controls in effect at the time  
12 it filed its complete urban center application, its application does not similarly vest the  
13 Hearing Examiner’s jurisdiction and authority.<sup>15</sup> The 2007 amendment to SCC 30.34A.180  
14 gives the Hearing Examiner authority to deny the urban center without prejudice and allows  
15 the applicant to “reactivate” its application within six months. This authority was revoked by  
16 the 2013 amendment. Ord. 13-007 §28 (adopted Sept. 11, 2013, eff. Oct. 3, 2013). SCC  
17 30.34A.180 does not authorize the Hearing Examiner to deny BSRE’s application without  
18 prejudice, consequently allowing BSRE to reactivate its application within six months. The  
19 Hearing Examiner does not have the authority to deny BSRE’s application without prejudice  
20 under SCC 30.34A.180 and the Hearing Examiner therefore will not do so.

21 **B. SCC 30.72.060**

22 BSRE correctly cites SCC 30.72.060(3) for the proposition that the Hearing Examiner has  
23 the authority to deny an application without prejudice.<sup>16</sup> BSRE’s application for development  
24 in an area zoned Urban Center is a type 2 application. SCC 30.72.020(11) (2015). The  
25 Hearing Examiner is explicitly authorized to “grant, grant in part, return to the applicable  
26 department and applicant for modification, deny without prejudice, deny, or grant” the  
27 application. SCC 30.72.060(3) (2013).

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<sup>14</sup> SCC 30.72.060(3) (2013). *N.B.* The Hearing Examiner only has authority to deny the type 2 urban center application without prejudice. He does not have authority to deny the requested extension without prejudice because the requested extension is not a type 2 application. The denial of the extension is a consequence of not remanding the type 2 application.

<sup>15</sup> Hearing Examiner jurisdiction and authority are not development regulations because his authority does not “exercise a restraining or directing influence over land.” Development regulations control or affect the type, degree, or physical attributes of land development or use. The Hearing Examiner’s authority is procedural, similar to fees, which are explicitly excluded from the definition of development regulations. SCC 30.70.300(3) (2017).

<sup>16</sup> “The hearing examiner may grant, grant in part, return to the applicable department and applicant for modification, deny without prejudice, deny, or grant with such conditions or modifications as the hearing examiner finds appropriate based on the applicable decision criteria.” SCC 30.72.060(3) (2013).

1 County code does not provide guidance regarding the circumstances or criteria by which  
2 applications should be remanded for further work, denied without prejudice, or denied.<sup>17</sup>  
3 The options suggest a continuum ranging from an application that could not be approved  
4 without substantial, material changes to an application that requires some changes that are  
5 not material but cannot be resolved simply by appropriately conditioning the approval.

6 In this case, the application could not be approved for several reasons, including the lack of  
7 an EIS and the problems identified in the record. PDS appropriately interrupted the EIS  
8 process in early 2018 because the application then extant substantially conflicted with  
9 county code.

10 Considering the entire record, the Hearing Examiner grants BSRE's request to clarify his  
11 decision and will issue an amended decision clarifying that his denial is without prejudice.

12 The decision will be amended as follows:

13 The Hearing Examiner grants PDS' request to deny the applications without  
14 prejudice pursuant to SCC 30.72.060(3) (2013) because some of the conflicts with  
15 county code are substantial.

16 Decision Denying Extension, 1:7-9.

17 PDS' request to deny project approval prior to completion of the environmental  
18 impact statement is granted in part and denied in part. BSRE's development  
19 applications are denied without prejudice pursuant to SCC 30.72.060(3) (2013).

20 *Id.*, 28:31-32.

## 21 IX. APPEAL

22 BSRE asks the Hearing Examiner to reconsider that portion of the decision describing  
23 appeal procedures. The Hearing Examiner notes first that the decision does not create or  
24 confer jurisdiction, either on County Council or the Superior Court. County code mandates  
25 description of reconsideration and appeal procedures, but does not create appellate  
26 jurisdiction. SCC 2.02.155(5) (2013).

27 The open record hearing and decision dealt with two requests: (1) PDS' request pursuant to  
28 SCC 30.61.220 (2012) to deny the application prior to completion of the environmental  
29 impact statement and (2) BSRE requested an extension of the expiration of its urban center  
30 development application on remand pursuant to SCC 30.70.140(2)(b) (2017).

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<sup>17</sup> The difference between denial and denial without prejudice appears to be that denial results in a one year prohibition on applying for "substantially the same matter" while denial without prejudice does not trigger a one year bar. SCC 30.70.150 (2003).



1 **A. DENIAL**

2 PDS' request to deny BSRE's application is grounded in SCC 30.61.220 (2012). Snohomish  
3 County implements the State Environmental Policy Act (SEPA) in chap. 30.61 SCC.  
4 Appeals from SEPA determinations typically are heard by the Hearing Examiner, whose  
5 decision is the final county decision. Further appeals are heard by the Superior Court  
6 pursuant to the Land Use Petition Act (LUPA), not County Council. SCC 30.61.330 (2003).  
7 The Hearing Examiner therefore described the appellate procedure and time limits  
8 consistent with SEPA appeals.

9 The Hearing Examiner grants BSRE's petition regarding appellate procedures and  
10 reconsiders his decision. Although PDS' request to deny the application arises under chap.  
11 30.61 SCC, SCC 30.61.220 (2012) points to chap. 30.72 SCC and chap. 30.71 SCC by  
12 referring to "decision-making body." SCC 30.61.220(3) (2003). Therefore, the Hearing  
13 Examiner agrees with BSRE that PDS' requested denial triggers the appellate procedure for  
14 type 2 decisions, i.e., appeals lie to County Council and not to Superior Court.<sup>18</sup> The  
15 decision will be amended as follows to reflect this procedural correction.

16 ~~This decision is a final decision of the Hearing Examiner, but may be~~  
17 ~~appealed by filing a land use petition in the Snohomish County Superior~~  
18 ~~Court. If no party to the appeal requests reconsideration, the petition to the~~  
19 ~~Superior Court must be filed with the Superior Court Clerk no later than~~  
20 ~~21 days after this decision. The date of issuance is calculated by RCW~~  
21 ~~36.70C.040(4). If a request for reconsideration is filed by any party to the~~  
22 ~~appeal, the Superior Court action must be filed no later than 21 days~~  
23 ~~after the reconsideration decision is issued. The date of issuance of~~  
24 ~~any reconsideration decision is calculated by RCW 36.70C.040(4). For~~  
25 ~~more information about appeals to Superior Court, including, but not~~  
26 ~~limited to, required steps that must be taken to appeal this decision, please~~  
27 ~~see the Revised Code of Washington, Snohomish County Code, and~~  
28 ~~applicable court rules.~~

29 ~~The cost of transcribing the record of proceedings, of copying~~  
30 ~~photographs, video tapes, and oversized documents, and of staff time~~  
31 ~~spent in copying and assembling the record and preparing the return for~~  
32 ~~filing with the court shall be borne by the petitioner. SCC 2.02.195(1)(b)~~  
33 ~~(2013). Please include PDS file number in any correspondence regarding~~  
34 ~~this case.~~

35 An appeal to the County Council may be filed by any aggrieved party of  
36 record on or before August 17, 2018. Where the reconsideration process  
37 of SCC 30.72.065 has been invoked, no appeal may be filed until the  
38 reconsideration petition has been decided by the Hearing Examiner. An

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<sup>18</sup> Note, however, that the Hearing Examiner's description of the process for appealing his decision is not binding on either County Council or the Superior Court. The Hearing Examiner cannot create jurisdiction.  
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1 aggrieved party need not file a petition for reconsideration but may file an  
2 appeal directly to the County Council. If a petition for reconsideration is  
3 filed, issues subsequently raised by that party on appeal to the County  
4 Council shall be limited to those issues raised in the petition for  
5 reconsideration.

6 Appeals shall be addressed to the Snohomish County Council but shall be  
7 filed in writing with the Department of Planning and Development Services,  
8 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue,  
9 Everett, Washington (Mailing address: M/S No. 604, 3000 Rockefeller  
10 Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in  
11 the amount of five hundred dollars (\$500.00) for each appeal filed;  
12 PROVIDED, that the fee shall not be charged to a department of the  
13 County. The filing fee shall be refunded in any case where an appeal is  
14 summarily dismissed in whole without hearing under SCC 30.72.075.

15 An appeal must contain the following items in order to be complete: a  
16 detailed statement of the grounds for appeal; a detailed statement of the  
17 facts upon which the appeal is based, including citations to specific  
18 Hearing Examiner findings, conclusions, exhibits or oral testimony; written  
19 arguments in support of the appeal; the name, mailing address and  
20 daytime telephone number of each appellant, together with the signature  
21 of at least one of the appellants or of the attorney for the appellant(s), if  
22 any; the name, mailing address, daytime telephone number and signature  
23 of the appellant's agent or representative, if any; and the required filing  
24 fee.

25 The grounds for filing an appeal shall be limited to the following:

26 (a) The decision exceeded the Hearing Examiner's jurisdiction;

27 (b) The Hearing Examiner failed to follow the applicable procedure in  
28 reaching his decision;

29 (c) The Hearing Examiner committed an error of law; or

30 (d) The Hearing Examiner's findings, conclusions and/or conditions are  
31 not supported by substantial evidence in the record. SCC 30.72.080

32 Appeals will be processed and considered by the County Council pursuant  
33 to the provisions of chapter 30.72 SCC. Please include the County file  
34 number in any correspondence regarding the case.

35 Decision, 30:7-21.

1 **B. EXTENSION**

2 BSRE sought an extension of the expiration of its urban center application if the Hearing  
3 Examiner denied PDS' request and remanded the application for further processing. BSRE  
4 received three prior extensions from the PDS Director. SCC 30.70.140(2)(a) (2017). The  
5 Director denied a fourth extension.

6 County code does not give the Hearing Examiner authority either to hear an appeal from the  
7 PDS' director rejection of a request for an extension or to hear an original application for an  
8 extension.

9 Extension of the expiration of a development application is a remedy when applicable to a  
10 type 2 matter or an appeal from a type 1 matter. There is no appeal process for denial of an  
11 extension in this circumstance; denial of the requested extension would be subsumed within  
12 an appeal from the Hearing Examiner's decision on the type 2 urban center development  
13 application.

14 **X. CONCLUSION**

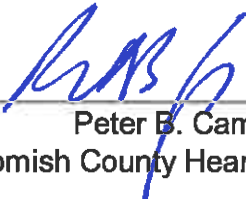
15 The Hearing Examiner grants BSRE's motion for reconsideration and clarification in part  
16 and denies the motion in part.

17 The Hearing Examiner grants the motion for reconsideration with respect to appeal  
18 procedures, but cautions BSRE, PDS, and parties of record that the information provided is  
19 advisory only and does not create jurisdiction. In other words, a reviewing court may come  
20 to a different conclusion regarding the correct appeal process. The Hearing Examiner  
21 contemporaneously issues an amended decision.

22 The Hearing Examiner grants the motion for clarification and amends the decision to state  
23 expressly that the denial of the development applications is without prejudice pursuant to  
24 SCC 30.72.060(3) (2013).

25 The Hearing Examiner denies BSRE's motion for reconsideration because (a) the Hearing  
26 Examiner believes the original decision to be correct and (b) reconsideration is futile  
27 because the application expired.

28 DATED this 3<sup>rd</sup> day of August, 2018.

  
\_\_\_\_\_  
Peter B. Camp  
Snohomish County Hearing Examiner

1 **RECONSIDERATION AND APPEAL PROCEDURES**

2 This is an interim decision from which no right of appeal lies. As a decision on a motion for  
3 reconsideration, it is not subject to a further motion for reconsideration.

4 Staff Distribution:

5 Department of Planning and Development Services: Ryan Countryman

6 The following statement is provided pursuant to RCW 36.70B.130: "Affected property  
7 owners may request a change in valuation for property tax purposes notwithstanding any  
8 program of revaluation." A copy of this Decision is being provided to the Snohomish County  
9 Assessor as required by RCW 36.70B.13