

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

**OFFICIAL NOTICE OF COUNCIL DECISION**

In re the Appeal of the August 3, 2018, Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement for BSRE Point Wells, LP, Hearing Examiner File No. 11-101457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-101007 SP, for property located at 20500 Richmond Beach Dr. NW, Edmonds, WA 98026.

NOTICE IS HEREBY GIVEN, that on October 8, 2018, a decision in this matter was entered by the Snohomish County Council: Upon a unanimous vote, the County Council approved a motion affirming the August 3, 2018, Amended Decision of the Hearing Examiner with modifications, as set forth in Council Motion No. 18-360, attached hereto.

FURTHER NOTICE IS GIVEN, that unless otherwise provided by law any person having standing who wishes to appeal this decision must do so by filing a land use petition in Superior Court in accordance with the provisions of Chapter 36.70C RCW and SCC 30.72.130.

FURTHER NOTICE IS GIVEN, that affected property owners may request the Snohomish County Assessor to make a change in valuation for property tax purposes notwithstanding any program of revaluation.

DATED this 9<sup>th</sup> day of October, 2018.

/s/ Debbie Eco, CMC  
Clerk of the Council

E-mailed: Tuesday, October 9, 2018  
Mailed: Wednesday, October 10, 2018

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 18-360

AFFIRMING THE AMENDED DECISION OF THE HEARING EXAMINER  
IN RE POINT WELLS URBAN CENTER, HEARING EXAMINER FILE NO. 11-101457 LU/VAR,  
11-101461 SM, 11-101464 RC, 11-101008 LDA, AND 11-101007 SP AND  
MODIFYING FINDINGS F.21 AND F.31

WHEREAS, BSRE Point Wells, LP (BSRE) applied to Snohomish County for approval of an Urban Center development at Point Wells; and

WHEREAS, Snohomish County Planning & Development Services Department recommended to the Snohomish County Hearing Examiner ("Hearing Examiner") that BSRE's applications be denied without an environmental impact statement because of substantial conflicts with County Code under SCC 30.61.220; and

WHEREAS, BSRE requested that the Hearing Examiner extend the expiration of its applications beyond June 30, 2018; and

WHEREAS, the Hearing Examiner held an open record hearing May 16, 2018, through May 24, 2018, and issued a decision on June 29, 2018; and

WHEREAS, BSRE petitioned for reconsideration on July 9, 2018; and

WHEREAS, the Hearing Examiner issued the Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement on August 3, 2018 ("Amended Decision"); and

WHEREAS, BSRE filed an appeal to Council on August 17, 2018, of the Hearing Examiner's Amended Decision; and

WHEREAS, appeal to Council is appropriate under SCC 30.72.070(1) and Council has jurisdiction over this closed record appeal except to the extent BSRE challenges denial of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance, which must be appealed to the state shoreline hearings board under SCC 30.44.250, not to Council as a closed record appeal; and

WHEREAS, Council held a closed record appeal hearing on October 3, 2018, to hear oral argument and to consider the appeal; and

WHEREAS, Council considered the following appeal issues raised by BSRE, as summarized, paraphrased, and numbered by Council staff for ease of reference:

1. The Hearing Examiner committed an error of law in applying SCC 30.34A.040(2), which limits building heights adjacent to certain residential zones, to this project.
2. The Hearing Examiner failed to follow applicable procedures by ignoring project changes submitted by BSRE to the Hearing Examiner in response to deficiencies identified in the June 29 decision regarding residential setbacks.

3. The Hearing Examiner committed an error of law and issued findings and conclusions not supported by the record with respect to BSRE's lack of diligence in delineating the Ordinary High Water Mark under SCC 30.62A.320.
4. The Hearing Examiner failed to follow applicable procedure by ignoring additional information and changes submitted by BSRE to the Hearing Examiner in response to deficiencies identified in the June 29 decision regarding the delineation of Ordinary High Water Mark.
5. The Hearing Examiner failed to follow applicable procedure by ignoring additional information and changes submitted by BSRE to the Hearing Examiner in response to deficiencies identified in the June 29 decision regarding the use of innovative development design to protect critical area functions and values (see SCC 30.62A.350).
6. The Hearing Examiner committed an error of law by concluding that additional building height and development capacity permitted through proximity to high capacity transit pursuant to SCC 30.34A.040 [2010] does not apply to this project.
7. The Hearing Examiner issued findings and conclusions that were not supported by the record regarding a lack of commitment by Sound Transit or Community Transit to provide passenger rail or bus rapid transit service to the project site.
8. The Hearing Examiner issued finding and conclusions that were not supported by the record regarding the potential for passenger ferry (aka water taxi) service to the project site.
9. The Hearing Examiner committed an error of law by concluding that the application did not document the necessity or desirability of additional height and development capacity permitted through proximity to high capacity transit pursuant to SCC 30.34A.040 [2010].
10. The Hearing Examiner committed an error of law by finding substantial conflict with county code regarding landslide hazards (SCC 30.62B) while a landslide deviation request was pending.
11. The Hearing Examiner issued findings and conclusions that were not supported by the record regarding landslide hazards.
12. The Hearing Examiner failed to follow applicable procedure by ignoring additional information and changes submitted by BSRE to the Hearing Examiner in response to deficiencies identified in the June 29 decision regarding landslide hazards.
13. The Hearing Examiner issued findings and conclusions that were not supported by the record regarding whether BSRE should be granted an extension of the application expiration deadline.
14. The Hearing Examiner failed to follow applicable procedure by ignoring additional information and changes submitted by BSRE to the Hearing Examiner in response to deficiencies identified in the June 29 decision regarding extension of the application expiration deadline.
15. The Hearing Examiner committed an error of law with respect to whether BSRE is entitled to refile its application pursuant to 30.34A.180(2)(f) [2007].
16. The Hearing Examiner committed an error of law by including BSRE's short plat application (No. 11-101007 SP) in the denial of the applications in the Amended Decision; and

WHEREAS, Council did not consider any appeal issues not raised in BSRE's written appeal or any evidence not in the record from the Hearing Examiner, consistent with SCC 30.72.110; and

WHEREAS, after hearing from Appellant and other parties of record, and following due deliberation, the Council affirms the August 3, 2018, Amended Decision of the Hearing Examiner, with certain findings modified as described below;

NOW, THEREFORE, ON MOTION:

Section 1. The Council incorporates the foregoing recitals as findings.

Section 2. The Council makes the following findings of fact and conclusions:

A. Finding F.21 of the Amended Decision is not supported by substantial evidence as written, and is modified to strike the last two sentences:

F.21 On March 30, 2016, BSRE requested a third extension.<sup>7</sup> PDS granted BSRE's request, extending the expiration to June 30, 2018. PDS notified BSRE of Amended Ordinance 16-004, which applied new expiration regulations to pending applications, including the Point Wells applications. PDS also advised BSRE that the applications could be heard by the Hearing Examiner if the alleged deficiencies were not remedied, though PDS would recommend denial. PDS told BSRE that it would receive no further extensions absent "extraordinary circumstances."<sup>8</sup>

As modified, Finding F.21 is supported by substantial evidence.

B. Finding F.31 of the Amended Decision is not supported by substantial evidence as written, and is modified to cite exhibit K-31 in footnote 11 instead of Exhibit K.32:

<sup>11</sup> Ex ~~K.32~~ K.31

As modified, Finding F.31 is supported by substantial evidence.

Section 3. The County Council enters its decision in the case of In Re Point Wells Urban Center, Hearing Examiner File No. 11-101457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-101007 SP as follows:

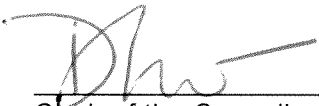
The Council hereby affirms the August 3, 2018, Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement with modifications, as provided in this Motion. Any language in the Examiner's Amended Decision in this matter that is contrary to this Motion is superseded by this Motion. In all other respects, the Council affirms the Findings, Conclusions, and Decision of the Examiner consistent with the scope of Council's jurisdiction in this closed record appeal under chapter 30.72 SCC.

DATED this 8<sup>th</sup> day of October, 2018.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
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Council Chair

ATTEST:

  
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Clerk of the Council

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