

**SNOHOMISH COUNTY COUNCIL
PROCEEDINGS FOR THE WEEK OF OCTOBER 1, 2018
WEDNESDAY, OCTOBER 3, 2018**

1:30 p.m. CLOSED RECORD APPEAL

Council considers a closed record appeal of the Snohomish County Hearing Examiner's August 3, 2018, Amended Decision Denying Extension and Denying Applications without Environmental Impact Statement in the case of Point Wells Urban Center, File No's. 11-101457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008 LDA, & 11-101007 SP, located at 20500 Richmond Beach Dr. NW, Edmonds, WA 98026

PRESENT:

Council Chair Wright
Council Vice-Chair Ryan (not present)
Councilmember Nehring
Councilmember Sullivan
Councilmember Low
Yorik Stevens-Wajda, Council Starr
Alethea Hart, Prosecutor's Office
Jacque St. Romain, Attorney for Applicant/Appellant
Anna Clark, Asst. Clerk of the Council
Debbie Eco, Clerk of the Council
*See below for names of persons providing oral argument

Chair Wright called the hearing to order at 1:30 p.m.

The clerk read the title of the closed record appeal into the record.

Chair Wright asked councilmembers for any disclosures. Councilmember Low stated he has reviewed the parties-of-record list and did not have any disclosures. Councilmembers Nehring, Sullivan, and Wright stated the same.

Yorik Stevens-Wajda, Legislative Analyst, provided a detailed staff report.

Chair Wright announced that Party-of-Record Tom McCormick notified Council the he objected to BSRE's supplemental written argument submitted September 7, 2018, and asked that Council strike or allow parties-of-record to respond. Chair Wright explained why Council will do neither. She stated the BSRE identified a new appeal issue regarding Estoppel and explained that Council will not consider that new issue.

Chair Wright announced that Mr. McCormick argued a new issue in his written argument submitted September 7, 2018. She explained Council will not consider that new issue. She also stated that Mr. McCormick included a photo in his written argument that does not appear to be a part of the Hearing Examiner's record currently before Council and will not be considered.

**Exhibit S-16 Minutes for Council Closed Record Appeal Hearing
Oct 3 2018**

PFN: 11-101457 LU

Chair Wright addressed submission of written documents today. She explained that the clerk will collect and keep in a separate file but will not be considered. Tom Mailhot, Party-of-Record, argued that the submissions are the prepared statements of parties-of-record and refer to the existing record and is not new information. Chair Wright consulted with Deputy Prosecuting Attorney Alethea Hart and determined to allow the documents to be distributed to councilmembers, but stated that the Council would not consider any new information in the documents, if there was any.

Chair Wright opened the hearing for oral argument. She explained that the appellant will be allowed 20 minutes, followed by parties-of-record who will be allowed three minutes each, and the appellant will then be allowed an additional five minutes for rebuttal.

Jacque St. Romain, Karr Tuttle Campbell, attorney for BSRE, provided oral argument encouraging the Council to reverse the Hearing Examiner's Decision.

The following parties-of-record provided oral argument in favor of the Hearing Examiner's Decision:

Robin McClelland, resident of city of Shoreline.

Jerry Patterson, resident of Richmond Beach, on the behalf of Tom McCormick, Party-of-Record resident of city of Shoreline.

Pearl Noreen, resident of the city of Shoreline.

Denis Casper, resident of Richmond Beach.

Barbara Twaddell, resident of city of Shoreline.

Robert Hauck, resident of the city of Shoreline.

Karen Briggs, resident of the town of Woodway.

Jack Malek, resident of Richmond Beach.

[Councilmember Sullivan left the hearing at 2:27 p.m. and returned at 2:30 p.m.]

John John, resident of city of Shoreline.

Domenick Dellino, resident of city of Shoreline.

Edith Loyer Nelson, resident of the city of Shoreline.

Janice Eckmann, resident of Richmond Beach.

George Mayer, resident of Richmond Beach.

Tracy Tallman, resident of city of Edmonds.

Kathryn ZuFall, resident of the city of Shoreline.

Tom Mailhot, resident of city of Shoreline.

Bill Krepick, resident of town of Woodway.

Jerry Patterson, resident of city of Shoreline

Carla Nichols, resident of town of Woodway.

Julie Taylor, City of Shoreline.

Ms. St. Romain provided rebuttal statements.

Chair Wright closed the oral argument portion of the hearing.

3:10 p.m. Pursuant RCW 42.30.140(2), Chair Wright recessed the Council into an Executive Session to discuss a quasi-judicial matter for approximately 15 minutes, with possible action to follow.

Chair Wright called the Council back to order at 3:25 p.m. and turned to council for discussion.

Councilmember Low made a motion to direct Council staff to draft a written motion consistent with the decision that Council discussed.

Mr. Stevens-Wajda walked Council through the 16 specific grounds for appeal (issues) as laid out in his staff report. The Council voted on each issue as follows:

- Issue 1: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 1. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 2: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 2. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 3: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 3. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 4: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 4. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 5: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 5. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 6: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 6. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 7: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 7. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 8: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 8. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.

- Issue 9: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 9. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 10: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 10. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 11: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 11. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 12: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 12. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 13: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 13 but finds that findings F.21 and F.31 are, in part, not supported by substantial evidence, and modifies finding F.21 to strike the last two sentences, and modifies finding F.31 to cite Exhibit K-31 in footnote 11 instead of Exhibit K-32. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 14: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 14. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 15: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 15. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.
- Issue 16: Councilmember Low made a motion to direct Council staff to prepare a written motion that affirms the Hearing Examiner on Issue 16. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.

Mr. Stevens-Wajda confirmed Council's direction according to the previous motions. He clarified that, with modification of the findings, the Council affirms the Hearing Examiner's overall conclusion to deny the extension of the application expiration deadline, regarding Issue 13. Chair Wright concurred.

Councilmember Low stated that while there were parts of two findings not supported by substantial evidence, those errors are harmless in light of the substantial evidence in the record that supports the totality of the Examiner's findings and conclusions denying BSRE's request for an extension of the application expiration. Councilmember Low further stated that he believed the Examiner did not abuse his discretion in denying extension, and moved that, with the modification of findings F.21 and F.31 as previously stated, the Council affirm the August 3, 2018, decision of the Hearing Examiner and direct staff to prepare a written motion to that effect. Councilmember Sullivan seconded the motion and it carried unanimously.

Chair Wright explained that this will be moved to Administrative Session October 8th to be ratified. She also noted that Councilmember Ryan had a conflict today, but he has expressed a desire to watch the hearing in its totality and weigh in next Monday.

Just prior to Mr. Stevens-Wajda's review of the issues, Councilmember Low made a motion to direct Council staff to draft a written motion. Councilmember Low withdrew that motion as it was the same motion but without the details of his latest motion directing staff to prepare a written motion.

Councilmember Low made a motion to move the prepared written motion to Administrative Session Monday, October 8th. Councilmember Sullivan seconded the motion and it carried unanimously by the four members present.

There being no further business, Chair Wright adjourned the Council for the day at 3:43 p.m.