

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 21-142

AFFIRMING THE HEARING EXAMINER'S DECISION ON REMAND DENYING APPLICATIONS WITHOUT ENVIRONMENTAL IMPACT STATEMENT, HEARING EXAMINER FILE NOS. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

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, the Hearing Examiner held an open record hearing May 16, 2018, through May 24, 2018, and issued an Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement on August 3, 2018; and

WHEREAS, BSRE filed an appeal to County Council ("Council") on August 17, 2018, of the Hearing Examiner's August 3, 2018 Amended Decision; and

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

WHEREAS, the Council entered a decision in the appeal, via Motion 18-360, affirming the August 3, 2018, Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement, with minor modifications to two findings; and

WHEREAS, on October 29, 2018, BSRE filed a Land Use Petition Act appeal in King County Superior Court, challenging the Hearing Examiner's Reconsideration Decision and Denial Decision, along with the Council's Decision on appeal; and

WHEREAS, on June 18, 2019, the King County Superior Court issued an "Order on BSRE Point Wells, LP's LUPA Petition Remanding Per SCC 30.34A.180(2)(f) (2007)" ("Remand Order"), providing that BSRE was entitled to "a one-time reactivation opportunity" under former SCC 30.34A.180(2)(f); and

WHEREAS, subsequent to the Remand Order, BSRE submitted additional and modified application materials to the county; and

WHEREAS, on May 27, 2020, Planning & Development Services and Public Works issued a second supplemental staff recommendation to deny the project applications under SCC 30.61.220 for substantial conflicts with County Code; and

WHEREAS, the Hearing Examiner held a continued open record hearing November 4 through November 6 and November 24, 2020 to consider the project application; and

WHEREAS, on January 29, 2021, the Hearing Examiner issued a decision approving Planning & Development Service's request to deny project approval, with prejudice, without performing an environmental impact statement; and

WHEREAS, BSRE filed an appeal to County Council on February 12, 2021, of the Hearing Examiner's January 29, 2021 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, the Council held a closed record appeal hearing on March 31, 2021, to hear oral argument, consider the appeal, and deliberate; and

WHEREAS, Council considered the appeal issues raised by BSRE in its written appeal to Council; 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 considering the appeal based upon the record and the argument of the applicant/appellant and parties of record, the County Council directed council staff to prepare a written motion to affirm the Hearing Examiner's January 29, 2021, decision and adopt the findings and conclusions therein;

NOW, THEREFORE, ON MOTION:

Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

1. The County Council adopts the findings and conclusions of the Hearing Examiner in the January 29, 2021, Decision on Remand Denying Applications without Environmental Impact Statement, File Nos. 11-101457 LU, 11-101461

SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI.


Section 2. The County Council affirms the Hearing Examiner's January 29, 2021, Decision on Remand Denying Applications without Environmental Impact Statement, File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI.

Section 3. With regard to the applicant's argument that SCC 30.61.220 violates state law, the council concludes that is not a basis to reject the Hearing Examiner's decision because the council does not have the subject matter jurisdiction to declare that county code provision contrary to state law in this quasi-judicial permit appeal.

Section 4. With regard to the applicant's argument concerning application expiration, the council considered this issue but finds that it does not need to reach it because the Hearing Examiner's decision is affirmed.


DATED this 5th day of April, 2021.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Megan Dunn
Acting Council Chair

ATTEST:



Debbie Eco, CMC
Clerk of the Council