

The logo for the Sno-King Environmental Protection Coalition features the text "Sno-King Environmental Protection Coalition" in a serif font, centered over a background image of a blue sky with white clouds.

Sno-King Environmental Protection Coalition

More details on the Point Wells decision

In what may be the end of an eight year effort to build over 3,000 housing units at Point Wells, the Hearing Examiner for Snohomish County issued a decision On Friday, June 29, 2018 denying a request by the developer, BSRE, for an extension of the June 30, 2018 expiration date of its Urban Center development applications. The decision also granted a request by Snohomish County Planning and Development Services (PDS) to deny BSRE's application without an environmental impact statement because of substantial conflicts with county code.

BSRE's request for extension of the June 30 expiration date

Decision: The Hearing Examiner denied BSRE's request for extension because BSRE did not exercise reasonable diligence in providing the information necessary to complete the application.

Examples of information submitted at the hearing to support this decision:

- PDS sent BSRE the first review completion letter on April, 2013, which identified 62 items that needed additional information and attention.
- After four years BSRE had still not comprehensively addressed the issues raised by the letter, even after PDS granted three extension requests. The last extension set a final deadline of June 30, 2018, more than five years after PDS' first completion review letter.
- With the June 30, 2018 deadline looming, BSRE turned in a substantial volume of new information in April and May, 2018. The new materials resolved some, but not all, issues. The Hearing Examiner stated, "This demonstrates BSRE could have done this work and resolved these issues sooner."
- The Hearing Examiner identified several "glaring examples" of BSRE's failure to process its applications diligently, including:
 - Failure to ascertain the "ordinary high water mark" until late spring 2018. Locating the ordinary high water mark identifies the area where

development cannot occur. From 2011 until the hearing dates in May, 2018, BSRE continued to propose an Urban Center with buildings placed too close to the ordinary high water mark. The Hearing Examiner concluded, "Waiting seven years to determine the area in which one can lawfully build is a failure of diligence at the least and dilatory at the most."

- Failure to resolve traffic issues with the City of Shoreline. According to the Hearing Examiner, "The lack of the necessary, critical, complete traffic corridor study is further evidence of a lack of reasonable diligence."
- Failure to obtain high capacity transit service, which is critical to justifying a 90 foot height bonus and waiting until April 2018 to prepare and submit requests for deviations and a variance.

The Hearing Examiner concluded: "Weighing the evidence and the totality of circumstances, the Hearing Examiner concludes that BSRE did not exercise reasonable diligence in the prosecution of its applications. Therefore, BSRE's request for another extension of its applications expiration date is therefore denied."

PDS's request that the application be denied without an environmental impact statement.

Decision: The Hearing Examiner granted PDS' request to deny the application because PDS identified some substantial conflicts with county code requirements.

Examples of information submitted at the hearing to support this decision:

- **County code requirements on maximum building height.** The maximum height allowed in an Urban Center is 90 feet. An additional 90 feet of height can be allowed if it is documented that the additional height is necessary and desirable and the project is located on a high capacity transit route or station.

The project plans included 21 buildings that were over the 90 foot height limit. While the Sounder commuter rail line crosses the property, the Hearing Examiner stated that BSRE did not attempt to document that the "additional height is necessary or desirable from a public, aesthetic, planning, or transportation standpoint" and concluded the buildings over 90 feet were in substantial conflict with county code.

- **Landslide hazard areas.** The county code states that "absent an approved deviation request, development must be set back from landslide hazard areas and their buffers by a distance half the height of the slope." Deviations from setback requirements are allowed only when the applicant 1) demonstrates there is no alternate location for the structure on the property; and 2) provides a geotechnical

report demonstrating the applicant's proposed setbacks provide equal protection to that provided by the standard minimum setbacks.

The project plans show multiple buildings located in a landslide hazard area but BSRE waited five years before attempting to address this issue. The deviation request submitted by BSRE on May 15, 2018, failed to show there were no alternate locations for buildings located in the hazard area and failed to prove the proposed buildings had equal or better protection. The Hearing examiner concluded that this is a substantial conflict with county code.

- **The sub-surface conditions section of the geotechnical report.** The geotechnical report did not include enough information to allow the county to confirm the site is suitable for the proposed development, though such confirmation is required by county code as part of the application. The Hearing Examiner found the missing information "is a substantial conflict with county code because virtually the entire site is susceptible to high liquefaction, a major public safety issue in a seismic zone like western Washington."
- **The buffer from ordinary high water mark (OHWM).** Marine waters must be protected by a 150 foot buffer where no development is allowed. At least four residential buildings are less than 150 feet from the OHWM. The Hearing Examiner concluded that "the residential buildings' intrusion on the marine buffer substantially conflicts with county code."

The multiple instances where the Hearing Examiner agreed that the application was in substantial conflict with county code were enough to grant PDS's request to deny the application without an environmental impact statement.

What's next?

BSRE has the right to ask the Hearing Examiner to reconsider the decision. That request must be submitted within 2 weeks of the date of the decision. We will let you know what happens next.

Make a donation

Sno-King Environmental Protection Coalition is asking for your financial help as we prepare for the inevitable court cases that will follow the Hearing Examiner's decision. Continuing our fight through the court system takes time and money. We can contribute the time but we need your help contributing the money.

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