



## Sno-King Environmental Protection Coalition

### Hearing Examiner Rejects Most of BSRE's Motion to Reconsider

The Snohomish County Hearing Examiner has issued a ruling on BSRE's motion to reconsider his June 29, 2018 ruling that denied their application for a 3,000 unit development at Point Wells. The [ruling on reconsideration](#) was issued on August 3, 2018.

The ruling on reconsideration rejects most of BSRE's objections and leaves the application dead pending any further appeals or other actions by BSRE.

#### Findings on Residential Setbacks

The Hearing Examiner originally ruled that [SCC 30.34A.040\(2\)\(a\)](#) limited the height of proposed buildings in the Upper Village area (the area east of the railroad tracks) because they were too close to neighboring residential zones in Woodway. BSRE argued that this section of the code only mentions specific Snohomish County residential zones, not the Woodway zones cited by the HE, so it can't be used to limit building heights in that area of the property.

On reconsideration, the HE stated that the clear intent of the code was to limit the height of buildings near any residential zones no matter what jurisdiction controlled those zones. He found BSRE's argument would lead to "absurd results that contradict the otherwise clear intent of the code", and upheld his original ruling.

#### Findings on the Ordinary High Water Mark

The Hearing Examiner originally ruled that BSRE placed several of its proposed buildings within 150 feet of the Ordinary High Water Mark (OHWM) when no development is allowed in that buffer zone. BSRE argued that they found out about the need to identify the OHWM only recently when the County pointed out it was missing from their plans.

On reconsideration, the HE stated the code requirement to use the OHWM was unambiguous and has been in the code since 2007, that it was BSRE's responsibility to understand the requirements for a design that meets County code, and upheld his original ruling.

## **Findings on the 90 Foot Height Limit and High Capacity Transit**

The normal height limit for the development is 90 feet, but the developer is allowed to build up to 180 feet if the site is near a high capacity transit route or station and the developer can document that the additional height is necessary or desirable. While BSRE's plans showed 21 buildings over the 90 foot limit, the Hearing Examiner originally ruled that BSRE had not submitted any documentation showing the extra height was either necessary or desirable. BSRE argued that since the County had not asked for such documentation, the HE could not base a ruling on it.

On reconsideration, the HE stated that it is the HE's job to determine code compliance and the HE cannot just ignore non-compliance whether or not the County previously mentioned the issue to the developer. The application does not show the taller buildings are necessary or desirable, that is in conflict with County code, so the HE upheld his original ruling.

## **Findings on Landslide Hazard Area**

Snohomish County Code section [30.62B.340](#) states that no buildings are allowed in a landslide hazard area unless it can be shown there is no alternate location for the buildings, and the developer can prove they will be able to complete geotechnical modifications that will make the buildings just as safe as if they were located outside the area. The Hearing Examiner originally ruled that BSRE had not fulfilled either of these conditions. BSRE argued that their project architect had since reviewed the site plan again and concluded that there was no other location for the buildings that was as good as the proposed location.

On reconsideration, the HE stated that it was too late for BSRE to submit more documentation because the application had expired on June 30, 2018, so the HE upheld his original ruling.

## **Findings on Request for Further Extension**

The Hearing Examiner originally ruled that he would not grant BSRE any further extensions because BSRE has not been diligent over the last five years in resolving issues raised by the County. BSRE argued that they were led to believe that the County would

grant them another extension, and that all the work they had accomplished in the last 3 months proved they would work diligently to complete the application if they were granted more time.

On reconsideration, the HE stated that he did not have authority to grant an extension unless he remanded the application back to the County for further processing. Since the HE denied application instead of remanding it, the HE could not grant an extension. The HE also stated that even if he had remanded the application, he would not have granted an extension because BSRE had not been diligent in trying to complete the application over the last five years. The HE upheld his original ruling.

## **What's Next**

The Hearing Examiner originally ruled that if BSRE did not like the ruling on the motion, they could appeal to Superior Court. BSRE cited sections of the County Code they claim allowed them to appeal to the County Council before going to court.

On reconsideration, the HE agreed with BSRE and changed the decision to indicate that the first level of appeal was the County Council, with a deadline of August 17, 2018 for filing an appeal. Any appeal to the Council must be limited to issues previously raised in the motion to reconsider.

At BSRE's prompting, the HE also clarified that his original ruling was to deny the application "without prejudice". Under the 2011 version of Snohomish County Code in effect when the application was submitted, denial without prejudice gave BSRE the right to reactivate the application while keeping the old vested development rules. The right to reactivate was removed in 2013 and we believe the HE indicated that BSRE must follow the current code in this area. We've asked the County to explain their position on this question but have not yet received an answer.

This is a critical question: if the County agrees with our position, then BSRE's only option if they want to proceed with development is to submit a new application using current development rules which give the City of Shoreline and the Town of Woodway much more control over the size of the development. We will let you know when we get that answer.

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## **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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