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## Sno-King Environmental Protection Coalition

### **BSRE Keeps It Going - Files Appeal with County Council**

As expected, BSRE hasn't taken "No" for the final answer. After having their development application denied by the Snohomish County Hearing Examiner (HE), then denied again when they asked the Hearing Examiner to reconsider the decision, BSRE has now taken the next step by filing an appeal with the County Council.

According to the Snohomish County Code, the appeal to the Council can only focus on issues already raised in the motion to reconsider the Hearing Examiner's decision. BSRE must argue that the HE came to a conclusion not supported by the record established in the hearing, made a mistake in applying the law, or that BSRE has new information which could not have been introduced at the hearing. The appeal will result in a public hearing where BSRE, the County, and the public will be able to make short presentations before the Council makes their decision. The date for the hearing has not yet been set.

#### **What is "without prejudice"?**

The Hearing Examiner had the choice of denying the application either "with prejudice" or "without prejudice". An application denied with prejudice is dead, and the developer must wait a year before submitting another similar application. A denial without prejudice allows the developer to submit a similar application without the one year wait period. The HE's ruling on reconsideration clarified that he denied BSRE's application without prejudice, giving BSRE a path to fix the issues found by the HE and quickly submit a new development plan.

One of the more interesting questions raised by BSRE is whether the HE's ruling that the application was denied without prejudice also grants BSRE the right to retain all their vested Urban Center development rights.

The HE seemed to rule against that right when he said the provision in the 2011 version of the County Code that preserved vesting was no longer in effect because it had been

removed in a 2013 update to the Code. The County is almost certain to use this argument before the Council.

BSRE is arguing that they were vested to that provision of the 2011 code so it doesn't matter that it was later removed - their vesting preserves their right to use the 2011 version of the code.

This sounds like an issue that will eventually end up in court before we get a final decision.

## **Why do we care about "without prejudice"?**

If BSRE wins this argument and is able to submit a new application using their vested development rights, then we will be right back where we were a year ago with a large development being proposed for a piece of land that does not have the access needed to support the number of vehicle trips the development will generate, and no process for the City of Shoreline to control what happens with the development.

If BSRE loses this argument, they can still submit a new application, but that application would have to follow the County's Urban Village development rules which give the City much more control over what can be developed.

It's much better for our neighborhood if the City has more control over the development since we have a much better chance of working cooperatively with our own City Council to come to good decisions than we do in talking to the Snohomish County Council.

Stay tuned for more updates when we find out the date of the hearing.

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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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Sno-King Environmental Protection Coalition is a non-profit 501(c)(3) charitable organization.

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