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Sno-King Environmental Protection Coalition

Judge Gives BSRE One More Chance

Superior Court Judge John McHale has issued a disappointing ruling on BSRE's appeal of Snohomish County's denial of BSRE's project application for Point Wells. Judge McHale agreed with BSRE's argument that the County must give BSRE a six month window to resubmit their project application under the 2011 Urban Center rules.

BSRE's argument was based on a section of the Snohomish County Code that was in place when BSRE submitted their plans in 2011, but which the County deleted from the Code in 2013. The section in question allowed BSRE a six month window to resubmit an Urban Center application that was denied by the Hearing Examiner. The County argued that since that section is not part of the current County Code, BSRE could no longer rely on it.

Judge McHale based his ruling on the Review Completion Letter the County sent to BSRE in October of 2017. That letter listed a long series of problems in the application and indicated that BSRE must resolve the problems before application could be processed any further. The letter also included a reference to the disputed section, but instead of stating that the section was no longer in effect, the letter stated that it was, in fact, still in effect. Judge McHale recognized the significant public interest in the resolution of the application process, and while he agreed that the public interest carries great weight, he felt the County's message to BSRE that the section was still in effect outweighed the public interest.

Six month period starts now

Snohomish County also argued that even if the six month window was ruled as still valid, BSRE had missed the window because it has been more than six months since the Hearing Examiner denied the application. Judge McHale disagreed with the County because the Hearing Examiner explicitly stated that BSRE could not resubmit the application. Judge McHale ruled that it was not reasonable to expect BSRE to spend money to fix the application when the County clearly stated they would not accept it. Judge McHale set the beginning of the six month period as the date of his ruling; the six month period will run out later this year in mid-December.

Where does that leave things?

In an unexpected twist, Judge McHale did not issue any ruling on the five areas of "substantial conflict" the County identified in denying the application. His reasoning was that it did not make sense to spend any effort on resolving these issues since BSRE was likely to address these areas in any resubmitted plans.

It appears that the County is not going to appeal the ruling. The County is assuming that BSRE will attempt to fix and resubmit the application. The County has been consistent in telling BSRE that they must remove the "substantial conflicts" or the application will not be approved, so it seems that the County has decided that either the resubmitted application will meet all their requirements so the project should be allowed to move forward, or that BSRE will not be able to fix all the problems in six months and the application will be denied again.

One of the more interesting conflicts is BSRE placing the Upper Village buildings in a landslide hazard area when the County Code says that's permitted only if there is no other location on the property where the buildings could be located. If the County holds fast to their statement that no building can be placed in the hazard area, that would require a complete redesign of the project, making it even harder to complete it by December.

More worrisome is that the County did not include any consideration of traffic issues when listing their "substantial conflicts". The County felt they had other easily stated conflicts so they didn't want to get into the much more complex issue of how much traffic the project would generate and how much traffic Shoreline roads could handle before becoming gridlocked. If BSRE does manage to resubmit their application, traffic issues will again become a major point of contention between BSRE, the County, and the City of Shoreline.

Many of us were hoping that the Court would put in one more stake toward the end of the project, but that didn't happen. Instead we will have to wait and see what happens in the second half of this year.

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