



**Snohomish County**

**Planning and Development  
Services**

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**Dave Somers**  
*County Executive*

January 19, 2018

Gary D. Huff  
Karr Tuttle Campbell  
701 Fifth Avenue, Suite 3300  
Seattle WA 98104

Subject: Point Wells Applications  
File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP

Dear Mr. Huff,

I am writing to respond to the January 12, 2018, letter you sent on behalf of BSRE to the Snohomish County Department of Planning and Development Services (PDS) concerning the Point Wells Applications (File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP) (the "applications").

Your January 12, 2018, letter was sent in response to a PDS letter dated January 9, 2018, in which PDS notified you that it would process the applications based on your current application submittals and forward it for hearing examiner review and decision prior to June 30, 2018. In addition, your January 12, 2018, letter included a request for extension of the June 30, 2018, expiration deadline for the applications. The permit application extension request has been forwarded to the PDS Director for consideration and response, and will be addressed in a separate document. In the interim, PDS will respond to the claims included in your January 12, 2018, letter.

Your January 12, 2018, letter describes discussions held at a November 13, 2017, meeting between BSRE representatives and County representatives. In your letter, you claim statements in PDS's letter, dated January 9, 2018, contradict recent discussions between representatives of BSRE and PDS. As detailed below, PDS disagrees with your characterization of the discussion and the alleged contradictions.

First, there is no dispute or contradiction that June 30, 2018, is the application expiration date. When the January 8, 2018, submittal date was established, PDS notified BSRE in clear terms in the October 6, 2017, letter that the date was set "to allow adequate time for PDS to review whether the issues identified in [the] Review Completion Letter have been sufficiently addressed." The January 8, 2018, submittal date was established in order for PDS to conduct final review and processing of the application materials, coordinate notice and hearing for the Design Review Board process, draft a PDS recommendation, provide required public notice, and schedule a multi-day public hearing with sufficient time for the Hearing Examiner to render a decision prior to the June 30, 2018, application expiration date.

Second, there is no dispute that at the November 13, 2017, meeting you circulated and discussed an anticipated timeline by which your consultants could respond to the Code compliance issues identified in the October 6, 2017, Review Completion Letter. In your January 12, 2018, letter you claim that BSRE demonstrated that the January 8<sup>th</sup> date "was not feasible" for your consultants. Aside from noting that your proposed timeline would not result in a complete resubmittal by the January 8, 2018, date, PDS staff did not opine on feasibility or endorse your proposed timeline at the meeting on November 13, 2017.

Third, at the November 13, 2017, meeting, BSRE representatives expressed interest in pursuing extensions of both the January 8, 2018, submittal date, and the June 30, 2018, application expiration date. PDS representatives recommended bifurcating the extension requests. As to the January 8, 2018, submittal date, PDS representatives recommended that BSRE submit a written extension "now" and that it be reflected in the public record. Instead, BSRE did not submit a written request to extend the January 8, 2018, submittal date until the December 29, 2017, letter to PDS.

In addition, because BSRE's consultant timeline did not propose to provide all necessary application materials to PDS by January 8, 2018, PDS representatives suggested in the November 13, 2017, meeting that BSRE submit the portions of the application materials your consultants had completed by the January 8<sup>th</sup> date and provide a date certain by which the remaining materials would be submitted to PDS in order to show BSRE was making a good faith effort in pursuing the resubmittal. Instead, on December 29, 2017, PDS received a letter from BSRE that not only failed to include any responsive application materials, but also failed to provide a date by which the remaining supplemental materials will be provided. Your letter, dated December 29, 2017, provided "this letter confirms BSRE is in process of preparing its revised submittal and as soon as we receive update from our consultants we will inform you of the new target date." Thus, two and half months after the October 6, 2017, Review Completion Letter, you failed to deliver even a proposed date by which you would provide the application resubmittal let alone substantive application materials responsive to the Review Completion Letter.

On this issue, it is significant to note that the BSRE's most recent submittal on April 17, 2017, which triggered the October 6, 2017, Review Completion Letter, failed to fully, or even partially, address a majority of the Code compliance issues that were initially identified in the April 12, 2013, Review Completion Letter. See Table 2, page 13 of the October 6, 2017, Review Completion Letter. In other words, BSRE has had over four years to provide information addressing a majority of the issues which were identified in the October 6, 2017, Review Completion Letter by PDS for a second time as being deficient.

Finally, in the November 13, 2017, meeting you are correct that PDS representatives did reference SCC 30.70.140(2)(a) as a potential option for BSRE to pursue if it was to decide to submit a request for extension of the June 30, 2018, application expiration deadline. PDS did not, however, offer support or suggest that one is appropriate in this case. Rather, PDS responded to your inquiry of whether there is a Code provision for seeking an extension. SCC 30.70.140(2)(a) provides the PDS director authority to grant a discretionary extension of an application expiration period. However, PDS did not make any promises or assurances, verbally or in writing, that an extension request would be granted and we note that your January 12, 2018, letter makes no claim that BSRE was promised or assured of being granted a further extension. As set forth in the County Code and previously communicated by PDS staff, the extension is a discretionary decision by the PDS director.

In your January 12, 2018, letter, you include a history of recent events but fail to provide the broader history and context for the current status of the applications. The timeline below represents a more comprehensive illustration of the permit application history.

February 4, 2011	BSRE submitted to PDS a Short Plat Application (11-101007 SP) and Land Disturbing Activity Permit Application (11-101008 LDA).
March 4, 2011	BSRE submitted to PDS a Land Use Permit Application for Site Plan (PDS 11-101457 LU), Shoreline Management Permit Application (11-101461 SM), and Retaining Wall – Commercial Permit Application (11-101464 RC).
April 12, 2013	PDS Review Completion Letter to BSRE. In the letter, PDS identified information BSRE needed to provide in order for PDS to further evaluate the proposal, which included no less than 62 discrete issues with the initial application.
March 21, 2014	BSRE Letter Requesting 1 <sup>st</sup> Extension of the Application Expiration Date.

- January 9, 2018 PDS Letter to BSRE. In the letter, PDS informs BSRE that having received no revised application materials by January 8, 2018, PDS will proceed with final review of materials submitted to date and forward a recommendation to the hearing examiner for a public hearing on the applications as previously indicated in the November 15, 2016, and October 6, 2017, letters from PDS to BSRE.
- January 12, 2018 BSRE Letter to PDS Re: Application Resubmittal Process and Request for a 4<sup>th</sup> Extension of the Applications. In the letter, BSRE makes a request for a 4<sup>th</sup> extension of the application expiration period for a minimum of 2 years.

Since BSRE submitted its application materials seven years ago, PDS has worked cooperatively and in good faith with BSRE in the application submittal and review process, and will continue to do so. However, BSRE has failed to address multiple County Code compliance issues with its application materials despite PDS repeatedly identifying Code compliance concerns and requesting BSRE submit materials resolving these issues. BSRE has allowed years to pass without addressing Code compliance issues with its application, which is well documented in PDS's Review Completion Letters dated April 12, 2013, and October 6, 2017. PDS has repeatedly and consistently communicated in writing to BSRE regarding the upcoming application expiration deadline and potential outcomes if BSRE did not provide adequate application submittals to address Code compliance issues and the information needed to continue environmental review.

PDS notes that BSRE is not precluded from providing the resubmittal materials identified in the October 6, 2017, Review Completion Letter. While materials provided after January 8, 2018, may not be included in the PDS recommendation due to the timing of BSRE's proposed resubmittal, it does not preclude BSRE from submitting application materials that may be considered by the hearing examiner in making a determination whether the applications satisfy the County Code requirements to a degree necessary to continue environmental review. Under SCC 30.61.220, the hearing examiner has authority to determine whether or not the application substantially conflicts with adopted plans, ordinances, regulations, and laws. The hearing examiner also has authority to remand the application for further environmental review and provide an additional extension of the expiration period under SCC 30.70.140(2)(b).

Respectfully,



Paul MacCready, Principal Planner/Project Manager