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SNOHOMISH COUNTY HEARING EXAMINER

BSRE POINT WELLS, LP,)	
)	NO. 11-101457 LU
Appellant)	
)	BSRE POINT WELLS, LP'S
v.)	REPLY IN SUPPORT OF ITS
)	MOTION TO STAY HEARING
SNOHOMISH COUNTY PLANNING AND)	
DEVELOPMENT SERVICES,)	
)	
Respondent.)	

BSRE Point Wells, LP (“BSRE”) hereby submits this reply in support of its Motion (the “Motion”) requesting a stay of the hearing tentatively scheduled for November of 2020 in order to allow the Court of Appeals to rule on the two legal issues that are outstanding. There are only four issues of conflict alleged by the County. Exhibit X-3. Thus, the legal issues on appeal comprise half of the issues before the Hearing Examiner.

In its response to the Motion, Snohomish County failed to assert that it would be harmed at all by the stay and failed to recognize what the impact will be on all parties if the hearing before the Hearing Examiner is conducted in November while the Court of Appeals appeal is still pending. Similarly, Snohomish County failed to recognize that a brief extension will not cause the parties (or the neighboring jurisdictions) to waste resources when the underlying legal issues have not been resolved. The best way to promote clarity and judicial and party economy and to preserve resources is to grant a stay to allow the Court of Appeals to issue a ruling on the two legal issues that are outstanding. This will ensure that the hearing before the Hearing Examiner is based on a

1 correct understanding of the law and may allow the hearing to be more focused and briefer in
2 duration (and to address just half of the issues raised by the County). For all of these reasons, as
3 well as those set forth in the Motion, BSRE’s request for a stay should be granted.

4 A. The Appealed Issues Determine the Scope of the Project.

5 Over the course of the County’s review of BSRE’s Land Use Applications,¹ the County’s
6 requirements have shifted and the County has continued to request greater and greater detail.
7 Despite this, BSRE has worked diligently and in good faith to resolve the issues identified by the
8 County. In order to develop Point Wells² as an Urban Center and satisfy the minimum FAR³
9 requirements, BSRE must be able to construct buildings up to 180 feet high. See Exhibit V-18.
10 For this reason, BSRE requested that the King County Superior Court issue a determination on
11 whether the former SCC 30.34A.040(1) allows additional height up to 180 feet where the property
12 is located adjacent to a high capacity transit route. However, the King County Superior Court was
13 silent on this issue. Exhibit U-1. This issue is absolutely vital to understanding how Point Wells
14 can be developed. Therefore, BSRE filed a timely appeal of this issue to the Court of Appeals.

15 Similarly, whether the residential setback set forth in the former SCC 30.34A.040(2)(a)
16 applies is of vital importance. It determines whether taller buildings can be constructed in the
17 Upper Plaza, impacts the scope of the project as a whole, and further determines whether the
18 project is even feasible. At some point, with the restrictions the County is trying to impose, the
19 density becomes so low that Point Wells is not a buildable property. Therefore, BSRE filed a
20 timely appeal of this issue to the Court of Appeals as well to determine the project’s feasibility and
21 what buildings are allowed and where.

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23
24 ¹ File numbers 11-01457 LU/VAR, 11-101461 SM, 11-101464 RC, 11-101008 LDA, and 11-101007 SP
(collectively, the “Land Use Applications”). Exhibits A-1 – A-3, A-6, and A-11–A-27.

25 ² The land owned by BSRE in unincorporated Snohomish County is referred to herein as “Point Wells.”

26 ³ The County’s most recent analysis of the FAR is a new issues raised for the first time in the County’s
27 May 27, 2020 Supplemental Staff Recommendation. Exhibit X-3. BSRE will provide evidence at the hearing or in a
separate motion regarding why that FAR analysis should be disregarded.

1 Because these issues are so important to the scope and size of the project at Point Wells,
2 BSRE sought additional time to file the revised Land Use Applications with the County.
3 Specifically, BSRE requested time to get a determination from the Court of Appeals before
4 revising the project. Attachment 4 to County's Response. The County refused to allow BSRE any
5 additional time, despite knowing that the answer to those two legal issues would drastically impact
6 the proposed project. Attachment 5 to County's Response.

7 Without having a legal determination while preparing the revised Land Use Applications,
8 BSRE was forced to proceed with the interpretation of former SCC 30.34A.040(1) and
9 30.34A.040(2) that it believes to be correct. The County's refusal to allow BSRE any additional
10 time (as well as its refusal to work in good faith with BSRE) has led to the exact predicament we
11 are in now. There are two separate legal proceedings in the same matter, which, if no stay is
12 granted, may lead to inconsistent results and will certainly lead to a waste of judicial, Hearing
13 Examiner and party resources.

14 B. A Stay Protects Valuable Party, Judicial and Hearing Examiner Resources.

15 A stay is necessary here to preserve valuable resources of the parties, the courts, and the
16 Hearing Examiner, as well as that of the surrounding jurisdictions. The County argues that a stay
17 would somehow expend valuable resources of the neighboring jurisdictions. County Response at
18 10. However, this is plainly not the case. During the stay, there would be no need for the
19 surrounding jurisdictions, the County, the Hearing Examiner or BSRE to spend any money on this
20 project. The parties and surrounding jurisdictions would not need to engage in a multi-day hearing
21 before the Hearing Examiner that may very well include irrelevant arguments about legally
22 unnecessary issues. Instead, the parties would simply wait to receive the ruling from the Court of
23 Appeals. Once the Court of Appeals issues its ruling on the two outstanding legal issues, then the
24 parties and surrounding jurisdictions could proceed to the hearing before the Hearing Examiner.
25 At that time, the hearing would be focused only on the remaining alleged areas of conflict, which
26 might not include the building height and residential setback. If those two issues are resolved by
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1 the Court of Appeals in BSRE's favor, then two of the variance requests submitted by BSRE would
2 also not have to be discussed at the hearing.⁴ This would possibly reduce the scope of the hearing
3 by half. This change would make the hearing more efficient, thus requiring less time and money
4 from the parties, the Hearing Examiner, and the surrounding jurisdictions. It is illogical to proceed
5 with the hearing now, where half of the issues to be discussed may be irrelevant. To do so would
6 certainly waste time and resources of all parties involved.

7 C. If the Hearing Proceeds, There May Be Two Simultaneous Appeals.

8 The stay will also preserve party and judicial resources because it will prevent two
9 simultaneous (and potentially conflicting) appeals. If the hearing proceeds in November prior to
10 the Court of Appeals issuing its ruling, and the Hearing Examiner finds an area of substantial
11 conflict, then BSRE may have to appeal the ruling to the County Council and/or Superior Court in
12 order to preserve its rights. This could lead to two different appeals of the same issues proceeding
13 simultaneously. Not only would this cause all of the parties and surrounding jurisdictions to waste
14 valuable resources, but it may also result in conflicting decisions in the two appeals. It would also
15 be a substantial drain on judicial resources and cause even further delays in the handling of the
16 Land Use Applications.

17 D. Snohomish County Has Shown No Harm in Granting Stay.

18 The County has failed to show that any harm would be caused by delaying the hearing
19 before the Hearing Examiner until after the Court of Appeals issues its ruling. The County will
20 not have to take any further action with respect to the Land Use Applications and will be able to
21 simply wait until the Court of Appeals issues its ruling. Similarly, the Hearing Examiner will not
22 need to waste time, resources and economy by moving forward with a potentially overbroad
23 hearing. The Court of Appeals' ruling will provide clarity to the parties prior to starting the hearing
24 before the Hearing Examiner. The interests of judicial economy, clarity and preserving valuable
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26 ⁴ The variance requests based on building height of greater than 90 feet and the height of buildings in the
27 Upper Plaza were solely filed as an interim measure while the appeal is pending. Exhibits V-18, V-19.

1 resources all weigh in favor of granting a stay in this matter until the Court of Appeals issues its
2 ruling.

3 **CONCLUSION**

4 While BSRE has followed all of the applicable appeals procedures to obtain a decision on
5 two vital issues, the County has refused BSRE's request for an extension and tried to force BSRE
6 to act quickly, without recognizing BSRE's rights of appeal. Now the County is using the fact that
7 the Court of Appeals has not yet ruled on the legal issues as grounds for the extraordinary remedy
8 of denial of the Land Use Applications under SCC 30.61.220. This, combined with the County's
9 refusal to even engage in discussions with BSRE about the Land Use Applications, shows a lack
10 of good faith on the part of the County.

11 In the interests of fairness, judicial economy, clarity and efficiency, BSRE respectfully
12 requests that the stay be granted to allow the parties to have an appellate interpretation of the two
13 issues of building height related to high capacity transit and the residential setback before
14 proceeding on the County's requested denial of the Land Use Applications. The County has not
15 shown that the parties would be harmed in any way by granting the stay.

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17 Dated this 9th day of July, 2020.

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22 _____
23 Jacquie E. St. Romain, WSBA #44167
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CERTIFICATE OF SERVICE

I, Heather L. Hatrup, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Ave., Suite 3300, Seattle, WA 98101. On this day, I caused to be filed with Snohomish County Planning and Development Service a true and correct copy of the foregoing document. I caused the same to be served on the parties listed below in the manner indicated.

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Laura Kisielius
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- Via U.S. Mail
- Via Hand Delivery
- Via Electronic Mail
- Via Overnight Mail
- CM/ECF via court’s website

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- Via U.S. Mail
- Via Hand Delivery
- Via Electronic Mail
- Via Overnight Mail
- CM/ECF via court’s website

Executed on this 9th day of July, 2020, at Seattle, Washington.

/s/ Heather L. Hatrup
Heather L. Hatrup
Assistant to Jacque E. St. Romain

From: [Heather Hattrup](#)
To: [Davis, Kris](#); [Davis, Kris](#)
Cc: [Otten, Matthew](#); [Kisielius, Laura](#); [Jacque St. Romain](#); [Douglas A. Luetjen](#); [J. Dino Vasquez](#); [Gary Huff](#)
Subject: BSRE Point Wells v. Snohomish County Planning and Development; 11-101457 LU - BSRE Reply
Date: Thursday, July 9, 2020 9:03:05 AM
Attachments: [DOCS-#1327274-v1-BSRE Reply ISO Motion to Stay Hearing.PDF](#)

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Good morning Kris,

Attached please find *BSRE Point Wells, LP's Reply in Support of its Motion to Stay Hearing*.

Best regards,

Heather Hattrup

Assistant to Jacque E. St. Romain

Heather Hattrup

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