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**MEMORANDUM**

**TO:** Snohomish County Council  
**FROM:** Yorik Stevens-Wajda, Senior Legislative Analyst  
**DATE:** March 30, 2021  
**SUBJECT:** Appeal of Hearing Examiner Decision on Remand: Point Wells Urban Center  
Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007  
SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-  
00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

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This memorandum provides an overview of the closed record appeal hearing scheduled for March 31, 2021, under the provisions of [Chapter 30.72](#) of the Snohomish County Code (SCC).

The record for the council's consideration of this appeal is limited to that which was before the Hearing Examiner and written argument timely filed with the council. Issues on appeal are limited to those raised by the appellant that are within the jurisdiction of the council. At the hearing, the council will take oral argument pertaining to the existing record. No new testimony will be taken and no new evidence or exhibits will be accepted unless specifically requested by the council.

A closed record appeal is a quasi-judicial hearing and councilmembers must abide by the appearance of fairness doctrine, codified in chapter [42.36](#) RCW.

**Timeline**

<b>February 14, 2011 March 4, 2011</b>	Applicant submits development applications. ( <a href="#">Hearing Examiner (H.E.) Exhibit A.1-3</a> )
<b>February 2, 2014</b>	Planning & Development Services issues Determination of Significance under the State Environmental Policy Act (SEPA). ( <a href="#">H.E. Exhibit E.1</a> )
<b>April 10, 2014 April 21, 2015 March 31, 2016</b>	Planning & Development Services grants permit application extensions.
<b>April 17, 2017</b>	Applicant submits revised plans ( <a href="#">H.E. Exhibit A.4-10</a> )

<b>October 6, 2017</b>	Planning & Development Services and Public Works issue review completion letter ( <a href="#">H.E. Exhibit K.31</a> )
<b>April 17, 2018</b>	Planning & Development Services and Public Works issue staff recommendation to deny the project applications (N.1)
<b>April 27, 2018</b>	Applicant submits revised materials ( <a href="#">H.E. Exhibit A.28-35</a> )
<b>May 9, 2018</b>	Planning & Development Services and Public Works issue supplemental staff recommendation to deny the project applications ( <a href="#">H.E. Exhibit N.2</a> )
<b>May 15, 2018</b>	Applicant submits revised materials ( <a href="#">H.E. Exhibit A.36-40</a> )
<b>May 16-24, 2018</b>	Hearing Examiner conducts open record hearing
<b>August 3, 2018</b>	Hearing Examiner issues Amended Decision Denying Extension and Denying Application Without Environmental Impact Statement ( <a href="#">H.E. Exhibit R.4</a> )
<b>August 17, 2018</b>	County Council receives an appeal of the Hearing Examiner's August 3, 2018 Denial Decision ( <a href="#">H.E. Exhibit S-1</a> )
<b>October 8, 2018</b>	County Council affirms Hearing Examiner's August 3, 2018 Denial Decision with minor modifications (Motion 18-360)
<b>October 29, 2018</b>	Applicant files Land Use Petition Act appeal in King County Superior Court
<b>June 18, 2019</b>	King County Superior Court issues Remand Order ( <a href="#">H.E. Exhibit U.1</a> )
<b>December 12, 2019 December 16, 2019 October 29, 2020</b>	Applicant submits revised materials ( <a href="#">H.E. Exhibit V.1-19, Z.4-11</a> )
<b>May 27, 2020</b>	Planning & Development Services and Public Works issue second supplemental staff recommendation to deny the project applications ( <a href="#">H.E. Exhibit X.3</a> )
<b>November 4-6 and November 24, 2020</b>	Hearing Examiner conducts open record hearing
<b>January 29, 2021</b>	Hearing Examiner issues decision approving Planning & Development Service's request to deny project approval, with prejudice, without performing an environmental impact statement. ( <a href="#">Council Exhibit AA.2</a> )
<b>February 12, 2021</b>	The County Council receives an appeal of the Hearing Examiner's January 29, 2021 decision. ( <a href="#">Council Exhibit AA.1</a> )
<b>March 31, 2021</b>	Closed record appeal hearing scheduled 1:30 p.m.

## **The Development Application**

The applicant, BSRE Point Wells, LP (BSRE), submitted a series of permit applications in 2011 ([H.E. Exhibit A.1-3](#)) related to an urban center development at Point Wells, and has since submitted several packages of revised or supplemental application materials ([H.E. Exhibit A.4-40](#)).

The proposed 61-acre site is in unincorporated Snohomish County along the Puget Sound shoreline, north and west of the Town of Woodway, and north of the City of Shoreline.

## **Planning & Development Services Staff Recommendations**

On April 17, 2018, the Snohomish County Departments of Planning and Development Services and Public Works issued a staff recommendation ([H.E. Exhibit N.1](#)) that recommended denying the project applications based on eight conclusions contained in the staff recommendation.

On May 9, 2018, the Snohomish County Departments of Planning and Development Services and Public Works issued a staff recommendation ([H.E. Exhibit N.2](#)) that continued to recommend denying the project applications based on five of the eight grounds from the April 17 recommendation while not continuing to rely on the remaining three grounds.

On May 27, 2020, the Snohomish County Department of Planning and Development Services issued its Supplemental Staff Recommendation No. 2 ([H.E. Exhibit X-3](#)) that recommended denial of certain applications and denial of the overall project under SCC 30.61.220 without EIS.

## **The Hearing Examiner Decision**

The Snohomish County [Hearing Examiner](#) held the continued open record hearing on the project applications, the subject of this appeal, on November 4, 6, and 24, 2020, and accepted public comments at the hearing. Based on the comments received, the written record, and applicable law, the Hearing Examiner issued a decision on January 29, 2021. The decision granted the request of Planning & Development Services to deny project approval without performing an environmental impact statement ([Council Exhibit AA.2](#))

## **Appeal of the Hearing Examiner Decision**

On February 12, 2021, the county council received an appeal of the Hearing Examiner's January 29, 2021 decision. ([Council Exhibit AA.1](#))

### Requirements for filing a Type 2 appeal

Requirements for filing a Type 2 appeal are presented in SCC [30.72.080](#):

An appeal must be in writing and contain:

- A detailed statement of the grounds for appeal and the facts upon which the appeal is based, including references to specific hearing examiner findings or conclusions, and to exhibits or oral testimony in the record
- Argument in support of the appeal
- Contact information

The grounds for an appeal are limited to the following:

- The decision exceeded the hearing examiner's jurisdiction;
- The hearing examiner failed to follow the applicable procedure in reaching the decision;
- The hearing examiner committed an error of law; or
- The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record.

#### Summary of grounds for this appeal

The appeal letter requests reversal of the Hearing Examiner's decision on the grounds that the Hearing Examiner failed to follow applicable procedure, that the decision reflected an error of law, and/or was not supported by substantial evidence. In addition, BSRE asserts SCC 30.61.220 violates state law and that an application expiration date should have been established or an extension granted.

#### **Responses and Rebuttals**

The council has received the following written arguments from the Applicant and Parties of Record.

- Applicant's appeal letter ([Council Exhibit AA.1](#))
- Written argument from a Party of Record ([Council Exhibits AA.3-6](#))
- Applicant's written rebuttal ([Council Exhibit AA.7](#))

#### **Council jurisdiction for this appeal**

Appeal to Council is appropriate under SCC [30.72.070](#) and Council has jurisdiction over this closed record appeal, except to the extent BSRE appeals shoreline substantial development permits and permit rescissions, shoreline conditional use permits, and shoreline variances, which must be appealed to the state shoreline hearings board under SCC [30.44.250](#), not to Council as a closed record appeal. See SCC [30.72.070\(1\)](#).

#### **Decision Options**

At the conclusion of closed record public hearing, the council must issue a decision in writing. The decision shall set forth findings and conclusions, which may include those of the Hearing Examiner, that support the council's decision.

The council's options, pursuant to SCC [30.72.120\(2\)](#):

- Affirm the Hearing Examiner's decision
- Reverse the Hearing Examiner's decision either in whole or in part
- Remand the matter to the Hearing Examiner for further proceedings in accordance with the council's findings and conclusions.

The council must issue a written decision within 60 days of the last day of the appeal period and within 15 days of the council's hearing, unless the applicant agrees to an extension. In this case the council's written decision should be issued no later than Monday, April 13, 2021.

cc: Alethea Hart, Deputy Prosecuting Attorney