



August 26, 2019

Stacey Chen  
Assistant State Auditor 3  
Office of the Washington State Auditor  
40 Lake Bellevue Drive, Suite 123  
Bellevue, WA 98005

Re: City of Shoreline Audit for 2018

Dear Ms. Chen:

In connection with the Washington State Auditor's audit of the City of Shoreline for the period January 1, 2018 through December 31, 2018, below is a listing of litigation existing as of December 31, 2018, litigation currently pending as of the date of this response; and, if necessary, a few matters with the potential for litigation. Please note that the listing excludes litigation brought by the City of Shoreline where there is no counterclaim against the City. External counsel has not been assigned or associated unless indicated. "WCIA" refers to the Washington Cities Insurance Authority, Shoreline's self-insured risk pool administrator, which provides defense under that risk pool coverage where listed.

With the exception of those shown below, the City Attorney's Office is aware of no other claims or assessments, or threatened claims, as of the date of this response that would likely have an unfavorable outcome if filed.

#### **I. Open Cases Pending End of 2018**

##### **BSRE Point Wells v. Shoreline, Growth Management Hearings Board Case No. 11-3-0007.**

This is an appeal of Ordinance No. 596 passed on February 14, 2011 which modified the City's Comprehensive Plan by imposing a maximum daily trip limit on Richmond Beach Drive. Since the time of filing, this case has been extended several times upon stipulation with the petitioner, BSRE Point Wells (BSRE). Recently, the City elected not to extend the case and the Growth Management Hearings Board set a mid-October 2018 hearing on the merits. The City filed a dispositive motion which reduced the number of issues. After this motion, the parties decided to re-institute settlement negotiations and filed a motion in September 2018 to allow for this to occur. The Growth Board held a hearing in February 2019 and issued its decision on March 7, 2019, holding in the City's favor.

BSRE filed an appeal in April 2019 in Snohomish County Superior Court. No court date has been set in this matter.

**Ronald Wastewater District v. Olympic View Water and Sewer District, Snohomish County, King County, City of Shoreline, and Town of Woodway, King County Superior Court Cause No. 16-2-153331-3**

This case is a Complaint for Declaratory Judgment and Injunctive Relief and Petition for Writ of Statutory and Constitutional Review filed on June 29, 2016. This case seeks to resolve a dispute between the Ronald Wastewater District (“Ronald”) and Olympic View Water and Sewer District (“Olympic View”) in regards to overlapping service areas. The City of Shoreline’s interest in the case is based on its desire to assume that portion of Ronald within the Point Wells area of Snohomish County and to potentially annex this same area. Summary Judgment Motions were filed in March 2017 seeking to resolve some of the issues. The Superior Court issued its decision on those motions on May 9, 2017, ruling in Ronald’s (and the City’s) favor. The Town of Woodway filed for certification of the May 9 ruling so as to allow for immediate appeal and also sought a stay of the remaining issues pending resolution by the appellate courts. The Superior Court granted the certification and the stay. On June 5, 2017, Woodway and Olympic View filed for direct review by the Washington Supreme Court. On June 6, 2018, the Supreme Court denied the request for direct review and the matter was transferred to the Court of Appeals for hearing. On January 15, 2019, the Court of Appeals heard argument in this case and, on July 1, 2019, issued a decision in favor of Woodway and Olympic View. Both the City and Ronald sought and were denied reconsideration of the Court’s decision. Ronald plans to file a discretionary petition for review with the Washington State Supreme Court. Shoreline City Council has authorized the City to support Ronald’s filing. The City retained outside legal counsel (Dorsey & Whitney) to assist in this litigation.

**City of Shoreline v. Boundary Review Board of Snohomish County, King County Superior Court Case No. 17-2-20821-3 City of Shoreline v. Boundary Review Board of Snohomish County, King County Superior Court Case No. 17-2-20821-3**

This is an appeal of *City of Shoreline’s Notice of Intent to Assume Ronald Wastewater District*, Snohomish County Boundary Review Board (BRB) Case No. 02-2017, in which the BRB denied the City’s request to assume that portion of the Ronald Wastewater District within the Point Wells Area of Snohomish County.

On August 7, 2017, the City filed an appeal of the BRB’s denial to the King County Superior Court and subsequently sought to consolidate this matter with Ronald’s Declaratory Action (See Case No. 16-2-153331-3 above) as well as to stay the appeal to align with Ronald’s case. At this same time, the Town of Woodway sought a change of venue, seeking to move the case to Snohomish County Superior

Court. In September 2017, the Superior Court denied consolidation and a change of venue but granted the City's requested stay. As noted in the case below, the Town of Woodway filed an appeal of the Court's denial of its motion for a change of venue and the granting of the City's stay.

On October 19, 2017, the Town of Woodway filed a motion for discretionary review of the King County Superior Court's September 2017 Order to the Court of Appeals, Division I, Case No. 77449-2-1. The Court of Appeals heard argument on the motion before a commissioner on January 19, 2018. On January 29, 2018, the Commissioner denied Woodway's request for discretionary review, and Woodway then moved for reconsideration before the entire panel of the Court of Appeals. On July 6, 2018, the Court of Appeals denied reconsideration closing this portion of the matter; the matter still exists in King County Superior Court pending the resolution of the Ronald Declaratory Action before the Court of Appeals (See Case No. 16-2-153331-3 above).

No financial implications are expected to arise from this matter.

**Christina Bresina v. City of Shoreline, Sarah Roberts, and Carmen McDonald, King County Superior Court Cause No. 17-2-066665-6; Court of Appeals, Division I, Case No. 787543**

This case relates to the City of Shoreline's contracted prosecuting attorney, Sarah Roberts. In June 2017, a complaint was filed alleging violations of state and federal law due to the filing of unredacted police reports that contained social security numbers. Based on the City's contract, Ms. Roberts is required to defend the matter and has retained legal counsel in that regard. WCIA has assigned an attorney and the City receives documents in the case.

On June 29, 2018, the King County Superior Court issued a ruling in favor of Ms. Robert's on a motion for summary judgment. On July 30, 2018, Bresina filed an appeal to the Court of Appeals. In March 2019 the Court issued an order terminating review and in May 2019 a mandate.

Given that Ms. Roberts' contract indemnified the City, there were no financial implications from this matter.

## II. Cases Filed and/or Closed in 2018

**Olympic View Water & Sewer District v. City of Shoreline, et al, Snohomish County Superior Court Cause No. 17-2-01636-31 consolidated with Olympic View Water & Sewer District v. City of Shoreline, et al, Snohomish County Superior Court Cause No. 17-2-11183-31 and Snohomish County Superior Court Case No. 18-2-03999-31.**

Case 17-2-01636-31: On February 22, 2017 Olympic View Water & Sewer District filed a Petition for Review appealing the Growth Management Hearings Board's January 25, 2017 Final Decision and Order in GMHB Case No. 16-3-0004c. The case dealt with the City's and the Ronald Wastewater Districts appeal of Snohomish County's approval of an amendment to Olympic View's Comprehensive Plan. The Growth Board's initial decision along with compliance decisions consistently found in the City's and Ronald's favor. The City filed a Motion for Change of Venue in order to coordinate this appeal with Ronald's Declaratory Judgment action (see above, KC Superior Court Cause No. 16-2-153331-3) but the Snohomish County Superior Court denied that motion.

Case 17-2-11183-31: On November 15, 2017, Olympic View Water & Sewer District filed a Petition for Review appealing the Growth Management Hearings Board's October 19, 2017 Order Finding Continuing Non-Compliance in Case No. 16-3-0004c.

On December 20, 2017, on a stipulation motion of the parties, the Snohomish County Superior Court consolidated these two matters for all further proceedings. The Case continued under Case No. 17-2-01636-31.

Case 18-2-03999-31: This case appealed the Growth Board's April 2018 Second Order of Non-Compliance.

Olympic View subsequently approached the City and the Ronald Wastewater District for execution of a stipulated dismissal of all matters. The Snohomish County Superior Court issued an Order of Voluntary Dismissal on October 24, 2018, dismissing all cases.

**Olympic View Water & Sewer District v. City of Shoreline. CPSGMHB Case No. 18-3-0001.**

This matter is an appeal filed on January 11, 2018, to the Growth Management Hearings Board. In the appeal, Olympic View challenges the City's adoption of the 2017 Comprehensive Plan Docket, but only in regards to Amendment No. 5. The Amendment provides that the City of Shoreline should replace the name of the Ronald Wastewater District in all necessary places of the Comprehensive Plan, to become effective upon formal assumption of the District. A hearing on this matter was held on July 19, 2018. The Growth Management Hearings Board issued its Final Decision and Order on August 27, 2018 finding that Olympic View failed to

prove the City has in any way violated the goals and requirements of the GMA through the adoption of Ordinance No. 802 and dismissed the petition. No appeal was filed, and this case is closed with no financial implications.

**King County v. City of Shoreline, City Hearing Examiner Code Enforcement Case No. CE17-003**

This was an appeal of a code enforcement action pertaining to clearing and grading without a permit filed in February 2018. King County was the property owner but not the violators. A Stipulation & Order of Dismissal was issued on April 3, 2018, based on an agreement with King County to restore the area. King County was separately seeking reimbursement from the violators.

**BSRE Points Wells LP v. Snohomish County, Snohomish County Hearing Examiner File No. 11-101457 LU/VAR, et al/County Council Motion 18-360; appealed to King County Superior Court, Case No. 18-2-27189-4.**

This is an appeal of an order terminating the applications of BSRE Point Wells (BSRE) for the development of an Urban Center in southwest Snohomish County. The County Hearing Examiner terminated the applications and the Snohomish County Council affirmed that termination. On August 3, 2018, BSRE filed a Land Use Petition (LUPA) in King County Superior Court. The City of Shoreline filed for, and was granted, intervenor status on behalf of Snohomish County. On June 18, 2019, the King County Superior Court issued its decision, ruling only on one issue – that BSRE should have been given the opportunity to “reactivate” its applications within a six-month period of time. The City requested, and was denied, reconsideration since the Court did not rule on the substantive issues. As of the date of this letter, BSRE has not yet reactivated its applications. On July 30, 2019, BSRE filed a Notice of Appeal with the Court of Appeals, challenging both the King County Superior Court’s June 18 ruling along with the denial of reconsideration.

**New Cases Filed in 2019**

**Mary Derig v. City of Shoreline, Shoreline District Court, King County, King County Superior Court Case No. 19-2-05873-1SEA**

This personal injury complaint, filed on March 5, 2019, took place on King County owned property at the King County District Court - Shoreline Division. The Plaintiff voluntarily dismissed the City from all claims against it on April 11, 2019.

**Elias Godifay, and minors E.E.A. and M.E., by and through their guardian ad litem Nebiat Yishak, v. King County, City of Shoreline, and Tyrus Robert Gilbertson; Pierce County Superior Court No. 19-2-06130-3**

This multi-million-dollar Complaint for Damages case was filed March 12, 2019 and involves Shoreline Police Officers (providing police services to the City via a contract with King County Sheriff's Department) engaged in a high-speed vehicle pursuit in the early morning hours. The vehicle they were pursuing, driven by Tyrus Robert Gilbertson, ran a red light at an intersection on Aurora Avenue North and North 155th, where he collided with a vehicle driven by Elias Godifay, who suffered life-threatening injuries. WCIA tendered, and King County accepted defense of this matter given the indemnification provision of the City's Contract. Discovery is currently underway with a trial tentatively scheduled for March 2020. There are no financial implications expected to arise towards the City.

**Steven and Denise Kellett, Jonathan Foral, Cameron McVie and Jennifer Haffner v. City of Shoreline; King County Superior Court No. 19-2-05648-7SEA.**

This Complaint for Specific Performance, Injunction, Damages and Declaratory Judgment case was filed on February 27, 2019. This action pertains to the City's decision to terminate the dredging of Hidden Lake, an artificial lake created in the 1930s-40s by the damming of Boeing Creek, given the high cost of such maintenance. Without dredging, Hidden Lake will return to its natural state – a forested wetland. In the 1990s, prior to incorporation, King County secured maintenance easements across property of the plaintiffs to perform dredging. The City abandoned those easements when it terminated dredging. Plaintiffs assert that the easements require the City to maintain Hidden Lake for their benefit in perpetuity. A summary judgment hearing is currently scheduled for November 2019. If the City does not prevail, the financial implications will be the cost of dredging in perpetuity; approximately \$75,000 every two years.

### **III. Potential Litigation**

#### **Development Activity**

Given the increase in permit activity in the City, with new development projects (both infill development in residential zones and projects within the upzoned light rail station subareas), the City Attorney's Office anticipates code enforcement activity will increase, potentially resulting in appeals of that activity to the City Hearing Examiner. The City Attorney is already aware of a few potential matters dealing with critical areas and vegetation (tree) removal that may result in an appeal. In addition, developers may challenge conditions imposed on them during permit review and, based on the controversy with the adoption of the planned action ordinance for the subareas, opponents may seek to prevent projects by challenging



their designations as planned action projects. Also, issues surrounding easements and plat restrictions may arise. Lastly, increased activity may result in conflicts arising with neighboring property owners for which either a hearing examiner appeal or a LUPA appeal to the court would follow.

**Point Wells – Snohomish County**

As shown above in several cases, the City has an interest in the future development of the Point Wells area of Snohomish County given its adjacency to the City's northern border. The City and the Town of Woodway have been engaged in negotiations to come to agreement about Point Wells. This may result in more litigation with BSRE and Snohomish County and/or issues pertaining to annexation.

**Interurban Trail Bicycle Incident**

On June 4, 2018, the City received a notice of tort claim from Robert Green related to hand fractures he sustained while riding on the Interurban Trail near Highway 99 and 160<sup>th</sup> Street. Seattle City Light is also named in this tort claim. Mr. Green is seeking \$258,000 in damages. The claim was tendered to WCIA; no lawsuit has yet been filed.

**Innis Arden**

Innis Arden is a large subdivision in the northwest part of the City of Shoreline. This subdivision, which dates back to the 1940s, has several covenants that create, at times, conflict with the City's tree conservation and critical areas regulations given the need for the homeowners to abide by view covenants. At present there is at least one permit application which the Innis Arden HOA is monitoring for tree removal required by covenants that is under review. While there has been no actual threat of litigation, the covenant-regulation conflict may produce one in the near future.

Sincerely,



Julie Ainsworth-Taylor  
Assistant City Attorney

cc: Debbie Tarry, City Manager  
John Norris, Assistant City Manager  
Sara Lane, Administrative Services Director  
Mark Gregg, Finance Manager