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BEFORE THE  
GROWTH MANAGEMENT HEARINGS BOARD  
OF CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

BSRE Point Wells, LP,

Petitioner,

vs.

CITY OF SHORELINE,

Respondent,

Case No. 11-3-0007

**CITY OF SHORELINE'S  
RESPONSE TO RICHMOND  
BEACH ADVOCATES' MOTION  
TO INTERVENE**

**I. RELIEF REQUESTED**

The City of Shoreline ("City") respectfully requests that this Board deny Richmond Beach Advocates' ("RBA") Motion to Intervene.

**II. STATEMENT OF FACTS**

BSRE Point Wells L.P. ("BSRE") is the owner of a 61-acre strip of waterfront land in unincorporated Snohomish County known as "Point Wells." This property is located just outside of the city limits of the City of Shoreline. On April 11, 2011 BSRE filed a Petition for Review challenging the City's adoption of an amendment to Policy PW-12 of the Point Wells Subarea

1 Plan.<sup>1</sup> On May 6, 2011, BSRE and the City filed with this Board a Request for Settlement  
2 Extension so that the parties could pursue settlement negotiations. The parties have filed 16  
3 extensions to continue these settlement negotiations in order to allow them to undertake a  
4 Transportation Corridor Study and mitigation negotiations.<sup>2</sup> On January 20, 2015, the City  
5 received RBA's Motion to Intervene in the above-entitled action.  
6

### 7 III. STATEMENT OF ISSUES

8 Whether the Board should grant RBA's Motion to Intervene when it fails to set forth a  
9 basis for demonstrating that intervention is appropriate pursuant to WAC 242.03.270 and CR 24?

### 10 IV. LEGAL ARGUMENT

#### 11 A. RBA's Has Failed to Provide a Sufficient Showing that Intervention is 12 Appropriate.

13 The Board's Rules of Procedure at WAC 242-03-270(1) state that, "Any person at  
14 any time may by motion request status as an Intervenor in a case." WAC 242-02-270(2)  
15 states in part, "[I]n determining whether a person qualifies as an Intervenor, the presiding  
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18 <sup>1</sup> BSRE filed a Petition for Review of the City's amendment of Policy PW-12, challenging the  
19 external consistency of the policy under the GMA and the process of adoption. Amended PW-12  
provides:

20 Policy PW-12 In view of the fact that Richmond Beach Drive between NW 199th  
21 St. and NW 205th St. is a local road with no opportunities for alternative access to  
dozens of homes in Shoreline and Woodway, the City designates this as a local  
22 street with a maximum capacity of 4,000 vehicle trips per day. Unless and until 1)  
Snohomish County and/or the owner of the Point Wells Urban Center can provide  
23 to the City the Transportation Corridor Study and Mitigation Plan called for in  
Policy PW-9, and 2) sources of financing for necessary mitigation are committed,  
the City should not consider reclassifying this road segment.

24 <sup>2</sup> On April 10, 2014, the Washington Supreme held that BSRE's permits to develop the property  
25 in Snohomish County as an Urban Center were vested permits. See *Town of Woodway v.*  
*Snohomish County*, 180 Wn.2d 165; 322 P.3d 1219 (2014).

1 officer shall apply any applicable provisions of law and may consider the applicable  
2 superior court civil rules (CR) of this state.” Pursuant to WAC 242-03-270(2), “The  
3 granting of intervention must be in the interests of justice and shall not impair the orderly  
4 and prompt conduct of the proceedings.”

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6 CR 24(a) states that:

7 Upon timely application anyone shall be permitted to  
8 intervene in an action: . . . (2) when the applicant claims an  
9 interest relating to the property or transaction which is the  
10 subject of the action and he is so situated that the disposition  
11 of the action may as a practical matter impair or impede his  
12 ability to protect that interest, unless the applicant’s interest  
13 is adequately represented by existing parties.

14 “The motion shall state the grounds for which intervention is sought.” CR 24(c).

15 RBA has failed to provide a sufficient basis for intervention. Pursuant to CR  
16 24(a), RBA has failed to show that its claimed interest relates to the subject of the action  
17 in this matter as required by CR 24(a)(2). Although the meaning of “interest” is broadly  
18 interpreted and requires flexibility on a case-by-case analysis so as to balance the relative  
19 concerns of the prospective intervenor, the original parties to the action, and the public, in  
20 the efficient resolution of controversies; the interest which the intervenor seeks to protect  
21 must still be one recognized by law. *Westerman v. Carey*, 125 Wn.2d 277, 303 (1994).

22 RBA states that the “prime interest to RBA are [sic] the traffic impacts on  
23 Richmond Beach Drive that will be generated by the Point Wells development.” Motion  
24 to Intervene at 4. The development of Point Wells and its related traffic impacts,  
25

1 however, are not issues before this Board.<sup>3</sup> Similarly, RBA's stated desire to intervene in  
2 order to have this Board make a determination that "Point Wells could generate no more  
3 than 4000 ADT" is beyond the jurisdiction of this Board and the issues in this case.<sup>4</sup>  
4  
5 Motion to Intervene at 5. Finally, RBA's assertion that "the lack of determination of the  
6 issues before the Board . . . has an impact on the negotiating position of the parties, and of  
7 RBA" and that a determination would "add strength and credibility to RBA's efforts,  
8 [because] it would change the dynamics of negotiations between the City and RBA, and it  
9 would influence the City Council when Council is presented with BSRE's Transportation  
10 Corridor Study, a proposed settlement agreement, or proposed comprehensive plan  
11 amendments" such considerations are not "interests" that relate to the issues raised by  
12 BSRE<sup>5</sup> in this case and therefore are not a basis for intervention.

13  
14 B. Intervention is Not in the Interests of Justice

15 The City understands and is sympathetic to the citizens that live near the site of the  
16 proposed Point Wells development in the Richmond Beach area and their concerns  
17 regarding the impact of the proposed Point Well's development. Allowing RBA to  
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19 <sup>3</sup> RCW 36.70A.300(1) provides that the Board order "shall be based exclusively on whether or not  
20 a state agency, county, or city is in compliance with the requirements of [the GMA], [the  
21 Shoreline Act] as it relates to adoption or amendment of shoreline master programs, or [SEPA] as  
22 it relates to adoption of plans, development regulations, and amendments thereto, under RCW  
23 36.70A.040 or chapter 90.58 RCW."

24 <sup>4</sup> Additionally, it should be noted that PW-12 does not limit Point Wells to 4000 ADT as stated by  
25 RBA, but instead classifies a portion of Richmond Beach Road as a local street and requires BSRE  
to conduct a Transportation Corridor Study and Mitigation Plan called for in Policy PW-9, and  
commit to sources of financing for necessary mitigation.

<sup>5</sup> With its Petition for Review, BSRE raised three issues. Issue 1 assert external consistency  
violations based on RCW 36.70A.100. Issue 2 and Issue 3 assert procedural violations based on  
RCW 36.70A.130(2)(a)-(b).

1 intervene into this case so that it may advance its "strategy" to place "leverage" on BSRE,  
2 however, is not within either requirements or the spirit of the intervention rule. The City  
3 is responsible for enforcing and defending its comprehensive plan policies. Intervention  
4 by RBA would interfere with the City's ability to defend its policy and result in  
5 preventing BSRE and the City from continuing to negotiate a resolution. This would  
6 impair the City's ability to protect the City's interests in this appeal. While RBA may  
7 believe that forcing this case forward would allow it to obtain "leverage" against BSRE to  
8 compel it to reduce the size of the development, and hence traffic counts, the City  
9 respectfully disagrees with that position and has chosen to pursue the path of negotiations  
10 with BSRE. This path allows BSRE to conduct and conclude a Transportation Corridor  
11 Study and Mitigation Plan, and provide a development agreement that will provide a  
12 binding commitment and a source of funding to incorporate the necessary mitigations, all  
13 in accordance with Policy PW-12.  
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16 Finally, allowing RBA to intervene to stop negotiations and place the issue  
17 before this Board is not only antithetical to this Board's preference to have parties resolve  
18 their disputes where possible, it would actually be contrary to the interests of justice.  
19 Because BSRE and the City are treating Policy PW-12 as being in place for purposes of  
20 negotiations, no purpose would be served by forcing the parties to stop negotiations so  
21 that the Board may determine BSRE's challenge to Policy PW-12. RBA simply cannot  
22 demonstrate that its interest in having the policy upheld is not being adequately protected  
23 by the City in this case. As such, RBA's intervention would actually impede a resolution  
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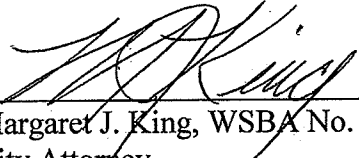
1 of this action.<sup>6</sup> This would also prejudice the City by requiring the City to expend its  
2 limited public resources to defend the policy before the Board, rather than allowing the  
3 City to use its resources to further the purposes and requirements of Policy PW-12  
4 through the negotiation process.  
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## 6 VI. CONCLUSION

7 RBA has failed to provide any persuasive basis to support its Motion to Intervene. It has not  
8 articulated an interest that relates to the issues before the board in this matter. CR 24(a)(2).  
9 Even if the Board finds that RBA has set forth such an interest, RBA has failed to show that the  
10 City will not adequately represent that interest. CR 24(a)(2). Finally, RBA intervention in this  
11 matter would prejudice the City and impede a resolution of this case. Accordingly, RBA's  
12 Motion to Intervene should be denied.  
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14  
15 DATED this 30<sup>th</sup> of January, 2015

16  
17 CITY OF SHORELINE

18   
19 Margaret J. King, WSBA No. 34886  
20 City Attorney  
21 Julie Ainsworth-Taylor, WSBA No. 36777  
22 Assistant City Attorney  
23 Attorneys for Defendant City of Shoreline

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25 <sup>6</sup> RBA's statement that Policy PW-12 provides them with certainty that "Point Wells could generate no more than 4000 ADT" over that portion of the classified road is an inaccurate characterization of the Policy and ignores the remainder of the Policy that provides that the 4000 ADT street classification is subject to the requirement that the City receive a Transportation Corridor Study and Mitigation Plan as well as a related commitment to fund any necessary mitigation policy –both of which are the subject of the ongoing negotiations of the parties.