

Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Tuesday, November 03, 2015 2:57 PM
To: Countryman, Ryan
Cc: Gretchen Brunner; Richard Schipanski; White, Clay; Olson, Erik; Brown, Mark A.; Thomsen, Steven; Bloodgood, Jim; Fogard, Bobann; Tom Mailhot
Subject: A Private Contract Bus Service is not "High Capacity Transit" so the Building Height Limit Remains 90 Feet

Ryan,

Documents that I received recently in response to a public records request show that BSRE might try to provide a private contract bus service for Point Wells, perhaps to satisfy the transit compatibility requirements of DPW Rule 4227 and the Transportation Element of the County's Comprehensive Plan. It is uncertain whether a private contract bus service can satisfy those requirements.

I. A Private Contract Bus Service is not "High Capacity Transit" so the Building Height Limit Remains 90 Feet

Regardless of whether a private contract bus service might satisfy the transit compatibility requirements of DPW Rule 4227 and the Transportation Element of the Comprehensive Plan, a private contract bus service will not satisfy the "high capacity transit" requirement of SCC 30.34A.040(1), which prescribes 90 feet as the maximum building height unless certain conditions are met, including a "high capacity transit" condition.

According to SCC 30.34A.040(1) (2011 version),

"The maximum building height in the UC zone shall be 90 feet. A building height increase up to an additional 90 feet may be approved [by the hearing examiner] under SCC 30.34A.180 when the additional height is documented to be necessary or desirable when the project is located near a high capacity transit route or station and the applicant prepares an environmental impact statement . . ." (emphasis added)

As defined in the Transportation Element of the County's Comprehensive Plan (in both the 2008 and 2015 versions),

"High Capacity Transit (HCT)" is "Any transit technology that operates on separated right-of-way and functions to move large numbers of riders, such as buses, light rail, commuter rail, and passenger-only ferries."

A private contract bus service is not "high capacity transit" unless it "operates on separated right-of-way." Given the constraints of Richmond Beach Drive and Richmond Beach Road, having a separated right-of-way for buses is not possible. Therefore, a private contract bus service will not constitute "high capacity transit" for purposes of SCC 30.34A.040(1). Accordingly, BSRE will continue to be restricted to a maximum building height of 90 feet at Point Wells.

Per SCC 30.34A.180 (2011 version), an Urban Center application cannot be approved unless, among other things, "the development complies with [County Code] requirements," and "the proposal is consistent with the comprehensive plan." It would be contrary to the County's Development Code and Comprehensive Plan to permit BSRE to build buildings taller than 90 feet that are not located near a separated high capacity transit right-of-way. Moreover, per State law, it would be unlawful for the County to disregard the definition of "high capacity transit" in its Comprehensive Plan. See RCW 36.70A.121's mandate that, "[e]ach county and city ... shall perform its activities ... in conformity with its Comprehensive Plan."

II. GMHB Decision

The GMHB has weighed in on the "high capacity transit" issue. In its 2011 decision dealing with the County's rezoning of Point Wells as an Urban Center, the GMHB stated that, "Even if the King County Metro bus line which now terminates half a mile from Point Wells were extended to Point Wells in the future to serve the anticipated population, this would not be express or high-capacity service." *City of Shoreline, et al., v. Snohomish County*, CPSGMHB Coordinated Case Nos. 09-3-0013c and 10-3-0011c, Corrected Final Decision and Order, page 16 (May 17, 2011). The GMHB also stated that, "The Board agrees with petitioners that a "highly efficient transportation system linking major centers" is not satisfied by providing van pools to a Metro park-and-ride two and a half miles away. Nor is "high capacity transit" satisfied by an urban center on a commuter rail line without a stop. There is nothing efficient or multi-modal about an urban center designation that could result in an additional 12,860 car trips per day through a two-lane neighborhood street, or that relies for high-capacity transit on an unusable commuter rail line and van pools."

III. "High Capacity Transit" in Other County Code Provisions

In addition to not satisfying the Comprehensive Plan's definition of "high capacity transit," a private contract bus service is not the type of "high capacity transit route" contemplated in SCC 30.34A.085 or SCC 30.91U.085 (2011 versions), "such as light rail or commuter rail lines, regional express bus routes, or transit corridors that contain multiple bus routes."

It is unnecessary to look to the above County Code provisions for guidance, because the Comprehensive Plan's definition of "high capacity transit" is dispositive (see I. above). But if the County Code provisions were considered, the outcome would be the same: a private contract bus service is not "high capacity transit" for purposes of SCC 30.34A.040(1), and accordingly, the maximum building height at Point Wells is 90 feet.

IV. "High Capacity Transit" Must Exist at the Time of Permitting

Per SCC 30.34A.040(1), the County may approve building heights greater than 90 feet only "when the project is located near a high capacity transit route or station." The high capacity transit route or station must exist at the time of permitting. A "planned" route or station does not meet the SCC 30.34A.040(1) criterion to get an extra 90 feet of building height.

A plain reading of SCC 30.34A.040(1) reveals that there must be a high capacity transit route or station at Point Wells before a permit can be approved for building heights in excess of 90 feet:

"A building height increase up to an additional 90 feet may be approved . . . when the project is located near a high capacity transit route or station . . ."

The above text doesn't say, when the project is located near an "existing or planned" high capacity transit route or station. It is significant that in other sections of the County's Urban Center Development Code, the words "existing or planned" are used, but not so in SCC 30.34A.040(1). See, for example, SCC 30.34A.085 (Access to public transportation), which provides:

"Business or residential buildings within an urban center either: (1) Shall be constructed within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter rail lines or regional express bus routes or transit corridors that contain multiple bus routes; . . ." (emphasis added.)

See also SCC 30.21.025 and SCC 30.91U.085, both employing the words "existing or planned."

If the County Council had intended to permit an extra 90 feet of building height for buildings near "planned" transit routes or stations, the word "planned" would be found in SCC 30.34A.040(1). As noted, the word "planned" is not found in SCC 30.34A.040(1).

It is completely reasonable and consistent for the County Code to require (via SCC 30.34A.040(1)) that, to gain approval to construct buildings taller than 90 feet, the project must at the time of permitting be located near an existing high capacity transit route or station, and yet allow (via the more lenient SCC 30.34A.085) urban center buildings up to 90 feet if constructed within one-half mile of existing or planned stops or stations for high capacity transit routes. The two requirements serve different purposes. In essence, the rules are saying: We'll grant you an urban center permit to build buildings up to 90 feet in height if all the buildings are near existing or planned high capacity transit stops, but we won't let you build buildings taller than 90 feet unless at the time of permitting a high capacity transit route or station near the project already exists.

V. Conclusion

Based on the above, we respectfully request that the Department of Planning and Development Services convey to BSRE that a private contract bus service will not satisfy the "high capacity transit" requirement of SCC 30.34A.040(1), and accordingly, building heights at Point Wells cannot exceed 90 feet.

Thank you.

Tom McCormick