Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Friday, May 12, 2017 4:56 PM
To: Countryman, Ryan
Cc: Rowe, Tom; Mock, Barb; Ze'ev Stein; Gretchen Brunner; Douglas Luetjen; Richard Schipanski; Gary Huff; McCrary, Mike; Dobesh, Michael; MacCready, Paul; Matt Otten; Cummings, Jason; Uddin, Mohammad; Olson, Erik; Brown, Mark A.; Rachael Markle; Eric Faison; Bill Willard; Phil Thompson; John John; Tom Mailhot; Jerry Patterson
Subject: Defects in BSRE's Point Wells resubmission

Ryan,

The County's May 10, 2017, letter to Mr. Huff (http://snohomishcountywa.gov/DocumentCenter/Home/View/43702) identifies a host of serious shortcomings in BSRE's application to develop Point Wells as an Urban Center.

The County's letter fails to warn the developer of many other defects. Here are just three examples:

1. Buildings taller than 90 feet.

The revised site plan includes numerous buildings taller than 90 feet, some nearly 180 feet tall with 16 or 17 stories. Under SCC 30.34A.040(1) (2011 version), building heights greater than 90 feet may only be approved "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 is not enough. It is significant that in other sections of the County Code, the words "existing *or planned*" are used, but not so in SCC 30.34A.040(1). See, e.g., SCC 30.34A.085(1), SCC 30.21.025(1)(f), and SCC 30.91U.085. The County must follow its own rules. The County lacks authority under SCC 30.34A.040(1) to approve buildings taller than 90 feet at Point Wells. If in 2010, when the County Council adopted SCC 30.34A.040, the Council had intended to allow building heights greater than 90 feet for buildings near "planned" high capacity transit routes or stations, the word "planned" would be found in SCC 30.34A.040(1). Unfortunately for the developer, the word "planned" is not found in SCC 30.34A.040(1). While the County may have the authority to grant to an Urban Center developer a permit to build buildings up to 90 feet tall if the buildings are near existing or planned high capacity transit stops, the County lacks authority to approve buildings taller than 90 feet unless, at the time of permitting, a high capacity transit route or station already exists near the project.

Because the Point Wells project site is not located near an existing high capacity transit route or station, the County should reject the revised site plan, and require the developer to resubmit a site plan with buildings no taller than 90 feet.

2. Landslide hazard area.

The developer's revived site plan at Sheet A-051 depicts a "Landslide Hazard Slope Buffer" near the North Village that is a mere 112 feet from the toe of the slope. The buffer should be 448 feet, four times the amount depicted on Sheet A-051. In employing a 112-foot landslide hazard buffer, the developer wrongly relies on outdated and unsafe, pre-OSO rules that were in effect in 2011, which prescribed a limited buffer equal to just 50% of the height of the slope. In contrast, the post-OSO 2015 rules now in effect require a buffer equal to 200% of the height of the slope (see current SCC 30.91L.040 (Landslide hazard areas)). Because the developer used outdated pre-OSO rules, the County should reject the revised site plan, and require the developer to resubmit a site plan that depicts a landslide hazard buffer in accordance with the County's post-OSO 2015 rules — requiring a buffer equal to 200% of the height of the slope.

Supposedly, the developer thinks that it is vested to the old pre-OSO rules that were in effect when it submitted its Urban Center application in 2011. The developer is wrong. No developer ever has a vested right to endanger the public's health and safety. Safety always trumps vesting. “ 'There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.’ " Hass v. Kirkland, 78 Wn.2d 929, 931-32, 481 P.2d 9 (1971) (quoting City of Seattle v. Hinckley, 40 Wn. 468, 471, 82 P. 747 (1905)). It is clear that the post-OSO 2015 rules were designed to protect public health and safety. As declared in SCC 30.62B.010, the purpose of the rules governing geologically hazardous areas is "to provide regulations for the protection of public safety, health and welfare ... in geologically hazardous areas, including: erosion hazard, landslide hazard, seismic hazard, mine hazard, volcanic hazard, and tsunami hazard areas.”

The County should reject the revised site plan, and require the developer to resubmit a site plan that depicts a landslide hazard buffer in accordance with the County’s post-OSO 2015 rules — requiring a buffer equal to 200% of the height of the slope.

3. Second access road.

The developer’s April 2017 submittal includes a drawing that depicts a second access road from Point Wells to 116th Ave West in the Town of Woodway. But elsewhere (page 24 of the narrative) the developer states that “Richmond Beach Road provides the only viable route to the site.” This inconsistency should be resolved. To satisfy numerous County rules including those governing Urban Centers, a full public access road to the site is required, not merely an emergency vehicle access road. It would be appreciated if the County would require the developer, in its next submission, to state unequivocally that the second access road will be one with full access open to all vehicular traffic.

The County’s May 10 letter notes that there is a problem with the depicted location of the second access road: consistency with critical areas requirements. The second access road would cross Chevron Creek and go through part of the buffer of a sloping wetland, and the road is also in the landslide hazard area. In addition to the County’s critical areas concerns, it appears that the developer does not own all of the property or easements needed to build the second access road at its desired location. We ask that the County require the developer to produce some evidence that it has acquired the needed property or easements, or at least has acquired an option to purchase them.

If it turns out that the developer cannot build a second access road, because the road fails to satisfy critical areas and landslide hazard rules, or because the developer cannot acquire the needed property or easements, or for any other other reason, then the County will be left with no choice but to deny the developer’s application to build an Urban Center at Point Wells. Years before the developer submitted its Urban Center application in 2011 to the County, the developer knew or should have known that a second access road to Point Wells would be required. If the developer is unable to build a second access road for any reason, then the risk of loss falls on the developer — no Urban Center at Point Wells.

Thank you.

Tom McCormick