

From: Tom McCormick
To: [Davis, Kris](#)
Cc: [Otten, Matthew](#); [Kisielius, Laura](#); [Cummings, Jason](#); [Gary Huff](#); [Douglas Luetjen](#); [Jacque St. Romain](#); [J. Dino Vasquez](#); [Mock, Barb](#); [Countryman, Ryan](#); [MacCready, Paul](#); [Debbie Tarry](#); [Eric Faison](#)
Subject: My Pre-Hearing Memorandum
Date: Tuesday, May 15, 2018 1:51:20 PM
Attachments: [2018-05-15 Tom McCormick Pre-Hearing Memo re 90 feet.pdf](#)

Kris, could you please provide the attached document to the hearing examiner, so that he can read it before the hearing. It's my Pre-Hearing Memorandum on the 90-foot building height issue.

Thank you.

Tom McCormick

TO: The Office of the Snohomish County Hearing Examiner
FROM: Tom McCormick
DATE: May 15, 2019

RE: 90-foot maximum building height (Pre-Hearing Memorandum 1 of 2)

CC: Matt Otten, Laura Kisielius, Jason Cummings - Snohomish County
Prosecuting Attorneys Office
CC: Gary Huff, Douglas Luetjen, Jacque St. Romain, J. Dino Vasquez - Karr Tuttle,
Attorneys for BSRE
CC: Barb Mock, Paul MacCready, Ryan Countryman - PDS
CC: Debbie Tarry - City of Shoreline
CC: Eric Faison - Town of Woodway

I am a Richmond Beach resident and retired attorney working with others who, like me, oppose the proposed Point Wells Urban Center development. This Pre-Hearing Memorandum addresses the following:

- A. Introduction — 180-foot towers substantially conflict with SCC 30.34A.040(1)
- B. “Located near a high capacity transit route or station” — access required now
 - 1. The transit must be high capacity transit
 - 2. Ready access where people can board
 - 3. Within easy walking distance
 - 4. Must be there now; plans for a future station are irrelevant
- C. BSRE’s arguments are without merit
 - 1. The Growth Management Hearings Board did not rule that Point Wells is located on a high capacity transit route
 - 2. Four knowing misstatements
- D. Conclusion — denial necessary to preclude any possibility of having 180-foot towers at Point Wells without access to high capacity transit

A. Introduction — 180-foot towers substantially conflict with SCC 30.34A.040(1)

Building heights in the Urban Center zone applicable to Point Wells are limited by SCC 30.34A.040(1) [2010], which provides:

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 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)

Under a plain reading of the highlighted text, buildings taller than 90 feet may be approved only if high capacity transit currently serves the project site. The Sounder commuter train would need to stop at Point Wells now, but it doesn’t. BSRE proposes

21 buildings taller than 90 feet. Because BSRE's applications are in substantial conflict with SCC 30.34A.040(1) [2010], its applications must be denied.

B. "Located near a high capacity transit route or station" – access required now

BSRE attempts to create an ambiguity where none exists, grasping to a contorted reading of SCC 30.34A.040(1) to declare:

"It is beyond question that Point Wells is located near a high capacity transit route. The Sound Transit commuter line runs directly through the site...." (Exhibit G-13, page 30)

That same argument was soundly rejected by the Growth Management Hearings Board (the Board) in 2011, when BSRE (and the County) attempted to defend the County's designation of Point Wells as an Urban Center. Challengers maintained that the designation was inconsistent with the County's comprehensive plan, including its requirement that "Urban centers shall be ... located on a regional high capacity transit route." After noting that "a transit requirement includes access" (Exhibit I-347, page 17, emphasis added), and concluding that "[m]ere location on an inaccessible transit route is not sufficient" (*Id.* at 18), the Board ruled that the County's "Urban Center designation for Point Wells [was] inconsistent with the County's comprehensive plan policies for Urban Centers, which require ready access to transit ..." (*Id.* at 73, emphasis added). The "County's action was clearly erroneous." (*Id.* at 22)

The Board's decision evaluated language in the County's comprehensive plan that was similar to the "located near a high capacity transit route or station" language in SCC 30.34A.040(1). Given the similarity in language, the Board's reasoning and conclusions deserve great weight.

SCC 30.34A.040(1) contains a transit requirement. To get a building height increase up to an additional 90 feet, the project must be "located near a high capacity transit route or station" A transit requirement includes access. (Exhibit I-347, page 17) "Mere location on an inaccessible transit route is not sufficient" (*Id.* at 18). BSRE's contorted reading of SCC 30.34A.040(1), that Point Wells is located near a high capacity transit route because the Sound Transit commuter line runs directly through the site, must be rejected for what it is: a grasping for straws.

While the Board's decision deserves great weight, common parlance does too. If I tell someone that Mary is looking to buy a condo located near a high capacity transit route or station, what does that mean? Obvious answer: Mary is looking to buy a condo located close to where she can board a bus rapid transit like Community Transit's Swift BRT, a commuter train like Sound Transit's Sounder train, or light rail.

There are four elements to being "located near a high capacity transit route or station:" (1) there must be high capacity transit; (2) there must be access where people

can board; (3) it must be nearby; and (4) the high capacity transit must be operating today (not merely a plan for a future station).

1. The transit must be high capacity transit

The County's Comprehensive Plan [2010, page E-8] defines "high capacity transit" as "[a]ny transit technology that operates on separate right-of-way and functions to move large numbers of passengers at high speeds, such as busways, light rail, and commuter rail." Van pooling, shuttle buses, taxis (including the water taxis that BSRE proposes), and private buses, are not high capacity transit.

Unlike its comprehensive plan, the County's 2010 Development Code, the version that is applicable to BSRE's vested applications, does not contain a definition of "high capacity transit." But today's Code does. SCC 30.91H.108 (definition added in 2013). The new definition includes land-based high capacity transit, and also "passenger-only ferries" designed "to carry high volumes of passengers." Passenger-only ferries are different than BSRE's proposed water taxis. But that is a moot point, because today's Code does not apply to BSRE's applications.

2. Ready access where people can board

Both common parlance and the Board's 2011 decision tell us that a project is "located near a high capacity transit route or station" *only if* there's a transit stop located near the project where a person can board a train, light rail, or bus rapid transit. That is clearly not the case with Point Wells. There is no high capacity transit stop there. No one can board the Sounder train there. No one can board a bus rapid transit there. No one can board light rail there.

In addition to common parlance and the Board's 2011 decision, parsing the words "**route or station**" in SCC 30.34A.040(1) definitively proves that SCC 30.34A.040(1) requires access where people can board.

We begin by noting that a station is always located on a transit route (e.g., the Edmonds train station is located on Sounder's Everett-Seattle route). If one deleted the word "station" from SCC 30.34A.040(1), there would be no consequence under BSRE's contorted reading that only proximity is required and not access. The word "station" would add nothing. A building located near the Edmonds train station would satisfy the "located near a high capacity transit route ~~or station~~" criteria. So the word "route" alone would do all the necessary work. The word "station" becomes superfluous, violating a basic canon of statutory construction.

We next ask, what then is a reasonable reading where both "route" and "station" add meaning? There are several reasonable readings, all with one thing in common — all include transit access: (1) the site is near a boarding stop for a bus rapid transit (BRT) route, or near a train station like the one in Edmonds; (2) the site is near a boarding stop for a light rail or BRT route, or near a transit station with linkages to several BRT

and other bus routes; or (3) the site is near a boarding stop for a light rail route or BRT route, or near a multi-modal transit station.

Only if SCC 30.34A.040(1) includes access, can the word “station” be giving any meaning. BSRE’s contorted reading fails on a statutory construction basis, and is contrary to common parlance, and is contrary to the Board’s conclusion that a transit requirement always includes access. BSRE’s contorted reading that only proximity is required, and not access, must be rejected.

There is one more statutory construction to consider. BSRE’s contorted reading that mere proximity to the railroad tracks is all that is needed to qualify for an additional 90 feet (mere proximity, no access) neuters the meaning of the word “near.” Under BSRE’s contorted reading, every square inch at Point Wells, a site that is almost 3/4 miles long, would be “near” high capacity transit. That’s a nonsensical reading that contorts the “located near a high capacity transit route or station” criteria as a whole. The word “near” must have a reasonable contextual meaning, such as “to restrict the tallest buildings to the core of the Urban Center nearest to the transit station/stop/route.”¹ BSRE’s contorted reading leaves behind no reasonable contextual meaning, and for this additional reason, must be rejected.

The entire Urban Center Development Code is all about access to transit.² Common parlance, the Board’s 2011 decision, and basic canons of statutory construction (plain meaning, no superfluous words, contextual meaning), all support the inescapable conclusion that transit access at Point Wells is required to satisfy the “located near a high capacity transit route or station” requirement in SCC 30.34A.040(1).

3. Within easy walking distance

Though “near” is not defined, it connotes an easy walking distance. See footnote 1 regarding the one-eighth mile standard in current SCC 30.34A.040(1).

¹ The quoted text is from an August 30, 2012, PDS Staff Report to the County’s Planning Commission (Exhibit I-389, page 16), providing an analysis of what would become Ordinance 13-007 (adopted Sept. 11, 2013). That ordinance amended SCC 30.34A.040(1), retaining the 90-foot maximum building height but reducing to 35 feet the additional height that may be approved “when the project is located within one-eighth mile of a high capacity transit station, major transit corridor or transit center.” The PDS Staff Report explains the rationale behind the one-eighth mile provision. A similar rationale surely must have been behind the 2010 version of SCC 30.34A.040(1) that uses the word “near” (“located **near** a high capacity transit route or station”), instead of “one-eighth mile” (“located within **one-eighth mile** of a high capacity transit ...”).

² See SCC 30.34A.010 Purpose and applicability (“standards [in this Urban Center] chapter are meant to encourage higher density **transit**- and pedestrian-oriented development”); SCC 30.34A.080 Circulation and access (“**transit** stops); SCC 30.34A.085 Access to public transportation (three ways to meet **transit** access requirement); SCC 30.34A.180(2)(c)(iv) (“**transit**-oriented architecture”); and 30.34A.180(2)(c)(vi) (“to provide **transit** linkages”).

4. Must be there now; plans for a future station are irrelevant

Words are to be understood in their ordinary, everyday meanings. A site is “located near a high capacity transit route or station” only if high capacity transit stops there now. Despite BSRE’s expressed disbelief (G-13, page 33), a station that is merely “planned” does not satisfy the “located near a high capacity transit route or station” requirement in SCC 30.34A.040(1).

SCC 30.34A.040(1) does not say, “located near an existing or planned high capacity transit route or station.” The absence of the underlined text is all the more pronounced when considering that the word “planned” is found in three other 2011 Code provisions governing Urban Centers:

SCC 30.34A.085(1) (buildings within an urban center shall “be constructed within one-half mile of *existing or planned* stops or stations”);

SCC 30.21.025(1)(f) (urban center zone allows a mix of high-density residential, office, and retail uses with pedestrian connections “located within one-half mile of *existing or planned* stops or stations”); and

SCC 30.91U.085 (urban center means an area with a mix of high-density residential, office, and retail uses and pedestrian connections “located within one-half mile of *existing or planned* stops or stations”).

If the County Council had intended to permit buildings taller than 90 feet near “planned” transit routes or stations in addition to existing routes or stations, the phrase “existing or planned” would be found in SCC 30.34A.040(1). It is significant that Council did not include the phrase “existing or planned” in SCC 30.34A.040(1), while it did include the phrase in the sections above.

The presumption of meaningful variation applies here, supporting the conclusion above. It provides that different statutory wording suggests different statutory meaning. See, e.g., *Lopez v. Gonzalez*, 549 U.S. 47, 55 (2006) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). As the Court in *Russello* said, “We would not presume to ascribe this difference to a simple mistake in draftsmanship.” 464 U.S. 16, 23.

BSRE’s so-called plans for a future station are irrelevant. Even if BSRE could demonstrate (which it hasn’t done) that it has plans in the works, and commitments from all necessary parties, both to build a high capacity transit station and begin transit stops at Point Wells, because the word “planned” is not found in SCC 30.34A.040(1), BSRE fails to meet the SCC 30.34A.040(1) standard that must be satisfied for buildings to exceed 90 feet — transit access, in place now.

BSRE tells us (G-13, page 31-33) and will likely tell us again at the hearing, about all of its efforts to try get Sound Transit to provide a stop at Point Wells some day. This is all for naught. A “planned” high capacity transit station does not satisfy SCC 30.34A.040(1). Since there is no high capacity transit stopping at Point Wells now, BSRE fails to satisfy the SCC 30.34A.040(1) standard for buildings to exceed 90 feet. Because BSRE’s applications include 21 building taller than 90 feet (presenting a substantial Code conflict), its applications must be denied.

And it’s a good thing that its applications be denied. It precludes a situation where many years from now we could end up having 180-foot towers at Point Wells, with no high capacity transit access. Assurances and promises cannot guarantee that there will ever be high capacity transit access at Point Wells. “Trust us” isn’t good enough. Agreements have escape clauses, decision-makers can change their mind, political bodies come and go, and definitely can change their mind. Only by denying BSRE’s applications can the Examiner eliminate any possibility of having 180-foot towers at Point Wells without high capacity transit access.

BSRE expresses great surprise that it might be deprived of an opportunity to build 180-foot towers. It knew of the 90-foot issue since 2015 (Exhibit I-222), yet it plowed ahead in its 2017 and 2018 submissions “assuming” it could build 180-foot towers, saying: “An additional 90 feet of building height may be approved under specific conditions. The Point Wells Urban Center Plan assumes full use of this provision.” (Exhibit A-32, page 19) BSRE never asked the County for a Code Interpretation; instead it chose to “assume” that it could build 180-foot towers. It wrongly continued to “assume” this even after the 2011 Board decision declared that “a transit requirement includes access” (Exhibit I-347, page 17) and that “[m]ere location on an inaccessible transit route is not sufficient.” (*Id.* At 18) It “assumed” wrong, and now its applications must be denied.

If 30.34A.040(1) were drafted differently, BSRE could have achieved the result it desires. BSRE could have tried to get 30.34A.040(1) amended before it was voted on. It submitted many other amendments to Council, including a last-minute van-pooling amendment codified in SCC 30.34A.085(3). (Exhibit L-5) BSRE could have, for example, sought to (1) add the words “existing or planned” to 30.34A.040(1) (“located near an existing or planned high capacity transit route or station”), or (2) add a clause that would allow an applicant to qualify for the building height increase by satisfying any of SCC 30.34A.085’s access to public transportation provisions (“located near a high capacity transit route or station or which otherwise provide access to such transportation as set forth in SCC 30.34A.085”). As we know, SCC 30.34A.040(1) was adopted without the word “planned.”

When confronted with the reality of its situation, BSRE says only,

Mr. McCormick seeks to insert provisions into SCC 30.34A.040 to achieve his own arguments. This code provision speaks for itself without any attempt to impose additional conditions. (G-13, page 33)

On the contrary, I seek to insert no provisions into SCC 30.34A.040(1). But if BSRE had arranged successfully to insert the above-underlined text into SCC 30.34A.040(1) when the Urban Center Development Code was adopted in 2010, then things would be different now, and an additional 90 feet possible. BSRE next asserts:

Mr. McCormick's logic is faulty. He argues that "[H]igh capacity transit would need to be in place before buildings taller than 90 feet may be approved." But Sound Transit will not commit to provide service until a project is approved. Thus, in Mr. McCormick's apparent view, BSRE must obtain approval for a project where building height is limited to 90 feet and then contract for service with Sound Transit before reapplying to the County for increased building height. That is clearly not what the code requires. ... (G-13, page 33)

SCC 30.34A.040(1) commands the result that BSRE bemoans. There is absolutely no doubt, consistent common parlance, the Board's 2011 decision, and normal canons of statutory construction, that SCC 30.34A.040(1) reads as I've discussed above — buildings taller than 90 feet at Point Wells may be approved only if high capacity transit currently serves the site. This correct reading protects the public from a future possibility of having 180-foot towers at Point Wells with no high capacity transit access.

Could have built 90-foot towers, even without any high capacity transit whatsoever. BSRE should have considered itself extremely fortunate that the Code would have allowed it to build 90-foot towers at Point Wells, served only by van-pooling or a private bus service. SCC 30.34A.085 requires access to public transportation. Van-pooling or a private bus service are sufficient to satisfy the access to public transportation requirement, thanks to a last-minute van-pooling amendment codified in SCC 30.34A.085(3) that BSRE prepared and submitted to the County Council. (Exhibit L-5) Though BSRE says that van-pooling or a private bus service was intended to be an interim solution until high capacity transit would become available (maybe never?), a plain reading of the Code says otherwise. As the Board said in its 2011 decision, the language in SCC 30.34A.085(3) "on its face, makes van pools a permanent, not merely interim, substitute for high-capacity transit access." (Exhibit I-347, page 49 at FN 161, and page 69)

Cannot build 180-foot towers, without high capacity transit access. On the other hand, projects with buildings as tall as 180 feet can only be approved if there's an existing high capacity transit stop or station near the site at the time of permit approval. This eliminates the risk to the public of having 180-foot towers full of people who don't have access to high capacity transit.

BSRE's applications must be denied due to the substantial conflict with SCC 30.34A.040(1). The Examiner's denial will protect the public. The public and the environment should never be burdened with even the remotest possibility that thousands of people

could some day live at Point Wells, in buildings as tall as 180 feet, without high capacity transit access.

C. BSRE's arguments are without merit

I have addressed above several of the comments that BSRE made in its most recent submission. But a more detailed response is needed to address misstatements made by BSRE, including its misstatement that the Growth Management Hearings Board concluded that Point Wells is located on a high capacity transit route.

1. The Growth Management Hearings Board did not rule that Point Wells is located on a high capacity transit route

BSRE argues that, "It is beyond question that Point Wells is located near a high capacity transit route. The Sound Transit commuter line runs directly through the site...." (Exhibit G-13, page 30)

That same argument was soundly rejected by the Growth Management Hearings Board in 2011, when BSRE (and the County) attempted to defend the County's designation of Point Wells as an Urban Center. Challengers maintained that the designation was inconsistent with the County's comprehensive plan, including its requirement that Urban Centers be located on a regional high capacity transit route:

LU Policy 3.A.3: Urban Centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

In its 2011 decision (Exhibit I-347), the Board first considered how the "grammatically [un]clear" language in LU Policy 3.A.3 should be read.

Are the criteria disjunctive – located on a highway or on a transit route – as the County contends? Or are the criteria conjunctive – located on a highway and with transit access, as Petitioners argue? (Exhibit I-347, page 14)

The Board deferred to the County's "rather strained" interpretation. (Exhibit I-347, page 14) As a result, LU Policy 3.A.3 could be satisfied if a site was "located on a regional high capacity transit route" but not located on a highway.

The County (and BSRE) asserted that Point Wells is located on a regional high capacity transit route, but the Board did not rule that Point Wells is located on a regional high capacity transit route, as BSRE suggests (Exhibit G-13, page 30). Just the opposite. After examining LU Policy 3.A.3 and other provisions in the comprehensive plan, the Board noted that "*a transit requirement includes access*" (Exhibit I-347, page 17, emphasis added).

The County had “urge[d] the Board to view the second clause of LU [Policy] 3.A.3 - “located on a regional high-capacity transit route” - as a stand-alone urban-center criterion notwithstanding the lack of existing or planned access to that route,” but the Board rejected that interpretation as leading to “an absurd result: an urban center with limited transportation access.” (Exhibit I-347, page 16) Later on, the Board said: “‘[H]igh capacity transit’ [is not] satisfied by an urban center on a commuter rail line without a stop.” (Exhibit I-347, page 21)

In the end, the Board concluded that the County’s construction of LU Policy 3.A.3 was inconsistent with the County’s comprehensive plan, and found the County’s action to re-designate Point Wells as an Urban Center to be “clearly erroneous.” (Exhibit I-347, pages 21-22)

2. Four knowing misstatements

BSRE makes four misstatements, all suggesting that the Board concluded that Point Wells is on a high capacity transit route, and can properly be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property even though it does not stop there.

BSRE asserts that,

Snohomish County has historically taken the position that Point Wells’ adjacency to the Sound Transit rail line satisfied comprehensive plan and code locational criteria. The County successfully argued this issue before the Growth Management Hearings Board. (Exhibit G-13, page 30)

1st misstatement. BSRE is correct that Snohomish County formerly took the position that Point Wells’ mere adjacency to the Sound Transit rail line satisfied *comprehensive plan* requirements. It took that position in re-designating Point Wells as an Urban Center in 2009. The County (with BSRE) *unsuccessfully* defended that position in the 2011 Growth Management Hearings Board proceedings. As discussed above, the Board rejected that position as leading to “an absurd result: an urban center with limited transportation access.” (Exhibit I-347, page 16) Thus, BSRE is incorrect when it says that the County *successfully* argued this issue before the Growth Management Hearings Board. (Exhibit G-13, page 30)

2nd misstatement: BSRE is incorrect when it says that the County has historically taken the position that Point Wells’ adjacency to the Sound Transit rail line satisfied County Code locational criteria. The Urban Center Development Code, adopted in 2010, specifically required access to transit, not mere proximity. See SCC 30.34A.085, titled “Access to public transportation” [2010]. Mere adjacency to a rail line without a stop did not and does not satisfy SCC 30.34A.085, nor has the County ever said that it did.

3rd misstatement: BSRE also says (quoting excerpts from the Board's decision):

The Board noted that the "County contends Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided." Point Wells is "on a regional high capacity transit route." (Exhibit G-13, pages 30-31)

If BSRE is suggesting, in the second sentence above, that the Board concluded that Point Wells is on a regional high capacity transit route, that's misleading. The Board reached no such conclusion. The complete sentence from the Board's decision, found at Exhibit I-347, page 14, is reproduced below, including the footnote and the colon omitted by BSRE in its rendition. The Board was simply summarizing the County's position, as is evident by the placement of footnote 52 at the end of the sentence. (Footnote 52 cited the County's response brief.)

The County contends Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided: Point Wells is "on a regional high capacity transit route." /FN 52/

4th misstatement: The second indented paragraph below is misleading.

The Board noted that the "County contends Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided." Point Wells is "on a regional high capacity transit route."

While not being entirely comfortable with the County's interpretation, the Board determined that deference to [the County's] interpretation is appropriate. (Exhibit G-13, pages 30-31)

The second indented paragraph is misleading because, when read together with the first paragraph, BSRE is saying that the Board gave deference to the County's interpretation (contention) that Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided. (Exhibit G-13, pages 30-31)

The Board gave no such deference to that interpretation (contention). Rather, the Board gave deference to something entirely different. The Board gave deference to the County's interpretation of how the "grammatically [un]clear" language in LU Policy 3.A.3, reproduced below, should be read:

LU Policy 3.A.3: Urban Centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

Here is what the Board said (see section C.1. above for a more detailed discussion of LU Policy 3.A.3):

The County contends that its reading of LU 3.A.3 [(i.e., that the criteria are disjunctive – located on a highway or on a transit route)] is supported by the evolution of the wording of LU 3.A.3 and asserts that the Board should defer to the County's construction of its own comprehensive plan policies. While the Board concludes the County's interpretation of LU Policy 3.A.3 is rather strained, deference to its interpretation is appropriate. (Exhibit I-347, page 14)

D. Conclusion – denial necessary to preclude any possibility of having 180-foot towers at Point Wells without access to high capacity transit

Under SCC 30.34A.040(1), the maximum building height is 90 feet. But an additional 90 feet may be approved if the project is “located near a high capacity transit route or station” — that is, if there is a transit stop currently (not just planned) located near the project where a person can board a train, light rail, or bus rapid transit. That is clearly not the case with Point Wells. There is no high capacity transit stop there. No one can board the Sounder train there. No one can board a bus rapid transit there. No one can board light rail there.

BSRE's application materials include 21 buildings taller than 90 feet. There is no doubt, let alone a reasonable doubt, that BSRE fails to satisfy the conditions to gain approval for building heights in excess of 90 feet. Therefore, its applications are in substantial conflict with SCC 30.34A.040(1) [2010], and its applications should be denied, with prejudice.

Denial is a just result. It protects the public by assuring that we won't end up some day having 180-foot towers at Point Wells with no access to high capacity transit. There must be no possibility, not even the remotest of possibilities, of that scenario occurring.
