

June 1, 2018

To: Honorable Peter Camp, Snohomish County Hearing Examiner

From: Tom Mailhot  
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## Post-Hearing Memorandum

### I. Substantial Conflict

BSRE claims their application qualifies for the 90 foot height bonus allowed by SCC 30.34A.040.

A bonus is normally an incentive for the developer to include some socially beneficial service or design element in the project beyond the base requirements in the code. For example, the developer is awarded FAR bonuses for including daycare, green roofs, community gardens, etc. (table 30.34A.030(2)). Yet BSRE claims in its pre-hearing brief (Exhibit O-3, page 9) that they do not need to provide any beneficial service or design element to earn the 90 foot height bonus, they earn it by mere proximity: “Therefore, even if BSRE did not provide a high capacity station at Point Wells, the proximity to the high capacity route alone would satisfy this criterion under SCC 30.34A.040(1) (2010).”

The base requirements for access to transit for an Urban Center application are set by SCC section 30.34A.085. As you would expect, each of the three subsections describe the need for actual access to transit routes or corridors, not just a nearby location.

The 90 foot height bonus is set in SCC 30.34A.040. The bonus height is allowed if “the project is located near a high capacity transit route or station”.

If we are to believe BSRE’s claim, then an Urban Center application for a property near a high capacity transit route that has no existing or planned stops or stations (does not satisfy 30.34A.085(1)), does not provide for any new stops or stations (does not satisfy 30.34A.085(2)), and does not provide any other mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles (does not satisfy 30.34A.085(3)) would still qualify for the 90 foot height bonus even though it does not meet the base requirement for an Urban Center application.

This result is illogical – no bonus provision should be interpreted in a way that allows the bonus to be earned when the underlying base requirement is not met, yet that is essentially what BSRE is claiming. The underlying base requirement for a new station (SCC 30.34A.080(2)) requires the developer to “coordinate with transit providers to assure use of the new stops or stations” but BSRE wants the bonus to be awarded without providing any assurance from Burlington Northern Santa Fe (BNSF) that BNSF (who controls the property the station would be

located on) would grant easements to allow the station to be constructed or grant permission to have trains stop there. Instead of assurance, all BSRE can offer is a box on their site plan that at best represents some possible potential access at some undetermined time after the project has already been approved and partially constructed.

## **II. Request for extension of deadline**

BSRE is asking for an extension so they can complete their plans. BSRE admits they have had at least 4 years to complete their plans (I would argue it's more like 6 years since in the last seven years the project was halted by legal action for less than 14 months). In that time BSRE has not submitted a single page of documentation from BNSF that indicates they would be allowed to either built or operate the station. Without an agreement with BNSF the station is a dream, not a plan.

If BSRE has not yet attempted to get an agreement with BNSF then after seven years of inaction they do not deserve an extension. If BSRE has attempted to get an agreement with BSNF but has been unsuccessful, it's not reasonable to believe they will be any more successful in any reasonable time in the future.

## **III. Conclusion**

There is no reasonable doubt that BSRE has failed to fulfill the requirements of 30.34A.040 as of today, no reasonable doubt that they will be unable to fulfill those requirements in any reasonable time in the future, and no reasonable doubt that the 20 buildings in the plan that exceed the 90 foot height limit for an Urban Center are in substantial conflict with SCC 30.34A.040(1).

You should affirm PDS's request to deny the application on this basis.

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