

To: Honorable Peter Camp, Snohomish County Hearing Examiner

From: Tom McCormick

Date: June 1, 2018

Cc: BSRE's attorneys, County's attorneys, PDS, Shoreline's attorneys, Woodway's manager

Certainty

Certainty — “the quality or state of being certain especially on the basis of evidence” (*Merriam-Webster.com*); an event that is definitely going to take place.

Many things are possible but not certain. It is possible but not likely that Sound Transit might provide service at Point Wells some day.

BSRE's Urban Center application includes 20 buildings taller than 90 feet. County Code says that the maximum building height is 90 feet. However, buildings as tall as 180 feet can be approved “*when the project is located near a high capacity transit route or station.*” SCC 30.34A.040(1)[2010].¹ The exception does not say, “when the project is located near a possible high capacity transit route or station.” Nor does the exception say, “when the project is located near an existing or planned high capacity transit route or station.”²

BSRE effectively wants the Examiner to disregard the high capacity transit condition altogether, or otherwise render it meaningless. BSRE claims that it should be allowed to build 180-foot towers because maybe some day there might be high capacity transit access at Point Wells.³ Do not be fooled. BSRE's promise to build a train station at Point Wells, coupled with Sound Transit's interest and supposed willingness to allow the Sounder North

¹ SCC 30.34A.040(1) requires that there be access near the project site where people can board. The requirement that there be access, and not mere proximity, is discussed in Exhibit I-392, pages 2-4 (Tom McCormick's Pre-Hearing Memorandum re 90-foot maximum building height). Also see Exhibit I-450 (Tom McCormick's discussion of *SSHI LLC v. City of Olympia*, No. 43300-1-II (Wash. Ct. App. Sep. 24, 2013)). And see BSRE's comments in Exhibit G-14, page 31: “While the literal language of SCC 30.34A.040(1) is satisfied by the fact that the project site is bifurcated by the Sound Transit commuter rail line, BSRE does not rely on this adjacency to justify a height increase to 180 feet.” And per BSRE's attorney, Gary Huff, “We can't rely on that interpretation.” (Hearing, May 16, at 2:56 pm.)

² Assuming, *arguendo*, that a “planned” station could satisfy SCC 30.34A.040(1), it wouldn't help BSRE. As used throughout the comprehensive plan and the County Code, the word “planned” has a very narrow, precise meaning. The County's 2010 comprehensive plan, page E-11, defines “Planned Transit Station” as a “transit station identified in a public transit agency long range or capital plan ...” Note that a train station at Point Wells is not included in Sound Transit's ST3 long range or capital plan. See Exhibits H-30, H-27, H-28, H-29, and H-25.

³ BSRE claims also that it *needs* to build its 20 towers > 90 feet to satisfy the Code's minimum FAR requirements. Not so. See Exhibit I-451, six measures to satisfy the Code's minimum FAR.

commuter train to stop at the site once enough people live there,⁴ is nothing more than a theoretical possibility — not a certainty.

Even calling it a possibility is generous, when considering that BSRE's underlying premise — that a batch of new residents will translate into an increase in Sound Transit ridership — is highly suspect. BSRE promises to provide a “shuttle service from [Point Wells] to the Edmonds Transit Station.” (Exhibit G-14, page 32.) Travel time to the Edmonds Station is just six (6) minutes.⁵ With residents having such easy and quick shuttle access to the Edmonds Station, it would be highly unlikely that Sound Transit's Board would ever vote to add a stop at Point Wells; it being highly unlikely that adding a station would increase ridership beyond the level achieved with just the shuttle service.⁶ Note that BSRE's shuttle service will likely continue forever, as it is the means by which BSRE complies with SCC 30.34A.085's access to public transportation requirement.

There must be certainty that a station will be constructed (approvals needed from Sound Transit's Board, BNSF, and other property owners), plus certainty that the Sounder North commuter train will stop there (more approvals and contracts needed). BSRE has produced no evidence of the requisite certainty, not even close.

Only by requiring certainty of high capacity transit access can the Examiner prevent having 180-foot towers at Point Wells without high capacity transit access. The Code prohibits 180-foot towers without high capacity transit access. In contrast, the Code permits 90-foot towers without high capacity transit access (van-pooling is a sufficient transit option).

Having reviewed all the evidence in the record, there is no doubt that BSRE fails to satisfy the high capacity transit condition in SCC 30.34A.040(1). With its 20 buildings taller than 90 feet, BSRE's Urban Center application substantially conflicts with County Code. On account of such substantial conflict, I respectfully request that the Examiner deny BSRE's Urban Center application, as PDS has recommended.

Whether the Examiner decides to deny BSRE's application with prejudice, or without prejudice (SCC 30.34A.180(2)(f) and SCC 30.41B.030(1)), I further request that the Examiner impose conditions as described in Exhibit I-408, my Pre-Hearing Memorandum 2 of 2, May 16, 2018 (see its *italicized* text), and as recommended by the Design Review Board in its March 26, 2018, recommendation letter (Exhibit H-13).

⁴ “Sound Transit will likely not agree to provide service at Point Wells until approximately 1,000 persons reside on-site.” (G-13, page 32.)

⁵ Several test drives taken on 06/01/2018, starting at the point where the second access road connects to 116th Ave W in the Town of Woodway, and ending at the train station.

⁶ Other reasons also make BSRE's underlying premise suspect. There won't be many Sounder North commuter train riders amongst the mostly non-working occupants of the 1,093 retirement units for those age 62+. (Exhibit A-35, page 4.) Also, with a 23% - 38% internal capture rate (Exhibit N-1, page 17 note 1), and no train station parking for the public (*Id.*, page 32), that removes another chunk of potential ridership. Sound Transit's alleged “willingness” to provide a stop at Point Wells will likely vanish once it performs its **due diligence**. A station at Point Wells is at best a theoretical possibility.

Practical considerations

BSRE urges the Examiner to let it proceed with its plans for 180-foot towers, to give it more time to work things out with PDS and get an EIS done.

Consider how things might play out: Will the EIS present a hypothetical alternative within the EIS's Urban Center alternative? Will the EIS describe BSRE's applications as they currently stand, and then explain that until (if ever) Sound Transit commences a Sounder North commuter train service at Point Wells, none of the planned 20 towers taller than 90 feet will be built? And will the EIS explain, in detail, all of the changes to the proposed development that would occur under the hypothetical alternative if, for example, Sound Transit does not approve a train station at Point Wells, or approves a station but one is never built, or a station gets built but service (1) does not commence until after 1,000 units have been occupied, or (2) until after 1,500 units have been occupied, or (3) until after 2,000 units have been occupied, or (4) never commences service at Point Wells?

Will the site plan and architectural drawings be revised (by when)? Must the application materials be amended now, to address the hypotheticals? If for example, no buildings over 90 feet can get built, or only five such buildings get built (which ones?), will the height of the remaining buildings be shortened to produce a stepped-down design (but how can buildings be shortened if it is not known until after their construction has begun whether Sound Transit will ever serve the site)? How will plans for parking garages change to reflect the lower parking demand from fewer residents? If Sound Transit never approves a train station, what will be built where the train station was supposed to be? If buildings are chopped down to 90 feet, how exactly will the project meet its minimum FAR requirements? Wider buildings, which ones? More buildings, located where? Utilize a different method for calculating FAR? Variance request? (See six possible methods in Exhibit I-451).

So many uncertainties with so many hypothetical scenarios. PDS looks at the plans as submitted, not hypotheticals. As submitted, with 180-foot towers, BSRE's applications substantially conflict with SCC 30.34A.040(1), and must be denied.

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