

Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Tuesday, December 3, 2019 1:18 PM
To: Mock, Barb
Cc: McCrary, Mike; Countryman, Ryan; MacCready, Paul; Otten, Matthew; Debbie Tarry; Eric Faison
Subject: Validity of 4,000 ADT limit; and need for BSRE to seek a variance from minimum FAR rules
Attachments: 2019-03-07 GMHB final decision and order re 4k ADT limit.pdf

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Director Mock,

On March 7, 2019, the Growth Management Hearings Board issued a decision (copy attached) upholding the validity of the City of Shoreline's 4,000 average daily trip limit (4,000 ADT limit) on Richmond Beach Drive. BSRE has appealed the decision, filing a Petition for Review with the Snohomish County Superior Court on April 5, 2019.

In its pre-hearing brief to the Board, BSRE argued that complying with the urban center minimum FAR requirement (SCC 30.34A.030(1)) will necessarily generate more than 4,000 ADTs on Richmond Beach Drive, causing the 4,000 ADT limit to be inconsistent with Snohomish County's designation of Point Wells as an urban center. The Board dismissed the argument, noting that an allegation of inconsistency with a County *development regulation* (the minimum FAR requirement) does not suffice to establish inconsistency with the County's *comprehensive plan*. The Board concluded that BSRE "failed to prove that Ordinance 596 [(adding the 4,000 ADT limit to the City's comprehensive plan)] renders Shoreline's comprehensive plan inconsistent with Snohomish County's comprehensive plan in violation of RCW 36.70A.100."

In its arguments to the Board, BSRE seems to suggest that it is being pushed into a corner with no good options — complying with the County's minimum FAR rules will cause it to violate the City's 4,000 ADT limit, and complying with the City's 4,000 ADT limit will cause it to violate the County's minimum FAR rules.

There's an easy solution to BSRE's perceived pickle. BSRE can request a variance, asking permission to use the County's current minimum FAR rules in lieu of the 2010 version of SCC 30.34A.030(1). Under the current rules, the minimum FAR for urban centers is 0.5, and the FAR formula uses "net" site area rather than "gross" site area (FAR = floor area of buildings ÷ net site area excluding critical areas and required buffers).

With a variance using the County's current rules, BSRE can satisfy the minimum FAR requirement with only 700,000 square feet of building floor area at Point Wells (= net site area of approximately 1.4 million square feet X 0.50 minimum FAR). Contrast that with the 2.6 million square feet of buildings that BSRE has assumed is required under the 2010 rules.

If BSRE continues to assert that the minimum FAR rules require that it build a huge, tall development with at least 2.6 million square feet of residential and commercial space, do not believe it. A variance is there for the

Exhibit W-21 McCormick, Tom December 3 2019
PFN: 11-101457 LU

asking. I can think of no reason why the County would deny a request to use the County's current minimum FAR rules.

If the 4,000 ADT limit or any other requirement relating to BSRE's soon-to-be-filed revised application can be addressed by applying for a variance from the minimum FAR rules, then BSRE must apply for the variance or risk denial of its application.

In another context it's been said that, "A landowner may need to seek a variance or submit multiple applications to determine the full extent to which the regulatory laws may allow or limit development." *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*, Washington State Attorney General, page 13 (December 2015).

Feel free to share this email with BSRE.

Thank you.

Tom McCormick

*"A small development at Point Wells
with a second public access road,
or no development at all."*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

BSRE POINT WELLS, LP,

Petitioner,

v.

CITY OF SHORELINE,

Respondent.

Case No. 11-3-0007

FINAL DECISION AND ORDER

SYNOPSIS

BSRE Point Wells, LP (Petitioner) challenged adoption of the City of Shoreline's Ordinance 596, an emergency ordinance imposing a maximum daily trip limit on Richmond Beach Drive. Allegations that the action violated RCW 36.70A.100¹ and RCW 36.70A.130(2)(b)² were dismissed on dispositive motion. The Board concludes that the Petitioner has failed to meet its burden to establish a violation of RCW 36.70A.100.

I. INTRODUCTION

Petitioner desires to redevelop a 61-acre industrial property on Point Wells, an unincorporated area in Snohomish County which for many decades served as an oil depot and tank farm. Point Wells is situated at the south westernmost point of Snohomish County

¹ RCW 36.70A.100 requires coordination and consistency between comprehensive plans of adjacent jurisdictions. The Board found that Petitioner's allegation of inconsistency with a neighboring jurisdiction's *development regulations*, which *implement* the comprehensive plan, could not suffice to establish inconsistency with that jurisdiction's comprehensive plan.

² RCW 36.70A.130(2)(b) requires that comprehensive plan amendments be considered "no more frequently than once a year" and "concurrently so that the cumulative effect of the various proposals can be ascertained." Petitioner alleged the adoption of Ordinance 596 as an emergency ordinance violated these provisions, but withdrew the issues in response to the City's Motion to Dismiss.

1 and is adjacent to the City of Shoreline.

2 In 2009, Snohomish County designated the Point Wells area as an Urban Center.
3 The redevelopment as originally proposed involved “over 3,000 housing units and over
4 100,000 square feet of commercial and retail space.”³ The sole ingress and egress to and
5 from Point Wells lies along Richmond Beach Drive, a road that also serves as the only
6 access to residences in the cities of Shoreline (in King County) and Woodway (in
7 Snohomish County).⁴ Following the Urban Center designation, Shoreline adopted
8 Ordinance 596 as an emergency ordinance to address the anticipated traffic volume
9 generated by redevelopment.⁵ Specifically, it included the following comprehensive plan
10 amendment:
11

12 Policy PW-12 In view of the fact that Richmond Beach Drive between NW
13 199th St. and NW 205th St. is a local road with no opportunities for alternative
14 access to dozens of homes in Shoreline and Woodway, the City designates
15 this as a local street with a maximum capacity of 4,000 vehicle trips per day.
16 Unless and until 1) Snohomish County and/or the owner of the Point Wells
17 Urban Center can provide to the City the Transportation Corridor Study and
18 Mitigation Plan called for in Policy PW-9, and 2) sources of financing for
19 necessary mitigation are committed, the City should not consider reclassifying
20 this road segment.⁶

21 A few months after Shoreline’s adoption of Ordinance 596, the Board determined that
22 the designation of Point Wells as an Urban Center was inconsistent with Snohomish
23 County’s Urban Center comprehensive plan provisions, it thwarted GMA compliance by the
24 City of Shoreline, and it was inconsistent with the comprehensive plans of adjacent
25 jurisdictions. The Board entered a **determination of invalidity** for Snohomish County
26 Ordinance Nos. 09-038 and 09-051.⁷ The Board simultaneously determined that Snohomish

27 ³ BSRE’s Prehearing Brief at 1-2.

28 ⁴ BSRE’s Prehearing Brief at 2.

29 ⁵ BSRE’s Prehearing Brief at 5.

30 ⁶ Ordinance 596 at 2.

31 ⁷ *Shoreline, et al. v. Snohomish County, et al.* GMHB Nos. 09-3-0013c and 10-3-0011c (Corrected Final
32 Decision and Order, May 17, 2011) at 72-73 (finding ordinances did not comply with RCW 36.70A.070
(preamble) and RCW 36.70A.100 requirement to be consistent with adjacent City of Shoreline and
County was not guided by RCW 36.70A.020, Planning Goals 1, 3, and 12).

1 County Ordinance Nos. 09-79 and 09-80 failed to comply with the State Environmental
2 Policy act (SEPA) RCW 43.21C.030(c)(iii) by providing only “bookend” analysis of the
3 redevelopment proposal and remanded them to Snohomish County.⁸

4 On remand, Snohomish County prepared an addendum to the Final Supplemental
5 Environmental Impact Statement (FSEIS Addendum) providing additional analysis of a non-
6 project alternative at lower development intensity, reducing the number of vehicle trips
7 generated to 8,251, compared with the 12,614 of the Proposed Action.⁹ The Board
8 determined that the FSEIS Addendum, which incorporated a Shoreline Traffic Study,
9 satisfied SEPA requirements.¹⁰ The County also adopted Ordinance Nos. 12-068 and 12-
10 069 (compliance ordinances), amending the County’s Urban Center policies, deleting
11 reference to Point Wells as an Urban Center and reversing some of the amendments
12 previously made in order to fit Point Wells into the Urban Center designation.¹¹ The
13 compliance ordinances designated Point Wells as an Urban Village with policies that
14 provided flexibility to accommodate this designation at Point Wells.”¹²
15
16

17 The compliance ordinances set out two requirements for needed public services.
18 First, generally, needed public services required by entities other than the County were
19 required to be incorporated into the Capital Facilities Plans of those service providers.
20 Second, specifically, the property owner at Point Wells was required to negotiate binding
21 agreements with the providers of necessary utilities or infrastructure, and was required to
22 limit the intensity of use so that it would be consistent with the level of service standards
23 adopted by the providing entity, thereby satisfying the external consistency requirements of
24 RCW 36.70A.100.¹³ Additionally, the County rescinded language that would have made
25
26
27

28 ⁸ *Id.* at 74.

29 ⁹ *Shoreline, et al. v. Snohomish County, et al.* GMHB Nos. 09-3-0013c and 10-3-0011c (Order Finding
30 Compliance and Rescinding Validity, December 20, 2012) at 5.

31 ¹⁰ *Id.*

32 ¹¹ *Id.* at 6.

¹² *Id.*

¹³ *Id.* at 6-7.

1 Point Wells fit “high-capacity transit” criteria and instead adopted policies for “local transit
2 service” that stressed access to “local bus service or customized transit” that provided a
3 “framework for designing local transit solutions that maximize access to higher-frequency
4 corridors.”¹⁴

5 The Board determined the amended policies complied with the goals and
6 requirements of the GMA. It rescinded its Order of Invalidity as to Ordinance Nos. 09-038
7 and 09-051 as amended by Ordinances 12-068 and 12-069 and found Snohomish County
8 in compliance.
9

10 **Subsequent Appellate Decisions**

11 After the Board found Snohomish County had achieved compliance by virtue of the
12 amended comprehensive plan policies detailed above, the Court of Appeals held in a
13 related case that “BSRE’s rights vested when it submitted its applications. A later finding of
14 noncompliance does not affect BSRE’s already vested rights.”¹⁵
15

16 Procedural matters relevant to the case are detailed in Appendix A.

17 Legal issues are set forth in Appendix B.
18

19 **II. BOARD JURISDICTION**

20 The Board finds the Petition for Review was timely filed, pursuant to RCW
21 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board
22 pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject
23 matter of the petition pursuant to RCW 36.70A.280(1)(a).
24

25 **III. STANDARD OF REVIEW**

26 Comprehensive plans and development regulations, and amendments to them, are
27
28
29
30

31 ¹⁴ *Id.* at 7.

32 ¹⁵ *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 169-70, 322 P.3d 1219 (2014).

1 presumed valid upon adoption.¹⁶ This presumption creates a high threshold for challengers
2 as the burden is on the Petitioner to demonstrate that any action taken by the jurisdiction is
3 not in compliance with the GMA.¹⁷ The Board is charged with adjudicating GMA compliance
4 and, when necessary, invalidating noncompliant plans and development regulations.¹⁸

5 The scope of the Board's review is limited to determining whether a city or county has
6 achieved compliance with the GMA only with respect to those issues presented in a timely
7 petition for review.¹⁹ The Board is directed to find compliance unless it determines that the
8 challenged action is clearly erroneous in view of the entire record before the Board and in
9 light of the goals and requirements of the GMA.²⁰

12 IV. ANALYSIS AND DISCUSSION

13 **Issues Two and Three were dismissed**, along with those portions of Issue One that
14 alleged violation of RCW 36.70A.100 because of inconsistency with Snohomish County's
15 development regulations.²¹ Thus the remaining portion of Issue One to be determined is:

17 **Issue No. 1.**

18
19 Did the City of Shoreline's adoption of Ordinance No. 596 fail to comply with RCW
20 36.70A.100 because it is externally inconsistent with (1) Snohomish County's
21 comprehensive plan provisions; and (2) the designation in Snohomish County's
22 comprehensive plan of Point Wells as an Urban Center (Ordinance 09-080)? Applicable
23 Snohomish County comprehensive plan policies are LU 2.A.5, LU 2.B.2, LU 3.A.1, and LU
24 5.B.12, Countywide Planning Policy UG-8 (as adopted by Snohomish Council Ordinance
25 09-038), and Objective LU 2.A (adopted by Snohomish Council Ordinance 09-051).

27 ¹⁶ RCW 36.70A.320(1).

28 ¹⁷ RCW 36.70A.320(2).

29 ¹⁸ RCW 36.70A.280, RCW 36.70A.302.

30 ¹⁹ RCW 36.70A.290(1).

31 ²⁰ RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm
and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201
(1993).

32 ²¹ Order on Motion to Dismiss (August 29, 2018).

1 **Applicable Law**

2 **RCW 36.70A.100** requires that the comprehensive plan of each county or city that is
3 adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the
4 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
5 which the county or city has, in part, common borders or related regional issues.

6 **Board Discussion**

7 Regardless of invalidity and subsequent plan amendments, BSRE's right to develop
8 Point Wells vested under the 2009 Urban Center designation.²² Therefore, BSRE asserts
9 that RCW 36.70A.100 requires the City of Shoreline's (Shoreline) comprehensive plan to
10 support BSRE's development plans in order to be consistent with the plans and regulations
11 in place in adjacent Snohomish County (County) at the time BSRE's complete permit
12 application was submitted.

13
14 Although Shoreline acknowledges that BSRE has development rights that vested to
15 development regulations that the County later amended,²³ Shoreline asserts that RCW
16 36.70A.100 does not require an adjacent city to have a comprehensive plan that is
17 consistent with the prior development regulations.²⁴ The Board agrees. In its Order on
18 Motion to Dismiss in this case, the Board held that "Petitioner would be unable to establish a
19 violation of RCW 36.70A.100 by showing an inconsistency between the challenged
20 Shoreline comprehensive plan amendment and a Snohomish County *development*
21 *regulation.*"²⁵

22
23 Asserting that Shoreline's comprehensive plan must be consistent with Snohomish
24 County's comprehensive plan policies, BSRE further argues that Ordinance 596, which
25 imposes a 4000 vehicle per day trip limit on Richmond Beach Drive,²⁶ will prevent
26
27

28
29 _____
30 ²² *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 180-181, 322 P.3d 1219 (2014).

31 ²³ Shoreline's Response to BSRE's Prehearing Brief at 6, fn. 11.

32 ²⁴ *Id.* at 8.

²⁵ Order on Motion to Dismiss (August 29, 2019) at 5.

²⁶ Ordinance 596, Policy PW-12.

1 Snohomish County from achieving some of its comprehensive plan objectives and goals. In
2 support of this proposition, BSRE enumerates several Snohomish County comprehensive
3 plan objectives and policies and explains how BSRE's development plans are consistent
4 with those objectives and policies.²⁷ Because Ordinance 596 frustrates BSRE's ability to
5 achieve those development plans,²⁸ BSRE concludes Ordinance 596 is not consistent with
6 the Snohomish County's objectives and policies.
7

8 Further, BSRE asserts that Ordinance 596 will prevent development of its Point Wells
9 property pursuant to the minimum density of 1.0 Floor Area Ratio (FAR)²⁹ that existed at the
10 time it vested its development rights.³⁰

11 Shoreline responds that the policies cited by BSRE, with the exception of Goal LU
12 5.B.12, are general locational policies for the County as a whole and not of a nature to be
13 thwarted by Ordinance 596, arguing that the objectives and goals are largely stated in non-
14 directive or aspirational language: "shall be encouraged ... where possible"³¹, "shall be
15 considered for future redesignation."³² Shoreline also argues that BSRE has provided no
16 evidence as to how the 4,000 vehicle trip per day limitation precludes the County from
17 achieving the cited locational objectives, nor the efficient use of land, provision of adequate
18 housing choices, or economic development.³³ The Board agrees.
19

20 As to Goal LU 5.B.12,³⁴ BSRE argues that Ordinance 596 was intended to have, and
21
22

23
24 ²⁷ BSRE's Prehearing Brief at 3-4.

25 ²⁸ In other words, to develop its Point Wells property under the development regulations that existed at
26 the time BSRE vested its development rights.

27 ²⁹ The FAR was one of the development regulations adopted in Ordinance No. 09-079. RCW 36.70A.100
28 does not require consistency with an adjacent jurisdiction's development regulations.

29 ³⁰ BSRE's Prehearing Brief at 3-4.

30 ³¹ Goal LU 2.A.5.

31 ³² Goal LU 5.b.12.

32 ³³ Shoreline's Response to BSRE's Prehearing Brief at 8-10.

33 ³⁴ LU.Policy 5.b.12 reads:

34 Within the Southwest UGA, parcels designated Urban Industrial (on Point Wells) shall be considered for
future redesignation from Urban Industrial to Urban Center designation upon issuance of a programmatic
non-project environmental impact statement addressing environmental impacts, infrastructure and the
provision of urban services.

1 did result in, a zoning effect that precludes the Urban Center designation.³⁵ The City argues
2 that the *consideration* of Point Wells for designation as an Urban Center after issuance of
3 an Environmental Impact Statement is not precluded by Ordinance 596 and had already
4 been accomplished prior to adoption of Ordinance 596.³⁶

5 As a preliminary matter, BSRE's burden of proof is not whether Ordinance 596 is
6 consistent with its development rights, but whether Ordinance 596 thwarts achievement of
7 Snohomish County's comprehensive plan policies.
8

9 Goal LU 5.B.12, consideration of the Urban Center designation at Point Wells, did
10 indeed happen in 2009 and was the subject of a prior challenge. The Board decided that the
11 designation of Point Wells as an urban center rested on an inadequate FSEIS that failed to
12 evaluate the lack of adequate transportation infrastructure and was inconsistent with the
13 County's comprehensive plan policies for Urban Centers, which require ready access to
14 transit, the road system and other urban services. Excerpts from the Board's decision in that
15 case are relevant:
16

17 Point Wells lacks highway access. Due to the steep bluffs upland, the only
18 way to access the property by land is through the City of Shoreline from the
19 south via Richmond Beach Drive, a two-lane street that dead-ends at Point
20 Wells. The nearest major highway is State Route 99, approximately 2.5 miles
21 east, via Richmond Beach Drive and N. 185th Street in Shoreline. The DSEIS
22 discloses the limitations of the street capacity of Richmond Beach Drive and of
23 the further roads and intersections that form the links to the highway. The
24 DSEIS points out the bluff to the east and northeast limits the potential for
25 additional access roads. ... Point Wells also lacks transit service.

26 ... [T]he DSEIS identifies a number of intersections in Shoreline, Woodway
27 and Edmonds where Point Wells' Urban Center development, without
28 mitigation, is projected to result in traffic levels beyond LOS limits adopted by
29 the respective municipalities, including several intersections that reach an F/F
30 standstill. The DSEIS identifies a number of possible mitigations, including
31 roadway improvements, turn lanes and signalization, primarily in Shoreline,
32 but also in Woodway and Edmonds.

³⁵ BSRE's Reply at 7.

³⁶ Shoreline's Response to BSRE's Prehearing Brief at 9.

1 *Shoreline, et al v. Snohomish County*, GMHB Case Nos. 09-3-0013c and 10-3-0011c
2 (Corrected FDO, May 17, 2011) at 10-11, 23.

3 The designation was also found to be inconsistent with City of Shoreline
4 infrastructure capacity, as it would result in traffic on Shoreline roads in excess of what
5 could be accommodated in the City's capital facilities plans. *Shoreline, et al v. Snohomish*
6 *County*, GMHB Case Nos. 09-3-0013c and 10-3-0011c (FDO, April 25, 2011) at 73. The
7 Board issued a finding of invalidity, following which the County enacted the compliance
8 ordinances which designated Point Wells as an Urban Village instead of as an Urban
9 Center.³⁷

10 Thus, consideration of Point Wells as an Urban Center has been realized, and may
11 again be realized in the future when circumstances change. It was the fact that the
12 designation was not consistent with other Snohomish County policies or guided by GMA
13 goals that has precluded the designation to date, not the City's adoption of Ordinance 596.

14 The Board empathizes with the dilemma facing the parties. However, chapter 36.70A
15 RCW does not provide the Board with the authority to grant the remedy BSRE seeks. RCW
16 36.70A.100 requires consistency between comprehensive plans of adjacent jurisdictions.
17 Nothing in the plain wording of the statute requires the City to adopt policies consistent with
18 development rights that have vested in an adjacent jurisdiction, which is the outcome that
19 BSRE seeks here.

20 **The Board finds and concludes** BSRE has not carried its burden to prove that City
21 of Shoreline Ordinance 596 prevents Snohomish County from achieving any of its
22 comprehensive plan provisions.
23
24

25 V. ORDER

26
27 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
28 parties, the GMA, prior Board orders and case law, having considered the arguments of the
29

30
31 ³⁷ The change in land use designation affects BSRE's vested development rights only to the extent the
32 vested development rights do not comply with the Urban Village designation. Both designations
concentrate density.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

parties, and having deliberated on the matter, the Board finds:

- BSRE has failed to prove that Ordinance 596 renders Shoreline’s comprehensive plan inconsistent with Snohomish County’s comprehensive plan in violation of RCW 36.70A.100.
- Case No. 11-3-0007 is closed.

SO ORDERED this 7th day of March 2019.

Cheryl Pflug, Board Member

Deb Eddy, Board Member

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.³⁸

³⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Appendix A: Procedural matters

On April 11, 2011, Petitioner filed a petition for review. The petition was assigned Case No. 11-3-0007.

A prehearing conference was held telephonically on July 26, 2018. Petitioner appeared through its counsel Gary Huff. Respondent appeared through its attorney Julie Ainsworth-Taylor.

There were thirty motions filed for settlement extension. The Status Report and Request for Extension, namely the thirtieth request for extension, filed on July 19, 2018, was denied. Respondent's filed a Dispositive Motion on August 14, 2018. The motion was partially granted. Petitioner filed a Motion to Supplement the Record on August 15, 2018. This motion was granted. On September 20, 2018, the parties filed a Joint Request for Settlement Extension. This motion was granted. On January 10, 2019, Petitioner filed its Second Motion to Supplement the Record. This motion was granted. January 28, 2019, Respondent filed a Motion for Reconsideration of Board's Order on Second Motion to Supplement the Record. The decision on this motion was pending until the hearing.

The briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioner's Prehearing Brief, January 11, 2019 (BSRE Prehearing Brief).
- Response Brief, January 24, 2019 (Shoreline's Response).
- Reply Brief, January 31, 2019 (BSRE Reply).

Hearing on the Merits

The hearing on the merits was convened February 7, 2019. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Appendix B: Legal Issues

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Per the Prehearing Order, legal Issues in this case were as follows:

1. Did the City of Shoreline’s adoption of Ordinance No. 596 fail to comply with the external consistency (consistent with adjacent jurisdictions) provisions of RCW 36.70A.100? More specifically, did Ordinance 596 fail to comply with (1) Snohomish County’s comprehensive plan provisions, (2) the designation in Snohomish County’s comprehensive plan of Point Wells as an Urban Center (Ordinance 09-080), and (3) the minimum density requirements (as measured by the minimum floor area ratio requirement) contained in SCC 30.34A.030 (2010), as adopted by Snohomish County Ordinance 09-079? Shoreline’s trip limit effectively precludes the possibility of complying with both Shoreline’s trip limit and Snohomish County’s minimum FAR requirement set forth in SCC 30.34A.030 (2010). Applicable Snohomish comprehensive plan policies include, but are not limited to, LU 2.A.5, LU 2.B.2, LU 3.A.1, and LU 5.B.12, Countywide Planning Policy UG-8 (as adopted by Snohomish Council Ordinance 09-038), and Objective LU 2.A (adopted by Snohomish Council Ordinance 09-051).
2. Did the City of Shoreline’s adoption of Ordinance No. 596 fail to comply with RCW 36.70A.130(2)(a) and (b) which requires that “updates, proposed amendments, or revisions to a comprehensive plan are [to be] considered by the governing body of the county or city no more frequently than once every year,” and “all proposals shall be considered by the governing body concurrently so that cumulative effect of the various proposals can be ascertained”?
3. Did the City of Shoreline’s adoption of Ordinance No. 596 fail to comply with RCW 36.70A.130(2)(b) by knowingly declaring an emergency, thereby avoiding the requirements of RCW 36.70A.130(2)(a) and (b), when no such emergency existed?