

## Countryman, Ryan

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**From:** Tom McCormick <tommccormick@mac.com>  
**Sent:** Tuesday, February 4, 2020 1:47 PM  
**To:** Mock, Barb; MacCready, Paul  
**Cc:** Countryman, Ryan; Dobesh, Michael; McCrary, Mike; Otten, Matthew; Klein, Ken  
**Subject:** Arguments in opposition to BSRE's request for a variance from the 90-foot maximum building height  
**Attachments:** Minimum FAR calculation.pdf

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

Director Mock,

In BSRE's Point Wells Development Project Narrative submitted March 4, 2011, BSRE declared that the minimum FAR for the project is 1.0, saying at page 15, "Mixed Use developments: base FAR = 1.0 minimum, 2.0 maximum." PDS had no reason then to object to BSRE's characterization, saying in its 2013 review completion letter that "the project meets definition of 'mixed use' per SCC 30.34A.030. The maximum Floor Area Ratio (FAR) for mixed use development is 2.0 and minimum FAR is 1.0. A FAR 1.17 is proposed."

But now things have changed. Now, for the first time, BSRE argues in its request for a variance from the 90-foot maximum building height, that it is unable to satisfy a minimum FAR of 1.0 with buildings limited to 90 feet (its December 12, 2019 resubmission states that with buildings limited to 90 feet, the project's FAR would be 0.907). BSRE's argument surprises me, since BSRE submitted drawings and data to PDS in 2015 showing a FAR of 1.12 with buildings limited to 90 feet (see exhibit #1 attached to Hearing Exh. I-222). PDS never before had reason to question BSRE's assumption that the minimum FAR was 1.0. It didn't matter. The FAR for the project has always been greater than 1.0, even with buildings limited to 90 feet.

Please read my May 21, 2018 email to the Hearing Examiner (reproduced below; and filed as Hearing Exh. I-439). In it, I conclude that the minimum FAR should be calculated on a building-by-building basis, and doing so for the plans that BSRE submitted in 2018 yields a minimum FAR of 0.79. Employing a building-by-building calculation will always yield the lowest lowest possible minimum FAR, the normal goal of developers. It would be an absurd interpretation to use anything but the lowest possible minimum FAR. In my May 21, 2018 email I said:

"the developer community tends to want either no FAR maximums or minimums, or very high FAR maximums and low FAR minimums. And once FAR maximums and minimums become part of the development code, a developer with a high density project will apply the code in a way that achieves the highest FAR maximum possible (e.g., by applying bonuses), and a developer with a low density project will read and apply the code in a way that achieves the lowest FAR minimum possible."

I suggest that PDS recalculate the building-by-building minimum FAR for BSRE's Dec. 12, 2019 resubmission. My guess is that the minimum FAR will be slightly higher than the 0.79 value that I calculated in 2018, but far less than 0.907 (BSRE's December 12, 2019 resubmission states that with buildings limited to 90 feet, the project's FAR would be 0.907). Then please advise BSRE that their variance request is moot because their project with buildings limited to 90 feet easily satisfies the minimum FAR when the minimum FAR is calculated on a building-by-building approach (0.907 is > 0.79 or so).

**Exhibit W-25 McCormick, Tom February 4 2020**  
**PFN: 11-101457 LU**

In sum, BSRE's variance request is moot because their project with buildings limited to 90 feet easily satisfies the minimum FAR when the Table 30.34A.030(1) minimum FAR is calculated on a building-by-building approach.

Because BSRE's Dec. 12, 2019 resubmission contains numerous buildings taller than 90 feet, the County should deny BSRE's applications with prejudice, without preparation of an EIS.

Please enter the following documents into the record in opposition to BSRE's request for a variance from the 90-foot maximum building height:

1. This Feb. 4, 2020 email to you, regarding "Arguments in opposition to BSRE's request for a variance from the 90-foot maximum building height";
2. My Dec. 17, 2019 email to you, regarding "Denying BSRE's resubmitted applications due to ongoing substantial conflict with SCC 30.34A.040(1), explaining that BSRE's long-shot variance request is dead on arrival because the Hearing Examiner lacks authority to disregard the very specific terms of SCC 30.34A.040(1), and approve buildings taller than 90 feet for some other reason, and discussing how BSRE can easily satisfy the minimum FAR with buildings no taller than 90 feet;
3. My Dec. 3, 2019 email to you, regarding "Validity of 4,000 ADT limit; and need for BSRE to seek a variance from minimum FAR rules";
4. My May 21, 2018 email to the Hearing Examiner (reproduced below; Hearing Exh. I-439), regarding "Minimum FAR for BSRE's project is 0.79, not 1.0";
5. A second email that I sent to the Hearing Examiner on May 21, 2018 (Hearing Exh. I-443), regarding "Variance request to use current Code's minimum 0.5 FAR and "net" site area to calculate the FAR"; and
6. My May 24, 2018 email to the Hearing Examiner (Hearing Exh. I-451), regarding "Six things BSRE can do to satisfy minimum FAR—one new one".

Thank you.

Tom McCormick

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

Begin forwarded message:

**From:** Tom McCormick <[tommccormick@mac.com](mailto:tommccormick@mac.com)>  
**Subject:** Minimum FAR for BSRE's project is 0.79, not 1.0  
**Date:** May 21, 2018 at 11:51:48 AM PDT  
**To:** [hearing.examiner@snoco.org](mailto:hearing.examiner@snoco.org)

TO: The Office of the Snohomish County Hearing Examiner

According to BSRE, the floor area ratio (FAR) for its project is 1.0, just barely satisfying the minimum FAR. (Exhibit B-7, PDF page 4 (Sheet A-040)) PDS assumes (wrongly) that the minimum FAR for the project under SCC 30.34A.030(1) [2010] is 1.0. (Exhibit K-31, page 79) As explained below, the correct minimum FAR is 0.79, determined by employing a building-by-building weighted average approach, based upon each building's use category.

Given that the present proceedings involve figuring out whether there are substantial Code conflicts or compliance failures, it may not appear critical whether the minimum FAR is 0.79 or 1.0, since BSRE's current 1.0 FAR would meet the minimum whether it is 0.79 or 1.0. Nonetheless, since the minimum FAR is being discussed (one of the public commenters on Friday, May 18, made a remark that the current density was needed to meet the minimum FAR, if I recall correctly), I thought it appropriate to address the minimum FAR issue in this email.

When a governing body considers adopting FAR minimums and maximums, the response by the developer community is to urge for flexibility; the developer community tends to want either no FAR maximums or minimums, or very high FAR maximums and low FAR minimums. And once FAR maximums and minimums become part of the development code, a developer with a high density project will apply the code in a way that achieves the highest FAR maximum possible (e.g., by applying bonuses), and a developer with a low density project will read and apply the code in a way that achieves the lowest FAR minimum possible.

With that background, let's examine how to determine the minimum FAR, first for projects of three or fewer buildings, and then for bigger projects like BSRE's Point Wells project.

**Projects with  $\leq 3$  buildings — calculating maximum and minimum FAR under the general rule using building-by-building weighted average approach.**

The minimum and maximum FARs are set forth in SCC 30.34A.030(1) [2010] (copy inset below).

## 30.34A.030 Floor area ratio.

(1) Floor to area ratios (FAR) in the UC zone are Table 30.34A.030(1). Additional FAR is allowed in Table 30.34A.030(2) and SCC Table 30.34A.030(2) and SCC Table 30.34A.030(2).

**Table 30.34A.030  
Floor to Area Ratio**

	Minimum	Maximum	Maximum allowable bonus (Table 30.34A.030(2))
Non-Residential	.5	1.0	1.5
Residential	.5	1.0	1.5
Mixed Use	1.0	2.0	3.0
Ground Floor Retail	.25	2.0	2.25

### Notes:

1. Allowable FAR for non-residential and residential uses may be added to the base FAR.
2. Hotels are considered residential for the purpose of this chart.
3. "Mixed-use" means residential and non-residential uses located within the same development proposal includes more than three buildings. To be eligible for the FAR for "mixed use" for development proposals that consist of three buildings or less the entire first floor of a proposed building must be devoted to retail use and double the non-retail area of the building within the building. In order to be eligible for the FAR for "mixed use" for development proposals with more than three buildings, the proposed development may include buildings that are devoted to retail use and double the non-retail area of the development as a whole (e.g. two residential use buildings and two non-residential use buildings).

The second sentence in Note 3 (above) applies to projects with three or fewer buildings:

To be eligible for the FAR for "mixed use" in development proposals that consist of three buildings or less[,] the entire first floor of a proposed building must be devoted to retail

use; or at least one-half of the first floor must be devoted to retail use and double the non-retail area of the first floor must be assigned to retail use on other floors within the building. (underlining added for emphasis)

Observe that for proposals with three buildings or less, the maximum FAR is determined by using a building-by-building weighted average based upon each building's use category. The above underlined text from Note 3 tells us that you determine the FAR category for each building separately (to be eligible for the "mixed use" category for "a proposed building" ...). For a project with three buildings with different use categories, the only possible way to calculate the project's maximum FAR as a whole is to multiply the square footage for each building X its FAR value from the Table, then add the amounts together, then divide by the combined square footage of all buildings. It's a simple weighting formula. Here's the formula to calculate the maximum FAR for a project:

$$\frac{[(\text{Square footage of "Non-Residential" buildings X 1.0 maximum FAR}) + (\text{Square footage of "Residential" buildings X 1.0 maximum FAR}) + (\text{Square footage of "Mixed Use" buildings X 2.0 maximum FAR}) + (\text{Square footage of "Ground floor retail" buildings X 2.0 maximum FAR})]}{(\text{Square footage of all buildings})} = \text{Combined total maximum FAR for the project as a whole}$$

**Example — assumes a 3-building proposed development:**

Gross site area = 100,000 sq ft

Building 1 area (residential) = 30,000 sq ft

Building 2 area (non-residential - offices) = 45,000 sq ft

Building 3 area (mixed use) = 60,000 sq ft

Total area all buildings = 135,000 sq ft

— Maximum FAR calculation:  $(30,000 \times 1.0) + (45,000 \times 1.0) + (60,000 \times 2.0) = 195,000 \div 135,000$  total area all buildings = 1.44 maximum FAR

— Maximum allowed building area for this 100,000 sq ft site =  $100,000 \times 1.44 = 144,000$  sq ft

— Since total area of all buildings (135,000 sq ft) is less than maximum allowed (144,000 sq ft), this 3-building proposed development satisfies the maximum FAR in SCC 30.34A.030(1) [2010].

The minimum FAR is calculated the same way, but using the Table's minimum FAR values:

$$\frac{[(\text{Square footage of "Non-Residential" buildings X 0.50 minimum FAR}) + (\text{Square footage of "Residential" buildings X 0.50 minimum FAR}) + (\text{Square footage of "Mixed Use" buildings X 1.0 minimum FAR}) + (\text{Square footage of "Ground floor retail" buildings X 0.25 minimum FAR})]}{(\text{Square footage of all buildings})} = \text{Combined total Minimum FAR for the project as a whole}$$

— Minimum FAR calculation:  $(30,000 \times 0.5) + (45,000 \times 0.5) + (60,000 \times 1.0) = 97,500 \div 135,000$  total area all buildings = 0.72 minimum FAR

— Minimum allowed building area for this 100,000 sq ft site =  $100,000 \times 0.72 = 72,000$  sq ft

— Since total area of all buildings (135,000 sq ft) is more than the minimum (72,000 sq ft), this 3-building proposed development satisfies the minimum FAR in SCC 30.34A.030(1) [2010].

**A proposed development with more than three buildings.**

BSRE's project has more than three buildings.

In order to be eligible for the FAR for "mixed use" for development proposals that consist of more than three buildings, the proposed development **may** include buildings that are devoted to a single use as long as there is a mixture of uses in the development as a whole (e.g. two residential use buildings and two non-residential buildings). (Note 3 to the Table in SCC 30.34A.030(1) [2010], bold underlining added for emphasis)

The above special rule is used to determine a project's maximum FAR when there are more than three buildings. If a project qualifies to use the special rule, then no building-by-building weighted average calculations are made, as they are for projects with three buildings or less (see above). This special rule invariably gives a developer a greater maximum FAR (2.0) than it would get if it had to calculate the maximum FAR using the building-by-building weighted average approach. Without the special rule, if just one or two buildings of a 10-building project were solely residential, the maximum FAR would be less than 2.0 (the residential buildings with their 1.0 maximum FAR (per Table) would bring down the project's weighted average).

The special rule does *not* apply for purposes of determining a project's minimum FAR. As discussed earlier, developers seek flexibility, and they get it with the greatest maximum FAR for a project (which the special rule confers) and the lowest minimum FAR for a project. No developer would ever elect (note the bold underlined word "may" in Note 3) to apply the special rule to *increase* to 1.0 the minimum FAR for its project, if using the general rule's building-by-building weighted average approach, the minimum FAR for a project would be less than 1.0. It would be a nonsensical reading to conclude that the special rule mandatorily applies to *increase* the minimum FAR. PDS erred in assuming the minimum FAR for BSRE's project is 1.0.

The minimum FAR for BSRE's project is calculated using the general rule's building-by-building weighted average approach discussed above, based upon each building's use category:

$$\frac{[(\text{Square footage of "Non-Residential" buildings} \times 0.50 \text{ minimum FAR}) + (\text{Square footage of "Residential" buildings} \times 0.50 \text{ minimum FAR}) + (\text{Square footage of "Mixed Use" buildings} \times 1.0 \text{ minimum FAR}) + (\text{Square footage of "Ground floor retail" buildings} \times 0.25 \text{ minimum FAR})]}{(\text{Square footage of all buildings})} = \text{Combined total Minimum FAR for the project as a whole}$$

Using the above formula, and the building data from Exhibit B-7, PDF pages 21-23 (Sheets A-200, 201 and 202), I calculated the minimum FAR for BSRE's project to be 0.79. See the attached PDF for my calculations.

**The correct minimum FAR for BSRE's project is 0.79.**

For the reasons discussed above, the correct minimum FAR for BSRE's project is 0.79, not 1.0 as PDS assumes.

Thank you.

Tom McCormick

