Ryan,

This email dives deeper into how to calculate the minimum FAR ("floor area ratio"). It dives into the history behind the adoption of SCC Table 30.34A.030(1) and its Note 3, and concludes that a building-by-building weighted average method is the default, mandatory method of calculating the minimum FAR for a project like Point Wells with multiple buildings.

This email goes beyond the following conclusion in Staff's May 27, 2020, Supplemental Recommendation #2 (Hearing Exhibit X-13, page 8):

Note 3 provides another approach authorized by the FAR regulations for calculating a weighted average of residential and mixed-use buildings throughout the site to achieve compliance with a lower FAR. The weighted average approach is authorized by Note 3 of SCC Table 30.34A.030(1). Under the weighted average approach authorized by Note 3, minimum FAR is calculated as follows:

\[
\left(\text{Square footage of Non-Residential buildings} \times 0.50 \text{ minimum FAR}\right) + \left(\text{Square Footage of Residential buildings} \times 0.50 \text{ minimum FAR}\right) + \left(\text{Square Footage of Mixed Use buildings} \times 1.0 \text{ minimum FAR}\right) + \left(\text{Square Footage of Ground floor retail buildings} \times 0.25 \text{ minimum FAR}\right) / \text{(Square footage of all the buildings)} = \text{Combined Total Minimum FAR for the project. [See Exhibit I-439 for a detailed overview the weighted average approach.]}\]

It is possible that the Applicant could have utilized a similar approach with the current version of the plans. However, the Applicant did not provide the County with application materials supporting this calculation and methodology.

Staff’s conclusion that BSRE "could have" utilized a building-by-building weighted average approach is not strong enough.

For years, BSRE has assumed that the minimum FAR for its project is 1.0—the “mixed use” value in SCC Table 30.34A.030(1). Because BSRE consistently reported that its project FAR exceeded 1.0, no one made a fuss about BSRE’s assumption.

But things are different now.

BSRE has requested a variance from the 90-foot height limit (see Hearing Exhibit V18), arguing that, "In order to satisfy the minimum FAR [of 1.0], the buildings must be constructed greater than 90 feet tall." BSRE states that its project FAR is 0.907 with buildings no taller than 90 feet, failing to meet the minimum FAR of 1.0.
Since BSRE’s variance request is predicated on the minimum FAR being 1.0, we must ask whether the minimum FAR is really 1.0 as BSRE has long assumed. It is not.

A building-by-building weighted average method must be used to calculate the minimum FAR. This method yields a minimum FAR of 0.76 for the project (see Part III below).

If BSRE’s project’s FAR is 0.907 as it claims, BSRE easily satisfies the minimum FAR of 0.76 with buildings limited to 90 feet. BSRE does not need a height variance to satisfy the minimum FAR. Its variance request must be denied.

I.

Let’s now examine the history of SCC Table 30.34A.030(1) and its Note 3, to determine why a building-by-building weighted average method must be used to calculate the minimum FAR.

A. April 21, 2010.

At its April 21, 2010 meeting, Council was considering a draft of Ordinance 09-079, and a series of proposed amendments. At that time, SCC Table 30.34A.030(1) contained only three categories of buildings for which a minimum and maximum FAR was provided: non-residential, residential, and mixed use. And Note 3 to SCC Table 30.34A.030(1) contained only one sentence:

3. “Mixed-use” means residential and non-residential uses located within the same building.

Amendment 8C proposed to add a second sentence to Note 3 to read as follows:

To be eligible for the FAR for “mixed use,” 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.

And amendment 8D proposed to add ground floor retail as a new category in SCC Table 30.34A.030(1), and proposed to reduce the minimum and maximum FARs for residential and mixed use, as follows:
BSRE’s concerns. BSRE’s attorney, Gary Huff, submitted a letter to Council (copy attached) at the April 21, 2010 meeting. BSRE’s letter expressed concern that proposed amendments 8C and 8D would seem to imply that FAR would be determined on a building-by-building basis, instead of calculating FAR for the overall site:

We must also express concern with the manner in which ground floor retail is to be encouraged. We believe there is a potential for confusion which relates to the definition of "mixed use" status and the calculation of mixed use FAR.

We have envisioned that one FAR calculation would be made for a project based on overall site area and characteristics. We are, of course, interested in any requirements for qualification as a "mixed use" project.

Amendments 8C and 8D seem to imply that FAR would be determined on a **building by building basis**. If so, we question the viability of that approach in that the denominator of the FAR calculation (site area) would be very difficult to determine for each individual building. We believe that the better approach is to encourage ground floor retail as a qualification for "mixed use" status, but calculate FAR for the overall site. (Emphasis added.)

Council action. Despite BSRE’s expressed concerns, Council unanimously approved proposed amendments 8C and 8D. Staff subsequently incorporated the amendments in the Proposed Final Draft of Ordinance 09-079 that Council considered at its May 5, 2010 meeting (the final meeting before Council adopted Ordinance 09-079 a week later, on May 12, 2010).

So, as of April 21, 2010, for a project with multiple buildings, the minimum and maximum FARs were to be determined on a building-by-building basis. There was no discussion about how exactly such building-by-building calculations were to be made. Some sort of weighted average method would obviously be needed.

B. April 28, 2010.

---

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**BSRE tries again, proposes specific text for Note 3.** A week later, on April 28, 2010, BSRE’s attorney sent to Council Legislative Analyst Peggy Sanders an email (Hearing Exhibit L-5) with a proposed amendment to Note 3 of Table 30.34A.030(1):

Peggy—Hopefully the attachment will make your job a little easier. It contains our suggestions to clean up some inconsistencies in the current draft [of Ordinance 09-079] (at least as we understand it). ... First, some explanation. We’ve reworded Note 3 re ground floor retail and the definition of mixed use. ...

BSRE’s proposed amendment to Note 3 read as follows:

3. "Mixed-use" means residential and non-residential uses located within the same building. For urban centers comprised of multiple lots and/or buildings, "mixed-use" means that both residential and non-residential uses must be included within the urban center, but not necessarily within the same building. For such urban centers, FAR shall be calculated for the entire property and not for each individual building. (Emphasis added.)

**C. May 5, 2010.**

**Council responds to BSRE’s proposal.** At its May 5, 2010 meeting, a Proposed Final Draft of Ordinance 09-079 was introduced and discussed. Councilmember Somers circulated a short memo (copy attached) that he prepared, containing four suggested amendments to the Proposed Final Draft. One of his suggestions was designed to address BSRE’s desire that FAR “be calculated for the entire property and not for each individual building.” Councilmember Somers’ memo suggested a two-tier rule, which he and other Councilmembers discussed favorably at the meeting:

1. "For urban centers of more than 3 buildings - allows the mixed use criteria and FAR bonuses to be applied to the whole development.” [Note: Unlike BSRE’s proposal, this is an optional rule, not a mandatory rule.]

2. “For proposals of 3 buildings or less, all buildings must be mixed use buildings [to get the mixed use FAR for the project]."

The minutes from the May 5, 2010, meeting Report the following:

Councilmember Somers then explained his [next] issue: ...

Mixed use - proposals of 3 buildings or less, all buildings must be mixed use buildings. For urban centers of more than 3 buildings - allow the mixed use criteria and FAR bonuses to be applied to the whole development

Councilmember Cooper expressed his support of the proposal. No opposition was heard from other members.

Several times during the discussion of Councilmember Somers’ proposal, Councilmembers mentioned “getting" the FAR for mixed use, obviously talking about getting the maximum 2.0 mixed use FAR plus bonus for a project. Here are four such mentions during the discussion (I listened to a recording of the meeting, available on the County’s website): “you get your mixed use” ... “if it was getting the mixed use FAR” ... “if they want to call it mixed use for purposes of getting the FAR bonus” ... “if they want to get the FAR bonus.”

**D. May 12, 2010.**

Following the May 5, 2010 meeting, Staff drafted a revised Note 3 incorporating with additional details the general concept of Councilman Somers’ proposal. The revised Note 3 was included in the final version of Ordinance 09-079, which Council adopted on May 12, 2010. The revised and adopted Note 3 reads as follows (with markups showing how the version of Note 3 contained in the May 5, 2010 Proposed Final Draft was revised to incorporate Councilmember Somers’ two-tier proposal):
3. “Mixed-use” means residential and non-residential uses located within the same building unless, for purposes of this section, the development proposal includes more than three 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. In order to be eligible for the FAR for “mixed use[2]” 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).

Unlike BSRE’s proposal, the rule for projects consisting of more than three buildings is an optional rule, not a mandatory rule. It enables developers “to get” the maximum mixed use FAR of 2.0 plus bonuses for a project. Since it is not a mandatory rule, it has no impact on determining the minimum FAR for a project consisting of more than three buildings. "Getting the mixed use FAR" makes sense when referring to the maximum FAR plus bonuses. But it makes no sense to speak of “getting the mixed use FAR” when referring to the minimum FAR for a project. One would never try “to get” a minimum FAR of 1.0 for a project when the default building-by-building weighted average method yields a minimum FAR that is much lower than 1.0.

II.

How the above chronology helps us determine the minimum and maximum FAR for a project.

A. Building-by-building basis is the default method.

Prior to Council amending Note 3 to SCC Table 30.34A.030(1) to incorporate Councilmember Somers’ two-tier suggestion introduced May 5, 2010, it was clear that the minimum and maximum FAR for all urban center projects was to be calculated on a building-by-building basis.

Councilmember Somers commented at the May 5, 2010, meeting, that, “right now, the way [Note 3 reads], we would require every building to have mixed use within it no matter what type of development it is” to get the FAR for mixed use. If not all buildings in a large project have a mixed use that qualified them for the mixed use maximum FAR of 2.0 (the maximum FAR for residential and non-residential buildings is only 1.0), then some sort of building-by-building weighted average formula would be needed to calculate the maximum FAR.

Even BSRE commented about a building-by-building approach. As BSRE stated in its April 21, 2010, letter to Council, the version of Note 3 being considered seemed to “imply that FAR would be determined on a building by building basis.”

B. Building-by-building basis is the only method for projects with three buildings or less.

Under the final, adopted version of Note 3 to SCC Table 30.34A.030(1), for projects with three buildings or less, the only way to get the maximum 2.0 FAR for mixed use is if all buildings are mixed use. If one building is mixed use and the others are not, then a building-by-building weighted average formula must be employed to calculate the maximum FAR. There is no other way. Likewise, the building-by-building weighted average formula must be employed to calculate the minimum FAR.

C. Projects with more than three buildings may elect a maximum FAR of 2.0 for the whole project, producing the highest possible maximum FAR.

Under the final, adopted version of Note 3 to SCC Table 30.34A.030(1), for projects with more than three buildings, “to be eligible for the FAR for mixed use,” you “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.” (Emphasis added.)
A plain reading of Note 3 tell us that this is an optional rule, not a mandatory one like BSRE proposed on April 28, 2010.

This optional rule gives developers a means to get the maximum FAR of 2.0 plus FAR bonuses for all buildings in a project, in lieu of calculating a project’s maximum FAR on a building-by-building basis. Note that calculating the maximum FAR on a building-by-building weighted average basis always yields a lower maximum FAR for projects containing some buildings that are solely residential or non-residential—buildings whose maximum FAR is 1.0 per SCC Table 30.34A.030(1).

As Councilmember Somers stated in his May 5, 2010, memo that introduced his two-tier proposal, this optional rule “allows the mixed use criteria and FAR bonuses to be applied to the whole development.” The intent was to help developers get the maximum FAR of 2.0 plus FAR bonuses for all buildings in a project.

D. The building-by-building weighted average method continues to be the default method to determine the minimum FAR for projects with more than three buildings, producing the lowest possible minimum FAR.

The optional rule in Note 3 has no bearing on determining a project’s minimum FAR, which continues to be calculated using a building-by-building weighted average approach. For a project like Point Wells with at least one building that is solely residential, or solely non-residential, or solely retail (buildings whose minimum FAR per SCC Table 30.34A.030(1) is, respectively, 0.50, 0.50, and 0.25), the default building-by-building weighted average approach will always yield a minimum FAR lower than 1.0 (the mixed use minimum FAR).

If Note 3 were written as a mandatory rule as BSRE had proposed on April 28, 2010 (“FAR shall be calculated for the entire property and not for each individual building”), then perhaps the result would be different. However, Council did not adopt a mandatory rule, likely recognizing that it would be harmful to developers seeking the lowest possible minimum FAR for a project.

See the following passage from my May 21, 2018 email, Hearing Exhibit I-439:

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.

Since 2011, BSRE should have been calculating the minimum FAR for its project on a building-by-building basis. But perhaps it figured, why bother, why waste the time, when its project easily satisfied a minimum FAR of 1.0, the highest possible minimum per SCC Table 30.34A.030(1). BSRE’s original application submitted in 2011 reported a project FAR of 1.17, easily satisfying BSRE’s assumed minimum FAR of 1.0.

BSRE’s assumed minimum FAR is no longer valid. In particular, it is wrong to use an assumed minimum FAR of 1.0 to justify BSRE’s purported need for a variance from the 90-foot height limit. If the project’s minimum FAR is going to be relied upon to justify a variance, BSRE must calculate the project’s minimum FAR employing the default building-by-building weighted average approach. No more assumptions.

III.

Contrary to what BSRE said in its April 21, 2010 letter, questioning the “the viability of that [building-by-building] approach in that the denominator of the FAR calculation (site area) would be very difficult to determine for each individual building,” it is very easy determine the minimum FAR employing a building-by-building weighted average formula.
The only variables are these: (1) what is the square footage of each building; and (2) what is the “use” and minimum FAR value of each building as provided in SCC Table 30.34A.030(1)—residential (0.50), non-residential (0.50), mixed use (1.0), or ground floor retail (0.25).

Here’s the formula to calculate the minimum FAR on a building-by-building weighted average basis; it’s the same formula that I first presented to the County in 2018 (see Hearing Exhibit I-439):

\[
\text{The project’s Minimum FAR} = \frac{\text{(Square footage of "Non-Residential" buildings X 0.50 minimum FAR) + (Square footage of "Residential" buildings X 0.50 minimum FAR) + (Square footage of "Mixed Use" buildings X 1.0 minimum FAR) + (Square footage of "Ground floor retail" buildings X 0.25 minimum FAR)}}{\text{(Square footage of all buildings)}}
\]

For BSRE’s resubmitted application (December 2019), the calculated minimum FAR is 0.76.

I calculated the minimum FAR using each building’s square footage, found in Appendix B of the POINT WELLS DEVELOPMENT FLOOR AREA RATIO REVIEW (the April 2020 REVIEW), prepared by WJA Design Collaborative (April 13, 2020) (Hearing Exhibit X-1). Appendix B caps building heights at 90 feet, and does not include buildings in the Urban Plaza. Next, I obtained each building’s “use” from Sheets A-200, 201 and 202 from BSRE’s resubmitted drawings (Hearing Exhibit V-6). Attached is a spreadsheet that shows the data used and calculations made.

With a minimum FAR of 0.76 and a gross site area of 2,653,620 square feet, the project would require 2,024,507 square feet of building space to satisfy the minimum FAR requirement (= 0.76 X 2,653,620). According to BSRE’s height variance request (Hearing Exhibit V-18), with buildings limited to 90 feet, the buildings have 2,408,637 square feet, which easily exceeds the calculated minimum of 2,024,507 square feet. The project FAR is 0.907, which easily exceeds the calculated minimum of 0.76.

The April 2020 REVIEW (see above) calculates the project FAR differently than BSRE did. Unlike BSRE, it removed stairways etc., with the result that it reported a lower square footage for the buildings than BSRE did. Using its lower square footage for the buildings, the April 2020 REVIEW determined that the project’s FAR is 0.59.

Assuming the project’s FAR is 0.59, there are many ways to increase it to satisfy the calculated minimum FAR of 0.76, without increasing building heights. For example, buildings can be widened, or new buildings can be added.

Or, instead of trying to increase the project FAR, perhaps the simplest fix is to take steps to reduce the calculated minimum FAR. By removing non-residential ground floor uses from 10 buildings currently considered mixed use, thereby converting the buildings to solely residential use, the calculated minimum FAR drops to 0.56. For details, see the attached spreadsheet.

In sum, if the project’s FAR is 0.907 as BSRE claims, then it satisfies the calculated minimum FAR of 0.76, so BSRE does not need its requested height variance. If instead the project’s FAR is 0.59, as per the April 2020 REVIEW, then BSRE has multiple tools available to increase the project’s FAR and/or reduce the project’s minimum FAR, so that the project will satisfy the Code’s minimum FAR requirement. Whatever scenario is presented, BSRE does not need its requested height variance to satisfy the Code’s minimum FAR requirement.

Please enter this email into the record for the upcoming hearing.

Thank you.

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

Attachments:

1. April 21, 2010 letter from BSRE’s attorney, Gary Huff, to Snohomish County Council
2. Exhibit L-5, April 28, 2010 email from BSRE’s attorney, Gary Huff, to Council Legislative Analyst Peggy Sanders
3. May 5, 2010 memo prepared by Councilmember Somers
4. Spreadsheet showing minimum FAR calculations (PDF version)
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<td>Minimum FAR value from SCC Table 30.34A.030(1) for each building's planned use.</td>
<td>Actual square footage of each building, determined per SCC 30.91(F)45 definition of &quot;Floor Area Ratio.&quot;</td>
<td>Square footage of each building X minimum FAR from SCC Table 30.34A.030(1), according to each building's planned use (the &quot;use-adjusted&quot; square feet).</td>
<td>Adjusted building use, with 10 buildings previously mixed use converted to purely residential use.</td>
<td>Minimum FAR value from SCC Table 30.34A.030(1) for each building's adjusted planned use.</td>
<td>Square footage of each building X minimum FAR from SCC Table 30.34A.030(1), according to each building's adjusted planned use (the &quot;use-adjusted square feet).</td>
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Minimum FAR for project = total "use-adjusted" square feet = total actual square feet of buildings: 0.76

Minimum FAR for project = total "use-adjusted" square feet = total actual square feet of buildings: 0.56
Proposed Refinements to Urban Centers Ordinance

Dave Somers

May 5, 2010

1. Permit process – modify code to provide two possible permit pathways. The first is a development agreement path that eliminates the design review board. The second path has a design review board and Type 2 process but eliminates the development agreement. See attached flow chart.

2. Public transportation – would require urban center to provide van pool or other access to transit until transit service is established by transit agency.

3. Mixed use – specifies for proposals of 3 buildings or less, all buildings must be “mixed use buildings”. For urban centers of more than 3 buildings, allows the mixed use criteria and FAR bonuses to be applied to the whole development.

4. Building Height and Setback cleanup – see attachment 2.
(2)(a) Building heights must be scaled down for buildings located on the edge of UC zoning and abutting R-9600, R-8400, R-7200, T or LDMR zoning and limited in height to that equal to half the distance of such land from the zoning line (e.g. a building that is 90 feet from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed 45 feet in height).

(2)(b) For buildings that are not located on the edge of the UC zoning but are located within 100 feet of the R-9600, R-8400, R-7200 shall be limited in height to two times the height limit in the R-9600, R-8400 or R-7200 zone; and buildings between 100 feet and 200 feet of an R-9600, R-8400 or R-7200 zone to three times the height limit in the R-9600, R-8400 or R-7200 zone.

(2)(c) Where the UC zoning line abuts a critical area protection area and buffer or utility, railroad, public or private road right-of-way, building heights shall not be subject to the limitations in sections (2)(a) and (2)(b) if the critical area protection area and buffer or utility, railroad, public or private right-of-way provides an equal or greater distance between the building(s) and the zoning line than would be provided in subsections (2)(a) or (b).
Peggy--Hopefully the attachment will make your job a little easier. It contains our suggestions to clean up some inconsistencies in the current draft (at least as we understand it). More importantly, we've included our suggestion as to how to "prune" the process requirements.

First, some explanation. We've reworded Note 3 re ground floor retail and the definition of mixed use. The next paragraph isn't proposed code text but a suggestion as to where the ground floor retail FAR bonus might fit better.

With respect to building heights and setbacks, there appears to be some language missing in all of the amendments. I've added language in 30.34A040(2)(a) so that it reads in the manner I think was intended. Without the addition, the example involving 45 and 90 feet doesn't make sense. You will also see that I reordered the language slightly to clarify what I think was the intent—that these requirements should not apply in either instance where the UC zoned property abuts a critical area.

The access to public transportation language is revised to avoid a potential trap where appropriate high occupancy travel may not be immediately available.

Our "process" proposal may take some explanation. You will recall that the language in Executive 2 and Council 7B were early attempts to define the proper role for cities. I can't believe that Woodway, for example, envisioned that those amendments would remain if their development agreement proposal, or a reasonable facsimile thereof, became part of the code. Thus, I've removed 2 and 7B and then expanded on Councilman Gossett's suggestion about alternative processes depending on whether a development agreement is successfully negotiated.

This may still be very confusing. I'm available to talk about this at any time. Hopefully this helps.

Gary
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Floor Area Ratio/Ground Floor Retail

Table 30.34A.030(1) Note 3.

3. “Mixed-use” means residential and non-residential uses located within the same building. For urban centers comprised of multiple lots and/or buildings, “mixed-use” means that both residential and non-residential uses must be included within the urban center, but not necessarily within the same building. For such urban centers, FAR shall be calculated for the entire property and not for each individual building.

If the intent of the new “Ground Floor Retail” FAR range is to provide an incentive for the provision of that use, then perhaps this requirement fits better in Table 30.34A.030(2) as a floor area ratio bonus. If so, it may be useful to include a minimum depth requirement for street level commercial uses. The Seattle code requires a minimum depth of 30 feet.

30.34A.040 Building Height and Setbacks (Council 8E)

(2)(a) Building heights must be scaled down for buildings located on the edge of UC zoning and abutting R-9600, R-8400, R-7200, T or LDMR zoning and limited in height to that equal to twice the distance of such land from the zoning line (e.g. a building that is 45 feet from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed 90 feet in height.

(2)(b) For buildings that are not located on the edge of the UC zoning but are located within 100 feet of the R-9600, R-8400, R-7200 shall be limited in height to two times the height limit in the R-9600, R-8400 or R-7200 zone; and buildings between 100 feet and 200 feet of an R-9600, R-8400 or R-7200 zone to three times the height limit in the R-9600, R-8400 or R-7200 zone.

(2)(c) Where the UC zoning line abuts a critical area protection area and buffer or utility, railroad, public or private road right-of-way, building heights shall not be subject to the limitations in sections (2)(a) and (2)(b) if the critical area protection area and buffer or utility, railroad, public or private road right-of-way provides an equal or greater distance between the building(s) and the zoning line than would be provided in subsections (2)(a) or (b).

30.34A.085 Access to public transportation. (Council 10B)

Business or residential buildings within an urban center must either (1) be constructed with one-half mile of existing or planned stops or stations for high capacity transit routes such as commuter rail lines, regional express bus routes or transit corridors that contain
multiple bus routes, (2) provide for new stops or stations for such high capacity transit routes or transit corridors within one-half mile of any business or residence and work with transit providers to assure use of the new stops or stations, or (3) provide a mechanism such as van pools or other similar means of transporting persons on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit routes.

“Process” Issues.

Executive 2 (SCT proposal) and Council 7B are redundant and have been superceded by the following amended language. Recommend deletion of Executive 2 and Council 7B.

30.34A.180 Review process and decision criteria.

1) Review of an urban center development shall be as follows:

(a) Following the submittal of an urban center application, the applicant, Snohomish County, any city whose municipal urban growth area includes the urban center and any city whose public utilities or services must be used by the proposed urban center development shall attempt to negotiate and reach agreement upon a development agreement which would control the design, extent and appropriate mitigation for the urban center. In the event no agreement has been achieved within __ days of the date of application, or if the parties acknowledge in writing at any time that the terms of a development agreement are not likely to be agreed upon within said time frame, then Snohomish County shall waive this requirement and may enter into a development agreement with the applicant alone. Nothing herein shall preclude the parties from agreeing to extend the time frame for entry into the development agreement.

(b) If the terms of a development agreement are agreed upon pursuant to subsection (a) above, then the development agreement shall be reviewed pursuant to the procedures established in SCC 30.75.010-300. If the County Council approves the development agreement pursuant to SCC 30.75.020, the development agreement shall control the manner in which the urban center shall be developed. An approved development agreement is the final decision of the county and may be appealed to superior court within 21 days of the issuance of the decision in accordance with chapter 36.70C RCW and SCC 30.71.130

(c) In the event the terms of a development agreement have not been agreed upon pursuant to either subsections (a) or (b) above within __ days of application, or if sooner requested by the applicant, a design review board established by SCC 30.34A.185 shall review and submit a recommendation regarding the initial urban center development plan to the hearing examiner based on urban center design guidelines adopted by Snohomish County. Nothing herein shall be preclude the
parties from agreeing to extend the time frame for entry into the development agreement.

(d) The hearing examiner shall consider the recommendation from the design review board under the Type 2 decision procedures set forth in SCC 30.72.025 through SCC 30.72.065.

(e) Except as otherwise provided in subsections (a) or (b) above, the hearing examiner's decision on an urban center application is the final decision of the county and may be appealed to superior court within 21 days of the issuance of the decision in accordance with chapter 36.70C RCW and SCC 30.71.130.
April 21, 2010

Snohomish County Council
3000 Rockefeller Avenue, M/S #609
Everett, WA 98201

RE: Paramount of Washington, LLC’s Comments re Urban Centers Code

Dear Members of the Snohomish County Council:

On behalf of Paramount of Washington, we express our gratitude to the County Council and to both the Council and PDS staff who have worked so tirelessly to create a workable Urban Centers Code. All of your efforts are very much appreciated. We are anxious to have a code in place so that we can work collaboratively to take the next steps in the development of a model Urban Center at Point Wells.

One theme you have often heard from both the jurisdictions neighboring Point Wells and from UI is that all urban centers are not alike and that “one size does not fit all.” We generally agree with these statements. Point Wells is different than the other urban centers. It is for that reason that we support efforts to incorporate flexibility into the code and into project review so that the eventual project design best fits the special characteristics of each individual site. Specific examples include letting the SEPA process and project-specific EIS determine appropriate building heights and allowing for the modification of standards where appropriate (Amendment 4B).

Paramount also recognizes the significance of site redevelopment on Woodway and Shoreline. We acknowledge that they are entitled to have their voices heard and their wishes considered. We believe that the SCT proposal (Executive 2) reflects the appropriate mechanism for insuring their participation. Should the Council determine that some more defined city role is required, then we urge the adoption of Amendment 7B which requires notice to and consultation with these jurisdictions which may result in (but does not mandate) the adoption of an interlocal agreement.
We strongly urge the rejection of Amendment 12A. Requiring the completion of both a project EIS and of design review and the required entry into a development agreement with Shoreline and Woodway as a precondition of an ability to file an Urban Center application presents significant procedural and legal issues. These preconditions could not withstand court challenge. This proposal amounts to giving this other jurisdictions veto power over the redevelopment of Point Wells. That is a concept which the Council has already rejected.

Paramount understands the Council’s concerns regarding the appropriate transitions between single family neighborhoods and urban centers. However, we note that the FAR reductions proposed in Amendments 8C & 8E where an urban center abuts a single family neighborhood essentially duplicates the height reductions required by Executive Amendment 4. Regardless of where or how these transitions are governed, we support the language in Executive Amendment 4 which provides for an exception where an urban center abuts a critical area.

We must also express concern with the manner in which ground floor retail is to be encouraged. We believe there is a potential for confusion which relates to the definition of “mixed use” status and the calculation of mixed use FAR.

We have envisioned that one FAR calculation would be made for a project based on overall site area and characteristics. We are, of course, interested in any requirements for qualification as a “mixed use” project.

Amendments 8C and 8D seem to imply that FAR would be determined on a building by building basis. If so, we question the viability of that approach in that the denominator of the FAR calculation (site area) would be very difficult to determine for each individual building. We believe that the better approach is to encourage ground floor retail as a qualification for “mixed use” status, but calculate FAR for the overall site.

Our final concern relates to the series of amendments (10, 10A, 10B and 10C) dealing with the availability of transit. While Paramount supports the importance of the availability of transit and/or rail service, we believe these requirements are better implemented as part of the locational criteria for urban center designation. If any such language is to be included in the Urban Centers Code, then we suggest that the term “commuter rail” is much preferable to “light rail.” We intend to take advantage of the proximity of Point Wells to the Sound Transit’s rail service. We are concerned that the inclusion of the term “light rail” in the definition of appropriate transit could be read as disqualifying Point Wells.
Thank you for your consideration of Paramount's suggestions and comments. We appreciate your efforts to date and look forward to making Point Wells the type of aesthetic sustainable development we can all be proud of.

Sincerely,

Gary D. Huff
Land Use Counsel for Paramount of Washington

cc: Steven D. Farkas, Vice President and General Counsel
D. Mark Wells, Northwest Environmental Manager
Dennis L. Derickson, David Evans and Associates, Inc.
Jack Molver, David Evans and Associates, Inc.
Steve Ohlenkamp, The Communication Group
Douglas A. Luetjen, Counsel for Paramount of Washington, LLC