Ms. Yount,

Before the applicant reposts the notice, two revisions are needed to correct the original deficiencies:

1. The date of the notice should say November 2, 2020, the date that it is being reposted.

2. A new paragraph should be added to the notice, entitled, Submitting Written Comments. The paragraph should describe the process for the public to submit written comments, and the deadline to do so (November 17).

Thank you.

Tom McCormick
Ms. Yount,

Today, October 30, a barely visible notice of the upcoming hearing was duct-taped on the fence along 116th Ave West in Woodway, where the proposed second access road would connect (see the attached photo #1 taken Oct. 30 showing the duct-taped notice, and photo #2 taken Oct. 29 showing the fence with no notice).

This spot along 116th Ave West in Woodway is the single most important location for notifying the public. Numerous walkers, bicyclists, and cars pass by this location. The number of people passing by this location every day far exceeds the 200 or so parties of record. In contrast, virtually no one passes by the location at the dead-end of Richmond Beach Drive near the entrance to Point Wells where a separate notice was posted (see the attached photo #3 taken Oct. 29 of a notice duct-taped to a faded notice board).

Unfortunately, the notice posted Oct. 30 on the fence along 116th Ave West in Woodway blends into the background and commands zero attention. In contrast, the notice posted for the hearing in 2018 was a proper notice with a proper red background. It was placed on an official PDS notice board that commanded the attention of passersby (see attached photo #4 taken April 24, 2018).

In the email that Matt Otten sent to the Hearing Examiner’s office today, he assumed that all required notices were posted on October 28. With that assumption, he said that, “PDS’s position is that the Applicant’s failure to post notice in a timely fashion does not require a delay of the hearing. … In the event the Examiner finds it necessary to take action in response to the untimely posting of the notice by the Applicant, PDS suggests that an additional opportunity for the public to provide comment be granted, and scheduled 15 days from the October 28th date the Applicant posted notice at the site.”

Please consider the following:

1. Contrary to what was assumed, not all notices were posted on October 28. As explained above and verified by me personally (see attached photos #1 and #2), no notice was posted at the single most important location for notifying the public until today, October 30 (fence along 116th Ave West in Woodway).

2. The notice posted today, October 30, on the fence along 116th Ave West in Woodway is deficient because it is not posted on an official PDS poster board like occurred in 2018 (see photo #4).

My recommendation:

The applicant should procure two official PDS notice boards, and repost both notices on the boards by November 2: (1) one on the fence along 116th Ave West in Woodway, and (2) one at the dead-end of Richmond Beach Drive near the entrance to Point Wells to replace the faded, nondescript notice board posted there.

I do not agree with Mr. Otten’s proposed period for the public to provide comment. Rather than a
deadline of 15 days from the date that it was assumed the Applicant posted the notices (October 28), the deadline should be 15 days from the actual date that the applicant properly posts both notices. As discussed above, the first date that both notices were posted is today, October 30, not the assumed October 28. But the notices are not yet properly posted because they need to be placed on official PDS notice boards to command the public’s attention. The public has come to expect that important notices be posted on official PDS notice boards, like how it was done in 2018, and not be duct-taped in a plastic bag directly on the fence in a fashion that is barely visible.

I would expect that the applicant could properly post the notices on Monday, November 2. And the recommended deadline for the public to provide comment would be 15 days later.

With corrective measures as above, I concur with Mr. Otten that the hearing need not be delayed because of the errors and delays posting the notices.

This email presents my views only. I don’t know what other members of the public might think.

Thank you for considering this matter.

Tom McCormick

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

Photo #1 taken Oct. 30, 2020 of the notice on the fence along 116th Ave West in Woodway:
Photo #2 taken Oct. 29, 2020 of the fence along 116th Ave West in Woodway:
Photo #3 taken Oct. 29, 2020 of the notice at the dead-end of Richmond Beach Drive near the entrance to Point Wells:
Photo #4 taken April 24, 2018 of the fence along 116th Ave West in Woodway:
On Oct 30, 2020, at 1:58 PM, Otten, Matthew <Matthew.Otten@co.snohomish.wa.us> wrote:

Ms. Yount,

I am writing to inform the Examiner of an issue PDS just recently became aware of with regard to the posted notice provided for the upcoming Point Wells hearing. PDS is notifying the Examiner of this issue now so that he has the opportunity to review the issue prior to the start of the hearing on November 2nd and can provide direction to the parties on how to proceed with minimal impact on the scheduled hearing.

On October 19, 2020, PDS provided the Notice of Application to the Applicant. In the communication to the Applicant, PDS specified that it needed to be posted on site and requested that the Verification of Notice Posting be returned to PDS when completed. PDS followed up with the Applicant on October 27, 2020, requesting the Verification of Notice Posting for inclusion into the administrative record. Under SCC 30.70.045(1), posting of the notice to the site is the Applicant’s responsibility. On October 29th, the Applicant provided PDS the Verification of Notice Posting indicating that the site had been posted on October 28, 2020. Under SCC 30.72.030, notice of the open record hearing shall be provided 15 days prior to the hearing date. The October 28th posting date does not satisfy the code requirement for 15-day prior notice under SCC 30.72.030(1).
However, in compliance with SCC 30.72.030, notice of the hearing was provided to the public prior to 15 days of the hearing by PDS via publication, mailing, and emailing. As a continued hearing on remand, PDS has an exhaustive list of the parties of record, including email addresses. PDS used this list to send email notice of the hearing to over 227 parties of record and mailed notice to 202 parties of record. Emailed notice is not required by the County Code but PDS used this method to provide additional notice to the parties. In addition, PDS published notice in the Everett Herald on October 18th. The notice PDS provided for this hearing has met and exceeded the requirements set forth in the County Code and apprised the public of the hearing and opportunity to participate.

The late timing of the posted notice provided by the Applicant has a de minimis impact on noticing of the hearing when viewed in the context of the other methods of notice provided to the public. Also due to the site’s location, at the end of dead-end road at a site with no public access, the late timing of the posted notice is unlikely to have practical impact on the notice provided to public concerning this hearing. Lastly, because this is a remanded application and continued hearing many of the members of the public with an interest in the development are already parties of record in this matter and were provided direct notice of the hearing. Given these facts, PDS’s position is that the Applicant’s failure to post notice in a timely fashion does not require a delay of the hearing. A delay of the hearing would have a much greater negative impact on public notice and opportunity to participate since the public has already been notified of the current hearing dates through the notice provided by PDS. In the event the Examiner finds it necessary to take action in response to the untimely posting of the notice by the Applicant, PDS suggests that an additional opportunity for the public to provide comment be granted, and scheduled 15 days from the October 28th date the Applicant posted notice at the site. The last scheduled hearing date, November 13th, would be 15 days from the date the site was posted.

Thank you for your consideration of this issue.

Matthew A. Otten
Deputy Prosecuting Attorney
Snohomish County Prosecutor's Office - Civil Division
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(425) 388-6337
motten@co.snohomish.wa.us

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Email Attachment on following page
NOTICE OF OPEN RECORD HEARING

File Name: Point Wells Urban Center

File Number: 11-101457 LU (land use permit for site plan), plus related permits and variance requests

Project Description: Urban Center Site Plan and associated permit applications and approval requests to develop in three phases a total of approximately 2,846 residential units plus associated commercial uses and public amenities on 61 acres. The site currently contains a marine fuel terminal, petroleum storage facility, and asphalt batching plant that would be redeveloped.

Location: Property is located at the extreme southwest part of Snohomish County adjacent to the Town of Woodway and the City of Shoreline; at the northwest terminus of Richmond Beach Drive, (20500 Richmond Beach Dr), Shoreline.

Tax Account Numbers: 27033500301100; 27033500301200; 27033500302700; 27033500302800, 27033500303000, 27033500303800, 27033500303900, 27033500304000, 27033500304300

Applicant: Blue Square Real Estate (BSRE) Point Wells, LP

Date of application/Completeness: February 14 and March 4, 2011 + additional more recent related requests

State Environmental Policy Act and Procedural Matters: Snohomish County Department of Planning and Development Services (PDS) determined that this proposal is likely to have a significant adverse impact on the environment and issued a Determination of Significance (EIS) on February 2, 2014, which required preparation of an Environmental Impact Statement (EIS) under RCW 43.21C.030(2)(c). Although the EIS process was initiated, the PDS SEPA responsible official found the proposal substantially conflicted with adopted plans, ordinances, regulations, and laws. As a result, PDS suspended preparation of the EIS and transmitted a recommendation of denial to the Hearing Examiner under SCC 30.61.220. The Hearing Examiner issued an Amended Decision on August 3, 2018, denying the project. The Applicant appealed the denial and the project was eventually remanded by King County Superior Court on June 18, 2019. The Applicant submitted new and revised application materials to Snohomish County on December 12 and December 16, 2019. After reviewing the materials, on June 5, 2020, PDS found that the proposal remained in substantial conflict with adopted plans, ordinances, regulations and laws and transmitted the application to the Hearing Examiner with a recommendation of denial without preparation of an EIS under SCC 30.61.220.

Hearing specifics: The public hearing will be held remotely before the Snohomish County Hearing Examiner via Zoom, beginning with public comments on November 4, 2020, at 2 pm and again at 6 pm on the same day. The hearing will proceed with presentation and testimony from PDS and the applicant on November 5 from 9 am to around 5 pm and continue at 9 am on the hearing dates of November 6, 12, and 13, and additional dates as needed. Refer to the Hearing Examiner’s website and agenda for additional details regarding the hearing.

Project Planner: Ryan Countryman, Phone: 425-262-2304, e-mail: ryan.countryman@snoco.org

Date of Notice: October 18, 2020

HOW TO USE THIS BULLETIN

To learn more about a project:
- All documents, plans and exhibits for the hearing are available at: https://snohomishcountywa.gov/4075/Port-Well-Exhibits-and-Decision
- Call or email the project planner with questions.

To comment on a project:
- You may become a party of record for a project by:
  - submitting original written comments to the county prior to the hearing,
  - testifying at the hearing or
  - entering your name on a sign-up register at the hearing. NOTE: Only parties of record may subsequently appeal the hearing examiner’s decision or provide written or oral arguments to the county council if such an appeal is filed.

To appeal a decision:
- All parties of record will receive notice of the decision.
- Hearing examiner decisions issued after a public hearing are appealable as described in the examiner’s decision.
- Notice of those decisions is not published. You must have submitted written comments to PDS or written or oral comments at the public hearing in order to appeal a hearing examiner’s decision.

ADA NOTICE: Accommodations for persons with disabilities will be provided upon request. Please make arrangements as soon as possible but no later than 48 hours before the hearing by contacting the Hearing Examiner’s office at 425-388-3538 or Hearing.Examiner@snoco.org.

VERIFICATION OF NOTICE POSTING

A COPY OF THIS NOTICE SHALL BE RETURNED TO THE DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES WITHIN 14 DAYS OF
APPLICATION

I hereby verify that on the 28th day of October 2020, I posted the above property in at least two (2) conspicuous places on the subject property in accordance with Snohomish County regulations. Said signs are posted at the following locations:

West side of Richmond Beach Dr NW
and
North of NW 205th St.

RETURN TO: Snohomish County Planning & Development Services
ATTN: Legal Notice Center
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201

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