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November 4, 2020

The Honorable Peter Camp, Hearing Examiner
Snohomish County
Office of Hearings Administration
3000 Rockefeller Ave M/S 405
Everett, WA 98201

VIA EMAIL: hearing.examiner@snoco.org

**RE: BSRE Point Wells LP Urban Center Re-Submittal Application¹
Hearing Dates November 4 – 5, 2020
Planning and Development Comments – Variances/Shoreline Permit**

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”), by its Department of Planning and Community Development, submits these comments regarding BSRE Point Wells LP’s (“BSRE”) December 12, 2019, resubmitted applications for an Urban Center at Point Wells (“Project”). After reviewing BSRE’s December 12, 2019 application resubmittal documents, and documents subsequently submitted to the Hearing Examiner,² Shoreline generally concurs with the recommendation of Snohomish County’s Departments of Planning and Development Services and Public Works that BSRE’s Point Wells Urban Center Project should be denied pursuant to Snohomish County Code (SCC) 30.61.220.³

¹ The Point Wells project applications are denoted as Snohomish County File Nos. 11-101457 LU (and all other permits under this number, e.g. VAR, FHZ), 11-101461 SM (denied), 11-101464 RC, 11-101008 LDA, 11-101007 SP, and 18-116078 CI. These applications and the development sought pursuant to them will collectively be referred to in this comment letter as the “Point Wells” or the “Project.”

² Documents reviewed include, but were not limited to, Exhibits V-1 to V-7; V-10; V-18 – V-19; X-1, Z-7 to Z-9, and Z-11.

³ Exhibit X-3 Supplemental Staff Recommendation No. 2 (May 27, 2020)

1. Variance Application 11-101457-002-00 VAR
(High Capacity Transit)

It is the responsibility of BSRE to demonstrate that the Project meets ALL of the criteria to be able to receive approval for a variance. BSRE has based the need for a variance, relief from SCC 30.34A.040(1) [2010], on the Project's inability to achieve the required minimum FAR unless a variance is approved. BSRE submitted just five (5) pages, plus less than three (3) pages of additional narrative as late as October 29, 2020, in its attempt to set forth its claimed need for a variance to allow proposed buildings to exceed 90 feet in order to achieve the required minimum FAR of 1.0. Exhibit V-18, Exhibit Z-8. In contrast, Snohomish County retained WJA Design Collaborative which performed a detailed analysis of BSRE's brief and unsubstantiated FAR conclusions that were included in its variance application. Exhibit X-1. WJA's analysis yielded a detailed 121-page report that verified the FAR figures presented by BSRE are not accurate and overestimate the achievable FAR even with the requested height variance. Even if a variance was approved, which Shoreline is not recommending, BSRE's Project would still not achieve the minimum FAR of 1.0. Thus, the question must be asked: Why did BSRE not provide detailed, accurate and timely information to support its variance request?

In its December 2019 application resubmittal, BSRE states, without any proof to the contrary, that if the buildings are limited to 90 feet the site cannot be developed as an Urban Center. The County identified that there are land use alternatives available to BSRE that would not require a variance to achieve the minimum FAR. However, BSRE has not chosen to change the mix of land uses to utilize these alternatives and, instead, continues to seek variances and deviations from multiple code provisions that are designed to protect the environment, reduce risks to life and property, and to protect public and private views and vistas of the Puget Sound.

As for the assertion by BSRE that the Project is allowed to include buildings over 90-feet up to 180 feet in height due to their proximity to a high capacity transit route or station, the City of Shoreline continues to disagree with such an assertion and the Shoreline City Attorney's Office has submitted additional comments in that regard.

The additional materials recently submitted by BSRE, specifically Exhibits Z-7, Z-8, and Z-9, still do not demonstrate that there are special circumstances applicable to the Point Wells site that do not apply generally to other properties or classes of use in the same vicinity. BSRE, through its consultant Perkins Will, contends that the site is unique because it is narrow, and access is limited. But other properties suffer from the same restriction. For example, south of Point Wells, within Shoreline, is an area known as Appletree Lane on 27th Avenue NW which is narrower and also has limited access due to its location being west of the BNSF railroad corridor. BSRE asserts that the pan handle shape of Point Wells is irregular, representing a special circumstance. Again, a look to the south reveals the same type of pan handle shape, platted, and developed areas within the

vicinity of Point Wells on both the east and the west sides of the BNSF railroad corridor. The topography described as unique to this site is commonly found along the Puget Sound coastline. Therefore, it seems hard to surmise that the size, shape, or topography are special circumstances applicable to Point Wells and not to other properties in the vicinity so as to warrant relief under a variance application.

BSRE also does not speak directly to Variance Criterion #2. Criterion 2 requires BSRE to prove that a variance is needed to allow BSRE a substantial property right or use that other property owners in the vicinity and zone possess. BSRE does not explain how such a right is impacted. Instead, it responds to this criterion not within the context of other property owners but in the context of its own property right – namely its assertion that it gets to develop its vested rights under the former Urban Center designation of Point Wells. That is not the standard to be applied. Also, no other properties in the vicinity possess anything more than the ability to establish and maintain single family uses in accordance with single family zoning (with the exception of parks and sewer pump station). No other properties in the vicinity have vested rights under an Urban Center designation. Therefore, it is not possible for BSRE to meet Criterion 2.

In its Supplemental Staff Recommendation #2 dated May 27, 2020 (Exhibit X-3), Snohomish County has provided the evidence necessary to deny this variance based on failure to meet all four (4) of the required criterion to approve a Variance in SCC 30.43B.100(4). Shoreline supports and concurs with the County's denial of VAR11-101457-002-00 and this concurrence is not modified by BSRE's recent submittals.

2. Variance Application 11-101457-003-00 VAR **(Height Adjacent to Low Density Zones)**

BSRE also seeks a variance from SCC 30.34A.040(2)(a) [2010] which establishes building height and setbacks for buildings adjacent to low-density residential zones. Once again, it is BSRE's responsibility to demonstrate that their project meets ALL of the criteria to approve a variance.

As was the case with BSRE's other variance application, BSRE submitted a scant two pages in its original resubmittal plus five pages of additional information in its recent filings. Exhibit V-19 and Z-9. However, in these documents BSRE never truly cites the reason it needs the variance or why it cannot meet SCC 30.34A.040(2)(a). In addition, Shoreline had a difficult time interpreting what BSRE was even requesting due to the internal inconsistencies in application materials, resulting in hours spent trying to decipher materials only to find that the submittal contains errors and omissions. BSRE has failed to meet its burden.

In its Supplemental Staff Recommendation #2 dated May 27, 2020 (Exhibit X-3), Snohomish County has provided the evidence necessary to deny this variance based on failure to meet all four (4) of the required criterion to approve a Variance in SCC 30.43B.100(4). Shoreline supports and concurs with the County's denial of VAR11-101457-003-00.

3. Shoreline Conditional Use Permit 11-101457 SHOR **(Commercial Use of Shoreline Environment)**

Public review, and therefore comment, on the Shoreline Conditional Use Permit was very difficult. The application materials submitted by BSRE are disjointed. To accomplish any type of review, Planning and Community Development must hunt down applicable resubmitted, revised documents and sift through volumes of old and new information in hopes of revealing additions applicable to development within the shoreline environment. Regardless, in Shoreline's opinion, the resubmitted, revised application materials are incomplete, inconsistent, and include omissions and errors necessitating a series of assumptions to move through the proposed use of the shoreline. Even with these challenges, it is clear BSRE has still failed to provide enough information and analysis to determine the feasibility of a water taxi, foot ferry, or other type of passenger ferry service.⁴ Do all three terms mean the same type of vessel and service? Would the impacts be the same for a water taxi, passenger ferry or foot ferry? Nor can Shoreline find any commitments or necessary approvals to allow any such a service to be operated from the existing pier at Point Wells.

Also, unsettling is the lack of a robust mitigation plan for impacts to habitat and species identified in BSRE's Critical Areas Report Supplemental Memorandum, Exhibit Z-1. This Supplemental Memorandum states that it is focused on the operational impacts associated with foot ferry service, not the impacts associated with the construction and establishment of a 7,000 square foot floating dock associated with that service. The Supplemental Memorandum states the construction and permanent impacts associated with the floating dock are covered in the Critical Areas Report originally prepared in 2018 (Exhibit C-30) and updated in 2019 (Exhibit V-10). However, no references to this floating dock were found in those documents, only references to one for recreational purposes. A specific and complete mitigation plan for habitat and species should be required as part of a Shoreline Conditional Use Permit application and not be left to an unknown future time.

The City of Shoreline agrees and concurs with Snohomish County that Shoreline Conditional Use Permit (11-101457 SHOR) should be denied for failure to comply with applicable codes as cited in the Supplemental Staff Recommendation #2 (Exhibit X-3).

Conclusion

For the reasons set forth above, the City of Shoreline agrees and concurs with Snohomish County that the variance applications and the shoreline conditional use permit be denied. Based on these reasons, other comments submitted by City of Shoreline Departments, and in the 2018 written and oral comments provided by the City of Shoreline for the original public hearing,⁵ BSRE has had

⁴ BSRE application materials use all 3 terms.

⁵ Exhibits previously submitted by or on behalf of the Shoreline Planning and Community Development include, but are not limited to Exhibits W-20, I-411, and Q-7. In addition, Director Markle provided testimony at the 2018 public hearings.

years to demonstrate that its vision for Point Wells can comply with Snohomish County's plans and regulations. BSRE has failed to do so, and these conflicts cannot be resolved by subsequent modifications or conditioning of permit applications. Therefore, the City of Shoreline concurs with Snohomish County's Departments of Planning and Development Services and Public Works that BSRE's Point Wells Urban Center Project should be denied pursuant to Snohomish County Code (SCC) 30.61.220.⁶

Sincerely,

CITY OF SHORELINE

/s/ *Rachael Markle*

Rachael Markle
Director of Planning and Community Development

⁶ Exhibit X-3 Supplemental Staff Recommendation No. 2 (May 27, 2020)