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 Application

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”) submits these comments regarding BSRE Point Wells LP’s (“BSRE”) December 12, 2019, resubmitted applications for an Urban Center at Point Wells. Nothing presented in BSRE’s resubmitted applications and supporting documents has changed Shoreline’s general concurrence with the Snohomish County Departments of Planning and Development Services’ and Public Works’ (collectively, “Snohomish County”) recommendation to deny the Urban Center at Point Wells pursuant to Snohomish County Code (SCC) 30.61.220. The development of Point Wells as an Urban Center continues to have substantial conflicts with Snohomish County’s adopted plans, ordinances, regulations, or laws that cannot be corrected to alleviate the conflicts, notwithstanding BSRE’s purported attempt to do so with its resubmittal applications.

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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
1. **Urban Center - High Capacity Transit**

As the Hearing Examiner is aware from the 2018 proceedings, given the geographical restrictions and current singular vehicular access through Shoreline to and from Point Well’s, Shoreline has been actively engaged in BSRE’s decade long quest to redevelop Point Wells as an Urban Center since the start. Regardless of any possible secondary access road that may at some future point possibly link Point Wells to the Town of Woodway, there is no dispute that Shoreline’s transportation network will be the primary recipient of traffic flowing to and from Point Wells.\(^2\) Because of the intensity of development for an Urban Center, as proposed by BSRE, having the future residents being able to directly access High Capacity Transit (HCT) is an essential element to prevent overburdening Shoreline’s transportation network.

In the 2018 hearing on BSRE’s applications, extensive, indisputable testimony was presented to the Hearing Examiner about the potential for a Sound Transit Sounder Rail Station to be provided at Point Wells. BSRE continues to promote such methods as a way to satisfy the language of SCC 30.34A.040(1) that permits buildings of a height greater than 90 feet - “near a high capacity transit route or a station.” In terminating BSRE’s applications, the Hearing Examiner concurred that there was no existing or planned high capacity transit for Point Wells so as to warrant buildings heights of up to 180 feet and that “proximity alone is not enough.”\(^3\)

BSRE acknowledges this problem with the issue of HCT as it once again puts forth a flawed concept of supplemental transit services, apparently by van pools\(^4\) and a speculative passenger-only ferry service, the later which would require a shoreline conditional use permit,\(^5\) as a way to satisfy the requirement for HCT. However, these concepts were previously rejected by the Hearing Examiner and found to be an insufficient basis for allowing a height increase.\(^6\) And, as Shoreline noted to the Hearing Examiner at that time, BSRE’s reliance on a ferry for the provision of HCT is based on current SCC 30.93H.108 (adopted in 2013) which includes “passenger-only ferries” in the definition of High Capacity Transit. As Shoreline previously noted in its final applications and the development sought pursuant to them will collectively be referred to in this comment letter as the “Point Wells.”

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\(^2\) See comments of Shoreline’s Traffic Engineer, Kendra Dedinsky, dated November 4, 2020.

\(^3\) Amended Decision Denying Extension and Denying Applications without Environmental Impact Statement, dated August 3, 2018, see, e.g. Findings 56 – 60 and 62 – 63 and Conclusions 34 - 39.

\(^4\) Exhibit V-3 Supplement to Urban Center Application (Dec 12, 2019), Section 5 and Exhibit C. The Hearing Examiner should note that the nearest transit centers to Point Wells are King County Metro’s Aurora Village Transit Center on North 200th Street and a future transit center is Sound Transit’s 185th Street Light Rail Station, both in Shoreline.

\(^5\) Exhibit V-1 Point Wells Urban Center Application – Summary of Revisions; see also comments of Shoreline’s Director of Planning and Community Development, Rachael Markel, dated November 4, 2020.

\(^6\) Amended Decision, dated August 3, 2018, see Conclusion 38.
comment letter, if BSRE wants to rely on its “vested rights,” then it is bound by the regulations it vested to in 2011, not those adopted years later in 2013.

More importantly, BSRE once again fails to provide any evidence from the appropriate governmental agencies, such as the State of Washington and/or the US Coast Guard in relation to its ability to actually provide the hypothetical ferry service. Similarly, it fails to provide for how passengers will get from the ferry to the HCT service, such as the Edmonds Sounder Station. Just like BSRE’s statements about the Sound Transit station at Point Wells, this ferry service is not an existing option and is speculative at best.

With its resubmittal applications, BSRE does not even attempt to submit evidence that its’ hope and dream of HCT serving Point Wells is more than that – a hope and a dream. Rather, despite the Hearing Examiner’s 2018 ruling, the Snohomish County Council’s approval of that ruling, and the King County Superior Court’s ruling, BSRE continues to assert that mere “proximity” without actual access to the route allows it to construct buildings of up to 180 feet; apparently believing that the Court of Appeals will reverse all of the prior rulings.

2. Variance for Height based on High Capacity Transit

Rather than actually demonstrate HCT, BSRE’s resubmittal applications includes a “security blanket” Variance Application noting the difficulty in meeting the Urban Center’s Floor Area Ratio (FAR) because of the challenging conditions Point Wells presents. It must first be noted that these challenging conditions – critical areas and physical location of the site – Puget Sound, railroad corridor, and steep wooded hillside – were all conditions known to Snohomish County when it enacted chapter 30.34A SCC. One must assume that Snohomish County does not enact regulations under which development could only occur if a variance was granted.

Once you remove the pre-existing challenging conditions in the supporting narrative for its variance application to allow for buildings greater than 90 feet, BSRE contends that “[t]he

7 Exhibit Q-7 (June 1, 2018)

8 Exhibit V-3 at Section 5 states that “Sound Transit has expressed an interest” – is this the same interest Sound Transit expressed in 2011 that the Hearing Examiner found to be a “tepid, noncommittal letter from a mid-level Sound Transit manager”? Amended Decision at Conclusion 35. See also, Exhibits Z-12 to Z-14 showing no planned transit for Point Wells.

9 BSRE filed its Notice of Appeal to the Court of Appeals on July 18, 2019. All briefing was filed by February 12, 2020. The Court of Appeals has not yet scheduled oral argument in this matter and, based on the Court’s current calendar, it is unlikely that this will occur until 2021.

10 Also see comments of Shoreline Director of Planning and Community Development, Rachael Markle, dated November 4, 2020.

11 The City uses the term “security blanket” to denote that BSRE continues its stance that the “high capacity transit” requirement of SCC 30.34A.040(1) has been satisfied despite the Hearing Examiner’s ruling and the King County Superior Court’s rulings.

12 Exhibit V-18 Variance Application Height over 90 feet (December 12, 2019).
County does not have authority to grant changes to FAR [Floor Area Ratio] by variance request” and, that increasing building height above 90 feet is the only way to satisfy the required FAR. SCC 30.43B.010, however, expressly states that it is applicable for variances to “any development standard contained in … chapter 30.34A SCC.” Is the FAR not a “development standard”?

What the application and supporting narrative reveal is that BSRE primarily raises its “vested rights” banner in order to defend its variance request. But BSRE distorts the concept. Washington’s vested rights doctrine does not guarantee that a development can occur. When the application is reviewed, as has been done here, it can be revealed that no matter how a development is mitigated, revised and/or re-analyzed it simply cannot satisfy the legal requirements for approval. BSRE has been trying to force its “vested rights” square peg concept into a “legal compliance” round hole for more than a decade. While a square peg may fit by altering either the peg or the hole, that is not the case here. Snohomish County’s decision to seek denial, without preparation of an environmental impact statement, recognizes that BSRE can never alter its proposed urban center development to actually fit the requirement of the code.

**Conclusion**

Despite BSRE’s opportunity to have another “bite at the apple” for its Urban Center development at Points Wells, BSRE’s December 12, 2019 resubmitted proposal fails to address the deficiencies and remains in substantial conflict with the Urban Center plans and regulations of Snohomish County. As detailed above, as well as in the 2018 written and oral comments provided by the City of Shoreline and others for the original public hearing, BSRE has had years to demonstrate that its vision for Point Wells can comply with Snohomish County’s plans and regulations. It has not been able to do so and these conflicts are substantial and cannot be resolved by subsequent modifications or conditioning of permit applications.

Sincerely,

CITY OF SHORELINE

/s/ Julie Ainsworth-Taylor

Julie Ainsworth-Taylor
Assistant City Attorney
jainsworth-taylor@shorelinewa.gov
206-801-2222

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13 Exhibit V-18 and Z-8 Height Variance Request Support Narrative (October 29, 2020).

14 The regulations for the development of an Urban Center are set forth in chapter 30.34A SCC.

15 City of Shoreline comments can be found in the following exhibits – Exhibits I-411, Q-5, Q-6, Q-7, and S-3. Representatives of the City also provided oral testimony at the May 17, 2018 public hearing.