

From: Ronald Trompeter
To: [Davis, Kris](#)
Subject: Point Wells Hearing Comments
Date: Sunday, May 20, 2018 10:17:06 PM
Attachments: [2018 05 20 memo to hearing examiner.pdf](#)

Attached is a memorandum setting out comments on behalf of my wife and myself.

Ronald J. Trompeter
24120 116th Avenue West
Woodway, WA 98020

MEMORANDUM

To: Peter Camp, Hearing Examiner
From: Ronald J. Trompeter and Margaret A. Evans
Re: Point Wells Hearing
Date: May 20, 2018

My wife and I reside at 24120 116th Avenue West in Woodway, Washington. Our home is directly east of the towers that the applicant, BSRE, proposes to construct on the upper shelf in an area the applicant calls the "Urban Plaza." We oppose this project for a number of reasons, including view, noise, light, and traffic. We recognize, however, that the hearing before you is limited in scope. Accordingly, we will limit our comments to the issue proposed by the applicant: whether the current iteration of BSRE's application is sufficiently complete to justify an extension of the life of the application.¹

I attended the presentation by the applicant on May 16, 2018 as well as the presentation by the PDS on May 17, 2018. I have reviewed the parties' briefs and most of the documentation recently submitted by the applicant. Based upon that evidence, it is clear that the applicant's strategy has been and continues to be to ignore the difficult issues presented by this inappropriate project in hopes that it can obtain what it calls "entitlement" with the expectation that solutions to the difficult issues will be less difficult once that entitlement has been achieved and momentum for the project has built.

Most notable among the many examples of this strategy is the applicant's position on the height restriction on the subject property. From the outset, the applicant has proposed to place four towers on the upper shelf, east of the railroad, an area the applicant calls the "Urban Plaza."² Those towers are approximately 180 feet in height, reaching an elevation of 210 feet above sea level. At the time of the initial application, SCC section 30.34A.040(2)(a) required that buildings or portions of buildings that are within 180 feet of adjacent low-density zoning be scaled down and limited in building height to a height that represents half the distance the building is from the adjacent zoning. In spite of the fact that the upper bench abuts the Town of Woodway and its low-density residential zoning, the developer here simply ignored the requirement that building near the low-density zoning be scaled down and proceeded with a proposal to place 180 foot-tall towers on the upper shelf, adjacent to Woodway's residential zoning.³

Now, seven years into the project and just days before this hearing, the applicant seeks to sidestep this requirement by seeking a variance to allow the towers to be built in spite of

¹ Ex. 0-3, BSRE Hearing Examiner Pre-Hearing Brief, p. 6.

² See Ex. B-2, sheets G003, A-040, A-310

³ A copy of Woodway's zoning map is attached for reference.

the step-down requirement.⁴ That variance application would have the reader believe that the towers are at the foot of a steep bluff, thereby negating any possible view obstruction to properties to the east of the proposed towers: “This zone directly east of the Urban Plaza is void of neighboring structures (the next neighbor⁵ is located ~750 further east) and includes critical areas, which will preclude from future construction directly adjacent to the Urban Plaza site.” In fact, the property immediately to the east of the upper shelf has been annexed to the Town of Woodway and a proposed residential development called Woodway Pointe is now under review by the Town. On August 10, 2015, the Town and the developer entered into an Annexation and Development Agreement. Attached to that agreement is a site plan showing homes in a location just east of the proposed towers. The agreement and the attached site plan can be viewed at

<http://www.townofwoodway.com/Documents/upper%20bluff/AnnexationandDevelopmentAgreement--TownandPointWellsLLC-8-3-2015-FINALSigned.pdf>

Thus, contrary to the assertion of the applicant in its application for variance (Ex. K-37), the proposed towers would in fact impair views to homeowners to the east of the proposed project.

Parenthetically, I should note that BSRE’s variance application makes no mention of this pending development, in spite of the fact that BSRE is well aware of this application. We know BSRE is fully aware of the Woodway Pointe proposal because by letter dated September 1, 2017 to the Town of Woodway, an attorney representing BSRE (G. Richard Hill) asked the Town to halt any processing of the Woodway Pointe application. The basis for that request was BSRE’s having an easement over the Woodway Pointe property.⁶ In addition, a draft letter prepared for Mr. Huff’s signature dated August 20, 2015, expressly references the Woodway Pointe project as part of a discussion of possible routes of for secondary access.⁷ It’s not clear why Mr. Huff did not mention this proposed development during his opening statement or in the variance application.

Just as the applicant has ignored the zoning requirement that the buildings be stepped down when they are adjacent to low-density zoning, so also has the applicant ignored the requirement that as a condition of the extra 90 feet of height, there must be access to high capacity transit. This has been a requirement of the code so long as BSRE’s application has been pending. The requirement makes sense, especially for this project, which presents such difficult transportation issues due to the fact that the only access routes to the property are residential streets. But now, seven years into the project, no station exists at Point Wells and no assurance exists that Sound Transit would ever agree to place a station there. The latest word from Sound Transit is a recent email from Sound Transit to Ryan Countryman at PDS dated May 8, 2018 stating: “Sound Transit staff are not aware of additional recent contact between BSRE and the agency since the Long Range

⁴ Ex. K-37 (dated 4/24/2018).

⁵ This is apparently a reference to my wife and myself and our neighbors.

⁶ A copy of the letter is attached.

⁷ Ex. K-11 (see attachment to PDS letter), page 5.

Plan FEIS. The ST3 package approved by voters in 2016 does not include a station at Point Wells. To construct a station there (or any other additional location along that corridor) would require an additional easement from Burlington Northern Railroad, something that likely would be very challenging to obtain.”⁸

In his opening statement, Mr. Huff said that Sound Transit will not approve the addition of a station at Point Wells until there are residents who would make use of the service. Assuming that to be true, there is no reason to believe that Sound Transit approval will be forthcoming, at least not until the construction has been completed, if then. If there is no Sound Transit station at Point wells, then the residents of the 3,000 plus units have four means of ingress and egress: car, bus, water taxi⁹ (perhaps) and bicycle.

One thing is clear: after seven years, the applicant has failed to meet the requirement of the SCC that would authorize the PDS to approve doubling the maximum building height from 90 feet to 180 feet.¹⁰ Importantly, there is no reason to believe that this failure can be remedied.

The applicant has also failed to address adequately the requirement of secondary access to the project site. A very interesting exhibit bearing on this issue is K-11, which is a letter from PDS’s Ryan Cunningham to Jack Molver of David Evans and Associates, Inc., BSRE’s consultant. The attachment to that letter is a draft letter from the consultant to Gary Huff dated August 26, 2015. In that letter, Mr. Molver discusses the options for secondary access and concludes that none of the proposals is feasible. (At that time, the applicant was still arguing that no secondary access should be required.) Option 2B in that letter is a route that approximates what the applicant has included as secondary access in its most recent proposal. Here is what the applicant’s expert said about that access route at the time:

The difficulty with this route is the steep slope that is encountered as the route leads east up the bluff. This slope is estimated to be as much as 60 percent and thus exceeds the regulatory limitation for emergency vehicles, the purpose of a secondary access route. Further this narrow strip of land is as little as ten feet in width. In addition, as this route is within the jurisdiction of the Town of Woodway, permit authorization for the

⁸ Ex. H-30.

⁹ In BSRE's Pre-Hearing Brief, the applicant states that the requirement that there be access to a "high capacity route" is met by the applicant's plan to have water taxis, which the applicant states "are specifically included in the definition of high capacity transit at SCC 30.91H.108. In fact, water taxis are not mentioned in that section. The section refers to "passenger ferries," something different from a water taxi.

¹⁰ The lengths to which the applicant is willing to go at this point is illustrated by its ridiculous position that because the Sound Transit commuter line runs through Point Wells, the requirement of the SCC is met, in spite of the fact that the train does not stop at Point Wells. See BSRE's Pre-Hearing Brief, p.8-9.

construction and use of such a route would have to be obtained from the Town. **In past discussions with Woodway officials they have indicated that they would object to a connection to Woodway via this route.**

Construction of an access at this location has the following challenges to implementation. First, it appears that the grade would exceed 15 percent, which could limit the use to emergency vehicles. Second, geotechnical considerations may render the alignment infeasible. Third, critical area buffers would be impacted. Fourth, construction of the access may require the permission of adjoining private property owners. Fifth, the existing right of way is too narrow. Finally, construction of the access along this route might require elimination of the development's planned ten story, 56-unit (UP-T3) building.

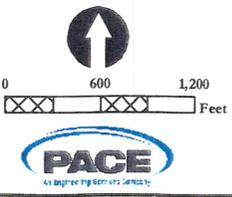
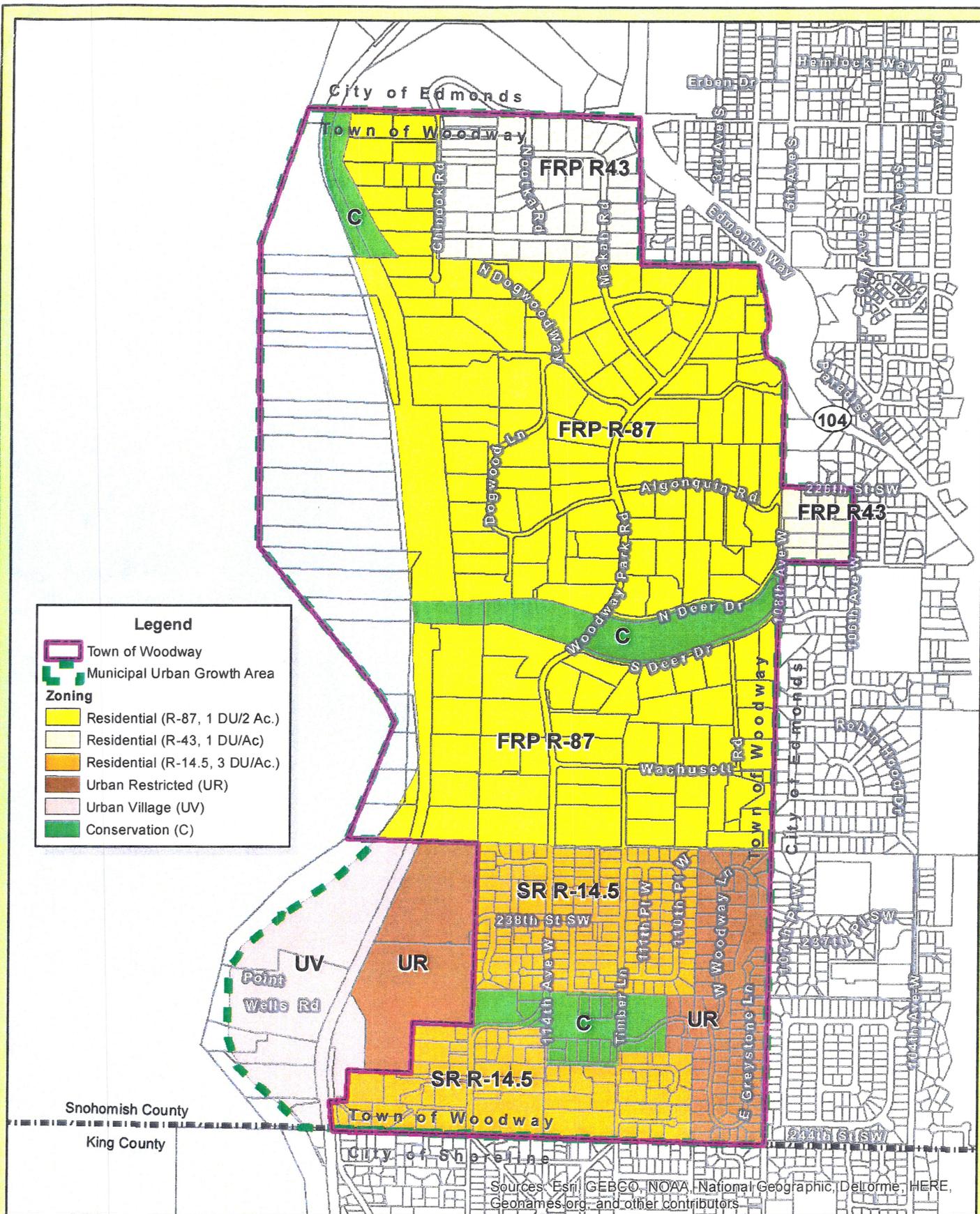
As a result, this option is not deemed an available option for emergency vehicles due to the steep slope and is not deemed a viable option for private vehicle traffic due to the previously stated objection of the governing jurisdiction.

(Emphasis added.) Now, the applicant has reversed its position; it now claims that this route is suitable for secondary access. However, the applicant has provided no basis to believe that the Town of Woodway will change its previously-stated position. According to Woodway staff, there has been no contact between the Town and the applicant with regard to this secondary access road for several years. Nor has the applicant made any showing that it has obtained property or easements from adjacent landowners¹¹ that would permit the construction of the proposed secondary access road. This is inexcusable.

The applicant has had ample time within which to present to PDS a workable plan. It has frittered away time, year after year, then on the eve of this hearing has produced a virtual blizzard of documents promising to address these and other difficult issues if only it has more time. In fact, it is clear that the applicant has not met and cannot meet the requirements of the SCC pertaining to building height and secondary access road, among others. Substantial conflicts exist between the applicant's proposal and the Snohomish County Code. Those substantial conflicts preclude approval of this project. We ask that the hearing examiner deny the applicant's proposal without preparing an EIS, in accordance with SCC 30.61.220(2). If the hearing examiner has reasonable doubts as to all the claimed conflicts, then we request that any remand not include an extension of time. Seven years is enough.

¹¹ The applicant's expert states that the width of the strip of land owned by BSRE on which the road would be located is "as little as ten feet in width." In its edits of the letter, PDS stated that the width was actually twenty feet, but in either case, to meet applicable standards, more width would be required.

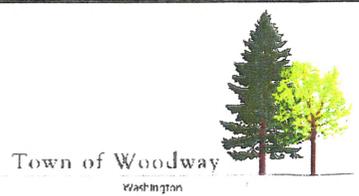
Ronald J. Trompeter and Margaret A. Evans
24120 116th Avenue West
Woodway, WA 98020
rjtrompeter@comcast.net



2015 Comprehensive Plan Update

Zoning

Figure 2-2



McCULLOUGH HILL LEARY, PS

September 1, 2017

VIA EMAIL

Town of Woodway
c/o Eric Faison, Town Administrator
23920 113th Place West
Woodway, WA 98020

Re: Upper Bluff 36 Lot Subdivision Application

Dear Mr. Faison:

Thank you for the opportunity to provide public comment in response to the August 2, 2017 date of notice of the application of BG Giddings Engineering, PLLC, for a subdivision of property known as the Upper Bluff ("Upper Bluff Property") in Woodway ("Application"). The Upper Bluff Property is owned by Point Wells, LLC ("Point Wells"). This letter is written on behalf of BSRE Point Wells, LP ("BSRE"), the owner of the real property ("BSRE Property"). The BSRE Property is immediately adjacent to the Upper Bluff Property.

The Application is deficient for two reasons, and accordingly it is premature and in violation of state and local law for the Town of Woodway ("Town") to process it. Because of that, the City's review of the Application should be placed on hold until such time as these deficiencies are corrected.

First, both the Town subdivision ordinance, WMC 13.12.020, and the Washington subdivision statute, RCW 58.17, require subdivision applications to be approved by all parties who have a real property interest in the land proposed for development. WMC 13.12.020 requires the applicant to provide a title report as a component of the subdivision application. The purpose of this requirement is to assure the Town that all parties with a real property interest in the property that may be affected by the proposal have consented to the processing of the subdivision. The title report provided to the Town in this case (assuming that the applicant complied with this clear application requirement) would clearly disclose that BSRE has a real property interest that will be affected by the proposal, pursuant to that Easement Agreement dated June 27, 2006 and recorded under Snohomish County recording number 200606271070 ("Easement Agreement"). A copy of the Easement Agreement is attached as Exhibit A.

In order to assure BSRE that any development on the Upper Bluff protects the BSRE Property, the Easement Agreement provides BSRE with a recorded property interest that runs with the land, that requires Point Wells to submit for prior approval any plans for development of the Upper Bluff Property. The real property interest that Point Wells has granted to BSRE is a

sufficient interest in land to make BSRE a necessary party to any subdivision application. Without BSRE's written consent, the Application is deficient.

For the same reason, the Application is deficient under RCW 58.17.165, which requires the applicant to provide a certificate stating that the subdivision has been made with the free consent and in accordance with the desires of the owners of the property. Here, BSRE, an owner of a real property interest in the Upper Bluff Property, has not consented to the Application. It is, accordingly, deficient and must be placed on hold until that deficiency is remedied.

The second reason that the Application is deficient is due to Point Wells' failure to comply with the express terms of the Easement Agreement.

Recital D of the Easement Agreement states that "the parties hereto desire to preserve and document their mutual intent to provide for the development of their respective properties, while accommodating the future development of [the terminal property]. . . ."

In Paragraph 1 of the Easement Agreement, BSRE's predecessor granted a perpetual nonexclusive easement for vehicular and pedestrian access over, across and upon the narrow strip of property which is depicted on Exhibit D of the Easement Agreement (the "Access Property"). This strip, which runs east to 116th Avenue, provides access to and from the Upper Bluff to the public road system. This easement is defined in the Easement Agreement as the "Pt. Wells Access Rights". The Pt. Wells Access Rights, along with the future development rights of the Point Wells property, were defined in the Easement Agreement as the "Pt. Wells Construction Rights."

In Paragraph 2 of the Easement Agreement, Paramount (BSRE's predecessor) "specifically reserves . . . a right over, across and upon the Access Property for any and all purposes" including the right to construct roadways for its use. BSRE's predecessor further reserved both "the right of ingress and egress from said property for any purposes" and "all rights with respect to its property. . . ."

Paragraph 4 of the Easement Agreement explicitly states:

Prior to the exercise of the Pt. Wells Construction Rights or any other substantial activity by Pt. Wells on the Access Property, a notification and plans for such work shall be submitted in writing to [BSRE] by Pt. Wells and no such work by Pt. Wells shall be commenced without [BSRE's] prior written approval . . . (Emphasis added.)

Applicant Point Wells' subdivision application clearly qualifies both as an "exercise of the Pt. Wells Construction Rights" and as "any other substantial activity." However, no request for approval of such plans by BSRE has been made nor has BSRE's consent been provided. Until such time as Point Wells complies with its legal obligations as set forth in Paragraph 4 of the Easement Agreement, the Application must be put on hold. Indeed, the review and approval process may substantially alter many of the key elements of the Application. It is premature to review the Application until it is complete and has complied with BSRE's rights of review and approval.

Town of Woodway
September 1, 2017
Page 3 of 3

Unless and until such time as Pt. Wells shall have complied with the requirements of the Town's subdivision ordinance, the provisions of RCW 58.17, and the procedures set forth in the Easement Agreement, and unless and until the consent of BSRE shall have been first obtained as required by the Easement Agreement and by applicable law, then the Application is deficient and should be placed on hold.

BSRE appreciates your consideration of this comment, and trusts that the Town will halt further application processing until Point Wells has complied with the necessary preconditions to a valid subdivision application.

Sincerely,

G. Richard Hill

cc: BSRE Point Wells, LP