

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Motion to Authorize an Appeal to the Growth Management Hearing Board of Snohomish County Amended Ordinance No. 09-079 Establishing Development Regulation for Point Wells and Associated SEPA Documents
DEPARTMENT:	City Attorney; Planning and Development Services
PRESENTED BY:	Ian Sievers, City Attorney; Joe Tovar, FAICP, Director

PROBLEM/ISSUE STATEMENT: On October 26, 2009 Council authorized an appeal of Snohomish County Ordinances designating Point Wells as an Urban Center which would allow development at high densities with significant impacts to Shoreline city services and neighborhoods. Appeal of the SEPA process for these ordinances was also authorized. An appeal to the Growth Hearings Board was subsequently filed on November 9, 2010.

State law establishes an interconnected hierarchical structure for local land use control with different venues for appeal. Policy decisions are implemented through comprehensive plans and development regulations. The comprehensive plan goals and policies create a framework for development regulations that in turn control development permits.

Comprehensive Plan and development regulations are legislative actions appealable to the Growth Management Hearing Board for compliance with the Growth Management Act. Development project decisions are appealed to Superior Court under the Land Use Petition Act (LUPA) for violation of the substance or procedures of development regulations. Appeal of SEPA decisions follow the action they support; e.g. SEPA review of a development regulation is appealable to the Board, SEPA review of a project permit is appealed to Superior Court together with the underlying permit. If the comp plan adoptions affecting a parcel are not appealed, it is difficult to appeal the development regulations since these will likely be consistent with the offending comp plan goals, policies and land use designation. Conversely, since development regulations are presumed valid when adopted, if no appeal of the implementing development regulations is filed, property owners may apply for permits under these regulation, and no LUPA appeal of the permit can raise violations of the Growth Management Act.

In the October 26th Council discussion concerning appeal of the Snohomish County comprehensive plan amendments affecting Point Wells, staff noted that the development regulations implementing these amendments was delayed and not expected to be passed until December. Council was also advised that an appeal of these regulations, when passed, would be needed to preserve the efficacy of the comprehensive plan appeal if the parties had not yet settled the appeal.

There have been settlement discussions with all parties to the current appeal. The initial hearing before the Growth Hearings Board has been continued to allow these discussions and to allow Snohomish County to complete its regulations. These regulations do allow a possible Shoreline input into future development permit approvals and encourage an interlocal agreement with Snohomish County controlling future development of Point Wells. However, the deadline for filing an appeal is July 26, and settlement is not likely in this timeframe as reviewed with the Council in executive session on July 12th.

Essentially, the Snohomish County Amended Ordinance 09-079 implements the comp plan provisions designating Point Wells as an urban center, with high urban densities that are not supported by urban services as required by the GMA. It is supported by the same SEPA EIS that is being appealed for inadequacy in the current appeal. A detailed summary of the ordinance published by Snohomish County is included with this report (Attachment A).

FINANCIAL IMPACT:

None. It is expected the Board will consolidate this appeal with the current appeal since comprehensive plan and development regulations coordinated to affect land use policy for the same property are typically considered in one appeal. Issues may be narrowed and at least one issue may be added as a result of the new Snohomish County regulations, resulting in no net increase in resources for prosecuting this new appeal.

RECOMMENDATION

Staff recommends that Council authorize the City Manager to file an appeal of Snohomish County Ordinance No. 09-079 and associated SEPA documents with the Growth Management Hearing Board.

Approved By: City Manager ____ City Attorney ____

ATTACHMENT A – Summary of Snohomish County Ordinance No. 09-079



Legal Notice

Publish Date: Wednesday, May 26, 2010

SNOHOMISH COUNTY COUNCIL Snohomish County, Washington NOTICE OF ENACTMENT NOTICE IS HEREBY GIVEN, that on May 12, 2010 the Snohomish County Council enacted Amended Ordinance No. 09-079. A summary of the adopted ordinance is as follows: AMENDED ORDINANCE NO. 09-079 RELATING TO URBAN CENTER DESIGN STANDARDS, ESTABLISHING A NEW ZONE FOR URBAN CENTERS, ESTABLISHING BULK REGULATIONS FOR URBAN CENTERS; AMENDING BULK REGULATIONS FOR THE NEIGHBORHOOD BUSINESS ZONE; AMENDING AND REPEALING DEFINITIONS TO SUBTITLE 30.9 SCC; AMENDING SECTIONS OF AND ADDING SECTIONS TO TITLE 30 SCC Section 1. Adopts findings including, but not limited to: the adoption and incorporation of the recitals as findings as if set forth in full. The recitals provide, among other things, factual and procedural background and policy justification for the ordinance. Section 2. States additional findings and conclusions including but not limited to: consistency between the County's Growth Management Act Comprehensive Plan and the multi-county planning policies adopted by the Puget Sound Regional Council; staff review of the Urban Centers Demonstration Program; SEPA, consistency with the Washington State Attorney General's December 2006 advisory memorandum entitled Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property, and public participation. Section 3. States that the findings and conclusions are based on the entire record of the planning commission and county council, including all testimony and exhibits. Section 4. Amends Snohomish County Code (SCC) 30.21.020, Establishment of zones: to add the new Urban Center (UC) zone in the Urban Zone category. Section 5. Amends SCC 30.21.025, Intent of zones: to include the intent of the urban center zone and to remove references to the Urban Centers Demonstration Program. The section would be revised as follows: 30.21.025(1)(c)(i) and (ii): (i) Neighborhood Business (NB). The intent and function of the neighborhood business zone is to provide for local facilities that serve the everyday needs of the surrounding neighborhood, rather than the larger surrounding community. ((Urban villages implemented under chapter 30.34A SCC Urban Centers Demonstration Program are only permitted within the Neighborhood Business (NB) zone)); (ii) Planned Community Business (PCB). The intent and function of the planned community business zone is to provide for community business enterprises in areas desirable for business but having highly sensitive elements of vehicular circulation, or natural site and environmental conditions while minimizing impacts upon these elements through the establishment of performance criteria. Performance criteria for this zone are intended to control external as well as internal effects of commercial development. It is the goal of this zone to discourage "piecemeal" and strip development by encouraging development under unified control. ((Urban centers implemented under chapter 30.34A SCC Urban Centers Demonstration Program are only permitted within the Planned Community Business (PCB) zone)); 30.21.025(1)(f): (f) Urban Center (UC). The intent and function of the Urban Center zone is to implement the Urban Center designation on the future land use map by providing a zone that allows a mix of high-density residential and commercial uses with public and community facilities and pedestrian connections located along existing or planned high capacity transit corridors; Section 6. SCC 30.22.030 is amended to remove a term no longer needed. 30.22.030 Number of uses per lot. Uses shall be established upon legally created lots that conform to current zoning requirements or on legal nonconforming lots. A lot may have more than one use placed within its bounds, except that only one single family dwelling may be placed on a lot. This exception shall not apply to model homes as defined herein, to planned residential developments proposed and approved pursuant to chapter 30.42B SCC, ((center)) projects proposed and approved pursuant to chapter 30.34A SCC, or to land zoned commercial or multiple family residential. Multifamily structures may be placed on lots at densities controlled by chapter 30.23 SCC. Section 7. Amends SCC 30.22.100, Urban zone categories-Use matrix: to add the new Urban Center (UC) zone and populate with permitted uses. Section 8. Amends SCC 30.22.130, Reference notes for use matrix to: Remove note 108 referencing the Urban Centers Demonstration Program and add three new reference notes: (117) Would prohibit drive-through facilities in the Urban Center (UC) zone. (118) Would permit boat launches only when associated with a marina. (119) Would permit only building mounted personal wireless communication facilities. Section 9. Amends Table 30.23.030 (1), Bulk Matrix: to add the new urban center zone and a cross-reference to Chapter 30.34A SCC, Urban Center Development. The table is also amended to change the building height, setbacks and lot coverage in the NB zone. Section 10. Amends SCC 30.23.040, Reference Notes for the Bulk Matrix: to delete notes 47-51 because they relate to the Urban Centers Demonstration Program being repealed. Section 11. Amends SCC 30.28A.120, Priority of Location: relating to personal wireless telecommunications facilities to include the Urban Center Zone under SCC 30.28A.120 (5). The amendment would be as follows: 30.28A.120 Priority of locations. The order of priorities for locating new personal wireless telecommunications services facilities shall be in accordance with SCC 30.28A.120(1) through (7) below. The applicant shall demonstrate that all other locations with a higher priority on the list are not feasible. Priorities rank from highest to lowest as set forth below. The zones listed in SCC 30.28A.120(4) through (7) are prioritized in order of preference within each subsection. (1) On existing wireless communications support structures. (2) Place on appropriate rights-of-way and existing structures such as buildings, towers, water towers and smokestacks located on non-residentially zoned property or in utility corridors. Wireless communications support structures for personal wireless telecommunications service facilities locating under this subsection shall secondarily consider the priorities established in SCC 30.28A.120(4) through (7). (3) Place on other public property if practical and allowed, i.e., Snohomish County property, etc. (4) Place in districts zoned: (a) Heavy Industrial (HI); (b) Light Industrial (LI); (c) General Commercial (GC); and (d) Community Business (CB). (5) Place in districts zoned: (a) Industrial Park (IP); (b) Business Park (BP); (c) Freeway Service (FS); (d) Rural Freeway Service (RFS); (e) Planned Community Business (PCB); (f) Neighborhood Business (NB); (g) Urban Center (UC) (((g))) (h) Rural Industrial (RI); (((h))) (i) Clearview Rural Commercial (CRC); and (((i))) (j) Rural Business (RB). (6) Place in districts zoned: (a) Rural Use (RU); (b) Rural Diversification (RD); (c) Rural Resource Transition-10 Acre (RRT-10); (d) Forestry (F); (e) Mineral Conservation (MC); (f) Forestry and Recreation (F&R); and (g) Agricultural-10 (A-10). (7) Place in districts zoned: (a) Rural 5 Acres (R-5); (b) Rural Conservancy (RC); (c) Suburban Agriculture 1 (SA-1); (d) Residential 20,000 (R-20,000); (e) Residential 12,500 (R-12,500); (f) Waterfront Beach (WFB); (g) Multiple Residential (MR); (h) Mobile Home Park (MHP); (i) Low-density Multiple Residential (LDMR); (j) Townhouse (T); (k) Residential 9,600 (R-9,600); (l) Residential 8,400 (R-8,400); and (m) Residential 7,200 (R-7,200). Section 12. Amends SCC 30.31A.010, Purpose and applicability: to remove references to the PCB-TPV subzone. The amendment is as follows: 30.31A.010 Purpose and applicability. This chapter regulates development in and establishes zoning criteria for the planned community business (PCB), neighborhood business (NB), business park (BP), and industrial park (IP) zones. ((The

PCB zone includes a subzone of planning community business - transit pedestrian village (PCB-TPV) with additional performance requirements described in 30.34A.) This chapter sets forth procedures and standards to be followed in applying for, and building in these zones. Section 13. Amends SCC 30.31A.020, Minimum zoning criteria: to remove references to the PCB-TPV subzone and references related to the Urban Centers Demonstration Program. The amendments are as follows: 30.31A.020 Minimum zoning criteria. (1) A tract of land proposed for BP zoning shall contain sufficient area to create a contiguous tract of BP zoned land at least four acres in size. (2) A tract of land proposed for PCB zoning shall contain sufficient area to create a contiguous tract of PCB zoned land at least five acres in size. ((Rezoning to PCB-TPV is only allowed when a master plan has been approved by the department and is adopted as part of the rezone. The county may rezone during adoption of a master or concept plan. A property owner may also complete a master plan as outlined in the GMACP and request a rezone through the docketing process.)) (3) A tract of land proposed for NB zoning shall contain sufficient area to create a contiguous tract of NB zoned land at least three acres in size. (4) A tract of land must be in single ownership or, for multiple parcels, under unified control. This requirement shall apply during preliminary and final plan stages to ensure continuity of plan development. (5) Zoning request must be accompanied by a preliminary development plan prepared by a team of design professionals in compliance with the regulations and requirements of this chapter. ((Rezoning to PCB-TPV subzone must be accompanied by a master plan or concept plan, approved by the department, in compliance with the regulations and requirements of chapter 30.34A SCC.)) (6) Preliminary and final plans must comply with bulk regulations contained in SCC 30.23.030 ((or if project is submitted under chapter 30.34A, the plans must comply with the bulk regulations in SCC 30.23.030)). (7) All utility services and distribution lines shall be located underground, and in the case of the BP zone ((and projects submitted under chapter 30.34A)) the property shall be served by public water and sewer services and paved streets, paved private roads, or paved common access areas. Section 14. Amends SCC 30.31A.100, General performance standards: to add a new requirement that projects in the NB zone and designated Urban Village will use the parking rates in Chapter 30.34A SCC. The amendments are as follows: 30.31A.100 General performance standards. Each planned zone and uses located in the BP, PCB, NB and IP zones shall comply with the following requirements unless more specific requirements are provided in code: (1) Processes and Equipment. Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable beyond the boundaries of the lot upon which the use is located by reason of offensive odors, dust, smoke, gas, or electronic interference; (2) Development Phases. Where the proposal contains more than one phase, all development shall occur in a sequence consistent with the phasing plan which shall be presented as an element of the preliminary plan unless revisions are approved by the department; (3) Building Design. Buildings shall be designed to be compatible with their surroundings, both within and adjacent to the zone; (4) Restrictive Covenants. Restrictive covenants shall be provided which shall ensure the long-term maintenance and upkeep of landscaping, storm drainage facilities, other private property improvements, and open space areas and facilities. Further, the covenants shall reference the official or binding site plan(s) and indicate their availability at the department, and shall provide that Snohomish County is an additional beneficiary with standing to enforce, and shall preclude the avoidance of performance obligations through lease agreements; (5) Off-street Parking. Permanent off-street parking shall be in accordance with terms of chapter 30.26 SCC, except in the NB zone where the land is designated Urban Village on the future land use map, parking shall be in accordance with SCC 30.34A.050; (6) Signing. Signs for business identification or advertising of products shall conform to the approved sign design scheme submitted with the final plan, and must comply with chapters 30.54B and 30.27 SCC; (7) Noise. Noise levels generated within the development shall not exceed those established in chapter 10.01 SCC - noise control, or violate other law or regulation relating to noise. Noise of machines and operations shall be muffled so as to not become objectionable due to intermittence or beat frequency, or shrillness; and (8) Landscaping. General landscaping and open space requirements shall be in accordance with chapter 30.25 SCC. Section 15. Adopts a new SCC 30.34A, Urban Center Development: to add 25 new sections: 30.34A.010 Purpose and applicability (establishes the purpose of the chapter and what development is subject to the regulations) 30.34A.020 Permitted uses (establishes the permitted uses within the UC zone) 30.34A.030 Floor area ratio (establishes the FAR requirements and bonuses) 30.34A.040 Building Height and Setbacks (maximum building height and setbacks) 30.34A.050 Parking ratios, parking locations and parking lot and structure design (min/max parking ratios, the location of parking and parking lot landscaping and design of structure parking) 30.34A.060 Landscaping (general landscaping requirements) 30.34A.070 Open space (requirements to provide open space for each project) 30.34A.080 Circulation and access (requirements to provide pedestrian facilities, road circulation requirements) 30.34A.085 Access to public transportation (requirements for urban center development to provide access to public transit) 30.34A.090 Design standard-signs (requirements for signs) 30.34A.100 Design standard-screening trash/service areas and rooftop mechanical equipment (Establishes screening requirements) 30.34A.110 Design standard-lighting (requirements for on-site exterior and ground lighting) 30.34A.120 Design standard-step back and roof edge (requirements for stepped back upper floors) 30.34A.130 Design standard-massing and articulation (standards to mitigate for building mass) 30.34A.140 Design standard-ground level detail (standards to encourage visually attractive streetscape) 30.34A.150 Design standard-weather protection (standards for canopies/awnings to provide weather protection for pedestrians) 30.34A.160 Design standard-blank walls (standards to mitigate for blank walls) 30.34A.165 Pre-Application Neighborhood Meeting (process and requirements for conducting) 30.34A.170 Submittal requirements (documents required to submit and application for an urban center development) 30.34A.175 Design Review Board (process and requirements for convening a Design Review Board) 30.34A.180 Review process and decision criteria (process to review an application) 30.34A.190 Public spaces and amenities (requirements to construct the on-site recreation space with the construction of the first building or phase) 30.34A.200 Priority permit processing (low income housing project allowed to use the priority permit process) 30.34A.210 City or Town Review (process for city or town to consult with the county on generalized design principles and development review procedures for urban center) 30.34A.220 Urban Centers as TDR receiving areas (designated areas zoned UC as Transfer of Development Receiving areas) Section 16. Amends SCC 30.62B.625, Transportation demand management (TDM)-voluntary payment: to add a cross-reference to the circulation and access of SCC 30.34A and clarify the requirements. The amendments are as follows: 30.66B.625 Transportation demand management (TDM)-Voluntary payment. (1) A development may satisfy a requirement under SCC 30.34A.080, SCC 30.66B.160 or SCC 30.66B.630 to provide Transportation Demand Management (TDM) by making a voluntary payment equal to the development's TDM obligation as ((calculated under)) required pursuant to SCC 30.66B.615. (2) Funds received by the ((county)) department for TDM measures will be placed in special accounts with the transportation mitigation fund to be used exclusively for identified TDM measures. The county may construct or purchase these measures or, upon establishment of appropriate interlocal agreements, may transfer the monies to transit agencies for construction or purchase of specific TDM measures. The collection and administration of any funds shall be consistent with SCC 30.66B.350. (3) Any payment under this section must be made at the time specified in SCC 30.66B.340. Section 17. Amends SCC 30.71.110, Processing timelines: to exempt the negotiating of an agreement or Design Review Board review of an urban center from the 120 day process). Section 18. Amends SCC 30.71.020, Type 1 permits and decisions: Removes urban centers projects from the list of Type 1 permits. Section 19. Amends SCC 30.72.020, Type 2 permits and decisions: Adds urban centers to the list of Type 2

permits. Section 20. Amends SCC 30.86.620, City fees, to remove references to the Urban Center Demonstration Program and change county to department. The amendments are as follows: 30.86.620 City or Town's fees. Pursuant to the terms of an executed interlocal agreement, the ((County))department may request and collect fees on behalf of the city or town, which are voluntarily paid by an applicant for the city's or town's cost of review of an urban center ((demonstration project)) development, submitted under ((the County's Urban Center Demonstration Program (C))chapter 30.34A SCC(())), located in a city's or town's associated urban growth area. The ((County))department will forward these fees to the city or town within 60 days. Section 21. Adds a new section to Chapter 30.86 SCC, Fees. This section was previously contained in the Urban Centers Demonstration Program. The new section is as follows: 30.86.800 Urban center development fees. A fee consistent with the Rezoning Fees for commercial zones (SCC 30.86.200) and any other applicable fees required by code (i.e., drainage, landscaping review, traffic concurrency, and subdivision or binding site plan, etc.) shall be paid upon submittal. Section 22. Repeals SCC 30.91A.230 (Applicant): will rely on SCC 30.91A.220. Section 23. Repeals SCC 30.91C.180 (Committee): no longer needed with change to administrative review. Section 24. Repeals SCC 30.91D.190 (Developable area): will rely on SCC 30.91N.035. Section 25. Adds a new definition SCC 30.91F.445, for Floor Area Ratio. 30.91F.445 "Floor Area Ratio" means the total building square footage (building area), measured to the inside face of exterior walls, excluding areas below finished grade, space dedicated to parking, mechanical spaces, elevator and stair shafts, lobbies and commons spaces including atriums and space used for any bonus features, divided by the site size square footage (site area). Floor Area Ratio = (Building area)/(Site area) Section 26. Adds a new definition SCC 30.91M.135, Mixed area. 30.91M.135 "Mixed Use" means residential and non-residential uses located within the same building. This definition applies only to SCC 30.34A.030. Section 27. Repeals SCC 30.91N.032 (net acreage): no longer needed with the new urban center zone. Section 28. Repeals SCC 30.91P.405 (Public use): no longer needed with the new urban center zone. Section 29. Amends SCC 30.91S.080 (Secondhand store): to incorporate the storage of use clothing related to a profit or nonprofit establishment. 30.91S.080 "Secondhand store" means a ((retail)) profit or nonprofit establishment dealing in the storage, selling ((and)) or buying of used merchandise which is not antique, not including the sale of used automobiles. Section 30. Repeals SCC 30.91T.064 (Transit Pedestrian Village): definition no longer needed as references in the code have been removed. Section 31. Amends SCC 30.91U.085 (Urban Center): to make the definition consistent with the comprehensive plan. 30.91U.085 "Urban center" means an area with a mix of high-density residential, office and retail ((development))uses with public and community facilities and pedestrian connections located ((along designated)) within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter rail lines, regional express bus routes, or transit corridors that contain multiple bus routes((or transit corridors))or which otherwise provide access to such transportation as set forth in SCC 30.34A.085. Section 32. Amends SCC 30.91U.095 (Urban Village): to make the definition consistent with the comprehensive plan. 30.91U.095 "Urban Village" means a neighborhood scale mixed-use area with a ((variety))mix of ((small-scale commercial))retail and office uses, public and community ((buildings))facilities, and high-density residential development((units, and public open space)). ((Pedestrian orientation includes pedestrian circulation, pedestrian scale and pedestrian convenience with connections between neighborhoods, communities and other centers. Urban Villages serve several neighborhoods or communities within a radius of about two miles.)) Section 33. Adds a new definition SCC 30.91W.007, for Wall, blank. 30.91W.007 "Wall, Blank" means an exterior building wall with no openings covered predominantly with single material and uniform texture on a single plane. Section 34. Provides a standard severability and savings clause. Section 35. Establishes applicability of the ordinance. Where to Get Copies of the Adopted Ordinance: Copies of the full ordinance are available in the office of the County Council. They may be obtained by calling (425) 388-3494, 1-(800) 562-4367 x3494, IDD (425) 388-3700 or E-mailing to contact.council@snoco.org. Copies may be picked up at the Council office at 3000 Rockefeller, Everett, WA or will be mailed upon request. QUESTIONS: For additional information or specific questions on the proposed ordinance please call David Killingstad (x2215) in the Department of Planning and Development Services at (425) 388-3311. Dated this 20th day of May, 2010. Brian Sullivan Acting Chair ATTEST: Sheila McCallister Asst. Clerk of the Council #107010 Published: May 26, 2010.

This legal notice appeared in The Herald newspaper, Everett, Wash., on Wednesday, May, 26, 2010.

This printed copy of the legal notice comes from HeraldNet.com, The Herald newspaper's Web site which can viewed at <http://www.heraldnet.com/>.

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