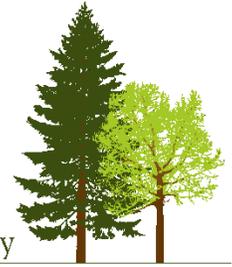


November 4, 2019

Town of Woodway  
WASHINGTON



## **My Fellow Woodway Residents,**

Over the past couple months, you've received a lot of information from the Town about our draft agreement with the City of Shoreline regarding Point Wells. On September 23 and October 7, the Council held public meetings, where we invited residents to learn about the proposal, ask questions and provide feedback. While we had a great turnout, for those who could not attend the meetings, I want to explain some of the background that led us to this point and lay out major elements of the Agreement. I also will highlight some of the discussion that occurred during the meetings. And, finally, I want to let you know what happens next.

Before I go into more detail, however, I think it's important that I make a couple of things very clear upfront.

1. The Agreement, which was approved by Council on the 7<sup>th</sup>, does not require the Town to annex Point Wells.
2. Any decision in the future about whether Point Wells will become part of the Town will be made by the Town Council only after a lot of public input and a detailed financial analysis.
3. The Agreement does not provide the Town or Shoreline with any new rights or limit any rights that BSRE (the owner of Point Wells) might have under the County code prior to annexation.

This Agreement only resolves key areas of conflict between the Town and Shoreline, with the goal of avoiding additional litigation and unifying our efforts related to Point Wells.

Lastly, I want to mention that we have a lot of information regarding Point Wells on our website. You can find that information here:

[https://www.townofwoodway.com/your\\_government/building\\_and\\_planning/point\\_wells.php#revize\\_document\\_center\\_rz572](https://www.townofwoodway.com/your_government/building_and_planning/point_wells.php#revize_document_center_rz572)

As we have done in the past, we will keep you updated on developments related to Point Wells. I just ask for your patience and understanding that this has been and likely will continue to be a long-term project, with many twists and turns before we truly know what will happen at Point Wells.

## **Background**

Point Wells has been at the center of relations between Woodway and Shoreline since 1998, when both cities identified Point Wells as a future annexation area. This designation led to a lawsuit, which ended with the Washington Supreme Court concluding that both cities could "plan" for annexation. As a result, both cities included Point Wells in their Comprehensive Plans. However, only Woodway's designation was officially recognized by Snohomish County in the County's Comprehensive Plan.

About ten years ago, BSRE submitted a request to Snohomish County to rezone Point Wells to allow for a new “Urban Center” with over 3,000 housing units and 100,000 square feet of commercial space. The cities appealed the designation to the Growth Management Hearings Board, and we prevailed. Snohomish County was required to rezone the area as an “Urban Village,” under which zoning the developer would be required to negotiate agreements with the cities before a development application could be approved. While the Urban Village zoning became the official zoning for the site, the Washington Supreme Court later ruled that, because BSRE filed their application under the Urban Center code immediately before the Board’s ruling, their project was “vested” under that illegal code and the unreasonably large redevelopment project could move forward.

The relationship between the cities was further strained following the County’s approval of the rezone when Ronald Wastewater District adopted a comprehensive plan for sewer services that included Point Wells. Following adoption of the plan, Shoreline, which has an agreement with Ronald to take over the District, twice submitted applications with the Snohomish County Boundary Review Board to take over Ronald’s facilities and services at Point Wells. The Town and Olympic View Water & Sewer District contested the requests. The Boundary Review Board rejected both of Shoreline’s applications.

Shoreline’s attempt to assume Ronald’s sewer services at Point Wells was viewed by the Town as an attempt to use utility service and accompanying property rights to leverage their ability to annex the area. It is through this lens that, approximately one year ago, the Town evaluated Shoreline’s adoption of a notice of intent to condemn property owned by BSRE for sewer facilities. The Town viewed the broadly written condemnation ordinance as having the effect of cutting off the Town from Point Wells. As a result, the Town responded to this notice by proceeding with an attempt to annex Point Wells.

Last October, the Town Council invited residents to a hearing to gather public opinion regarding the proposed annexation. At that meeting, the Council heard from residents who both expressed support and urged caution. The Council also heard from representatives from Shoreline, Ronald Wastewater District and BSRE. A consistent theme of the evening was a request that we “just work something out with Shoreline,” so as to avoid additional, costly litigation.

### **Mediation**

The Council took the public’s feedback to heart. They put the Town’s annexation resolution on hold and worked with Shoreline to select a mediator. In January, Mayor Nichols, Council members Elizabeth Mitchell and Tom Whitson, Town Administrator Eric Faison and Town attorney Greg Rubstello entered into mediation with Shoreline’s mayor, city manager and city attorney.

There quickly was consensus that that if Point Wells is going to be developed, our respective communities would be better served if the property was permitted and developed within a city, rather than within unincorporated Snohomish County. The parties also were similarly in agreement regarding many shared concerns about development at Point Wells, including traffic, building heights, glare, noise, parking, environmental protection, and public access to the waterfront. The cities acknowledged, however, that they have little influence – the property is under the control of Snohomish County and the County’s development regulations.

The tougher discussions involved annexation and sewer services. With regard to sewer services, several months into the negotiations, the Washington State Court of Appeals ruled that Ronald has no legal right

to provide sewer services in Snohomish County. As a result, other than a couple small paragraphs dealing with the ownership of a sewer lift station located at Point Wells and service to each other's residences, it was not necessary to further consider sewer services in the Agreement. Of note, however, Ronald has elected to appeal the Court's decision to the Washington Supreme Court. If the Supreme Court takes the case and rules in Ronald's favor, this issue may have to be addressed separately.

## **The Agreement**

The Agreement is a fifteen-year agreement, divided into three parts. The first part deals with mutual obligations of Woodway and Shoreline to each other in relation to Point Wells. The second part addresses Shoreline's obligations to Woodway, and the third is Woodway's obligations to Shoreline. Below is an overview of the provisions in each section.

### *Section I – Provisions Applicable to All Parties*

This section states that the cities will create a joint staff working group that will develop and recommend comprehensive plan policies, zoning designations, development regulations and design standards to both city councils. Once adopted, the cities agree to keep the adopted policies and regulations in place for two years after an annexation.

The staff recommendation must include, at a minimum:

- Point Wells will be zoned and developed as an environmentally sustainable, primarily residential development, and any mixed-use development will be pedestrian-oriented, with limited commercial uses, dark sky standards, and mandatory public recreation (with adequate parking) accessible to residents of both cities.
- Any development application for Point Wells must include a traffic study for Shoreline and Woodway roads consistent with the preparation criteria required by each City.
- Building heights will be limited to no more than 75 feet, with additional height restrictions possible in the southern portion of Point Wells to protect view corridors.
- Any development or redevelopment of Point Wells will be subject to a Master Development Plan or Development Agreement, along with a required design review process that includes consultation with each City.
- There will be a traffic restriction on Richmond Beach Drive in Shoreline that is consistent with Shoreline's current level of service standards. While this restriction does not establish unit count limitations, the cities estimate that the restriction would likely limit development at Point Wells to between 400 to 800 residential units.

After adoption of these policies and regulations by each council, each city agrees to give the other thirty days written notice and an opportunity to comment on any action that would modify them.

The cities also agreed to coordinate review of environmental impacts. In the event neither city has annexed Point Wells prior to the developer submitting a development application to Snohomish County, each city agrees not to enter into any agreements with the developer and/or Snohomish County inconsistent with the terms set forth in the Agreement.

## *Section II – Provisions Applicable to the City of Shoreline*

With respect to annexation, Shoreline agrees not to annex Point Wells and to support the Town’s annexation of Point Wells, including support for any legislation necessary to effectuate an annexation. Additionally, Shoreline agrees not to provide sewer services to Town residences or businesses without the Town’s approval.

With respect to traffic, Shoreline agrees that it will not reduce the current level of service standards on Richmond Beach Drive or restrict access to Point Wells via Richmond Beach Drive in any way that would unreasonably interfere with or prevent use of the road by the general public. An exception to this provision would be if such action is necessary to protect the health and safety of its residents and the public or to implement emergency measures.

## *Section III – Provisions Applicable to the Town of Woodway*

With respect to annexation, Woodway agrees to use its “best efforts” to effectuate the annexation of Point Wells. However, Woodway is not required to annex Point Wells. Woodway can formally notify Shoreline that it does not want to annex Point Wells, in which case the Town agrees to support Shoreline’s annexation.

If the Town chooses not to initiate an annexation within three years from gaining legislative authority to annex without BSRE’s approval, or within three years of receiving an annexation petition, then Shoreline can seek annexation, and Woodway will support Shoreline's annexation. If Shoreline fails to annex the property within similar three-year time periods, then either city can annex, and we will work with Snohomish County to identify and address impacts from Point Wells.

Woodway agrees that if it annexes Point Wells, it will require any development or redevelopment of Point Wells of 25 or more units, as a condition of development approval, to provide a publicly accessible road that connects Point Wells to the rest of Woodway. This road must be built to Woodway’s road standards and accommodate full access for commercial, emergency, and residential traffic that meets acceptable engineering standards, and provides a viable reasonable alternative to the use of Richmond Beach Drive. This obligation is similar to the Town’s existing legal obligation to Snohomish County.

Lastly, the Agreement requires Woodway to recognize Shoreline's ownership of a sewer lift station located at Point Wells after Shoreline’s assumption of Ronald.

The Agreement remains in effect until the responsibilities and obligations of the parties are fulfilled, but no later than December 31, 2034, unless there is mutual agreement to extend. The Agreement can be terminated by mutual consent of the two cities. A dispute resolution process is provided.

## **The Meetings**

At the meetings, we provided the above background information and answered questions. Some of the questions and answers were as follows:

### *1. What is the status of BSRE’s Urban Center application?*

The Snohomish County Hearing Examiner terminated BSRE’s application due to BSRE's continued failure to demonstrate that it could meet certain mandatory provisions of the County's Urban Center

code. As a result, BSRE no longer has a vested Urban Center application. BSRE appealed that decision to Superior Court.

In June, the Superior Court issued an order on BSRE's appeal. The judge's order did not respond to the substantive issues of whether BSRE complied with the County Code. Instead, the order concluded that, for various technical reasons under the County's code, the County must give BSRE six-months to fix the deficiencies in its application.

Although the ruling was essentially in its favor, BSRE appealed the ruling to the Court of Appeals, seeking more time so that they could seek clarification on the substantive issues. The Court of Appeals rejected BSRE's request. As a result, BSRE has until approximately the middle of December to fix all the problems with their application. If they fail to do so, we would anticipate that the Hearing Examiner will terminate their project again, which, of course, would be a decision that is subject to appeal.

2. *Does this Agreement mean that Woodway will annex Point Wells?*

No. The Agreement does not require the Town to annex. While the parties agree that Woodway should have what amounts to a right of first refusal to annex Point Wells, the decision on whether to annex will ultimately be made by the Town Council, in accordance with state law, at a public meeting, after such time as Woodway obtains a legislatively authorized, undisputed legal right to annex.

3. *Do residents have a right to vote on whether to annex Point Wells?*

No. The annexation laws are very prescriptive. State law provides that an annexation can only be approved by the Town Council, not by a public vote. The Council may use a variety of methods to assess public opinion on an annexation. But the legally prescribed method under State law is a requirement that the Town Council hold public hearings, so that residents and affected parties have an opportunity to provide feedback before the Council acts to annex.

4. *Why can't we just let Shoreline annex Point Wells and, in exchange for conceding this right, get them to pay for our police/fire costs?*

Shoreline and the Town's attorney looked at this idea and concluded that there is not a legally available mechanism that could make this work. There also likely will not be enough revenue generated by the project (especially a smaller scale project as contemplated by this Agreement) to pay for Shoreline's services to the site under this scenario in addition to covering the cost of the Town's police/fire services.

5. *Why can't the Town maintain a balanced budget?*

Washington's restrictions on funding local government inherently creates a structural deficit in the finances of most cities. Why is that the case? Generally speaking, property tax revenue is the largest single source of revenue for most cities in Washington. Following voter approval of a state-wide initiative in the '90s, state law restricts the amount a city can collect in property tax revenue in any given year to 1% more than what the city received the prior year. This 1% increase in revenue is irrespective of what happens to the assessed value of your home.

For Woodway, the Town will receive approximately \$11,000 more in 2020 than in 2019. In contrast, public safety costs, which are generally the largest single expense for most cities, tend to grow at a rate greater than 1%. For Woodway, the Town’s fire contract increases annually by 3%, which is \$16,000 in 2020.

This type of deficit grows exponentially over time. As a result, cities are forced to return to voters periodically to fund even essential services. This growth in the deficit is shown here in the Town’s financial forecast (which illustrates the amount of available funds in our operating budget at the beginning of each year):

Beginning Fund Balances	2019	2020	2021	2022	2023	2024	2025	2026
001 - General Fund	1,454,022	1,387,455	1,143,254	993,498	841,239	647,361	441,035	177,255
002 - Replacement Reserve Fund	60,107	31,607	51,607	71,607	91,607	111,607	131,607	151,607
102 - Transportation Fund	167,107	78,857	27,075	(35,117)	(108,279)	(193,000)	(289,897)	(399,618)
Operating Budget	1,681,236	1,497,919	1,221,936	1,029,988	824,567	565,968	282,745	(70,757)

As you can tell from this chart, the Town is relying on its reserves (created by a 2009 voter-approved tax increase) to maintain a balanced budget.

The Town Council has determined that the Town should maintain at least \$1 million unallocated in the Town’s operating budget as a reserve for emergency or catastrophic events. We anticipate dropping below that \$1 million threshold in 2023. While \$1 million may seem like a lot relative to the size of the Town’s budget, \$1 million does not get you very far in the event of a significant road repair due to a natural disaster, an uninsured legal claim, or a similar major event. As a result, without new revenue, the Town Council will have to substantially reduce services in 2023.

6. *When will the Town conduct a financial analysis of annexation?*

We have received a couple inquiries asking for a financial analysis on annexation. Four years ago, we worked with Shoreline to jointly hire a consultant to conduct a financial analysis of annexation based on BSRE’s application with the County. The analysis required certain assumptions with regard to service levels, such as fire, police and public works services and staffing. You can find that analysis on our website here:

<https://www.townofwoodway.com/Documents/point%20wells/2015%20Annexation%20Fiscal%20Analysis%20-%20draft.pdf>

While the analysis showed that annexation would provide the Town with a substantial financial benefit, the analysis was based on a much larger scale of development than is anticipated in this Agreement with Shoreline. It also includes a lot of assumptions that now, years later, likely will not be accurate.

This point illustrates part of the problem. Any realistic financial analysis will have to be done in response to a real development proposal. It’s difficult to do a meaningful analysis without answers to a lot of very basic questions. For example, we don’t know the number or average assessed values of the units to be developed. We do not know what the Town’s tax rate will be upon completion of the project. We don’t know the type or amount of public space and whether the Town or the business/homeowner’s association would be responsible for providing services to the area. We do not

know what types of businesses will be at the site – some businesses generate more tax revenue than others.

Many of the answers to these questions are areas of negotiation with a developer. For this reason, and because of the high degree of uncertainty, we do not believe that this type of analysis is reliable at this stage or valuable for public discussion and/or decision-making.

7. *Will the Council commit that an annexation will not take place unless an analysis shows that annexation is financially beneficial?*

Whether an annexation is financially advantageous is perhaps the most fundamental question to be determined by the Council. Even if an annexation generates more revenue than expenses initially, given the state's tax structure, we know that it is likely that an annexation would not permanently eliminate the Town's need to ask for tax increases. So, the Council also will have to consider whether an annexation would reduce either the frequency or amount of such requests. The answer to these questions will depend on what is built at Point Wells (unknown) and the development's associated revenues and expenses (also unknown).

The issue of annexation is not currently before the Council, and the current Council cannot legally bind a future council. As a result, the Council has not made any binding commitments in this regard. However, at the meeting, the Council and I made clear that financial considerations would be essential in the evaluation of the merits of an annexation.

8. *Does the Town have the expertise or financial ability to process permits for Point Wells?*

Yes. The Town would likely contract out for this work, with the costs of such work to be paid for by the developer (as is the case with development currently in the Town).

9. *Does the Town have to annex Point Wells within three years or lose the right to Shoreline?*

No. The Town must begin the annexation process within three years after the state creates a new method of annexation that would allow the Town to annex without the property owner's permission, or within three years of BSRE submitting a petition to annex.

10. *If the Town annexes, can we limit the voting power of future residents at Point Wells?*

No. Voting in Washington requires one person, one vote. There is not a legal way to dilute the voting power of one area of a city in favor of another. With that being said, we have approximately 990 registered voters in Woodway. It is entirely possible that an Urban Village sized development at Point Wells, as contemplated in this Agreement, will have fewer registered voters, or fewer voters participating in any given election, than registered or participating voters in the remainder of Woodway. It also is entirely possible that these new voters will share many of the same concerns and many of the same values as those held by existing Woodway residents.

11. *Will annexation of Point Wells mean that we have to allow commercial zoning in Town?*

The only potential commercial zoning district in Town resulting from an annexation of Point Wells would be at Point Wells. Commercial zoning at Point Wells does not mean that commercial zoning will apply to the rest of Town.

*12. Does the Town have to build a secondary access road up the bluff?*

No. If, after annexation, a developer at Point Wells wants to build 25 units or more, their application cannot be approved without a secondary access. The developer will have the responsibility to prove that such an access is environmentally feasible. The developer will be required to obtain the necessary property to construct the access. The developer will have to design the road in accordance with the Town's standards, including any requirements necessary to ensure privacy for adjacent residences. And the developer would have to pay to construct the road. Upon completion, the road would be turned over to the Town, and the Town would be required to insure and maintain the road, as it does with any other public road in Woodway.

*13. Will the Town be required to widen or improve other Town roads to accommodate development at Point Wells?*

While we do not anticipate any major changes to the Town's street network as a result of a development the size contemplated in this Agreement, we cannot completely rule out that some improvements might be required, especially for a larger development done under the County code. If the existing roads in Woodway are insufficient to support an otherwise legally allowable development at Point Wells, the developer has a legal right to mitigate their impacts by making improvements to the Town's street network. This right exists whether or not an annexation occurs.

*14. Do we have an estimate of how much traffic will be coming into Town from Point Wells?*

The preliminary analysis done as part of BSRE's County application suggest that approximately 16-20% of Point Wells traffic will come through Woodway. How many more vehicles on our roads that this percentage equates to will depend on the size of the development.

*15. Do we know when the project will start or when the secondary access road will be built?*

No. We don't know whether a project at Point Wells is even feasible, let alone when it would be built. We don't know the extent of the environmental cleanup or the time that would be required to accomplish that task. It is possible that no redevelopment occurs and BSRE continues its existing operations indefinitely.

*16. How much has the Town spent on litigation?*

The Town has spent over \$200,000 on Point Wells related litigation over the past 8 years. Most of this cost has been to defend the Town from lawsuit brought by Ronald Wastewater, Shoreline and King County.

*17. What sort of costs related to Point Wells can we anticipate going forward?*

We may experience costs related to lobbying, review of environmental or traffic reports, litigation related to the size of a development under the County. These costs may be necessary to protect our interests and the character of our community, with or without an annexation.

*18. When will we negotiate with BSRE?*

We would welcome a good-faith negotiation with BSRE, and we believe that we could work expeditiously with them to reach an agreement that would result in an appropriately sized

development at Point Wells that is consistent with our Agreement with Shoreline. We would note, however, that BSRE has previously indicated that they were focused on understanding their rights under Snohomish County before seriously considering a negotiation with the Town.

### **Next Steps**

Over the next few months, Shoreline and Town staff will be working on developing new policies and regulations that will be applicable to Point Wells upon annexation by either city. These regulations are the elements of the proposed agreement between the two cities that were summarized above. The staff proposal will be presented to the Planning Commission within the next six months and, ultimately, to the Town Council.

We will keep you informed when these meetings and hearings take place. For these events, and for any critical updates, our primary method of communication will be through our website and by email. I encourage you to sign up for our email list, where I usually provide monthly updates on Town events. You can sign up for the email list on the “How Do I” tab on our website. As usual, you also are always welcome to attend a Council meeting to listen to council discussions or share your thoughts.

Again, I apologize for this lengthy letter. But I want to share with all our residents as much information as possible. Point Wells has been and will continue to be a major issue for Town government. As you can see, there continues to be a lot of uncertainties. However, we are working hard to protect our collective interests as a small but unique community.

If you have any questions about any of this, or if you want to provide comments, please feel free to contact me at or our Town Administrator, Eric Faison, at [eric@townofwoodway.com](mailto:eric@townofwoodway.com). You also can reach us by phone at (206) 542-4443.

Sincerely,



Carla A. Nichols

Mayor