

---

---

**MEMORANDUM**

---

---

**TO:** Town Council  
**FROM:** Eric Faison, Town Administrator  
**SUBJECT:** Settlement and Interlocal Agreement with Shoreline  
**DATE:** 9/23/2019  
**CC:** Carla Nichols, Mayor

---

**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.

The cities’ relationship was further strained after BSRE, owner of Point Wells, 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. However, the Washington Supreme Court later ruled that, because BSRE filed their application under the Urban Center code before the Board’s ruling, their project was “vested” under that illegal code and their project could move forward.

Following the County’s approval of the rezone, Ronald Wastewater District adopted a comprehensive plan for sewer services that included Point Wells. Shoreline, which has an agreement with Ronald to take over the District, then twice submitted requests with the Snohomish County Boundary Review Board to take over Ronald’s facilities and services at Point Wells. The Boundary Review Board rejected the both requests.

Shoreline’s attempt to assume Ronald’s sewer services at Point Wells was viewed by the Town as Shoreline’s attempt to use utility service and 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. 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 both expressing support and urging caution. The Council also heard from representatives from Shoreline, Ronald Wastewater District and BSRE (the owner of Point Wells). 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, however, 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 small paragraph dealing with the ownership of a sewer lift station located at Point Wells, 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 Draft Agreement**

The Agreement is 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 are Woodway's obligations to Shoreline. Below is an overview of the provision in each section.

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

This section requires that, within 60 days of approving the Agreement, the cities will create a joint working group (3 staff members from each city) that will develop and recommend comprehensive plan policies, zoning designations, development regulations and design standards. The recommended policies and regulations will be presented to the respective each city's council within 180 days. Once adopted, the cities agree to keep the adopted policies and regulations in place for two years after annexation. The recommendation must include, at a minimum:

- That Point Wells be zoned and developed as an environmentally sustainable, primarily residential development, and any mixed-use development be pedestrian-oriented with limited commercial uses, dark sky standards, and mandatory public recreation (with adequate parking) accessible to residents of both cities.
- That any development application for Point Wells include a traffic study for Shoreline and Woodway roads consistent with the preparation criteria required by each City.
- Building height limitation of 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 shall be subject to a Master Development Plan or a Development Agreement along with a required design review process that includes a consultation with each City.
- A traffic restriction for Richmond Beach Drive in Shoreline of 4,000 Average Daily Trips (ADT) and a level of service standard "D" and 0.9 Volume to Capacity (V/C) ratio on Richmond Beach Road.

After adoption, each city agrees to give the other 30 days written notice and an opportunity to comment for any action that would modify the comprehensive plan policies or development regulations adopted from the recommendations from the Working Group.

The cities will enter into a reciprocal mitigation agreement that provides for coordinated review of SEPA impacts. The Agreement further provides that, 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 to not take any action to annex Point Wells, or to challenge or object to Woodway's annexation of Point Wells, including any administrative or judicial

process. Shoreline also agrees to affirmatively support Woodway's annexation of Point Wells, including support of any legislation necessary to effectuate an annexation without the consent of the Point Wells property owner. Additionally, Shoreline also agrees not to provide sewer services to Woodway residences or businesses without Woodway's approval.

With respect to traffic, Shoreline agrees that it will not reduce the current 4,000 average daily trip ("ADT") limitation 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. The cities assume that the 4,000 ADT limitation should allow for approximately 400 to 800 residential units.

### *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 as expeditiously as possible. If Woodway formally notifies Shoreline that it does not want to annex Point Wells, then Shoreline may immediately do so and Woodway agrees to support Shoreline's annexation. If Woodway fails to file a notice of intent to annex Point Wells with the Boundary Review Board (if such a notice is legally required) or to adopt an annexation ordinance (if Boundary Review Board approval is not required) within three years from being able to annex without BSRE's approval, then Shoreline can seek annexation of Point Wells under any legally available method, and Woodway will fully support Shoreline's annexation. If Shoreline fails to annex the property within a similar three year time period, then Shoreline and Woodway will jointly request Snohomish County to undertake a zoning and annexation study to identify and address impacts to the cities in relation to development or redevelopment or continued industrial use of the unincorporated area.

Woodway agrees that, after annexation, it will require any development or redevelopment of Point Wells of 25 or more units, as a condition of development approval, to provide a general-purpose public access road wholly within Woodway that connects into Woodway's transportation network and provides a full second vehicular access point to Point Wells into 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, to provide a viable reasonable alternative to the use of Richmond Beach Drive.

Lastly, the Agreement requires Woodway to recognize Shoreline's ownership of Lift Station #13 after Shoreline's assumption of Ronald and that Shoreline's operation of the Lift Station is a superior public use. Woodway also agrees not to take any actions that would interfere or be inconsistent with Shoreline's ownership and operation of the lift station and related infrastructure. The initial draft of

the proposed Agreement released for public review on September 5, 2019, did not include Section III.A.4, which addresses this issue. Since that time, our Town Administrator and Shoreline's City Manager came to agreement on the language provided in Section III.A.4 (along with a provision in II.B that restricts Shoreline from providing sewer service to Woodway residences and businesses) in the draft Agreement before Council for discussion this evening.

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.

### **Other Items of Note**

#### *BSRE's Application*

The Snohomish County Hearing Examiner terminated BSRE's vested 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 had a vested Urban Center application. BSRE appealed that decision to Superior Court.

On June 18, 2019, a King County Superior Court judge issued an order on BSRE's appeal. The judge's order did not respond to the substantive issues of whether an Urban Center was even feasible at Point Wells, instead it concluded that, for various reasons, BSRE was entitled to a six-month "reactivation" period for its Urban Center application. Although the ruling was in its favor, on July 31, 2019, BSRE appealed the Superior Court ruling to the Court of Appeals and recently requested a stay of the six-month reactivation to allow it to pursue an appeal that seeks clarification of the substantive issues. The Court of Appeals has not yet ruled on the stay request.

It is important for Council and the public to understand, however, the redevelopment of Point Wells is currently under the jurisdiction of Snohomish County and BSRE currently holds a vested permit application under the Urban Center zoning, dependent on the outcome of its appeal of the Superior Court's decision or BSRE's reactivation of its Urban Center application. Until this process is complete, we don't know what scale of development will likely occur at Point Wells.

#### *Annexation*

While the parties agree that Woodway should have the right of first refusal to annex Point Wells, the decision on whether to annex will ultimately be made by the Town Council at a public meeting at such time as Woodway obtains the undisputed legal right to annex. The Agreement does not require the Town to annex.

We have received a couple inquiries asking for a financial analysis on annexation. Any realistic financial analysis will require a development proposal. That being said, we have conducted a financial analysis based on certain assumptions, which will be presented at the meeting. Our initial analysis was conducted jointly with Shoreline several years ago, based on a much larger scale of development than is anticipated in this Agreement. Based on the anticipated development scale contained in this Agreement, the analysis continues to show that annexation would continue to be financially positive – with anticipated one-time and ongoing revenues materially in excess of anticipated expenses.

We also have received questions about the Town’s ability to process permits for a large development. 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).

**Conclusion**

Staff is seeking Council direction and authorization for the mayor to execute the Agreement.