

Heidi K. S. Napolitano

From: bkrepick@sbcglobal.net
Sent: Friday, March 1, 2024 10:41 AM
To: Mike Quinn; Elizabeth Mitchell; John Brock; Jim Willett; Steven Mitchell
Cc: Heidi K. S. Napolitano; Eric Faison; Per Odegaard; Jan Ostlund; John Rettenmier
Subject: Public Comment for 3/4/2024 Council Meeting: why did Woodway disrespect residents by refusing to support a Boundary Review Board public hearing on Point Wells annexation?

Importance: High

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Date: March 1, 2024
To: Mayor Quinn and Council Members
Cc: Woodway Planning Committee; Eric Faison; Heidi Napolitano
Bcc: Interested Woodway residents
From: Bill Krepick
Subj: Public Comment for 3/4/2024 Council Meeting: why did Woodway disrespect residents by refusing to support a Boundary Review Board public hearing on Point Wells annexation?

Please post this as a Public Comment for the March 4, 2024 Council Meeting

I don't understand. I attended a Boundary Review Board (BRB) Zoom meeting last night and was very disappointed that Eric and the Town lawyer were testifying to ask the BRB to decide against holding a separate public hearing to answer a myriad of questions raised by Tom McCormick and dozens of Richmond Beach residents. A copy of their Petition is included below. I fully supported the Petition because I believe the Point Wells annexation issues in the Petition are new issues that were NOT discussed by the Council and NOT disclosed and communicated to residents before the Town submitted the annexation application to the BRB. My written comments and 3-minute verbal comments are included below. I am appalled that Eric and our Town lawyer would contest the Petition and contest a BRB Public Hearing. By doing so, they are essentially disrespecting taxpayers and limiting public access to information that may impact Woodway residents' opinions of the risks and merits of annexation. Eric and our Town lawyer took a position to limit full disclosure and transparency, and arbitrarily push the annexation forward without addressing serious concerns of the public.

The State law requires that 3 BRB board members must vote in favor of a Public hearing in order to suspend the annexation approval process and hold such a hearing. The BRB failed to get the 3 votes as their vote was 2-2 on a motion to suspend the annexation approval process and schedule a Public Hearing. That meant that the BRB will move forward to approve the annexation application without giving residents an opportunity to comment on the new issues.

At the end of 2023, after listening to many Town public comment sessions, the Mayor and Council 'sold' the annexation application to the residents by essentially saying that submitting the application and having it approved by the BRB is really a safety-net placeholder, and nothing more. They said the Town can back out of the annexation in 180 days(?) with no penalty. They said that by having extra time to meet with BSRE and the Petroleum companies they will be able to figure out if there's common ground, determine if the annexation will wind up a good return on investment, determine if litigation risks can be managed, and determine if the Town actually will have the level of control necessary to make Point Wells a desirable asset and one that protects Woodway's "Quiet Place" moniker. One would think that the Town would have done everything possible to

extend the time for the BRB decision, and take advantage of more opportunities to get more feedback and information from the taxpayers, from BSRE, from the petroleum companies, and from the Interlocal agreement partners. APPARENTLY, NOT SO, AS THE TOWN'S ACTIONS WITH THE BRB HAVE CLEARLY SHOWN A DIFFERENT COURSE OF ACTION – AND ONE THAT SHOWS NO ACCOUNTABILITY FOR VERBAL COMMITMENTS MADE TO THE TAXPAYERS AND NO EFFORTS TO PROVIDE FULL DISCLOSURE AND TRANSPARENCY.

At last night's meeting, Eric and our Town lawyer had 3 minutes to speak, as did Tom McCormick, Denis Casper (one of the Richmond Beach petitioners) and myself. The BRB members then questioned our Town lawyer about his narrow interpretation of the timing of the Petition filing – and the BRB stated that the County's lawyers had concluded that the Petition had met all of the requirements of timely filing. The most appalling aspect of the meeting was when the Chairman asked Eric to explain the process of getting Shoreline, Olympic View, and the County to sign the Interlocal agreement in support of Woodway's annexation application. Eric took 10-15 minutes to explain the process and to expound on why he believed that the Petitioner's issues were 'frivolous' because their issues were not new, they had been discussed with all Interlocal agreement partners, they had all been addressed in the Town's Urban Village general plan, and the Town had taken great pains to have many public input sessions, and the Town had the best interests of all residents at heart. The BRB chairman allowed Eric to deliver and amplify half-truths and misinformation. Both Tom McCormick and I had our Zoom 'hands' raised for additional comment (and that was acknowledged by the meeting secretary), but the Chairman ignored us and didn't allow us to rebut Eric's comments. In my view, Eric twisted and 'spun' the facts into a false narrative that disrespected the Petitioners and all Woodway residents. Regardless of what Eric said, the Petitioner's issues and my issues were never discussed nor made public prior to the Town submitting the annexation application to the BRB.

The end result was that the BRB made its decision to not hold a Public Hearing based on false narratives and limited and unvetted information. It's a sad commentary on the Public Comment process when it can be manipulated by such a degree that only one side's arguments are allowed to be heard – and no rebuttal opportunity is given. I suggest that the Woodway Council think hard about what transpired last night at the BRB – and ask yourselves why Woodway did **not** support a Public Hearing to get the issues on the table, and why Eric and our Town counsel did everything they could to **not** support a Public Hearing?

I have some serious questions for the Council – and based on the Town's shutdown of a Public Hearing – I'd like to understand most of all why the Council supports such total disregard for full disclosure and transparency? In the interest of full disclosure, I'd also like the Council to answer the following questions for me and other residents and post them on the Town's Point Wells' website for all to see:

- 1) Why did the Town not support a BRB Public Hearing? What possible benefit is there to the Town and the residents to not discuss new issues? And what downsides are there for the Town if the BRB delayed the application process by a month or two and held a Public Hearing?
- 2) How can Eric claim that BSRE's and Alon Asphalt's plans to restart Point Wells' 'non-conforming' asphalt plant operations were known and discussed with residents and Interlocal agreement parties before the annexation application was submitted to the BRB – given the following facts:
 - a) the Dept of Ecology approval of the construction of large earth berms to contain leaking oil tanks was not known
 - b) the fact that the Town Shoreline Master Program boundaries were less restrictive than the County's SMP boundaries and would allow less environmental and ecologic control at Point Wells was not known
 - c) the fact that there was no agreement nor any stipulation by the City of Shoreline, or the County, or the Town to disallow restarting asphalt operations at Point Wells
 - d) the status of a permit to allow expansion and reconstruction of the commercial pier to allow petroleum cargo ships to offload product was not known, and no one knew whether the County would allow it or not
- 3) Is the Town going to allow BSRE or one of the Petroleum companies to restart operations at Point Wells? If it will allow the operations – how is that going to benefit Woodway residents and the environment? If the Town will not allow asphalt operations, how much is the Town willing to spend on legal services to counter a BSRE/Alon lawsuit? If the Town will allow asphalt operations, how much is

the Town willing to spend on litigation between it and Shoreline or the County or other aggrieved taxpayers?

- 4) Why is the Town not taking a more proactive and supportive role with the County in reaffirming termination of Point Well's asphalt and other industrial operations?
- 5) Will Town staff and Town officials swear that no discussion has taken place and no commitments have been made to BSRE or a petroleum company re allowing asphalt operations after annexation?
- 6) How much did the Town spend in the last 2 months for our Town Counsel to research the BRB statutes and to develop a legal case against the McCormick Petition filing? Was this money budgeted?
- 7) How many hours did Eric spend with the lawyer and with the Council to develop a strategy to dissuade the BRB from holding a public hearing?
- 8) How much does the Town anticipate the Point Wells' legal fees will be for the rest of the year in lawsuits and court cases where BSRE and the petroleum company sue for not allowing them to operate an asphalt plant, or for imposing new environmental standards, or new storage tank limits, or any other manner of vested interest interference lawsuits?

Sincerely
Bill Krepick
10-year Woodway resident

My verbal public comments at the 2/29/2024 BRB Zoom meeting:

Good evening - I'm Bill Krepick- a 10 yr Woodway resident.

I'm in full support of Mr. McCormick and the many Richmond Beach residents who have petitioned the Board to take a pause and schedule a public hearing on Woodway's proposed annexation of Point Wells. I believe there are too many outstanding issues with the annexation that were never fully vetted before Woodway submitted its Boundary Review Board annexation application in November 2023. These issues are well described in the McCormick et al petition.

I am especially concerned that the Town of Woodway has not amended its Shoreline Master Plan to match the SMP of the County. The result of this divergence is that residents would see significantly less ecological and environmental protection under Woodway's stewardship of Point Wells than under the County's.

The other major issue that was never disclosed to any residents is the current activities that are being spearheaded by Alon Asphalt to restart the asphalt plant operations, even though the plant has been closed for more than 2 years.

This action would appear to be backtracking from any residential development – and instead seems to be focusing on restarting an asphalt plant operation. They have received a Dept of Ecology approval to build large berms to contain any petroleum product leakage around several large tanks. They have also proposed major upgrades to the offloading dock to make it capable of receiving large cargo ship petroleum product deliveries. And they have engaged in these activities even though their industrial-use license lapsed more than a year ago. They will need to get approval for a new non-conforming use license from either the County or Woodway – which residents believe should not happen. Regardless of whether these activities go forward or not – expensive litigation is almost guaranteed.

It is noteworthy that Woodway's General Plan emphasizes a small urban village development – and does not contemplate having a busy asphalt terminal. Residents believe that a small urban village will result from annexation. Sadly, this does not appear to be the case. Residents and the environment will be negatively impacted by Woodway's reduced Shoreline Master Plan boundary and by having an undesirable asphalt operation in full tilt with all its noxious odors, heavy truck traffic, and toxic leakage.

Until and unless these serious unresolved issues are settled between the County, Woodway, Alon Asphalt and possibly, the developer – residents are left in limbo and will be disadvantaged by the annexation – and likely forced to pay for litigation with their tax dollars.

Because the petition contesting the Town's proposed annexation raises numerous valid issues, please concur with the request for review, and then convene a public hearing where you will be able to get a lot more information that will help you make the 'right decision' (*quote/unquote*) to approve, modify or deny the Town's proposed annexation.

Thank you for considering.

My written Public Comments submitted on 2/28/2024:

From: bkrepick@sbcglobal.net <bkrepick@sbcglobal.net>

Sent: Wednesday, February 28, 2024 4:00 PM

To: Board, Boundary Review <BoundaryReview.Board@co.snohomish.wa.us>

Cc: 'Denis Casper' <casperdenn@aol.com>; 'Jerry Patterson' <jerrypat08@gmail.com>; 'Eric Faison' <eric@townofwoodway.com>; 'Greg A. Rubstello' <grubstello@omwlaw.com>; 'Tom McCormick' <tommccormick@mac.com>

Subject: RE: Comment #1 of 2: Why the Board should concur with our Petition for Review of the Town's proposed annexation of Point Wells- A LONG TIME WOODWAY RESIDENT AGREES 100% WITH MR. MCCORMICK ET AL

Importance: High

To: Boundary Review Board of Snohomish County

From: Bill Krepick (resident of Woodway for 10 yrs)

Subj: Agreement with Tom McCormick and other Richmond Beach resident petitioners- PLEASE HOLD A PUBLIC HEARING

I am a resident of Woodway and live at the top of the bluff directly above Point Wells. I believe my house is within 1/ 4 mile of the eastern boundary of Point Wells.

Although I live within the 'annexing jurisdiction' I am opposed to the annexation of Point Wells for a variety of reasons. I don't feel the Woodway Council was privy to all the information that Mr. McCormick has presented, and I don't feel the Woodway annexation application to the Board was fully vetted, nor were Woodway residents fully informed of the undesirable ecologic impact and the possibility that the asphalt plant would be allowed to restart its operations. I would like to see the Boundary Review Board hold a separate public hearing to address the environmental and other concerns with Woodway's annexation of Point Wells. I agree 100% with all of the points made by Mr. McCormick et al. I think their list of concerns is significant enough that public hearing is justified, and would benefit all residents and the Board.

Sincerely

Bill Krepick

11402 239th PI SW

Woodway, WA

From: Tom McCormick <tommccormick@mac.com>

Sent: Wednesday, February 28, 2024 3:20 PM

To: Board, Boundary Review <BoundaryReview.Board@co.snohomish.wa.us>; brb@snoco.org

Cc: Denis Casper <casperdenn@aol.com>; Jerry Patterson <jerrypat08@gmail.com>; Eric Faison <eric@townofwoodway.com>; Greg A. Rubstello <grubstello@omwlaw.com>

Subject: Comment #1 of 2: Why the Board should concur with our Petition for Review of the Town's proposed annexation of Point Wells

To: Boundary Review Board of Snohomish County (the "Board")

From: Tom McCormick, on behalf of the Initiators of the Petition for Review of the Town of Woodway's Proposed Annexation of Point Wells

This email (comment #1 of 2) addresses why the Board should concur unanimously with our Petition for Review, and schedule a public hearing to address our environmental and many other concerns with the Town's annexation of Point Wells. Another email to be submitted (comment #2 of 2) addresses the Town's absurd contention that the Board has no jurisdiction because our Petition for Review was filed too late and/or the Board failed to concur on time.

I. In 1987, our legislature amended the law to give a voice to local residents residing outside the area proposed to be annexed and outside of the annexing jurisdiction.

In 1987, the legislature added subsection (4) to RCW 36.93.100, adding a new class of individuals who could file a Petition for Review: "registered voters who deem themselves affected by the action and reside within one-quarter mile of the proposed action but not within the jurisdiction proposing the action." (Laws of 1987 c 477 § 3, SB 5335.) Subsection (4) was added to give a voice to affected individuals living near an area being annexed, whose interests may not otherwise be adequately protected by local officials who may have a strong bias in favor of annexation. Local officials may push to annex even when annexation may provide less protection for the environment than without the annexation.

As Brice Martin, representing Boundary Review Boards, testified on April 2, 1987, at a public hearing of the House Local Government Committee, "The fact that the county, city and property owners agree may not be consistent with state standards."

And as Representative Doty said on the day that the State House of Representatives passed its amended version of SB 5335 (April 8, 1987): "The thing that I would like you to remember is that the Boundary Review Board is an appointed group of folks, as opposed to the elected county or city officials--[the Board] answers directly to the populace. I urge your support."

II. The Board's role, and the standard for deciding whether to concur with our Petition for Review.

At your meeting on Feb. 29, 2024, your job is to decide whether our Petition for Review of the Town of Woodway's Proposed Annexation of Point Wells raises any possible issues that warrant examination that only a full public hearing can provide through the presentation of evidence under oath.

If you believe that there is any arguable merit whatsoever to the issues that we discussed in the memorandum that I filed on Jan. 11, 2024, with our Petition for Review (copy attached for your convenience), and that we raise in this email, then I respectfully request that you concur unanimously with our Petition for Review, and schedule a date for a public hearing.

The legislature added subsection (4) to RCW 36.93.100 to give local residents like we petitioners the right to have the Board review a proposed annexation. The legislature was surely aware that some petitions for review could be frivolous, and not worthy of a Board's review, so the legislature added a method for the Board to weed out frivolous petitions. A petition for review cannot proceed to a public hearing unless the majority of Board members concur. Our Petition for Review is undoubtedly NOT frivolous. We raise genuine, valid issues. Even then City of Shoreline Mayor Scully acknowledged as much, when five months ago during a public hearing, he stated that "Mr. McCormick has raised valid concerns."

Please vote unanimously to concur with our Petition for Review, and schedule a public hearing.

III. A public hearing where evidence can be presented is needed to enable the Board to assess whether the Town's proposed annexation is inconsistent with any of the objectives listed in RCW 36.93.180, and for the Board to consider the factors listed in RCW 36.93.170.

After completion of a public hearing, the Board can modify or deny a proposed action if there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. As

provided in RCW 36.93.150, "The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180."

A. We believe that the Town's annexation is inconsistent with several of the RCW 36.93.180 objectives, listed below (see particularly the objectives that I have highlighted with bold typeface):

"(1) Preservation of natural neighborhoods and communities;

(2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;

(3) Creation and preservation of logical service areas;

(4) Prevention of abnormally irregular boundaries;

(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

(6) Dissolution of inactive special purpose districts;

(7) Adjustment of impractical boundaries;

(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority."

A public hearing is needed to to assess whether the Town's proposed annexation is inconsistent with any of the objectives. A public hearing will provide the Board with the evidence it needs to render an informed decision on the Town's annexation of Point Wells—whether to modify, deny, or approve it.

B. Factors to consider. RCW 36.93.170 provides that, "In reaching a decision" on the Town's annexation, "the [B]oard **shall consider** the factors affecting such proposal, which shall include, but not be limited to the following:" (see particularly the factors that I have highlighted with bold typeface)

(1) Population and territory; population density; **land area and land uses; comprehensive plans and zoning**, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; **comprehensive plans and development regulations** adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; **applicable interlocal annexation agreements between a county and its cities**; per capita assessed valuation; **topography**, natural boundaries and drainage basins, **proximity to other populated areas**; the existence and preservation of prime agricultural soils and productive agricultural uses; **the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years**; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; **effect of ordinances, governmental codes, regulations and resolutions on existing uses**; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) **The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests**, and on the local governmental structure of the county.

A public hearing is needed to allow the Board to consider and assess, in its decision making process, the above factors affecting the Town's proposed annexation. A public hearing will provide the Board with the evidence it needs to render an informed decision on the Town's annexation of Point Wells—whether to modify, deny, or approve it.

IV. Inconsistencies with several of the objectives under RCW 36.93.180.

Our Petition deserves your review, as it raises serious issues as to whether the Town's proposed annexation of Point Wells is inconsistent with the RCW 36.93.180 objectives.

Note: At the Feb. 29 special meeting, your role is not to decide whether the objectives have been met, but only whether we raise any possible, non-frivolous, issues that warrant examination. If there is arguable merit to our contention that the Town's proposed annexation fails to meet some of the RCW 36.93.180 objectives, then a public hearing is needed to gather evidence to assist you, as decision maker, to render an informed decision on the Town's annexation of Point Wells. We ask that you concur unanimously with our Petition for Review.

Consider, for example, the following three objectives. A public hearing is needed to produce evidence showing that the Town's proposed annexation is inconsistent with these objectives and perhaps others.

A. "Preservation of natural neighborhoods and communities" (RCW 36.93.180(1)).

— Petitioners in Richmond Beach recognize Point Wells as being part of their natural neighborhood and community. This bond will become even stronger if Point Wells ever gets cleaned up and re-developed into a residential community. The only road to Point Wells is a narrow two-lane road named Richmond Beach Drive. It runs through our Richmond Beach neighborhood in the City of Shoreline. Except for five (5) Town of Woodway residences that access their property via Richmond Beach Drive, all Town residences are totally disconnected from Point Wells. They are located far to the east, high above the Point Wells site. There is no road originating in the Town that connects to Point Wells. Consider also that while our Richmond Beach community regularly walks along Richmond Beach Drive to the Point Wells site, and regularly walks the beaches at Point Wells, virtually no Town residents do.

B. "Creation and preservation of logical service areas" (RCW 36.93.180(3)).

— Annexation by the Town does not create or preserve logical service areas for any service that requires direct road access, such as police, fire, garbage and recycling collection, snow removal, school buses, etc.

C. "[A]nnexation to cities or towns of unincorporated areas which are urban in character" (RCW 36.93.180(8)).

— This objective seeks growth of the Town's existing population by expanding residential development into adjacent areas that are urban in character. There's a problem with meeting this objective. Point Wells is an out-of-service marine fuel and asphalt oil terminal. It is not urban in character. Despite its wishful Urban Village zoning, because cleanup of the contaminated site is expected to take decades, Point Wells is decades away from being urban in character.

V. Inconsistencies with several of the factors under RCW 36.93.170.

As referred to above, RCW 36.93.170 provides that, "In reaching a decision" on the Town's annexation, "the [B]oard **shall consider** the factors affecting such proposal ..." (Bold typeface added for emphasis.) For the Board satisfy this mandate to consider the listed RCW 36.93.170 factors, a public hearing is needed. We ask that you concur unanimously with our Petition for Review and schedule the needed public hearing.

Consider, for example, the many concerns associated with the following selected factors affecting the Town's annexation of Point Wells. A public hearing is needed to produce evidence regarding these factors, including how the Town's proposed annexation will result in a cutback in environmental protection compared to the status quo.

A. "The effect of the proposal or alternative on adjacent areas, [and] on mutual economic and social interests" (RCW 36.93.170(3)).

— See comment under IV.A. above.

B. "[T]he likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years" (RCW 36.93.170(1)).

— There is zero possibility for any residential growth at Point Wells during the next ten years. This factor weighs against approving the Town's annexation at this time. Point Wells is an out-of-service marine fuel and asphalt oil terminal. Cleanup of the contaminated site is expected to take decades, Point Wells is decades away from seeing any residential development.

— There is another problem. It appears that the oil company may try to re-start the commercial oil operations at Point Wells, which have been discontinued since June 2020. The public contends that re-starting commercial oil

operations would be illegal, because the operations are a nonconforming use (illegal under the County's Shoreline Master Program and illegal under current Urban Village zoning), and all nonconforming use rights have expired due to operations having been discontinued for more than 12 months.

C. "[E]ffect of ordinances, governmental codes, regulations and resolutions on **existing uses**" (RCW 36.93.170(2)).

— This is a huge factor to consider. See the paragraph immediately above about nonconforming use (in V.B. above). Snohomish County's code provision regarding nonconforming uses, contained in its Shoreline Master Program, is very strict, and likely would cause all nonconforming use rights at Point Wells to expire regardless of the owner's intent to abandon the use. In contrast, the Town's provision regarding nonconforming uses, contained in its Shoreline Master Program, is not as strict and could be construed as permitting a nonconforming use to continue so long as the owner shows no intent to abandon the use.

— Annexation by the Town potentially would result in fewer restrictions on existing uses in the shoreline environment, as compared to the status quo.

D. "[L]and uses", "[C]omprehensive plans and zoning", "[C]omprehensive plans and development regulations" (RCW 36.93.170(1)).

— As discussed in the memorandum that I filed on Jan. 11, 2024, with our Petition for Review (copy attached for your convenience):

"As a preview, we are concerned about how Point Wells might be used or developed to the public's detriment if the Town annexes Point Wells, as opposed to Point Wells remaining in unincorporated Snohomish County. We are concerned about environmental issues, building heights, industrial uses, public access, etc.—issues that the annexation interlocal agreement fails to address. ... To help you decide whether to grant review, please consider, for example, the following Shoreline Management Act concern (one of many to be articulated at a hearing).

Section 4.2.2(3) of the Town's Shoreline Master Program, as approved by the Department of Ecology, provides that, "All structures in the shoreline shall be designed and constructed consistent with the underlying zoning and shall not exceed 35 feet above average grade level, consistent with RCW 90.58."

The "shoreline" protected by and restricted by the Town's Shoreline Master Program is a 200-foot-wide portion of Point Wells at the western edge of the property. In contrast, the "shoreline" protected by and restricted by the County's Shoreline Management Program is a far larger area. Under the County's rules, virtually all property west of the railroad tracks is protected by and restricted by the County's Shoreline Management Program. ...

Under the Town's shoreline rules, only at the western edge of the property will future buildings be limited to 35 feet. In contrast, under the County's shoreline rules, virtually the entire area west of the railroad tracks will be subject to the 35-foot height restriction.

The above building height example (one of many) illustrates how we, our neighbors, and future occupants of Point Wells will suffer a cutback in environmental protections, restrictions, and benefits if the Town is allowed to annex Point Wells."

— In addition to the above, if the Board were to approve the Town's proposed annexation, public access to the shoreline, a key objective of the Washington Shoreline Management Act, may also be impaired due to the differences in the Town's shoreline jurisdiction vs. the County's shoreline jurisdiction. See above. But it may be that the Town's urban village rules would supersede and provide access. However, there is concern that the Town could easily eliminate those rules after the site is cleaned up, and rezone the area for industrial use, which could eliminate public access protections, whereas it is unlikely that Shoreline Master Program's rules could be similarly amended to deny public access because such rule changes require approval of the Department of Ecology.

E. "[A]pplicable interlocal annexation agreements between a county and its cities" (RCW 36.93.170(1)).

— The Town, Snohomish County, the City of Shoreline, and Olympic View Sewer and Water entered into an Interlocal agreement for the Town's proposed annexation (the "annexation ILA"). The problem is that this agreement

fails to address the above-discussed concerns, some of which elected officials have previously recognized as being valid. Per an excerpt from the minutes of the City of Shoreline's Sept. 25, 2023 Council meeting, "Mayor Scully stated Mr. McCormick has raised valid concerns but to him they do not rise to a level that would require Shoreline to derail the agreement language already in process." And here is an excerpt from an Oct. 3, 2023 email from Snohomish County Councilmember Dunn to me: "I can understand your concerns and being protective of the environment and shoreline. It's my understanding that the remedy would not be with the County" Who then?

— **The snowball effect.** Staff of the Town, County, City and Olympic View negotiated a draft annexation ILA out of the public eye. Then staff presented the "done deal" to their respective Councils, asking them whether they wished to proceed to schedule a public hearing on the draft annexation ILA. The City of Shoreline Council was the first council to discuss the draft annexation ILA, and vote to proceed with a public hearing, as required by State law. Problem: The City Council discussed and voted on the draft annexation ILA out of the public eye, in an executive session, held on Aug. 14, 2023, that I contend violated the Washington Open Public Meetings Act (OPMA). In contrast, the County Council and the Town Council considered the draft annexation ILA in an open public meeting, and published the draft annexation ILA in advance, so that the public could provide input, before the two councils voted or acquiesced to moving forward and scheduling the required public hearing.

Below is an excerpt from an email that I sent to the City on Sept. 29, 2023, complaining about the OPMA violation. The excerpt illustrates the snowball effect. Momentum was built so that the public never had a real opportunity to have its concerns meaningfully heard. It became too late for any of the councils to want to "derail the agreement language already in process." (City Mayor Scully's comment, as recorded in the minutes to the Sept. 25, 2023 Council meeting.) Assuming that the Board concurs with our Petition for Review, it will give the public its first real opportunity to be meaningfully heard.

"On August 14, the City of Shoreline violated OPMA. The City illegally took its action in an executive session. Here's what the August 14 minutes say ...:

At 9:20 p.m., Mayor Scully announced that Council would recess into an Executive Session for a period of 15 minutes as authorized by RCW 42.30.110(1)(i) to discuss with legal counsel matters relating to agency enforcement actions or litigation or potential litigation to which the City is or is likely to become a party. He stated the Council may potentially take action following the Executive Session. Staff attending the Executive Session included Bristol Ellington, City Manager; and Margaret King, City Attorney. The Executive Session ended at 9:32 p.m. and Mayor Scully called the meeting back to order at 9:35 p.m.

Councilmember Doris McConnell moved to authorize the City Manager to execute the Annexation Interlocal Agreement (ILA) between the Town of Woodway, Snohomish County, the City of Shoreline, and Olympic View Water and Sewer District in a form acceptable to the City Manager and City Attorney. Deputy Mayor Betsy Robertson seconded the motion, which carried 5-0.

It was a violation of OPMA to discuss the matter in executive session.

It was a violation of OPMA not to list the matter on the regular agenda, with a copy of the draft 4-way ILA and the staff report. If done properly, the public would have had an opportunity to provide comments, which might have changed the direction of events, especially given that the City Council was the first of the four jurisdictions to take any sort of action on the draft 4-way ILA.

It was a violation to misrepresent the purposes of the executive session.

It was a further violation to have voted to authorize the City Manager to execute the agreement, before public hearings were ever held.

It was violation to fail to vote on the correct action--to set time and date for a public hearing.

The City blew it badly. It is particularly distressing because the City was the first of the four jurisdictions to consider the matter. Once the City took its action, momentum built. What good were the later public hearings when the matter had already been decided?

VI. Conclusion

Assuming that the Board concurs with our Petition for Review, it will give the public its first real opportunity to be meaningfully heard.

Please vote unanimously to concur with our Petition for Review, and schedule a public hearing where we can be meaningfully heard.

Thank you.

Tom McCormick