

POINT WELLS ANNEXATION

QUESTIONS AND ANSWERS

At the beginning of 2023, the Town Council started a public discussion on whether the Town should annex Point Wells. As part of this process, the Council has requested that staff conduct a financial analysis and look at other pros and cons of an annexation. Council also is reserving time at all of its Council meetings for public comment and discussion on annexation.

This questions and answers document is intended to address many of the questions that we have been asked over the years about Point Wells. The document does not address all questions. And the document does not answer questions that might be the subject of negotiation with the property owner. We encourage you to participate in the council meetings and annexation meetings, or to set up a meeting with the Mayor, a Council member, or our Town Administrator if you have questions that are not included in this document.

1. *What is Point Wells and where is it located?*

Point Wells is about 67 acres of unincorporated Snohomish County, located along the southwestern boundary of the Town and the northern boundary of the Shoreline/King County line. The property currently has an industrial use, but most of the property is zoned by the County for commercial and mixed-use development. A parcel at the southern end of the site is the King County Brightwater Treatment Plant's outfall to Puget Sound. This parcel continues to be zoned for industrial use.

2. *What is the significance of Point Wells to the Town?*

The State's Growth Management law divides lands in the state between urban and rural. Urban areas are intended to be annexed by cities. Snohomish County has designated Point Wells as an urban area within the Town's "municipal urban growth area," also known as a "MUGA". This means that, at some point, the property is intended to be annexed by the Town and developed pursuant to the Town's regulations. The Town has planned for the eventual annexation of Point Wells since 1999. The Town has significant concerns that, under County jurisdiction, the property may be developed in a manner that is inconsistent with the desires of Woodway residents.

3. *Is the Town required to annex Point Wells?*

No. While State law intends for all urban unincorporated areas within the state to be annexed and managed by cities, State law does not currently mandate that the associated cities annex these areas.

4. *What is the source of the years of litigation related to Point Wells?*

Over a decade ago, BSRE (the 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 Town and the City of Shoreline appealed the designation to the Growth Management Hearings Board. We prevailed.

Following the Board's ruling, Snohomish County rezoned Point Wells as an "Urban Village." Under this zoning, the developer would be required to negotiate agreements with the Town and Shoreline

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 before the Board's ruling, their project was "vested" under that illegal code. As a result, BSRE's unreasonably large redevelopment project could continue to move forward.

A couple years ago, the County moved to terminate BSRE's application because BSRE failed to diligently pursue its application in compliance with the County's code requirements. A court gave BSRE additional time to fix its application. Recently, a court determined that BSRE failed to adequately revise its application, and the court ruled that the County was justified in terminating BSRE's application.

In addition to litigation regarding the project itself, Ronald Wastewater District, the City of Shoreline, and King County sued the Town, Olympic View Water & Sewer District, and Snohomish County regarding jurisdiction over sewer service to Point Wells. The State Supreme Court ruled in our favor, stating that Ronald, Shoreline, and King County have no right to provide sewer services within Snohomish County. Point Wells is within Olympic View's water and sewer service area.

5. *What is the status of BSRE's "Urban Center" application?*

In December 2022, the Washington Court of Appeals held that the County's termination of BSRE's project was justified. As of today, BSRE's 3,000+ unit Urban Center development application is dead. BSRE will likely appeal to the State Supreme Court. However, the Supreme Court is not required to hear their appeal. If the Supreme Court does not take the case, any new mixed-use development at Point Wells is now subject to the County's more restrictive Urban Village zoning designation.

6. *What is contained in the Town's Settlement Agreement with Shoreline?*

The Town and the City of Shoreline entered into a settlement agreement, resolving our differences related to both annexation and sewer service at Point Wells. The Agreement is a 15-year agreement in which the Town and Shoreline have agreed to work together on issues related to Point Wells. The Agreement addresses zoning, annexation, traffic, and utility service.

The Agreement provides that the Town will have an opportunity to initiate an annexation of Point Wells, and Shoreline will support that annexation. If the Town fails to initiate an annexation under certain circumstances, Shoreline will have an opportunity to annex Point Wells.

Perhaps most importantly, under the terms of the Agreement, density at the site will be limited (based on traffic generated by certain types of development). No more than 24 residential units may be developed unless there is a secondary access through upper Woodway. The Agreement estimates that, with secondary access, density will be limited to approximately 400 single-family homes or 800 multi-family homes.

7. *Does the Settlement Agreement mean that Woodway will annex Point Wells?*

No. The Agreement does not require the Town to annex Point Wells. 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, in accordance with state law, at a public meeting.

8. *Do residents get 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. However, State law requires the Town Council to hold public hearings to hear from residents and affected parties before taking action to annex territory. In addition to the public hearing, the Council may use a variety of methods for obtaining information on public opinion regarding a potential annexation.

9. *Can the Town maintain a balanced budget without annexation?*

Yes. In fact, the Town has a legal obligation to maintain a balanced budget and will always do so. Maintaining a balanced budget, however, does not mean that service levels or taxes will remain the same.

Without new revenue, the Town Council will have to reduce services. Unfortunately, many of the Town's responsibilities are legally mandated. Surprisingly, services that we would otherwise view as essential, such as police, fire, and certain aspects of our street & right-of-way maintenance, are not legally mandated. These services will be reduced prior to a reduction in legally-mandated services or funding for legally mandated tasks that might seem less important.

The challenge associated with the Town's budget is not unique to Woodway. It results from the tax structure that the State uses to fund local government. Generally speaking, property tax revenue is the largest single source of revenue for most cities in Washington. A state-wide voter approved initiative in the '90s restricts the amount a city can collect in property tax revenue 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 (*i.e., an increase in your home's value does not result in an increase in the amount of property tax revenue the Town receives*). As a result, most cities have a structural deficit, requiring either voter approved tax increases or service level cuts to maintain a balanced budget.

For Woodway, the Town will receive approximately \$11,000 more in property tax revenue in 2023 than it received 2022 (excluding revenue from new construction). In contrast, public safety costs, which are generally the largest single expense for most cities, tend to grow at a rate far greater than 1%. For Woodway, the Town's police and fire contracts alone will increase by over \$34,000 in 2023. This does not include other costs that grow by more than 1%. As a result, most cities are faced with a deficit that grows exponentially over time, forcing them to return to voters periodically to maintain services.

Annexation will not solve this problem. Depending on the nature of the development at Point Wells, however, annexation may allow the Town to distribute relatively fixed costs over a larger tax base.

10. *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 legal mechanism available that could make this work.

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

Several 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 regarding service levels, such as fire, police, and public works services and staffing. 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 our Agreement with Shoreline. It also includes a lot of assumptions that now, years later, are not accurate.

The Town has hired a consultant to conduct a financial analysis based on several scenarios. The scenarios we are considering include:

- a 24-lot single-family subdivision (the most that could be built without secondary access);
- a 140-unit multi-family condominium development (the County's housing projection based on environmental limitations);
- a 734-unit multi-family condominium development (the most that could be built under the Settlement Agreement with Shoreline); and
- a modernized industrial use similar to Point Wells' historical use.

We hope to have results from this analysis in April or early May.

Of note, it's difficult to do a meaningful analysis without answers to a lot of very basic questions. This financial analysis will have to include a number of assumptions. For example, for residential uses, we will have to estimate the assessed values of the units to be developed and what the Town's tax rate will be upon completion of the development. 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 maintaining these spaces or providing certain services. We also do not know what types of businesses will be at the site – some businesses generate more tax revenue than others. Many of these questions will be subject to negotiations with the developer. Perhaps the biggest degree of uncertainty that will test the real-world reliability of our analysis is the financial feasibility of any of these scenarios, given the anticipated environmental cleanup cost.

12. *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 considered by the Council. However, even if our analysis shows that an annexation will generate more revenue than expenses initially, given the state's tax structure, we know that it is likely that an annexation will not permanently eliminate the Town's need to ask for tax increases.

As a result, the Council also will be considering several factors when deciding whether to pursue an annexation. For example, the Council will consider the extent to which control over future development of the site outweighs or mitigates the impacts from an annexation. This is a complicated issue that will require a lot of considered thought and public discussion.

13. *If the Town's zoning and Shoreline's zoning are the same, why not just let Shoreline annex Point Wells?*

The Settlement Agreement with Shoreline is limited in scope and time. There is no agreement that would guarantee that the Town's and Shoreline's zoning regulations will remain harmonized. Without annexation, the Town has no control.

14. *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. That being said, we have about 1,000 registered voters in

Woodway. It is entirely possible (perhaps even likely, given the extensive environmental constraints on the property) that any residential development at Point Wells will have fewer registered voters than registered 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.

15. *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 will not result in commercial zoning in the rest of Town.

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

No. If a developer at Point Wells wants to develop a project that results in traffic greater than would be generated by more than 24 single-family homes, their application cannot be approved under either the County's zoning or the Town's proposed zoning 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 likely would be turned over to the Town and, if so, the Town would be required to insure and maintain the road, as it does with any other public road in Woodway.

17. *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 because of redevelopment at Point Wells, we cannot completely rule out that some improvements might be required. If the existing roads in Woodway are insufficient to support an otherwise legally allowable development at Point Wells, the developer may have the right to mitigate their impacts by making improvements to the Town's street network. This right may exist whether or not an annexation occurs.

18. *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 upper Woodway. The exact number of vehicles will depend on the size and type of development.

19. *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. We don't know the scale of the project, the duration of legal proceedings or the timeline for an approval of a redevelopment plan. It is possible that no redevelopment occurs and BSRE continues its existing operations indefinitely.

20. *If the Town annexes Point Wells, will the Town be responsible for the clean-up costs at the site?*

No. The Town is not in the chain of title for any land at Point Wells and does not become so as a result of annexation. Even if the site becomes abandoned, it will not be the Town's responsibility to clean-up the property.

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

Yes. The Town likely would contract out for this work, with the costs of such work to be paid for by the developer. Working with consultants (paid for by the applicant) is how the Town currently processes most development applications in the Town.

22. *If the Town annexes Point Wells, can the Town adopt procedures or requirements that will limit BSRE's ability to sue the Town or to require the developer to pay for the Town's legal costs?*

No. Property owners have the right to develop pursuant to development regulations in effect when they submit a completed development application. Property owner rights are further defined by state law. No jurisdiction in the state has the right, through legislation, to limit a property owner's right to pursue litigation to assert what they believe is a legal right or to require a property owner to pay for the Town's costs in that litigation.

The Town also cannot adopt mandatory arbitration provisions or similar legislation that would limit the ability of a property owner to pursue litigation. This applies to current Town property owners, as well as to a property owner at Point Wells after annexation.

The Town can enter into an agreement with a developer that addresses litigation expenses and requires mandatory or binding arbitration in the event of a dispute. But this is a voluntary agreement between the parties. The most effective thing that the Town can do to limit the cost of litigation is to adopt reasonable development regulations that we can live with and have strongly defensible positions with regard to those regulations if challenged.

23. *Can the Town require that BSRE cleanup hazardous waste on the site before approving an application to develop a large mixed-use project?*

No. The Town cannot require a developer to clean-up a site prior to submission or vesting of a development application. However, the Town's code does require a development agreement between the Town and a developer before a developer obtains a vested right to develop anything other than single-family housing at Point Wells. A development agreement will likely address state environmental policy act (SEPA) compliance and a clean-up schedule.

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

The Town has spent approximately \$200,000 on Point Wells related litigation over the past 12 years. Most of this cost has been to defend the Town from lawsuit brought by Ronald Wastewater, Shoreline, and King County.

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

We may experience costs related to review of environmental or traffic reports, or 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. We also may experience costs to ensure

that, if we choose to annex, our rights to facilitate and manage a development are more fully under our control.

The annexation evaluation process that the Town is currently engaged in also has a cost. The financial feasibility study will cost approximately \$20,000. We estimate that our planning and litigation costs will be about \$5,000 each. Most other costs will be in the form of the use of time of our existing staff.

26. *Can the Town annex through a negotiated agreement with BSRE rather than acting unilaterally?*

As the Council works expeditiously to better understand the benefits and risks associated with annexation of Point Wells, the Town is working in a manner that preserves all options until the Council makes a decision. The Town is negotiating an agreement with the County, Shoreline, and Olympic View that would allow the Town to annex Point Wells without the property owner's consent. The Town also has had several meetings with BSRE, to better understand each other's concerns and to see if we can reach an agreement that would be mutually beneficial.

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