

# POINT WELLS ANNEXATION

## QUESTIONS AND ANSWERS

On May 20, 2024, at 6 p.m., the Town Council will hold a public hearing on an ordinance annexing Point Wells into the Town. Following the hearing, Council may take the final step in the process – the deliberation and vote on the annexation ordinance. This final step may or may not occur immediately following the public hearing. If Council approves the ordinance, the annexation will be effective five days after the passage and publication of the ordinance.

### **Background**

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, Council engaged a consultant to conduct a financial analysis and looked at legal considerations and other pros and cons of an annexation. Council also reserved time at most of its Council meetings in 2023 for public comment and discussion on annexation.

In late September and early October of 2023, the Town, Snohomish County, the City of Shoreline, and Olympic View Water & Sewer District Council each approved an Interlocal Agreement between the parties pursuant to RCW 34A.14.296. This state law provides a process through which the Town can effectuate the annexation of Point Wells by mutual agreement of the parties, without the property owner's consent. A copy of the Agreement is available on the Town's website.

This Q&A is intended to address many of the questions that we have been asked over the years, particularly those arising from the outreach effort the Town has engaged in since January 2023. The document does not address all questions. In particular, the document does not answer questions that might be the subject of negotiation with the property owner or that might be the subject of potential future litigation. We encourage residents to participate in our council meetings (including the upcoming public hearing), or to set up a meeting with the Mayor, a Councilmember, or our Town Administrator if you have questions that are not included in this document.

### **Q&A**

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 of 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. However, the court ultimately determined that BSRE failed to adequately revise its application, and the court ruled that the County was justified in terminating BSRE’s application.

In December 2022, the Washington Court of Appeals affirmed the lower court’s determination that the County’s termination of BSRE’s project was justified. The State Supreme Court declined to hear BSRE’s appeal. As a result, BSRE’s 3,000+ unit Urban Center development application is dead. Point Wells is now subject to the County’s more restrictive Urban Village zoning designation.

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 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. In the Agreement, the Town and Shoreline agreed to work together on issues related to Point Wells. The Agreement addresses zoning, annexation, traffic, mitigation, 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.

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

No. The Agreement does not require the Town to annex Point Wells. The Agreement provides that Woodway has the right of first refusal to annex Point Wells. The Agreement requires the Town to use “its best efforts to effectuate the annexation of Point Wells as expeditiously as possible . . . .” If the Town does not act in good faith to annex Point Wells, the Town is required to support Shoreline’s efforts to annex the site. The decision to annex Point Wells is a decision made by the Town Council, in accordance with state law, at a public meeting.

7. *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. The next hearing is tentatively scheduled for May 20, 2024, at 6 p.m. In addition to public hearings, the Council may use and has used a variety of methods to obtain information on public opinion regarding a potential annexation.

8. *Is there a difference between how the Town regulates development on the shoreline compared to the County?*

Yes. In addition to general environmental protection regulations, like most jurisdictions in the state, the Town strictly regulates activities and development within 200 feet of the ordinary high-water mark. These shoreline regulations are in accordance with specific requirements of state law. The County has elected to extend the state’s shoreline regulations landward, encompassing almost all of Point Wells.

A group of City of Shoreline residents has asked the Town Council to adopt regulations similar to the County’s shoreline regulations – for “environmental protection” reasons. Their most often cited justification for the request relates to how the County regulates building height at Point Wells. However, mirroring the County’s regulations could have other significant effects, the scope of which we currently do not fully understand and may not agree with. Staff has recommended that Council review this issue as part of next year’s planned Shoreline Management Program update. There is no legal requirement that the issue be addressed as part of or prior to annexation.

9. *What are the building height limitations at Point Wells under the Town’s Code?*

The Town’s Urban Village zone grants the property owner the right to build single-family housing at Point Wells with a height limit of 35 feet. This is the same height limit applicable to the Upper Bluff and the Town’s Woodway Highlands neighborhood. If the developer elects to negotiate and enter into a development agreement with the Town, the height limit west of the railroad track is increased to 45 feet.

The height limit west of the tracks can be increased with a development agreement to 75 feet, but only if the applicant conducts a view analysis demonstrating that public views from Richmond Beach Drive to Admiralty Inlet are not impacted.

10. *What is non-conforming use, and how does it relate to issues at Point Wells?*

State law grants property owners the right to maintain a use or a structure even if the zoning laws change after the use or structure is established. This is called a non-conforming use or a non-conforming structure. This is a substantive right, and a claimant alleging abandonment of a use or structure has the burden proving such abandonment. Proof in a non-conforming use case is generally heavily based on facts provided by the property owner.

Some residents in the City of Shoreline have asserted that the owner of Point Wells no longer operates the facilities at Point Wells on a commercial basis, and the owner therefore has lost the right to operate or maintain the facilities at the site. They state that this issue will be litigated at some point, and the Town should delay annexation until such time as litigation of the issue is initiated under the County – making the litigation expense a County responsibility, rather than a Town responsibility. We do not know, however, when or if this issue will arise.

Furthermore, the Town has a multi-decade history of legal actions and threatened legal actions related to Point Wells. History would suggest that this trend will continue, whether the Town annexes Point Wells or not. The Town has a responsibility to protect the interests and safety of its residents. While we cannot discuss this particular legal issue in detail, we can say that the issue has been thoroughly evaluated by the Town's attorney and Council has received professional legal advice on the issue.

11. *Why does an amendment to the Settlement Agreement include references to industrial uses at Point Wells if industrial uses are prohibited by the Town's code?*

As part of last fall's negotiations with the City of Shoreline on the four-party annexation Interlocal Agreement, Shoreline requested an amendment to our Settlement Agreement that clarified their rights and the development approval process related to any future change in the Town's zoning that might allow industrial uses at the site or if the property owner is found to have a vested, legal non-conforming industrial use. Shoreline's principal concern related to potential impacts to their transportation infrastructure or public facilities.

12. *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 \$12,000 more in property tax revenue in 2024 than it received 2023 (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 increased by over twice that amount in 2024. 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 character of future development at Point Wells, however, annexation may allow the Town to distribute some of its fixed costs over a larger tax base. Either way, voters soon will be asked to raise their taxes to support Town services. Without voter support, there will be substantial cuts in services, including cuts in services that most of us would consider essential.

13. *Has the Town conducted a financial analysis of annexation?*

Several years ago, the Town 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 under the code that would apply to Point Wells after. It also includes a lot of assumptions that now, years later, are not accurate.

As a result, Council directed staff to engage a consultant to conduct an updated 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 projected upper limit of what could be built under the Settlement Agreement with Shoreline); and
- a modernized industrial use similar to Point Wells' historical use.

You can find a copy of the consultant's report on our website. Key findings include:

- All the development scenarios result in a stronger financial position than the status quo because they enhance the tax base by adding population, housing units, assessed value, and/or real estate sales, thereby reducing the burden on existing taxpayers.
- Consistent with the prior analysis, the larger condominium development provides the largest net financial benefit for the Town because of the large one-time revenues associated with construction.
- The larger condominium development has the largest increase in expenditures, including new positions and higher contractual costs to provide services to a larger community.
- In all scenarios, the Town would receive one-time real estate excise tax revenues (REET) from property sales, which are not included in this analysis, but could be used for capital projects.

- In each scenario, including the status quo, the Town will have to address the underlying structural budget deficit created by expenditures growing more quickly than the Town's primary revenue sources – property tax.

Of note, this analysis is intended to be comparative and not conclusive. A truly meaningful financial analysis is difficult without answers to a lot of very basic questions, which we don't have and may not have for years.

This financial analysis includes a number of assumptions. For example, for residential uses, we had 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 and other questions would be subject to negotiations with and cooperation of the property owner/developer.

Perhaps the biggest area of uncertainty that will test the real-world reliability of our analysis is the financial feasibility of any of these scenarios. The most significant variable in this regard is the anticipated environmental cleanup cost. We don't know the scale of the environmental contamination or the cost of cleanup that will be required. As a result, we don't know whether any of the scenarios are feasible or whether industrial uses are the only reasonably likely uses at the site.

14. *How will the Council evaluate the benefits of annexation versus the risks?*

Whether an annexation is financially advantageous is perhaps the most fundamental question to be considered by the Council. As stated above, there is significant uncertainty as to whether certain types of development will be built and how much new revenue may result from redevelopment. However, we know that adding even undeveloped land will generate additional property taxes, which can marginally reduce the tax burden on existing taxpayers. But, given the state's tax structure, we also know that it is likely that an annexation will not permanently eliminate the Town's need to ask for tax increases.

As a result, Council also will be considering several other factors when deciding whether to pursue an annexation. The most significant of these is the extent to which control over future development of the site outweighs or mitigates potential impacts from an annexation.

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

There is no agreement that would guarantee that the Town's and Shoreline's zoning regulations (or the County's, for that matter) will remain harmonized indefinitely. Without annexation, the Town has no control. Also, depending on the nature of redevelopment at Point Wells, the Town could receive the impacts of redevelopment without corresponding revenue from the site.

16. *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 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 current Woodway residents.

17. *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 the Town.

18. *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.

19. *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.

20. *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 suggests 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.

21. *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 or the timeline for an approval of a redevelopment plan. It is possible that no redevelopment occurs and (if BSRE's industrial operations are found to be legal non-conforming uses) BSRE continues to operate its existing industrial uses indefinitely.

22. *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.

23. *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.

24. *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.

25. *Can the Town require that BSRE clean up 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.

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

The Town has spent approximately \$225,000 on Point Wells related litigation over the past 12 years. Most of this cost was incurred several years ago to defend the Town from lawsuit brought by Ronald Wastewater, Shoreline, and King County.

27. *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.

28. *Can the Town annex through a negotiated agreement with BSRE rather than acting on the ILA with the County, Shoreline, and Olympic View?*

Yes. However, the Town has already executed an ILA with its governmental partners and has obtained the legal authority to annex Point Wells through the ILA method of annexation. Whether or not Council chooses to exercise its authority by executing an ordinance officially annexing Point Wells, the Town will continue to reach out to and work collaboratively with the owners of Point Wells to better understand each other's concerns and attempt reach an agreement on redevelopment of the site in a manner 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](mailto:eric@townofwoodway.com). You can also reach us by phone at (206) 542-4443.