Comp Plan Docket – May 13, 2013
Councilmember Salomon's Questions & Comments

1. BRSE says if no agreement it will provide its own services. Is it even possible they will provide their own water and sewer? Assuming we assume Ronald and SWD by the time BRSE is ready to have people move in to their units would they just use Olympic view for water? What about sewer treatment? I'm trying to gauge just how much they need us.

   Julie's response: For water they'll most likely continue to use Olympic, and for sewer they'll use RWD (King County treatment).

   Ian's response: In your hypothetical (no agreement, City has taken RWD and SPU, and people moving in) this would be the classic use of annexation agreements for utility extension, in this case, sewer. They would use Olympic water, but unless they can do private collection with a wholesale treatment with Edmonds we could require annexation limited powers of attorney for sewer connection to what would then be our system and use these to initiate annexation, the same approach we are taking with BSRE now as a single property owner using our road. However, this is all moot if it has been annexed to Woodway.

2. How likely is it they would be able to collect sewer and enter an agreement with Edmonds?

   Ian's response: I think this would require some study, particularly when they are already in an assigned service area for a sewer district.

   Mark's response: Not knowing much of the detail with infrastructure, I guess/would agree that an engineering study would have to evaluate the practicality of trying to collect and discharge directly to Edmonds. The bigger issue is probably getting an agreement for service since there is an ILA for treatment with specific capacities assigned to Ronald, Olympic View, Edmonds and Mountlake Terrace. If all parties have to agree, then BSRE trying to strike their own deal seems remote to me.

3. Is it fair to say that by docketing the ADT count we are not adopting a new ADT level but rather are getting ourselves into the position where we can legally increase ADT levels concurrently with adoption of an agreement on mitigation and service provision?

   Julie's response: Yes.

4. What are the downsides and upsides of waiting to docket the change in ADT until after the TCS is completed?

   Julie & Rachael's response: Docketing is really procedural (Planning Commission already recommended approval of the docket). Because the Council can only make Comp Plan changes one time a year (with some exceptions), this is a process to inform the public of what those changes might be. The main purpose of the docket is to establish what amendments

will be studied and analyzed for a given year to ensure a holistic review of the impacts. I believe the downside is not giving the public a heads up about what you're considering.

5. Hypothetically, if we don't change the 4000 ADT and BRSE development pushes the number of trips above 4000, and there is no agreement for them to provide mitigation, then are we legally required to fund mitigation to maintain our adopted LOS? Just trying to refresh my memory.

   Rachael's response: If the development pushes the ADT over 4,000 and we don't have agreement on mitigation following the TCS and we therefore don't amend the Comprehensive Plan, then we have to work with Snohomish County staff to influence what mitigation is approved in the EIS and applied to the development permits. The mitigation identified in the EIS should be accompanied by a funding plan. The City could appeal the EIS if it is determined that the City of Shoreline's level of service is not being met as a result of the development and inadequate the mitigation. Inadequate mitigation could also be defined as unfunded or underfunded mitigation measures.

   Ian's response: I would add that in addition to doing what we can to force a condition respecting our 4000 ADT (not likely) through the EIS process, if 4000 is not changed I don't believe we are forced to start improving the road system that is failing under the Pt. Wells trips. Even City funded projects will not change the LOS measured by ADT rather than delay at intersections (LOS D). We may, however, be forced to do some improvements and traffic controls (speed limits, speed humps) to create a safe design for the increased use to avoid lawsuits. We would also be required to suffer the increased maintenance costs caused by those trips to keep the roadway safe for travel.

6. Another hypothetical: If we have an mcs completed with brse and the Supreme Court later rules brse not vested, then does our mcs become invalid to the extent it contemplates urban center development? Since SRB has standing under this scenario wouldn't the court's ruling nullify any conflicting part of our agreement?

   Ian's response: Unless we change approaches, our Municipal Service Agreement links paying for trip mitigation projects and maintenance costs to a certain number of trips. The agreement will not be dependent on the Snohomish County zoning or residential densities that creates those trips whether the zoning is urban center, village, planned community business, etc. and regardless of whether the trips are residential or commercial. We will be measuring and enforcing trips paired to mitigation since trips are essential to the agreement.

   The agreement would not fail if the underlying zoning changes through the pending litigation or by action of Sno. Co. So if the court rules BSRE is not vested to Urban Center, because we are not contemplating any particular zoning in Sno. Co. and zoning is not material to our agreement, this would not upset our binding agreement. For example, if BSRE loses and stupidly neglects to vest the Urban Village zoning and Snohomish County zones it under a new urban village that SRB might favor, it may be that outcome has fewer trips than we would allow. In that case, zoning would be the limiting factor not Shoreline's agreement. The two need not agree.

7. On page 99 of the council packet there is an email exchange between Tracy Tallman and Rachael Markle. Tracy thinks one house on RB drive is within City right of way. The maps per Rachael are old. Do we have clarity on this? Is it possible that part of a person's house would be condemned for mitigation after the TCS? I would hope not and think that if there is a lack of clarity in the maps of private property v right of way the benefit should go to the property owner. I understand we likely as a city have the power to condemn even if not right of way but as a matter of policy I am very unlikely to support something like that and am likely to oppose it.

   Julie's response: Staff would not recommend a project that would condemn a house.

   Mark's response: The short answer is that condemnation will not be required to acquire a house simply because the MOU clearly states that eminent domain will only be used at isolated intersections, not in the street segments. However, encroachments do exist throughout the corridor. In recent conversations with the public, it is clear not all residents understand the difference between condemnation and encroachments. While condemnation may have a limited application at intersections, the removal of encroachments will certainly be required to fit any cross section within the existing ROW. The TCS is intended to provide more detail for every property owner along the corridor.

   Perhaps what is being referenced in the email is the situation at the very north end of Richmond Beach Drive where the property lines are not well established due to some conflicts with survey plats. This is to be addressed prior to the TCS so we can provide more certainty. However, staff does see the possibility that one property in particular may have significant improvements in the ROW; likely not the house itself, but separated entry features (e.g. screening/fences).

   As with any encroachment, it is the legal responsibility of the property owner to remove the encroachment. However, the TCS and cross section alternatives are intended to fit well within the ROW and minimize the removal of encroachments. If there are encroachments, then at the time of construction property owners will be given the opportunity to remove it, or the contractor will do so at the developer's cost.

   Ian's response: Mark is correct as to the confusion between encroachment and condemnation. To begin, if part of a house is already in the right-of-way (or a fence, other structure, landscaping) no condemnation would be needed regardless of how long the private use has been established. The question then becomes whether a public project requires use of the right of way. If such a project is approved by council the design will need to be modified either for long term right-of-way site permit or vacation for permanent divestment to allow the encroachment, because either require that the right-of-way is not needed for current or foreseeable transportation uses.

   This situation occurred during Mile 1 of Aurora. We stopped short of condemning full right-of-way based on Council guidelines for business accommodation with future dedication when the property redeveloped (Aurora Ski Shop). However, it was discovered that the

office building on 152nd and Aurora was moved onto the site two feet into the right-of-way. We went to council to make sure the Aurora Project could be modified for a right-of-way site permit for this location since we already owned the property under the building.

8. At some point I wonder if it is better to reveal the exec session legal considerations since so many RB residents think council actions are motivated by the specter of mitigation dollars. Can we discuss what a discussion of this might be like?

   Julie's response: I understand the political implications but revealing our legal strategy before we have an agreement would be unwise. I'm sending this to Ian - this may be better to answer in a phone call.

   Ian's response: The attorney client privilege can only be waived by the Council. Discussion would be in executive session regarding potential litigation, which would be the litigation with BSRE if there is no agreement. That is the potential litigation which would be disadvantaged by release of our assessment of legal options to prevent development.

   However, events such as the passing of the Amicus deadline or signing the MOU for TCS do not make our legal strategy moot. That event might be the signing of the Municipal Services Agreement. Up to that point BSRE might use the information to reassess its risk in not negotiating that agreement. It would be ironic if we released our strategy, the public would see the wisdom of our ways and understand why we weighed legal option against negotiation in favor of negotiation, and at the same time BSRE abandons meaningful negotiations and we lose the benefits of that choice. Explained this way the public might tell you to keep the legal strategy to yourselves.

9. Robert Flanigan's comments on p 115 discuss an 80 foot right of way - or I think more specifically an 80 foot roadway(?) on RB Drive. I thought we are talking about 60 feet. But I think Rachael did say in another email eventually RB drive would need to go to four lanes. What is the possibility of an 80 foot roadway here? Where have we read about that if at all? Why would we be contemplating 4 lanes eventually?

   Mark's response: The existing ROW is typically 60 feet, with one notable exception in the north section of Richmond Beach Drive where it narrows to roughly 47 feet. The MOU clearly states there will be no use of eminent domain in the street segments to increase the ROW. In other words, the mitigation has to fit within the existing ROW except for what may happen at isolated intersections.

   Prior to the execution of the MOU, there was a misunderstanding in the community about an 80 foot ROW. Staff surmises this came from someone's concern that the Transportation Master Plan had a guideline for certain functional classifications and assumed this guideline would be imposed on the corridor. This of course was never the issue, but the MOU has now clearly stated as such.

As for the number of lanes, the TCS is intended to make that determination. While four lanes could fit within a 60 foot ROW, staff does not see this as necessary in at least the Richmond Beach Drive section.

One final note, staff has had significant discussion with Mr. Flannigan. He and his wife now understand what they might expect in the 60 foot ROW adjacent to their home.

10. Can it be explained to me in more detail what "isolated corners at intersections are?" Are we talking about imminent domain of an entire abutting length of a parcel's property up to 10-20 from the abutment? Or just 100 square feet total? I'm not clear on the scope of impact to a person's property on any given corner.

    Mark's response: It is staff's experience that when a project of this magnitude is considered for a ROW of this width, improvements at intersections are likely going to require isolated property acquisitions to accommodate such improvements as curb and gutter, sidewalk and signs. The extent of this impact is not known, but the TCS is intended to provide more detail.

    The reason for this starts with meeting the LOS standard. Sometimes the traffic movements will require a left-turn lane when none exists. The added pavement width pushes out the curb, gutter and sidewalk closer to the ROW/property line. When this occurs, the geometry of the improvements being in a radius will many times intersect the right angle geometry of property lines. This creates the need to acquire triangular sections of private property measured sometimes in just a few square feet.

    It is possible that in meeting a LOS standard at an intersection, the improvements may be both a left-turn lane and right-turn lane. This combination may not only require the same triangular configuration, but may require a few feet of private property running parallel to property for a few car lengths. If this condition were to exist, many times in can be avoided if all of the improvements can be realigned within the ROW. This approach is typical standard practice in the industry.

11. So by definition isolated intersections do not contain private property? It's not clear by just the use of the words "isolated intersection". Can you define the term isolated intersections please?

    Mark's response: The term "isolated" intersections is used to infer there are some intersections that are anticipated to require additional ROW (i.e. property acquisition), but not all intersections. This assessment is based upon experience since the TCS is not completed and we simply do not know at this point. One example where we believe it is clear that additional ROW is required is 3rd and Richmond Beach Road. The east/west movement presently is an issue and requires a left-turn lane, but the ROW width is not sufficient.

12. How do you define "street segments" as it relates to private property?

    Mark's response: While street segments are the sections between the intersections, we distinguish between the two by how the LOS is calculated for each. The segments have more

to do with vehicles/hour/lane, while the intersection LOS is the of measurement of delay. In practice, the two are reliant upon one another, but typically the LOS for intersections fails much sooner than the segment. That is why we can forecast a two or three lane street section will fit within the existing ROW, but some intersections will need significant improvements (e.g. left-turn lanes, traffic signals, etc).

13. What is the definition of encroachment? Private property owner's use of/or building in City ROW?

    Mark's response: My simple definition of encroachment is one's private improvements built upon someone else's property. The encroachment can be upon a neighbor as well as the City ROW. Having been a surveyor in my early career, I can assure you this is a very common occurrence. . . . ., very common. In the case of one property owner building upon another private property owner, there is the issue of adverse possession, but that requires 17 years and with full knowledge. Sometimes residents think they can claim adverse possession against a City, but that is prohibited by state law. Ian can expand upon this if you are interested.

14. I think you are correct in your second paragraph about which house is referenced. Can you provide a photo of what private development may be in the ROW?

    Mark's response: I would be happy to send a plan view (under separate cover), but please remember the issue of the survey conflict. We have about 8 feet that needs to be resolved. I believe we have the photo properly aligned (+/- two feet) but we will confirm later in the TCS process.

15. Can you define for me "cross section alternatives"?

    Mark's response: Cross sections are used in this instance to reference the alternatives in the number of lanes, their width, curb, gutter and sidewalk combinations (detached or not), sidewalk/trail on one or both sides, medians, on-street parking, bike lanes, etc. The basic template starts with three lanes at about 36 feet. The TCS will explore with people variations of this template.