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SUPREME COURT  
OF THE STATE OF WASHINGTON

C/A No. 68048-0-I (Consolidated with Case No. 68049-8-I)

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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TOWN OF WOODWAY and SAVE RICHMOND BEACH,  
Petitioners/Respondents

vs.

BSRE POINT WELLS, LP and SNOHOMISH COUNTY,  
Respondents/Appellants

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RESPONDENT SNOHOMISH COUNTY'S ANSWER TO  
AMENDED *AMICUS CURIAE* BRIEF OF THE SHORELINE  
COALITION FOR OPEN GOVERNMENT

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## **I. INTRODUCTION**

This Answer is filed by Respondent Snohomish County (“County”) in response to the Amended Amicus Curiae Brief of the Shoreline Coalition for Open Government (“Coalition”) in Support of Petitioners (“Coalition’s Amicus Brief”).

After paring away the inflammatory and unsupported allegations set forth in the Coalition’s Amicus Brief, there is very little in the way of legal argument or citation to the record that would warrant a substantive response. Nevertheless, in this Answer the County will respond to the newly raised issues set forth in the Coalition’s Amicus Brief. RAP 10.3(f).

## **II. ARGUMENT**

To be clear, the decision on appeal in this matter concerns whether, under the GMA, a landowner’s development permit application vests to a local jurisdiction’s land use comprehensive plan provisions and development regulations at the time a complete application is filed, despite a Growth Board’s subsequent determination that the jurisdiction did not fully comply with SEPA’s procedural requirements in its enactment of those plan provisions and regulations. It is a question that the Court of Appeals found was unambiguously addressed by the Washington State

Legislature in RCW 36.70A.302(2).<sup>1</sup> Rather than address the legal merits of the appeal, the Coalition uses its brief to aggressively mischaracterize the history of this case and to raise issues completely irrelevant to the matter on the appeal.

**A. The Coalition’s Argument Regarding the County’s Lack of Public Notice and Participation Is Without Merit.**

First, lost in its reliance on buzzwords and clichés,<sup>2</sup> the Coalition completely glosses over the fact the Growth Board found the County had fully complied with the Growth Management Act’s provisions for public notice, and early and continuous public participation during the County’s long-process of developing and amending its comprehensive plans and development regulations.<sup>3</sup> Raising this issue anew is nothing but a diversion from the actual legal issue in this matter, and should be

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<sup>1</sup> Town of Woodway v. BSRE, 172 Wn. App. 643, 660, 291 P.3d 278 (2013).

<sup>2</sup> See Coalition’s Amicus Brief at 1, 2, 5, 9-12, 14-17 (e.g., “threaten the essence of accountable and open government” at 10; “significant damage to the concepts of open and accountable government” at 15; “mandate of open and accountable government” at 17; and “proceed in the light of day” at 17.)

<sup>3</sup> The Coalition’s arguments are so far removed from the actual legal issue on appeal, the County must cite to a Growth Board Order outside of the court record to counter their groundless accusations. Town of Woodway, et al., v. Snohomish County, et al., (Shoreline III and IV), CPSGMHB Nos. 09-3-0013c and 10-30011c (Order on Dispositive Motions, Jan. 18, 2011) at 14 (granting the County’s dispositive motion concerning compliance with the GMA’s notice and public participation requirements); see also RCW 36.70A.020(11); RCW 36.70A.035; and RCW 36.70A.140.

disregarded by the Court along with all of the other groundless accusations leveled at the County by the Coalition.<sup>4</sup>

Second, the Coalition provides no explanation why its organization and its membership did not avail themselves of the multiple opportunities to engage in the public participation process and provide input during the County's consideration of amendments to its comprehensive plan and development regulations.<sup>5</sup> For an organization that is purportedly devoted to open government and accessibility for citizenry, this is a particularly glaring omission.<sup>6</sup>

Finally, the Coalition ignores that numerous opportunities exist for public comment and participation in future project-level review of the development application through both a) the environmental review process under the State Environmental Policy Act and b) under the County's Unified Development Code, title 30 of the Snohomish County Code. That process will provide the Coalition and other interested parties the

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<sup>4</sup> The slew of baseless accusations are too numerous, and tellingly without citation to the record, to warrant a response from the County (e.g. "with little notice to affected residents and out-of-county governments" at 5; "relied on old and outdated draft environmental impact statements" at 5; and the analogy or suggestion of bribery at 15.); See Lewis v. Mercer Island, 63 Wn. App. 29, 32, 817 P.2d 408, *review denied*, 117 Wn.2d 1024, 820 P.2d 510 (1991) (holding that allegations of fact without support in the record will not be considered by an appellate court).

<sup>5</sup> In fact, fellow amicus to the Coalition in this case, Futurewise, actively participated and provided comments supporting the legislative enactments adopted by the County. See County's Answer to Prior Amicus Brief of Futurewise, Appendix A.

<sup>6</sup> If on the other hand the Coalition or its membership did actively participate in the GMA process, that alternative fact scenario also severely undermines the Coalition's claims about lack of open government and accessibility for citizens.

opportunity to make substantive comments on whether the development application should receive project approval or denial, and whether particular conditions should be imposed on the project in the event it is approved.

**B. In Direct Conflict with Statutory Law and Long Established Case Law, the Coalition Seeks to Supplant Washington's Vested Rights Doctrine.**

The Coalition next focuses its crosshairs on Washington's long-standing vested rights doctrine. Rather than cite to the record or legal authority to argue the Court of Appeals erred in reaching its decision, the Coalition recklessly advocates for setting aside decades of established Washington case law on the vested rights doctrine.<sup>7</sup> In doing so, the Coalition avoids any reference to RCW 36.70A.302(2), the Legislature's unambiguous provision that describes how vesting is to be applied in the scenario before this Court. As the County cited in previous briefing, the Court of Appeals painstakingly explained that allowing those applications to vest development rights was a conscious policy choice of the State Legislature, made after years of study.<sup>8</sup> It is not for courts to second-guess policy decisions made by the Legislature. State v. Jackson, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999).

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<sup>7</sup> Coalition's Amicus Brief at 12-15.

<sup>8</sup> Town of Woodway v. BSRE, 172 Wn. App. 643, 652-66, 291 P.3d 278 (2013).

**C. The Coalition's Citation to the Public Records Act & Open Public Meeting Act Are Red-Herrings.**

Without much of any explanation, the Coalition goes on to cite the Public Records Act ("PRA"), chapter 42.56 RCW, and Open Public Meetings Act ("OPMA"), chapter 42.30 RCW, alleging that upholding the Court of Appeal's Opinion, and ruling for BSRE and the County, will do significant damage to the concepts of open and accountable government.<sup>9</sup> Frankly, the County is perplexed by these references since, aside from the Coalition's Amicus Brief, the record is completely void of any mention of either the PRA or OPMA, or any conduct that could be considered even remotely violative of either of these laws. This non-issue is undeserving of the scant attention it has received.<sup>10</sup>

**III. CONCLUSION**

Despite the rhetoric, it is apparent from the Coalition's failure to cite to any specific facts in the record or relevant legal authority that the Coalition is not genuinely concerned a decision in this matter actually threatens the policies underlying open and accountable government. Rather, the Coalition is more focused on expressing its general displeasure with the past planning decisions made by the democratically elected members of the Snohomish County Council and with the well-reasoned

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<sup>9</sup> Coalition's Amicus Brief at 15.

<sup>10</sup> Lewis, 63 Wn. App. at 32, 817 P.2d 408 (holding that allegations of fact without support in the record will not be considered by an appellate court).

Opinion issued by the Court of Appeals. The County respectfully requests that the Court review the Coalition's Amicus Brief with the consideration it warrants, ultimately reject the appeals filed by Town of Woodway and Save Richmond Beach, and affirm the Court of Appeals' Opinion.

Respectfully submitted this 10<sup>th</sup> day of October, 2013.

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