

1 Adopted: January 14, 2009
2 Effective Date: February 13, 2009

3
4 SNOHOMISH COUNTY COUNCIL
5 SNOHOMISH COUNTY, WASHINGTON

6
7 ORDINANCE NO. 08-155

8
9 RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT WITH THE
10 SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA (COMMUNITY
11 TRANSIT) FOR THE SWIFT BUS RAPID TRANSIT PROJECT
12

13 WHEREAS, RCW 30.70B.170 authorizes the use of development agreements
14 that establish development standards and other provisions applicable to, governing and
15 vesting the development, use and mitigation of real property; and
16

17 WHEREAS, Chapter 30.75 of the Snohomish County Code (SCC) authorizes the
18 use of development agreements; and
19

20 WHEREAS, Snohomish County Public Transportation Benefit Area (“Community
21 Transit”) is in the process of implementing a new Swift Bus Rapid Transit (BRT)
22 program that will connect the Everett station and the Aurora Village Transit Center and
23 that will require the construction of 29 small stations with 5 of those stations lying within
24 Snohomish County jurisdiction along the Highway 99 corridor; and
25

26 WHEREAS, Community Transit has proposed that the County agree to apply
27 consistent design standards and a uniform review process in order to assure that all
28 future Swift stations along the entire corridor are visually coherent and easily identifiable
29 to the general public regardless of the jurisdiction in which a facility may be located; and
30

31 WHEREAS, the Swift BRT meets the definition of an essential public facility
32 (EPF) and such facilities are to be permitted upon approval of a development
33 agreement pursuant to SCC 30.22.020(2); and
34

35 WHEREAS, development agreements shall be presented to county council for
36 approval pursuant to SCC 30.75.020(1); and
37

38 WHEREAS, the subject development agreement meets the approval criteria for
39 development agreements specified in SCC 30.75.100; and
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41 WHEREAS, the Snohomish County Council held a public hearing on January 14,
42 2009, to consider the entire record and to hear public testimony on this Ordinance No.
43 08-155.
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2 NOW, THEREFORE, BE IT ORDAINED:
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4 **Section 1.** The county council makes the following findings:
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- 6 A. The county council adopts and incorporates the foregoing recitals as findings of fact
7 as if set forth fully herein.
8
- 9 B. The Development Agreement with Community Transit relating to the Swift Bus Rapid
10 Transit (BRT) program is attached hereto and incorporated herein by this reference
11 as Attachment A.
12
- 13 C. The Swift Bus Rapid Transit Project is proposed to connect two regional
14 transportation nodes, the Everett Station in Snohomish County and the Aurora
15 Village Transit Center in King County. The proposed system will involve more
16 frequent bus service with fewer stops and faster boarding. There are 29 proposed
17 bus stations with 5 of these lying within Snohomish County jurisdiction along the
18 Highway 99 corridor.
19
- 20 D. Appendix B of the GPP defines an essential public facility as “characterized by the
21 following:
22 1. it is a necessary component of a system or network which provides a public
23 service or good; and
24 2. it may be difficult to site because of potential significant opposition.”
25
- 26 E. Appendix E of the GPP defines essential public facility as “facilities that are typically
27 difficult to site, such as airports, state education facilities, and state or regional
28 transportation facilities, state and local correctional facilities, solid waste handling
29 facilities, and in-patient facilities including substance abuse facilities, mental health
30 facilities and group homes.
31
- 32 F. SCC 30.22.020(2) states that “Essential public facilities shall be permitted in any
33 zone in which they are listed as a permitted or conditional use upon the approval of
34 a development agreement under SCC 30.75.020, 30.75.100 and 30.75.130.”
35
- 36 G. SCC 30.91G.060 defines government facilities as “a facility owned and operated by
37 an agency of the federal, state, or local government.”
38
- 39 H. SCC 30.22.100 indicates that government structures and facilities are a permitted
40 use in the General Commercial (GC) zone. The parcels subject to the attached
41 development agreement are all zoned GC.
42

- 1
2 I. SCC 30.75.020(1) states that development agreements for projects to site,
3 construct, operate or expand essential public facilities shall be presented to the
4 county council for approval upon the adoption of an ordinance meeting the
5 requirements of SCC 30.75.100.
6
7 J. SCC 30.75.100 sets forth the decision criteria for adoption of a development
8 agreement for essential public facilities.
9
10 K. SCC 30.75.130 states that the county council may approve a development
11 agreement that creates exemptions or modifications to the requirements of Title 30
12 SCC in order to allow for the siting, development or expansion of an essential public
13 facility. No exemptions or modifications are proposed within the proposed
14 development agreement.
15
16 L. Community Transit has evaluated the potential adverse environmental impacts and
17 issued a Determination of Nonsignificance (DNS) on June 2, 2008. The appeal
18 period concluded on June 23, 2008, with no appeal filed.
19
20 M. The transportation element of the GPP is required by the Growth Management Act
21 (GMA) to encourage efficient multimodal transportation systems that are based on
22 regional priorities and coordination with county and city comprehensive plans. The
23 Snohomish County Transportation Element identifies this specific Community Transit
24 project as a supportive public transportation improvement.
25
26 N. The following goals of the Transportation Element of the GPP address and
27 encourage the planning, development and coordination of regional transportation
28 systems: Goals TR 8, TR 9, and TR 10.
29
30 O. Goal CF 12 of the capital facilities Element of the GPP specifically encourages
31 facilitating the siting of essential public facilities sponsored by public or private
32 entities where their location within unincorporated areas may be appropriate.
33

34 **Section 2.** The county council makes the following conclusions:
35

- 36 A. The Swift Bus Rapid Transit System connects two regional transportation facilities in
37 two separate counties and therefore meets the definition of essential public facility
38 as defined in Appendix B and E of the GPP.
39
40 B. The proposed use is permitted within the GC zone and therefore such essential
41 public facilities are allowed to be permitted subject to a development agreement
42 pursuant to SCC 30.22.020(2).
43

- 1 C. The proposed development agreement meets the approval criteria as specified in
2 SCC 30.75.100.
3 1. The proposed agreement is compatible with the comprehensive plans goals
4 related to transportation and capital facilities.
5 2. The proposed agreement is consistent with the applicable development
6 regulations and no modifications pursuant to SCC 30.75.130 have been
7 requested.
8 3. The environmental impacts of the entire project, including the 5 stations within
9 Snohomish County have been addressed at the project level with the issuance of
10 a Determination of Nonsignificance (DNS), which was not appealed and the
11 comment and appeal period has passed.
12 4. Paragraph 6 of the development agreement reserves the authority to impose new
13 regulations to the extent required by a serious threat to public health and safety.
14
15 D. All SEPA requirements with respect to this project action have been satisfied.

16
17 **Section 3.** The county council bases its findings and conclusions on the entire record
18 of the county council, including all testimony and exhibits. Any finding, which should be
19 deemed a conclusion, and any conclusion which should be deemed a finding, is hereby
20 adopted as such.

21
22 **Section 4.** Based on the foregoing findings and conclusions, the Snohomish County
23 Council approves this Development Agreement between Snohomish County Public
24 Transportation Benefit Area, dba Community Transit and Snohomish County, and
25 directs the County Executive to sign the Development Agreement attached hereto as
26 Attachment A.

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29
30 PASSED this 14th day of January, 2009.

31
32 SNOHOMISH COUNTY COUNCIL
33 Snohomish County, Washington

34
35
36 Dave Gossett
37 Council Vice-Chair

38 ATTEST:

39 Barbara Sikorski
40 Asst. Clerk of the Council

41
42 (X) APPROVED
43 () EMERGENCY
44 () VETOED

DATE: February 3, 2009

Mark Soine
For Aaron G. Reardon, County Executive

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6 ATTEST:

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8 Cora Palmer

9
10 Approved as to form only:

11
12 Shawn Aronow
13 Deputy Prosecuting Attorney

After Recording Return to:

Barbara Sikorski, Asst. Clerk
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

Agencies: Snohomish County and Snohomish County Public Transportation Benefit Area, dba
Community Transit

Tax Account No.: N/A

Legal Description: N/A

Reference No. of Documents Affected: Development Agr. Recorded at AF#_____

Filed with the Auditor pursuant to RCW 36.70B.190

Documents Title:

DEVELOPMENT AGREEMENT

This Development Agreement is entered into by and between Snohomish County, a political subdivision of the State of Washington, hereinafter referred to as the "County," and Snohomish County Public Transportation Benefit Area, dba Community Transit, a Washington municipal corporation, hereinafter referred to as "Community Transit," pursuant to RCW 36.70B.170.

WHEREAS, RCW 36.70B.170 authorizes development agreements between the County and persons having ownership or control of real property in order to establish development standards to govern and vest the development, use and mitigation of real properties; and

WHEREAS, Community Transit is in the process of establishing standard station designs for its new Swift BRT program in and along Highway 99 within the county; and

WHEREAS, Community Transit has proposed that the County agree to apply consistent design standards and a uniform review process in order to assure that all future Swift stations along the entire transportation corridor are visually coherent and easily identifiable to the general public regardless of the jurisdiction in which a facility may be located; and

WHEREAS, a public hearing was held on the 14th day of January, 2009, regarding this Development Agreement as required by statute; and

WHEREAS, the county council finds that the proposed Development Agreement is consistent with its development regulations as adopted;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein, the County and Community Transit mutually agree to enter into this Agreement as follows:

1. Authority and Purpose. This Development Agreement is entered into pursuant to RCW 36.70.B.170 for the purpose of vesting Community Transit to the development standards set forth in this Agreement for a period of five years. Vesting is limited to the specific topics and subjects referenced in this Agreement. Any development requirement of the County not specifically referenced shall apply based on the date of vesting as determined in accordance with county ordinances and state law.

2. Mitigation Measures. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW are a proper subject of development agreements, pursuant to RCW 36.70B.170(3)(c). The small size of individual Swift BRT stations will not exceed County surface water management thresholds. Community Transit will make a voluntary payment of \$_____ in lieu of on-site improvements for any identified impacts under this Development Agreement, to be applied to stormwater mitigation as deemed appropriate by the County at a date of its election.

3. Design Standards. Pursuant to RCW 36.70.B.170(3)(d), this Development Agreement sets forth the design standards that shall apply to and govern and vest the development, use, and mitigation of the five Swift BRT stations identified in Exhibit A for the duration of this Agreement. The stations shall be constructed to incorporate the specific design features shown in the attached Exhibit B, which is hereby incorporated into this Agreement by reference.

3.1 This Development Agreement is intended to ensure the consistency of basic Swift station design in order to facilitate the public's awareness of and utilization of the Swift station program. The five proposed Swift BRT stations identified in Exhibit A shall be vested to the County's development and design standards set forth in title 30 of the Snohomish County Code as of the effective date of this Agreement. The County will review development applications for individual stations under the vested standards agreed to in this paragraph and will apply those standards consistent with the general appearance and design depicted in Exhibit B.

3.2 In addition to the standard design features shown in Exhibit B, the County has certain personalization choices for concrete artwork and other artwork, as described in the attached Exhibit C, which is hereby incorporated into this Agreement by reference. The County and Community Transit will work together to incorporate the Council's choice of personalization features into the design of each of the five stations identified in Exhibit A.

3.3 The Swift BRT Stations will utilize easements from private property owners. To the extent the use of such easements by Community Transit potentially affects development rights and requirements

applicable to existing or future development on the parent parcel, it is the County's intent that applicable landscaping, setback, and lot coverage regulations be applied so as to avoid or minimize such affects to the maximum extent feasible.

4. Vesting as Conforming Uses. Bus stops at the locations shown on Exhibit A are conforming uses. They shall remain conforming for the period of vesting established by this Agreement and as authorized by RCW 36.70B.170(3)(i).

5. Access Management. RCW 36.70B.170(3)(j) authorizes a development agreement to include other appropriate development requirements or procedures. By execution of this Development Agreement, the Parties agree to work together to the maximum extent reasonably and legally appropriate to identify curb cuts that may impact new station locations and, wherever possible and subject to negotiations between Community Transit, the County and affected property owners, to close or consolidate existing driveways at the new Swift station locations. Nothing herein shall be deemed to obligate the County to contribute toward the cost of purchase, to condemnation or to pay any other necessary cost or claim to condemn or otherwise acquire access rights from the adjacent properties, and Community Transit agrees to hold harmless and indemnify the County, its officers, agents, and employees from any cost, claim or liability whatsoever, including but not limited to allegations of inverse condemnation or taking, which may arise from or out of such process or negotiations with adjacent property owners.

6. Reservation of Authority to Impose New Regulations. The County specifically reserves authority, pursuant to RCW 36.70B.180(4), to impose new or different regulations to the extent required by a serious threat to public health and safety.

7. Duration. This Agreement shall vest Community Transit with the authority to develop the Swift BRT stations described on Exhibits A and B for a period of five (5) years from the date the Agreement becomes effective pursuant to paragraph 11. These rights may be exercised by filing fully complete building permit applications within such five-year period in accordance with state law and county ordinance. If and when Community Transit, in its sole discretion, deems it appropriate to terminate the Swift BRT programs, the provisions of this Agreement shall automatically lapse, if said five-year period has not run.

8. Delay in Effective Date in Event of Appeal. This Development Agreement relates to project permit applications and approvals, such as building permits, right-of-way construction, and encroachment permits. Therefore, it shall be effective upon the expiration of the appeal period provided in Chapter 36.70C RCW. In the event an appeal of the Development Agreement is upheld, the five-year period previously established shall automatically be extended. The five-year vesting period established by this Development Agreement shall commence upon the date of entry of a final order upholding the Development Agreement and extend for a period of five years thereafter.

9. Entire Agreement. This agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

10. Changes, Modifications, And Amendments. This Development Agreement may be changed, modified, or amended only by written agreement executed by both of the parties hereto.

11. Effective Date; Recording. This Development Agreement shall be effective when filed with the Snohomish County Auditor in accordance with the provisions of RCW 36.70B.190. All costs of recording shall be borne by Community Transit.

Dated this ____ day of _____, 2008.

Snohomish County Executive

ATTEST:

Snohomish County

Snohomish County Public
Transportation Benefit Area, dba
Community Transit

ATTEST:

Snohomish County Public Transportation
Benefit Area, dba Community Transit

APPROVED AS TO FORM

APPROVED AS TO FORM

Deputy Prosecuting Attorney

Community Transit Attorney