

FILED
SUPREME COURT
STATE OF WASHINGTON
2/2/2018 4:39 PM
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No. 97599-0

No. ~~XXXXX~~

SUPREME COURT
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington
municipal corporation; and TOWN OF WOODWAY, a Washington
municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal
corporation,

Respondent,

And

SNOHOMISH COUNTY, a Washington municipal corporation; KING
COUNTY, Washington municipal corporation; CITY OF SHORELINE,
a Washington municipal corporation,

Defendants

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CITY OF SHORELINE

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I. INTRODUCTION

In November 1985, shortly after Ronald Reagan began his second term as President of the United States, the King County Superior Court – pursuant to the plain and unambiguous terms of duly enacted state statute - entered an order effective January 1, 1986, transferring King County Sewer District No. 3 from King County to respondent Ronald Wastewater District.

Since that time (and through the remainder of President Reagan's term, the full terms of Presidents Bush, Clinton, Bush, and Obama, and the beginning of President Trump's term), Ronald has continuously and without interruption provided sewer service to the Point Wells area in Snohomish County.

Some 32 years later, Olympic View and Woodway for the first time raised objections to the King County Superior Court's unappealed order authorizing Ronald to provide sewer service to Point Wells. These woefully tardy challenges should be rejected not only due to the binding nature of the unappealed court order, but also due to the lack of legal merit associated with the challenges.

The express terms of state statute authorized the action reflected in the King County Superior Court's 1985 order. To the extent that any doubt thereafter remained, the Legislature in 1996 plainly stated that "all other things and proceedings done . . . by those districts . . . are declared legal and valid and of full force and effect."

The City of Shoreline respectfully asks this Court to dismiss this appeal.

II. STATEMENT OF THE ISSUES¹

1. Did the trial court correctly rule that the unappealed 1985 Transfer Order may not be collaterally attacked by Olympic View and Woodway 32 years after the fact?²

2. Did the trial court correctly confirm the validity of the transfer and annexation of the area included in the King County Superior Court's 1985 Order?³

¹ The City of Shoreline adopts the Statement of Issues of Ronald and the arguments related thereto but for ease of review by this Court. Shoreline does not reiterate those issues but instead incorporates them herein. Shoreline's response specifically focuses on issues raised in Olympic View's and Woodway's Opening Briefs by setting forth three stated issues that serve as a foundation for the several issues of error alleged by Olympic View and Woodway. See Section IV.C, *infra*.

² Issue 8 of Woodway and Olympic View.

³ Issues 1,2,6,7 of Woodway and Olympic View.

3. Did the trial court correctly conclude that RCW 36.94.410 - .440 and RCW 57.02.001 are constitutional?⁴

III. STATEMENT OF THE CASE

A. Historical Background

The City of Shoreline (“Shoreline”) incorporates by reference the factual background set forth in the responsive brief of the respondent Ronald Wastewater District (“Ronald”) and King County, and also provides the following supplemental historical background specific to its interest in Ronald.

While some may consider Shoreline to be a young city, it has now been in existence for more than twenty years. Incorporated in 1995 by residents seeking to become a self-sustaining, self-governing community in charge of its own destiny, today Shoreline is an evolving community that has transformed from its suburban origins. Shoreline’s Comprehensive Plan reflects the original basis for incorporation by setting forth goals to provide high quality public services, utilities and infrastructure to accommodate anticipated levels of growth and to protect the public health and safety and enhance quality of life. CP 4766-67.

⁴ Issues 4 and 5 of Woodway and Olympic View.

Shoreline has and continues to take many steps in order to fulfill these goals, including incorporating utility services within Shoreline's operations.

In 2002, Shoreline took its first step towards achieving its unified utilities goal when it entered into an Interlocal Operating Agreement ("2002 IOA") and concurrent Franchise Agreement ("Franchise") with Ronald for the provision of sanitary sewer services over the succeeding 15 years. CP 4769-4780; 4782-4801. The 2002 IOA and related Franchise were duly authorized in open public meetings by both Shoreline and Ronald and clearly provided that at the end of this time period, Shoreline would assume Ronald as provided in RCW 35.13A *et seq.* CP 4770. Ronald's assumption was for the express purpose of unifying sewer service within Shoreline's operations in order to provide overall present and future benefits to Shoreline residents by achieving efficiencies through reduced and streamlined operational costs, providing a transparent and customer-based process, and ensuring a comprehensive and coordinated approach to capital facilities and land use planning. This goal of unifying utility services not only benefits residents but also

promotes the GMA's preference that cities be the providers of urban services.⁵

Shoreline's assumption of Ronald is also consistent with its long-standing plan for annexation of the contiguous unincorporated designated urban growth area of southwestern Snohomish County, commonly known as Point Wells. This intent has been clear since Shoreline's earliest days of incorporation. In 1998, just three years after incorporation, Shoreline designated the Point Wells area, whose singular point of vehicular access is through and into Shoreline,⁶ as a "potential annexation area" with the adoption of Shoreline's GMA comprehensive plan. Planning efforts for this area culminated in the adoption of the Point Wells Subarea Plan in 2010 that labeled it as a "future service and annexation area" ("FSAA"). CP 4805, 4807-4815.

Similarly, Ronald has planned and provided sanitary sewer service within the Point Wells area since it assumed service from King County in

⁵ RCW 36.70A.110(4).

⁶ Statements have been made about a secondary access point from the eastern edge of the Point Wells area into the Town of Woodway. While this may conceivably be feasible from an engineering standard it is very unlikely that traffic would actually utilize this route for commuting and shopping purposes and the topography of the area may well preclude use by emergency vehicles. Regardless, there is currently only one access to the area which is the City of Shoreline's Richmond Beach Drive.

1986. In fact, Ronald's predecessor in title, King County Sewer and Drainage District No. 3 (KCSD #3), began service in the 1970s when it obtained title to a lift station constructed by Standard Oil to serve the company's property at Point Wells. CP 2243-44; 2246-2250; 3489-3491. This lift station, which has been upgraded since the 1970s and is now known as Lift Station #13, primarily serves the western waterfront portion of Point Wells, which is the proposed future location of an Urban Center development that has a vested application under zoning that could potentially result in more than 3,000 residential units along with commercial and retail space. CP 4817-4818.⁷

Prior to the proposed Urban Center development in Point Wells, additional development within Point Wells was essentially non-existent. Nevertheless, Ronald had planned for the area and constructed improvements to its infrastructure based on preexisting growth projections existing at that point in time. CP 2568, 2572-2576, 2630-2648, 2638, 2695, 2715, 2731-2732; 4820-4821.⁸ As detailed in Ronald's Responsive Brief, Ronald has also continued to provide service to the Point Wells area,

⁷ See also, *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1218 (2014) in which this Court reviewed the vested permits for the Point Wells project.

⁸ The fact that Ronald utilized Public Works Trust Fund dollars to pay for these some of these upgrades has no bearing on the upgrade.

adopted comprehensive sewer plans for the area, and has issued certificates of sewer availability for proposed development in the area. All of this planning and activity has occurred under the “watchful eyes” of Snohomish County, the Town of Woodway (“Woodway”), and Olympic View Water and Sewer District (“Olympic View”), none of which identify having made any objections, and all of which based their own planning decisions on Ronald’s provision of service to the area. CP 4823-4841; 4891-4893; 4977-4978; 5011-5106; 5372-5397.⁹

With the expiration of the 2002 IOA and Franchise term approaching, Ronald and its then Board of Commissioners’ President Arthur Wadekamper began to question the wisdom of their prior decision and Agreements and filed a complaint for declaratory judgment in King County Superior Court requesting guidance as to whether a public vote was required prior to assumption by Shoreline. CP 3113-3123 (King County Superior Court Cause No. 13-2-24208-7 SEA). While Ronald’s Board of Commissioners subsequently withdrew from the case (CP 3216-3217), Mr. Wadekamper¹⁰ continued the matter which concluded when

⁹ Ronald’s Comprehensive Sewer Plans for 2007 and 2010 were approved by Snohomish County Motion 07-699 (CP 4899); County Motion 10-185 (CP 4975).

¹⁰ At this time, Ronald was represented by the Law Firm of Talmadge Fitzpatrick, the same firm now representing Olympic View, and Mr. Wadekamper was represented by the Law Firm of Inslee Best who also serves as legal counsel for the Washington

the King County Superior Court entered an order on May 9, 2014, finding that a public vote was not required for the assumption. CP 3227-3228. In 2013, while the public vote question was pending, Shoreline initiated the formal statutory process necessary to finalize its assumption of Ronald, including developing an Assumption Transition Plan and filing Notice of Intents with the Boundary Review Boards of King and Snohomish Counties, as set out by RCW 36.93.090(2), since Ronald's service area encompasses both counties.

It was not until Shoreline formally petitioned the Boundary Review Boards to begin the formal assumption process that the first objections began to arise, particularly from special purpose districts. Only then, almost three decades after Ronald assumed service to the area, two decades after Shoreline announced its desire to annex Point Wells, and more than a decade after Shoreline began formal planning for the assumption of Ronald, did Olympic View and Woodway, for the first time, assert that Ronald's corporate boundaries could not legally encompass any land within unincorporated Snohomish County, in what is clearly a last

Association of Water and Sewer Districts, an association representing special purpose districts.

minute attempt to undermine the assumption by Shoreline of all of the area being served by Ronald.¹¹

¹¹ Olympic View's inclusion within its Statement of the Case of proceedings before the Boundary Review Board and the Growth Management Hearings Board (Olympic View Opening Brief at 22-23) has no relevance to this appeal and is outside of the record, as such this Court should disregard Olympic View's and Woodway's references. Such inappropriate reference is nothing more than a desperate attempt to make their various actions in other forums appear to increase the importance of this case to public at large—but has no such bearing. Nevertheless, because the proceedings were referenced and discussed by the Olympic View and Woodway, Shoreline has included procedural backgrounds in this footnote for the proceedings should the Court desire to understand the status of those separate unrelated proceedings:

Boundary Review Board After the required public hearings before the Boundary Review Boards, on October 16, 2014, the Boundary Review Board for King County (“King County BRB”) approved the assumption and on September 11, 2014, the Boundary Review Board for Snohomish County (“Snohomish County BRB”) denied the assumption. CP 5205-5225; 5227-5232. Ronald and Shoreline appealed the Snohomish County BRB decision to Snohomish County Superior Court, Consolidated Cause No. 14-2-06647-1, for which Olympic View and Woodway filed cross appeals, crossclaims, counter claims, and a declaratory judgment action, all of which were subsequently withdrawn. CP 5465-5487. In their cross-appeals, cross-claims, and counterclaims Olympic View and Woodway asserted many of the same issues that are before this Court. CP 5480-5481; 5487. On March 15, 2016, the Honorable Millie Judge issued an order granting Olympic View and Woodway's joint motion for dismissal. CP 5509-5523. Two months later, on May 25, 2016, Shoreline and Ronald's joint motion for dismissal was granted. CP 5535-5538; 5545-5547. As provided for in RCW 36.93.150(5), on February 17, 2017, Shoreline filed a new notice of intent for assumption within Snohomish County. CP 3361-3365. After a multiple day public hearing, on July 11, 2017, the Snohomish County BRB again denied the assumption. On August 7, 2017, Shoreline appealed this denial to King County Superior Court, Cause No. 17-2-0821-3 SEA. Woodway sought, and was denied, a change of venue to the Snohomish County Superior Court. Woodway sought discretionary review before the Court of Appeals. Argument was heard before the Honorable Commissioner Neal on January 19, 2018, who on January 29, 2018, issued a ruling denying Woodway's motion.

Growth Management Hearings Board: In 2014, after Shoreline began the assumption process, Olympic View began, for the first time, to plan for the Point Wells area. This planning resulted in a proposed amendment to Olympic View's Comprehensive Sewer Plan to include the area which was adopted by Snohomish County on June 1, 2016 via Amended Motion 16-135, over the objections of Shoreline and Ronald. CP 4325-4326. Shoreline and Ronald both sought review of Snohomish County's action before the Growth Management Hearings Board, Central Puget Sound Region (GMHB), which consolidated the matters as Case No. 16-3-0004c. King County joined with Shoreline

B. Abbreviated Procedural Background

The case before this Court arises from the Ronald Wastewater District's filing of a Complaint for Declaratory Judgment and Injunctive Relief and Petition for Writ of Statutory and Constitutional Review in the King County Superior Court on June 29, 2016, as amended on July 15, 2016. CP 1 – 26, CP 61-86. Answers and cross/counter-claims were filed by Olympic View and Woodway. CP 147-157, 158-203.

A Motion for Partial Summary Judgment was filed by Ronald. CP 1746-1776. Woodway, Olympic View, and Snohomish County filed responsive briefing in opposition of this motion. CP 1931-1946; CP 3260-

and Ronald. Woodway and Olympic View joined with Snohomish County. After a public hearing, on January 25, 2017, the GMHB issued its Final Decision and Order (FDO) finding Snohomish County had violated the GMA when adopted the amendment. CP 2912-2947. On February 22, 2017, Olympic View filed an appeal of the GMHB's FDO with Snohomish County Superior Court, Case No. 17-2-01636-31. On July 24, 2017, in an attempt to bring itself into compliance with the GMA, Snohomish County adopted Amended Motion 17-250 which purported to "suspend" Amended Motion 16-135. On October 19, 2017, after a telephonic compliance hearing, the GMHB issued an Order Finding Continuing Non-Compliance (Compliance Order) against Snohomish County. On November 25, 2017, Olympic View filed an appeal of the GMHB's Compliance Order in Snohomish County Superior Court, Case No. 17-2-111183-31. Case 17-2-016363-31 and Case 17-2-111183-31 were consolidated on December 20, 2017 and are proceeding under Case No. 17-2-01636-31 although a hearing date has not yet been set at the time of the filing of this brief. In another attempt to achieve compliance with the GMA, the County has proposed Motion 18-003 which is intended repeal "certain provisions" of Amended Motion 16-135. Shoreline and Ronald have filed objections to this new attempt to circumvent the GMA process as still noncompliant with the GMHB Order. On January 31, 2018, the Snohomish County adopted Motion 18-003. Snohomish County must now present this to the GMHB no later than February 2, 2018 so that the GMHB may ascertain if compliance with the GMA has been achieved.

3285; CP 3319-3340. Replies were filed by Ronald. CP 5049-5055; CP 6092-6096; CP 7041-7047.

Motions for Summary Judgment were also filed by Woodway and Snohomish County. CP 506-530; CP 1637- 1657. Ronald, King County, and Shoreline filed responsive briefing in opposition of these motions. CP 2109-2137, CP 3443-3471; CP 3892-3894; CP 5017-5048. Replies were filed by Woodway and Snohomish County. CP 5548-5555; CP 8006-8014.

After a two-day hearing, on May 9, 2017, the King County Superior Court issued an Order Granting Ronald's Motion for Partial Summary Judgment and Denying the Motions for Summary Judgment of Woodway and Snohomish County ("May 9 Order"). CP 8022-8045. Given that not all issues were resolved by the May 9 Order, various motions were filed to amend the schedule, determine the May 9 Order final, and/or stay proceedings. CP 8046-8068.

Upon motion by Woodway for Certification of the May 9 Order pursuant to CR 54(B), and over the objections of Ronald and Shoreline, the King County Superior Court issued an Order Directing the Entry of the May 9 Order as a Final Judgment and staying all remaining proceedings before the King County Superior Court. CP 8147-8150.

Subsequently, Woodway and Olympic View independently filed Motions for Direct Review with this Court as provided in RAP 4.2(a)(4) and (5).¹² CP 8176-8178; CP 8210-8211. Statements of Grounds for Review were filed with this Court by Olympic View and Woodway on June 26-27, 2017, with opposition to Direct Review filed by Shoreline, Ronald, and King County on July 17, 2017, asserting that this case does not satisfy RAP 4.2(a).

IV. ARGUMENT

A. Summary of Argument

Pursuant to RAP 10.3 the City of Shoreline is required to answer Olympic View's and Woodway's Opening Briefs.¹³ As stated in Section II *supra*, Shoreline's Brief will address the issues Shoreline sees as the foundation for the error alleged by Olympic View and Woodway with

¹² RAP 4.2(a)(4) permits direct review of a superior court order if the case involves "fundamental and urgent issues of broad public import which requires prompt and ultimate determination."

RAP 4.2(a)(5) permits direct review if the case is an action "against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus." Woodway, in its Statement of Grounds for Review at 5, also asserted that direct review was appropriate because the trial court's ruling "had a preclusive effect contravenes established principles of law established by this Court." RAP 4.2(a) does not provide for direct review based on such an assertion standard.

¹³ For all other issues pertaining to the Assignment of Error, and for supplementation of the ones addressed in this brief, Shoreline adopts and incorporates by reference argument of the Ronald Wastewater District in its responsive brief.

respect to the Superior Court's decision. Namely, their challenge to the Superior Court's conclusion that Olympic View and Woodway may not collaterally attack the 1985 Transfer Order pursuant to CR 60(b)(5); that the Legislature granted the King County Superior Court authority to direct the transfer and annexation of the area included in the 1985 Order; and that the statutes at issue are constitutional.

Key to this Court accepting review is a showing by Olympic View and Woodway that there is a fundamental and urgent issue of broad public import requiring resolution by this Court. RAP 4.2(a)(4). There is no such issue here. Instead, this is an extremely narrow matter involving an order issued by a superior court in 1985 that the King County Superior Court, in 2017, upheld.

As will be discussed below, Olympic View and Woodway have presented no reason why this Court should accept direct review nor have they presented any legally-sound basis to allow them to collaterally attack the 1985 court order. Instead, what this Court will see is Olympic View's and Woodway's attempt to have this Court divert from its long-standing principles of statutory construction in order to create the result they desire. But even with Olympic View and Woodway's distortion and spin on RCW 36.94's statutory provisions, the 1985 Order still

remains a legally valid and binding court order that is not subject to a collateral challenge pursuant to CR 60(b)(5).

The Legislature duly enacted an “alternative process” to allow for the transfer of a county sewer system to a RCW Title 57 water-sewer district. The Legislature’s enactment is presumed valid and constitutional. The process that the Legislature selected for the transfer was fully complied with by King County and Ronald back in 1985. Pursuant to the legislative enactment as well as the Washington State Constitution and, King County Superior Court had jurisdictional authority to enter a decree approving the transfer and annexing all of the area served by the system.

B. Standard of Review

At the heart of this case is the King County Superior Court’s 2017 rulings in favor of Ronald and Shoreline on their motions for summary judgment. The standard of review on appeal from an order on summary judgment is *de novo*. *Kitsap County Deputy Sheriff’s Guild v. Kitsap County*, 183 Wn.2d 358, 362, 353 P.3d 188 (2015); *Lyons v. U.S. Bank Nat. Ass’n*, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014). Under this standard this Court is to engage in the same inquiry as the superior court. *Id.* While each of the parties to this appeal has its own story to tell and

presents the facts in a way that highlights their story, there are no disputed materials facts and none of the parties assert otherwise. Rather, the issues presented to this Court are entirely founded on the interpretation of statutes or their constitutionality, which are both questions of law reviewed *de novo*. *University of Washington v. City of Seattle*, 188 Wn.2d 823, 829, 399 P.3d 519 (2017); *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012) (issues of constitutional and statutory interpretation are questions of law reviewed *de novo*).

Similarly, Olympic View's and Woodway's challenge to the Superior Court's refusal to grant their request to vacate the King County Superior Court 1985 Order as void is reviewed under the *de novo* standard. *Ahten v. Barnes*, 158 Wn. App. 343, 350, 242 P.3d 35 (2010) (A decision to grant or deny a motion to vacate a judgment under CR 60(b)(5) is review *de novo*).

C. Argument of the Legal Issues

1. The Superior Court Correctly concluded that the 1985 King County Superior Court Order is Valid.

The statutory scheme setting forth the appropriate procedure for transferring a water-sewer district like Ronald can be found in RCW 36.94, *et seq.* At the outset of this brief it is worth noting that

Olympic View and Woodway do not quibble with King County's and Ronald's conformance with the statutory procedures prescribed by RCW 36.94, *et seq.* It is indisputable the procedures set out in RCW 36.94, *et seq.* were complied with. Instead, Olympic View and Woodway argue that the King County Superior Court's 1985 Order was void *ab initio*, presumably because that is the only mechanism available to them to mount a belated collateral attack to the *unappealed* 1985 Order. Of course, demonstrating that a court order is void from its inception is a much heavier burden than showing that a court simply erred as a matter of law (*i.e.*, an erroneous ruling). In fact, as described more fully below, in order to do so successfully Olympic View and Woodway must establish that the King County Superior Court lacked personal or subject matter jurisdiction or lacked the inherent power to enter the 1985 Order. *See, Mueller v. Miller*, 82 Wn. App. 236, 251-252, 917 P. 2d 604 (1996). Not surprisingly, Woodway and Olympic View fail to make that showing.

Court Rule (CR) 60(b), upon which Olympic View and Woodway rely, describes several situations in which a court may relieve a party from a final judgment, order, or proceeding, including relief from a "void judgment." CR 60(b)(5); *Mueller v. Miller*, 82 Wn. App. 236, 251-252, 917 P.2d 604 (1996) (holding a collateral attack may be maintained but

the judgment must be “absolutely void, not merely erroneous or avoidable.”). An order is void, however, only where the courts lacks jurisdiction of the parties, the subject matter, or the inherent power to enter the order involved. *Id.* Since the King County Superior Court clearly had statutory authority and jurisdictional authority to enter the 1985 Order, CR 60(b) is simply irrelevant to the 1985 Order.

2. RCW 36.94.410-.440 Unambiguously Grants the King County Superior Court the Authority to Direct the Transfer and Annexation of the System.

The primary issue before the Court in this case is the statutory language contained in RCW 36.94.410-36.94.440. The interpretation of a statute is a question of law that is reviewed *de novo*. *Hertog, ex rel S.A.H. v City of Seattle*, 138 Wn.2d 265, 275, 979 P. 2d 400 (1999) (citing *Taggart v. State*, 118 Wn.2d 195, 199, 822 P.2d 243 (1992)).

This Court’s fundamental objective in construing a statute is to ascertain and carry out the Legislature’s intent. *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) (*Woodcreek HOA*). The surest indication of the Legislature’s intent and the starting point for the inquiry is the plain language of the statute, which always controls if the statute is unambiguous. *Nissen v. Pierce County*,

183 Wn.2d 863, 881, 357 P.3d 45 (2015)¹⁴(citing *Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002)); *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

When the plain language is unambiguous, as it is here, the legislative intent is apparent and the Court is not to construe the statute otherwise as plain language does not require construction. *Delgado*, 148 Wn.2d at 727 (holding that when statutory language is unambiguous, the court looks only to that language to determine the legislative intent without considering outside sources) (citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994); *see also*, *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007) (stating that when a statute's meaning is plain on its face then the court must give effect to the plain meaning as an expression of legislative intent); *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001) (stating the courts should assume the Legislature means exactly what it says). When a statute is unambiguous the Court's inquiry ceases there because the statute does not need interpretation since its meaning is apparent from the language.

¹⁴ A dictionary may be used to discern the plain meaning of an undefined, nontechnical statutory term. *Nissen v. Pierce County*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015); *State v. McDougal*, 120 Wn.2d 334, 351, 841 P.2d 1232 (1992).

Additionally, when faced with a question of statutory interpretation the Court is not to add words. *State v. Arlene's Flowers, Inc.*, 187 Wn.2d 804, 829, 389 P.3d 543 (2017) (citing *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)). While the Court may look to the broader statutory context for guidance, it must do so in a way to not extend or enlarge the meaning of a statute by adding words or clauses where the Legislature has chosen not to include them; instead the Court must assume the Legislature meant exactly what it says. *State v. Delgado*, 148 Wn.2d 723, 727 63 P.3d 792 (2003) (citing *Davis v. Dept. of Licensing*, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)); *see also*, *Woodcreek HOA*, 169 Wn.2d at 526 (citing *Restaurant Development Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 602-603 80 P.3d 598 (2003)).

In the present case, Olympic View and Woodway would like the Court to read the statute as adding a limitation or restriction to the statute that does not exist. And, even if the Legislature had actually intended to place such a restriction in RCW 36.94, although there is no indication that was the case, this Court has a long history of restraining from compensating for legislative omissions, even when those omissions may be inadvertent. *State v. Taylor*, 97 Wn.2d 724, 728, 649 P.2d 633 (1982) (citing *Jenkins v. Bellingham Municipal Court*, 95 Wn.2d 574, 579, 627

P.2d 1316 (1981) (holding the court cannot read into a statute that which it may believe the Legislature has omitted, be it an intentional or an inadvertent omission). In fact, only in very limited situations has this Court disregarded unambiguous statutory language in order to avoid an absurd result to prevent obviously inept wording from thwarting otherwise clear legislative intent. *In Matter of Dependency of DLB*, 186 Wn.2d 103, 119, 376 P.3d 1099 (2016) (citing *Five Corners Family Farmers*, 173 Wn.2d at 311 (holding the canon is used sparingly so that the wisdom of the Legislature is not called into question because inserting or removing statutory language is decidedly the province of the Legislature)).

Olympic View and Ronald's argument that the 1985 Court lacked jurisdiction to convey that portion of the system located outside of King County is premised on two central assertions – (1) the statute permits a transfer *only* when the system is within the confines of a single county; and (2) the statute grants a superior court jurisdictional authority *only* to act within its own county. They solely rely on their interpretation of RCW 36.94.310 as the basis for their jurisdiction limiting argument.¹⁵ Their

¹⁵ No appellate court has discussed this provision or RCW 36.94.410-36.94.440 in this regard. Woodway improperly cites to the 2008 unpublished case of *Lakehaven Utility District v. Pierce County*. Woodway Brief at 12. GR 14.1 states that only unpublished opinions of the Court of Appeals filed after March 1, 2013 may be cited as nonbinding authority. The Court should disregard this case as contrary to GR 14.1 but it should

reading of the statutory language, however, ignores both the plain language of the statute as well this Court's holdings on jurisdiction. *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001); *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 306, 268 P.3d 892 (2011). .

This Court has previously held that it is not “obliged to discern any ambiguity by imaging a variety of alternative interpretations.” *Keller*, 143 Wn.2d at 277. Only if a statute is truly ambiguous may this Court look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 306, 268 P.3d 892 (2011); *see also State ex rel Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004) (citing *Dept of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *Mutual of Enumclaw Ins. Co. v. Grimstad-Hardy*, 71 Wn. App. 226, 232, 857 P.2d 1064 (1993) (stating that resorting to legislative history to urge ambiguity where none exists is not appropriate);

also disregard it because it is factually and legally distinct from the case now before the Court. While the case did deal with the transfer of Milton's sewer system, a town that straddles the King-Pierce County lines, it is important to note that the transfer in that case was NOT done pursuant to RCW 36.94.410-.440 but instead related to a separate issue of those governmental entities contractual authority.

State v. Bigsby, 189 Wn.2d 210, 217, 399 P.3d 540 (2017) (legislative history serves a role in “divining” legislative intent).

The King County Superior Court correctly concluded that the statute did not limit the amount or location of the system that could be transferred. Olympic View’s and Woodway’s disagreement with the King County Superior Court’s conclusion is simply not a basis for this Court to determine the statute ambiguous.

3. The King County Superior Court had the Authority to Issue the 1985 Order Approving the Transfer of the System and Annexing the Area Served, including the area served in Snohomish County.

It has been more than 32 years since the King County Superior Court issued the 1985 Order. A subsequent challenge to a final order is only possible in the rarest of circumstances, such as a showing under Court Rule 60(b)(5) that an order was void. As noted above, an order is void only where the courts lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to enter the order involved. *Mueller*, 82 Wn. App. 236 at 251-252. Because the King County Superior Court clearly possessed all three, the Superior Court correctly concluded that the 1985 Order is not “absolutely void” so as to allow the Olympic View and Woodway to challenge the Order.

4. The Legislature granted the King County Superior Court the Inherent Power to enter the 1985 Order.

The King County Superior Court had the power to enter the 1985 Order. By adopting RCW 36.94.410-.440, the Legislature established an “alternative” process by which a county may transfer its system to a water-sewer district. Accordingly, it is indisputable that a superior court, then and now, possesses statutory authority to enter a decree transferring a system. The plain language of RCW 36.94.440 provides:

If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement.

RCW 36.94.440 thus authorizes the superior court “by decree” to “direct that the transfer [of a system] ... in accordance with the [transfer] agreement.” The 1985 Order is such a decree and Olympic View and Woodway cannot deny the express authority given to the superior court by the Legislature through RCW 36.94.440.¹⁶ Given this statutory authority, there can be no question the King County Superior Court had

¹⁶ Olympic View and Woodway assert that the Boundary Review Board is the appropriate review body for such transfers. But the Boundary Review Board was not the review body the Legislature established in RCW 36.94.410-.440. It was the superior court that the Legislature selected as the method for ensuring compliance with the statutory process and it tasked the superior court with entering a decree memorializing the terms and conditions of the transfer.

the power to issue the decree for the transfer of King County's system to Ronald.

Olympic View's and Woodway's argument is not a question of statutory authority but instead a question of statutory interpretation and does not, therefore, form a basis for appeal under CR 60(b)(5). Olympic View's and Woodway's opinion that the King County Superior Court erred in determining the transfer was "legally correct" does not erase a superior court's authority and power indisputably given to it by the Legislature to enter a decree. Nor would an erroneous determination of the law by a superior court result in a void judgment for which relief may now be sought pursuant to CR 60(b)(5), as this Court has held a mistake or error of law *cannot* be transformed into a jurisdictional flaw for purposes of voiding a ruling.

In fact, in *Marley v. Dept. of Labor & Industries*, the case relied on by Olympic View and Woodway, this Court observed that a ruling is not void just because a party believes it to be erroneously made or an erroneous interpretation of the law. *Marley v. Dept. of Labor & Industries*, 125 Wn.2d 533, 541-543, 886 P.2d 189 (1994) (quoting *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (stating the court should not transform mistakes in statutory construction or errors of law into jurisdictional flaws

and “[t]he power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct”); *Mead School District No. 354 v. Mead Education Ass’n*, 85 Wn.2d 278, 280, 534 P.2d 561 (1975) (quoting *State v. Olsen*, 54 Wn.2d 272, 274, 340 P.2d 171 (1959) (the test of the jurisdiction of a court is whether or not it had *power* to enter upon the inquiry, not whether its conclusion in the course of it was right or wrong); see also, *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 874 P.2d 182 (1994) (holding erroneous judgments - as opposed to void judgments - are not subject to collateral attack).

In light of *Marley* and its progeny, even if Olympic View and Woodway could demonstrate that the King County Superior Court erroneously interpreted RCW 36.94.410-.440 (which it did not), that does not result in the 1985 Order being absolutely void. In issuing the 1985 Order, the King County Superior Court was required to interpret the relevant provisions of RCW 36.94, *et seq.*, and to make a determination regarding whether the process outlined in the statute had been followed and the Transfer Agreement was “legally correct.” This determination was necessarily a statutory interpretation, and Olympic View and Woodway - recognizing this issue and thus attempting to disguise their appeal with the trappings of a jurisdictional question - really argue not that

the 1985 Order was void, but, rather, that it was legally wrong (incorrect).

This theory cannot form the basis of a CR 60(b)(5) appeal.¹⁷

5. The King County Superior Court had Subject Matter and Personal Jurisdiction to enter the 1985 Order.

Olympic View and Woodway next attempt to label the 1985 Order as “absolutely void” by infusing (and confusing) subject matter and personal jurisdictional concepts pulled from basic civil procedure into the Legislature’s statutory process. Jurisdiction defines the power and authority of a court to act. *Dougherty v. Dept. of Labor & Industries*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003). Because both the Constitution and the process established by the Legislature grant the King County Superior Court the jurisdiction to issue the 1985 Order, the 1985 Order is valid.

a. The Superior Court had the Subject Matter Jurisdiction it Needed to Enter the 1985 Order

The King County Superior Court possessed subject matter jurisdiction. Subject matter jurisdiction refers to a court’s ability to entertain a “type” of case. “Type” means the general category of a case without regard to the facts of a particular case and refers to the authority

¹⁷ In asserting that a challenge to a void judgment may be brought at any time, Woodway contends that nothing has been done since the time of Ronald’s annexation and this area of unincorporated Snohomish County is designated as a municipal urban growth area for Woodway. Woodway Brief at 14. The alleged lack of additional infrastructure simply has no bearing on a determination of whether a judgment is void.

of a court to adjudicate a particular type of controversy, not a particular case. *Dougherty v. Dept. of Labor & Industries*, 150 Wn.2d 310, 317, 76 P.3d 1183 (2003). The superior courts have broad jurisdiction stemming from Article IV, Section 6 of the Washington Constitution. The Constitution not only affords the superior courts with original jurisdiction in cases that involve the possession of real property but it also provides the superior courts “universal jurisdiction” in all cases and over all proceedings in which jurisdiction has not been by law vested exclusively in some other court. *Young v. Clark*, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003). Article IV, Section 6 of the State Constitution does not permit the Legislature to limit subject matter jurisdiction “as among superior courts.” *Id.* at 134; *see also ZDI Gaming Inc. v. State*, 173 Wn.2d 608, 621, 268 P.3d 929 (2012) (Legislature can sculpt the venue but not the subject matter jurisdiction); *Ralph v. WA State Dept. of Natural Resources*, 182 Wn.2d 242, 254, 343 P.3d 342 (2014) (citing *Dougherty* as a basis for rejecting the theory that subject matter jurisdiction of the superior court varies from county to county). Accordingly, if one superior court can hear a “type” of case then all superior courts may hear a “type” of case. *Dougherty* 150 Wn.2d at 316 (holding all superior courts have the same subject matter jurisdiction; if one superior court possesses authority than

there is no ‘jurisdictional’ reason why another superior court could not hear the same case).

Olympic View’s and Woodway’s interpretation of the statute’s use of “within the same county” as establishing a limitation on the subject matter jurisdiction of the superior court is contrary to the case law and is a distortion of what “type” means within the doctrine of subject matter jurisdiction.¹⁸ As this Court concluded in *Dougherty*, a statute that requires an action to be brought in a certain county is generally regarded as specifying venue and not construed as limiting jurisdiction to the court of the county designated. *Dougherty*, 150 Wn.2d at 316 (explaining that if the “type” of controversy for the purposes of subject matter jurisdiction depends on *which county* the case is filed or heard in, then *all venue provisions would become subject matter jurisdiction provisions*) (citing to *Shoop v. Kittitas County*, 149 Wn.2d 29, 37, 65 P.3d 1194 (2003)).

Olympic View’s and Woodway’s contention that the referenced statutory provisions limit the King County Superior Court only to entering a ruling as to property located solely within the bounds of King County is

¹⁸ Olympic View and Woodway supplement their jurisdictional argument by reaching out and relying on the Boundary Review Board (BRB) process contained in RCW 36.93; this does not save them. RCW 36.93.105(1) expressly excludes an annexation done pursuant to RCW 36.94.410-.440 from BRB review.

completely contrary to the lineage of decisions holding that the Legislature cannot limit the subject matter jurisdiction of the superior court “as among superior courts.” *ZDI Gaming*, 173 Wn.2d at 616. The King County Superior Court’s subject matter jurisdiction was present not only as a result of the specific authority granted it by the Legislature, but also because the superior courts have jurisdiction over cases dealing with real and personal property, including any contractual rights transferred as a result of an action.

b. The Superior Court had the Personal Jurisdiction it needed to enter the 1985 Order.

The King County Superior Court also had necessary personal jurisdiction over the parties. It is true that if a court lacks personal jurisdiction *over a party*, a judgment entered by the court *against that party* may be void. CR 60(b)(5); *Allstate Insurance Co. v. Khani*, 75 Wn. App. 317, 326, 877 P.2d 724 (1994) (citing *In the Marriage of Leslie*, 112 Wn.2d 612, 619, 772 P.2d 1013 (1989)). But, Olympic View and Woodway do not, nor can they, assert that the superior court lacked personal jurisdiction over King County or Ronald, the two parties that jointly filed the transfer petition as authorized by RCW 36.94.340. Instead, Olympic View and Woodway contend that the personal

jurisdiction that was lacking was “relative to” them because they were not joined as parties and they allegedly did not have notice.

RCW 36.94.410-.440 do not require that entities such as Olympic View and Woodway be made a party to the transfer proceedings. RCW 36.94.340¹⁹ does not require anyone other than the county and the water-sewer district participate in the petition for court approval of the transfer. A plain reading of the statutory provisions shows that the Legislature chose to grant the superior courts the authority to approve a transfer without naming and joining anyone else as a party.²⁰

Notwithstanding the absence of a statutory mandate that Olympic View and Woodway (or other like individuals or entities) be made parties, Olympic View and Woodway next claim the 1985 Order was void because they were not joined as necessary and indispensable parties pursuant to CR 19. In making this claim, Olympic View and Woodway do not explain how a failure to join them resulted in the superior court lacking personal jurisdiction to enter an Order making the 1985 Order void.

¹⁹ The statute requires only the county and the water-sewer district to sign the petition.

²⁰ The Legislature knows how to explicitly require the naming and joinder of parties. See, e.g. RCW 36.70C.040 delineating who is to be named as a party and 36.70C.050 requiring joinder of parties in LUPA proceedings; RCW 42.56.360 requiring joinder of submitting entity in action related to health care; RCW 64.55.150 joinder for arbitration; RCW 18.27.040 requiring a surety to be named as a party in any suit upon a bond.

Gildon v. Simon Property Group, 158 Wn.2d. 483, 504, 145 P.3d 1196 (2006) (citing *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 206, 634 P.2d 853 (1981) (The doctrine of indispensability is not jurisdictional)). The remedy for a party's failure to join omitted parties is dismissal, not to void an order. CR 19(b); *Gildon*, 158 Wn.2d at 493-494 (noting dismissal is the remedy under CR 19 with review for abuse of discretion regarding the decision but legal conclusions underlying the decision are *de novo*). Failure to join parties does not rise to a jurisdictional issue and, pursuant to the Court's holding in *Marley v. Dept. of Labor & Industries* cited supra, it also does not result in the 1985 Order being "absolutely void."

In providing for the alternative process to transfer a sewer system, the Legislature set forth the notice to be provided and did not require notice to any individual or entity except as may be prescribed by the superior court or as set forth in the statute itself. RCW 36.94.340 (requires the superior court to prescribe the form and manner of notice); RCW 36.94.420 (sets forth how notice was to be given for the ordinance executing the transfer agreement). Olympic View and Woodway do not dispute that this notice was provided. CP 1113-1114; 1117-1118. Per the Legislature, the notice deemed adequate for this alternative process is the

notice contained in the statute and any notice prescribed by the superior court. Thus, Olympic View's and Woodway's complaint about the level of notice is a political dispute with the Legislature, not a jurisdictional one and, as such, it does not provide any basis to void 1985 Order.

c. **The 1985 Order was not contrary to RCW 36.94 which granted King County the authority to engage in the proprietary function of operating a sewer system.**

Olympic View and Woodway also attempt to void the 1985 Order by asserting King County itself lacked the authority to operate a sewer system within Snohomish County and, therefore, could not operate or convey the system to Ronald. In making this argument Olympic View and Woodway attempt to segregate the sewer system into two independent pieces – one south of the county line and one north of the county line. Of course, this belies the reality that the sewer system is and has always been an integrated system of pipes and pumps operating as a whole. If RCW 36.94.020 authorized King County to operate a sewer system, then RCW 36.94.410 authorized it to transfer the entirety of that system, wherever it lay, to Ronald.

Finally, Woodway cites to cases dealing with contracts and states the 1985 Order, which includes the legal description of the Point Wells area, is void and unenforceable because it is contrary to the terms and

policy of the statute (as Woodway interprets it). Woodway Brief, at 13. However, Woodway falls short in its quoted citation. While a contract may be illegal and unenforceable if contrary to a statute, when dealing with the regulation of business there is a different standard - a contract is not void unless the statute expressly provides for invalidation. *Smith v. Skone & Connors Produce Inc.*, 107 Wn. App. 199, 207-208, 26 P.3d 981 (2001); see also *Parker v. Tumwater Family Practice Clinic*, 118 Wn. App. 425, 432-433, 76 P.3d 764 (2003) (stating an agreement is void only if the statute or regulation specifically deem it invalid). The provision of sewer is a proprietary (business) function so the different standard applies. *Stiefel v. City of Kent*, 132 Wn. App. 523, 529, 132 P.3d 1111 (2006) (citing to *Hayes v. City of Vancouver*, 61 Wash. 536, 112 P. 498 (1911)).

It cannot be disputed that RCW 36.94.190 permits King County to contract with other entities – public and private – and therefore the origin of the Point Wells service area (a contract) cannot be found to be contrary to RCW 36.94. Rather, King County’s contract was completely within the terms and policy of RCW 36.94. In addition, rather than providing for invalidation, RCW 36.94.910 speaks to a liberal interpretation and the conformation of any inconsistent act.

RCW 36.94.410 unequivocally grants a superior court the authority to, by decree, direct the transfer of a county sewer system. The King County Superior Court, based on this statute and basic principles of the law discussed above had both subject matter and personal jurisdiction to enter the 1985 Order. The 1985 Order, providing for the transfer of a proprietary function, was not contrary to the statute. Olympic View's and Woodway's disagreement with the process established by the Legislature and their dislike of Shoreline, a city, to be the provider of sewer service instead of a special purpose district, does not provide a basis for a CR 60(b)(5) challenge. Olympic View and Woodway have failed to set forth any legal basis for this Court to declare the 1985 Order is "absolutely void".

d. RCW 36.94.410 authorized King County to transfer its entire sewer system to the Ronald Wastewater District, including that portion of its system located and serving Snohomish County.

The transfer at issue in these proceedings was done pursuant to RCW 36.94.410-.440. The plain language of the statute reveals its purpose and authorizes a county to transfer its sewer system to a water-sewer district and provides an alternative process with procedural steps, including a court decree, by which the transfer is to be accomplished.

Given that the statute's plain language has no ambiguity, the Court's inquiry ends here.

Olympic View and Woodway nevertheless want the Court to look behind the plain language, claiming that if the Court does this they believe the Court will see the Legislature's intended to restrict any such county-district transfer to only be for a system that is wholly contained within a single county's lines. In an attempt to support their argument position they try to conjure up the "intent" of the Legislature when it enacted these statutes more than three decades ago. But, in doing so, Olympic View and Woodway simply ignore the long-standing rules of statutory interpretation provided *supra*. Olympic View and Woodway try to create ambiguity where none exists by inviting the Court to go beyond even the legislative history of the statute itself, and reach into areas of the law that have no relevance in order to insert words into the statute in order to achieve the results they seek. This Court should reject any such invitation.

Olympic View's and Woodway's argument is entirely premised on their unique and conveniently self-serving reading of RCW 36.94.410's use of the phrase "in the same manner," asserting that they believe this creates a restriction on the system a county may be transferring, binding it to county lines. The phrase "in the same manner," however, is not

limiting or restrictive. Rather, it means by comparable or similar proceedings. “In the same manner” refers to *procedure* and this is obvious by its context within the statute. See, e.g., *Association of Irrigated Residents v. U.S. EPA*, 790 F.3d 934, 948-949 (9th Circuit, 2015) (citing to *Nat’l Federation of Independent Business v. Sebelius*, 567 US 519, 545, 132 S. Ct. 2566, 183 L.Ed. 450 (2012) (holding that “in the same manner” was procedural); *Wilder’s S.S. Co. v. Low*, 112 F. 161, 164, 50 C.C.A. 473 (9th Circuit, 1901) (holding the phrase “in the same manner” has a well-understood meaning in legislation, and that meaning is not one of restriction or limitation, but of procedure).

Contrary to the rules of statutory interpretation and the meaning of the phrase, Olympic View and Woodway seize on RCW 36.94.410’s phrase “*in the same manner as is provided for ... in RCW 36.93.310 through 36.94.340...*” (Emphasis added) to claim that it is a limiting criteria for a county when it seeks to transfer a system to a water-sewer district. The limiting use of the phrase is not only a strained reading but it is also contrary to its procedural context. By using the “in the same manner” phrase, the Legislature clearly intended the *procedural* requirements applicable to a municipal corporation-county transfer to similarly apply to a county-water-sewer district transfer. And, the

Legislature did not stop there; it added supplemental provisions contained in RCW 36.94.420 and 36.94.440 that pertain only to a county-water-sewer district transfer.

What are the “in the same manner” procedural requirements of RCW 36.94.310 - .350? In the most basic of terms, the procedures are as follows:

RCW	Statutory Requirements
36.94.310	<ul style="list-style-type: none"> • Transfer of all or part of a system by mutual agreement of governing body and legislative authority • Approval by the superior court of such county
36.94.320	<ul style="list-style-type: none"> • County may assume and agree to pay all or part of the indebtedness
36.94.330	<ul style="list-style-type: none"> • Written Transfer Agreement adopted by the legislative authority of county and governing body of municipal corporation, via resolution or ordinance
36.94.340	<ul style="list-style-type: none"> • Court Decree directing transfer in time and manner prescribed in court decree
36.94.350	<ul style="list-style-type: none"> • If all property transferred and it is requested by parties in the petition, superior court may dissolve in original decree or by subsequent decree

In addition to these requirements, the Legislature established a few other procedural requirements in RCW 36.94.420 and .450 unique to a county – water-sewer district transfer. These procedures are as follows:

RCW	Statutory Requirements
36.94.420	<ul style="list-style-type: none"> • If provided in transfer agreement, area served deemed annexed upon complete transfer subject to notice and hearing by county legislative authority on ordinance executing transfer agreement
36.94.440	<ul style="list-style-type: none"> • If superior court finds transfer agreement legally correct and interests of owners of related indebtedness protected, superior court issues decree directing transfer to be accomplished in accordance with transfer agreement

Olympic View and Woodway do not argue that these procedures were not completed. And the Record demonstrates the statutory process established by the Legislation in RCW 36.94.410 - .440 was followed and resulted in the 1985 Order:

RCW	Clerk's Paper Citation
36.94.330	<ul style="list-style-type: none"> • Transfer Agreement and Approvals CP 575-581; 1150, 1152
36.94.340	<ul style="list-style-type: none"> • Petition to Court

	CP 37-39
36.94.420	<ul style="list-style-type: none"> • Notice and Hearing CP 1113-1114; 1117-1118; 2421-2422
36.94.330 36.94.440	<ul style="list-style-type: none"> • Court Decree CP 41-42

RCW 36.94.410-.440 is unambiguous. RCW 36.93.410's language is clear on its face – all or part of a system operated by a county may be transferred from the county to a water-sewer district subject to the same procedural requirements as when a municipal corporation is transferring its system to a county. This statutory provision does not include any language limiting such a transfer to a county's border. Notwithstanding Olympic View's and Woodway's request, this Court should not add words the Legislature chose not to include.

6. RCW 36.94.410 – 36.94.440 AND RCW 57.02.001 are constitutionally sound enactments of the Washington State Legislature.

In a not so veiled attempt to entice this Court to accept direct review of this case without the benefit of lower appellate court review, Olympic View and Woodway attempt to manufacture a constitutional challenge by asserting RCW 36.94.410-.440 and RCW 57.02.001 are “special legislation” in violation of Article II, Section 28 of the

Washington Constitution. Since all legislative enactments are presumed constitutional, Olympic View and Woodway have the demanding burden to prove the statute's unconstitutionality beyond a reasonable doubt; they must convince the Court, by argument and research, that there is no reasonable doubt the statute violates the constitution. *Island County v. State*, 135 Wn.2d 141, 146-147, 955 P.2d 377 (1998); *School District's Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010). Olympic View and Woodway have failed to meet this demanding burden. The statutory provisions are clearly not special legislation.

Special legislation is legislation which operates upon a single person or entity while general legislation operates upon all things or people within a class. *Brower v. State*, 137 Wn.2d 44, 60, 969 P.2d 42 (1998) (citing *CLEAN v. State*, 130 Wn.2d 782, 802, 928 P.2d 1054 (1996)). When the challenged legislation applies to a class, the legislation is upheld so long as the class bears a rational relationship to a legitimate purpose and subject matter of the legislation. *In re Metcalf*, 92 Wn. App. 165, 185, 963 P.2d 911 (1998) (citing *CLEAN*, 130 Wn.2d at 802). A class may consist of one member provided the law applies to all members of the class. *Brower*, 137 Wn.2d at 60; *see also, Port of Seattle v. PCHB*, 151

Wn.2d 568, 628, 90 P.3d 659 (2004). In addition, this Court has repeatedly stated that the test of special legislation is not what the law *includes* but rather what it *excludes* and the rationality of the exclusions. *Brower*, 137 Wn.2d at 60. (citing *Island County v. State*, 135 Wn.2d 141, 150, 955 P.2d 377 (1998); *City of Seattle v. State*, 103 Wn.2d 663, 674-75, 693 P.2d 641 (1985) (holding it is not what a law includes that makes it special but what it excludes).

Olympic View and Woodway contend RCW 36.94.410 - .440 was enacted for the special benefit of King County. Just because King County had a distinct interest in facilitating the passage of the challenged legislation and may be the only county that has utilized RCW 36.94.410-.440's provisions, does not make the legislation special. In fact, the Court has found legislation constitutionally sound even when it could presently be used by only one entity. In *CLEAN*, opponents asserted legislation allowed for the construction of a baseball stadium only in King County due to its exclusion based on county population. The Court found the legislation was not special legislation simply because it was, at that time, available to only one county. *CLEAN*, 130 Wn.2d at 801-802. The Court reasoned that it was not irrational for the Legislature to limit a stadium to

the most populous counties of the State given the economics of major league baseball. *Id.* at 802-803.

Similarly, in *Brower*, the Court again found legislation providing for the construction and financing of a new football stadium was not special legislation because “any county” could create a public stadium authority provided it satisfied a letter of intent requirement, an exclusionary requirement that was deemed to be rational for professional sports facilities. *Brower*, 137 Wn.2d at 61. And, in *Port of Seattle*, the Court found legislation, which applied retroactively and only impacted a single project – Sea-Tac’s third runway project – was not special legislation. The Court stated that a class may consist of one member so long as there is no irrational exclusion from the class and, in the *Port of Seattle* case, opponents did not point to any irrational exclusions from the class of projects impacted by the legislation. *Port of Seattle*, 151 Wn.2d at 628.

Olympic View and Woodway rely on a single case, *Island County v. State*, 145 Wn. 3d 141, 955 P.2d 377 (1998), in their attempt to support their position that legislation which benefits only one county has previously been determined to be unconstitutional. However, in *Island County* the Court did not find the legislation unconstitutional simply

because it impacted a single county as Olympic View and Woodway contend. Instead, the Court found the law at issue unconstitutional special legislation because there was no rational basis why other populated island communities were excluded from the legislation. *Id.* at 155.

RCW 36.94.410-.440 has no exclusions and is clearly constitutionally sound.²¹ The legislation applies uniformly to a single similarly situated class - counties operating a system of sewerage, water, or combined water/sewerage – and it does not exclude any of Washington’s 39 counties within this class from utilizing the process. The class is rationally related to the legislation’s legitimate purpose which, of course, is to authorize *any* county to transfer a system it is operating to a RCW Title 57 water-sewer district. The statute does not provide a different process for King County than for any other county. Moreover, since the test of special legislation is not what the law *includes* but rather what it *rationally excludes*, RCW 36.94.410-.440 clearly satisfies this test.

In regards to RCW 57.02.001, Olympic View and Woodway present no argument that this statute amounts to special legislation. Nor could they as this statutory provisions clearly applies to “every sewer

²¹ Despite Olympic View’s and Woodway’s claim the statute excludes systems encompassing more than one county, the statute, on its face, contains no exclusions.

district and every water district” created under RCW Title 56 that were now reclassified as “water-sewer districts” under RCW Title 57.

RCW 36.94.410 - .440 and RCW 57.02.001 are clearly not special legislation. These statutory provisions are constitutional sound legislation and Olympic View and Woodway have failed to present an argument that would convince this Court otherwise.

V. CONCLUSION

Olympic View and Woodway have failed to establish any basis for this Court to grant Direct Review of the King County Superior Court’s May 9 rulings. For the foregoing reasons, the City of Shoreline respectfully requests that this Court affirm the King County Superior Court’s May 9, 2017 Order in all respects and enter judgement for the Ronald Wastewater District declaring that the 1985 Annexation Order is legal, binding on the parties, and resulted in the annexation of the Point Wells area to the Ronald Wastewater District.

Dated this 2ND day of February, 2018.

CITY OF SHORELINE

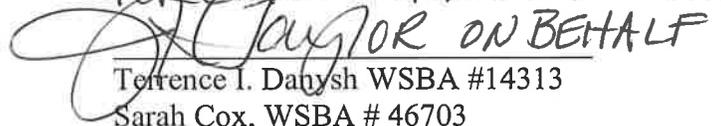


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APPENDIX

**RELEVANT PROVISIONS OF
Chapter 36.94 RCW
SEWERAGE, WATER, AND DRAINAGE SYSTEMS**

RCW 36.94.020 Purpose—Powers.

The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to adopt, provide for, accept, establish, condemn, purchase, construct, add to, operate, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plans, and facilities and services necessary for sewerage treatment and disposal, and/or system or systems of water supply within all or a portion of the county. However, counties shall not have power to condemn sewerage and/or water systems of any municipal corporation or private utility.

Such county or counties shall have the authority to control, regulate, operate, and manage such system or systems and to provide funds therefor by general obligation bonds, revenue bonds, local improvement district bonds, utility local improvement district or local improvement district assessments, and in any other lawful fiscal manner. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A county shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using county employees unless the on-site system is connected by a publicly owned collection system to the county's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of a state or local health officer to carry out their responsibilities under any other applicable law.

A county may, as part of a system of sewerage established under this chapter, provide for, finance, and operate any of the facilities and services and may exercise the powers expressly authorized for county stormwater, flood control, pollution prevention, and drainage services and activities under chapters 36.89, 86.12, 86.13, and 86.15 RCW. A county also may provide for, finance, and operate the facilities and services and may exercise any of the powers authorized for aquifer protection areas under chapter 36.36 RCW; for lake or beach management districts under chapter 36.61 RCW; for diking districts, and diking, drainage, and sewerage improvement districts under chapters 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection districts under chapter 90.72 RCW. However, if a county by reference to any of those statutes

assumes as part of its system of sewerage any powers granted to such areas or districts and not otherwise available to a county under this chapter, then (1) the procedures and restrictions applicable to those areas or districts apply to the county's exercise of those powers, and (2) the county may not simultaneously impose rates and charges under this chapter and under the statutes authorizing such areas or districts for substantially the same facilities and services, but must instead impose uniform rates and charges consistent with RCW 36.94.140. By agreement with such an area or district that is not part of a county's system of sewerage, a county may operate that area's or district's services or facilities, but a county may not dissolve any existing area or district except in accordance with any applicable provisions of the statute under which that area or district was created. [2008 c 301 § 25; 1997 c 447 § 11; 1981 c 313 § 1; 1967 c 72 § 2.]

RCW 36.94.310 Transfer of system from municipal corporation to county—Authorized.

Subject to the provisions of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county within which all of its territory lies, all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension, or financing of that system, and the county may acquire such property on such terms as may be mutually agreed upon by the governing body of the municipal corporation and the legislative authority of the county, and approved by the superior court for such county. [1975 1st ex.s. c 188 § 7.]

RCW 36.94.320 Transfer of system from municipal corporation to county—Assumption of indebtedness.

In consideration of a transfer of property by a municipal corporation to a county in the manner provided in RCW 36.94.310 through 36.94.350, a county may assume and agree to pay or provide for the payment of all or part of the indebtedness of a municipal corporation including the payment and retirement of outstanding general obligation and revenue bonds issued by a municipal corporation. Until the indebtedness of a municipal corporation thus assumed by a county has been discharged, all property within the municipal corporation and the owners and occupants of that property, shall continue to be liable for taxes, special assessments, and other charges legally pledged to pay such indebtedness. The county may assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments, and charges and observing and performing the other contractual obligations of the municipal corporation. The legislative authority of the county may act in the same manner as the governing body of the municipal corporation for the purpose of certifying the amount of any property tax to be levied and collected therein, and may cause service and other charges and assessments to be collected from such property or owners or occupants thereof, enforce such collection and perform all other acts necessary to insure performance of the contractual obligations of the municipal corporation in the same manner and by the same means as if the property of the municipal corporation had not been acquired by the county.

When a county assumes the obligation of paying indebtedness of a municipal corporation and if property taxes or assessments have been levied and service and other charges have accrued for such purpose but have not been collected by the municipal corporation prior to such assumption, the same when collected shall belong and be paid to the county and be used by such county so

far as necessary for payment of the indebtedness of the municipal corporation existing and unpaid on the date such county assumed that indebtedness. Any funds received by the county which have been collected for the purpose of paying any bonded or other indebtedness of the municipal corporation shall be used for the purpose for which they were collected and for no other purpose until such indebtedness has been paid and retired or adequate provision has been made for such payment and retirement. No transfer of property as provided in *this amendatory act shall derogate from the claims or rights of the creditors of the municipal corporation or impair the ability of the municipal corporation to respond to its debts and obligations. [1975 1st ex.s. c 188 § 8.]

RCW 36.94.330 Transfer of system from municipal corporation to county—Transfer agreement.

The governing body of a municipal corporation proposing to transfer all or part of its property to a county in the manner provided by RCW 36.94.310 through 36.94.350 and the legislative authority of a county proposing to accept such property, and to assume if it so agrees any indebtedness of the municipal corporation in consideration of such transfer, shall adopt resolutions or ordinances authorizing respectively the execution of a written agreement setting forth the terms and conditions upon which they have agreed and finding the transfer and acquisition of property pursuant to such agreement to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such written agreement may include provisions, by way of description and not by way of limitation, for the rights, powers, duties, and obligations of such municipal corporation and county with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, the allocation of costs, the financing and construction of new facilities, the application and use of assets, the disposition of liabilities and indebtedness, the performance of contractual obligations, and any other matters relating to the proposed transfer of property, which may be preceded by an interim period of operation by the county of the property and facilities subsequently to be transferred to that county. The agreement may provide for a period of time during which the municipal corporation may continue to exercise certain rights, privileges, powers, and functions authorized to it by law including the ability to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, and to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements and to issue general obligation bonds or revenue bonds in the manner provided by law, or the agreement may provide for the exercise for a period of time of all or some of such rights, privileges, powers, and functions by the county. The agreement may provide that either party thereto may authorize, issue and sell, in the manner provided by law, revenue bonds to provide funds for new water or sewer improvements or to refund or advance refund any water revenue, sewer revenue or combined water and sewer revenue bonds outstanding of either or both such parties. The agreement may provide that either party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions and covenants as the outstanding bonds of either or both such parties and such new bonds may be substituted or exchanged for such outstanding bonds to the extent permitted by law. [1975 1st ex.s. c 188 § 9.]

RCW 36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree.

When a municipal corporation and a county have entered into a written agreement providing for the transfer to such county of all or part of the property of such municipal corporation, proceedings may be initiated in the superior court for that county by the filing of a petition to which there shall be attached copies of the agreement of the parties and of the resolutions of the governing body of the municipal corporation and the legislative authority of the county authorizing its execution. Such petition shall ask that the court approve and direct the proposed transfer of property, and any assumption of indebtedness agreed to in consideration thereof by the county, after finding such transfer and acquisition of property to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such petition shall be signed by the members of the legislative authority of the county or chief administrative officer of the municipal corporation and the chair of the legislative authority of the county, respectively, upon authorization by the governing body of the municipal corporation and the legislative authority of the county.

Within thirty days after the filing of the petition of the parties with copies of their agreement and the resolutions authorizing its execution attached thereto, the court shall by order fix a date for a hearing on the petition not less than twenty nor more than ninety days after the entry of such order which also shall prescribe the form and manner of notice of such hearing to be given. After considering the petition and such evidence as may be presented at the hearing thereon, the court may determine by decree that the proposed transfer of property is in the public interest and conducive to the public health, safety, welfare, or convenience, approve the agreement of the parties and direct that such transfer be accomplished in accordance with that agreement at the time and in the manner prescribed by the court decree. [2009 c 549 § 4156; 1975 1st ex.s. c 188 § 10.]

RCW 36.94.350 Transfer of system from municipal corporation to county—Dissolution of municipal corporation.

In the event the agreement of the parties provides for the transfer to the county of all the property of the municipal corporation or all such property except bond redemption funds in the possession of the county treasurer from which outstanding bonds of the municipal corporation are payable, and the agreement also provides for the assumption and payment by the county of all the indebtedness of the municipal corporation including the payment and retirement of all its outstanding bonds, and if the petition of the parties so requests, the court in the decree approving and directing the transfer of property, or in a subsequent decree, may dissolve the municipal corporation effective as of the time of transfer of property or at such time thereafter as the court may determine and establish. [1975 1st ex.s. c 188 § 11.]

RCW 36.94.360 Transfer of system from municipal corporation to county—RCW 36.94.310 through 36.94.350 deemed alternative method.

The provisions of RCW 36.94.310 through 36.94.350 shall be deemed to provide an alternative method for the doing of the things therein authorized and shall not be construed as imposing any additional conditions upon the exercise of any other powers vested in municipal corporations or counties. [1975 1st ex.s. c 188 § 12.]

RCW 36.94.410 Transfer of system from county to water-sewer district.

A system of sewerage, system of water or combined water and sewerage systems operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340. [1999 c 153 § 51; 1984 c 147 § 1.]

RCW 36.94.420 Transfer of system from county to water-sewer district—Annexation—Hearing—Public notice—Operation of system.

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage, a system of water, or combined water and sewer systems from a county to a water-sewer district, the water-sewer district shall operate the system or systems under the provisions of Title 57 RCW. [1999 c 153 § 52; 1996 c 230 § 1609; 1985 c 141 § 1; 1984 c 147 § 2.]

RCW 36.94.430 Transfer of system from county to water-sewer district—Alternative method.

The provisions of RCW 36.94.410 and 36.94.420 provide an alternative method of accomplishing the transfer permitted by those sections and do not impose additional conditions upon the exercise of powers vested in water-sewer districts and counties. [1999 c 153 § 49; 1984 c 147 § 3.]

RCW 36.94.440 Transfer of system from county to water-sewer district—Decree by superior court.

If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and that the interests of the owners of related indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement. [1984 c 147 § 4.]

RCW 36.94.910 Authority—Liberal construction of chapter—Modification of inconsistent acts.

This chapter shall be complete authority for the establishment, construction and operation and maintenance of a system or systems of sewerage and/or water hereby authorized, and shall be liberally construed to accomplish its purpose. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1967 c 72 § 31.]

DECLARATION OF SERVICE

On said day below, I electronically filed this document with the Supreme Court, and served a true and correct copy of this document, the City of Shoreline's Responsive Brief, to the following parties through their counsel of record via e-service and email:

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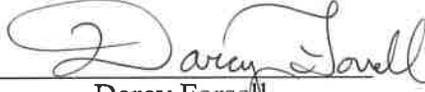
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I make this declaration subject to penalty of perjury under the laws
of the State of Washington.

EXECUTED in Shoreline, Washington this 2nd day of February,
2018.



Darcy Forsell

CITY OF SHORELINE

February 02, 2018 - 4:39 PM

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Appellate Court Case Title: Ronald Wastewater District v. Olympic View and Sewer District, et al.
Superior Court Case Number: 16-2-15331-3

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