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No. 97599-0

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

RONALD WASTEWATER DISTRICT and KING COUNTY,

Petitioners,

v.

OLYMPIC VIEW WATER AND SEWER DISTRICT, TOWN OF
WOODWAY, SNOHOMISH COUNTY, and CITY OF SHORELINE,

Respondents.

**SUPPLEMENTAL BRIEF OF
PETITIONER RONALD WASTEWATER DISTRICT**

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I. INTRODUCTION

In 1985, the King County Superior Court entered an order pursuant to RCW 36.94.410-.440 stating that the Point Wells Service Area¹ “shall be annexed to and become a part of” Ronald Wastewater District (“Ronald”),² resulting in the statutory annexation (addition) of territory to Ronald’s corporate boundary (the “1985 Annexation”). The 1985 Annexation also created an “overlap” between Ronald’s territory and the territory of the Olympic View Water & Sewer District (“Olympic View”).

The legislature anticipated and specifically provided for such “overlaps,” creating a first-in-time-to-serve framework to resolve any service disputes in overlapping areas—and for good reason. At the time of the 1985 Annexation, the Point Wells Service Area was part of Olympic View’s corporate boundary, but Olympic View had no interest in providing sewer service to the area. Only Ronald was willing to serve the Point Wells Service Area. The legislature adopted RCW 36.94.410-.440, which authorized superior courts to approve the transfer of such sewer systems and the annexation of such areas by sewer districts that, like Ronald, were willing to serve them.

The Court of Appeals erred when it misunderstood or second-guessed the wisdom of that legislative intent, and when it failed to distinguish the unique sewer district annexation process authorized by

¹ The Point Wells Service Area is depicted in the Appendix to Ronald’s Petition for Review (“Petition”) at pages A-215 through A-223.

² CP 1082–96.

RCW 36.94.410-.440 from other boundary change processes. It also erred by confusing the Superior Court’s subject matter jurisdiction with its statutory authority. For these reasons, which are explained below, this Court should reverse the Court of Appeals and affirm the trial court’s summary judgment order, which confirmed the Point Wells Service Area as part of Ronald’s corporate boundary.

II. ISSUES

1. Did the Superior Court have statutory authority to order the 1985 Annexation pursuant to RCW 36.94.410-.440 where the statutory framework provides express, independent authority for sewer district annexations and the plain language of RCW 36.94.420 authorized annexation of the “area served by the system,” with no express geographic restrictions?

2. Did the Superior Court have subject matter jurisdiction to order the 1985 Annexation where the “general category” of case created by RCW 36.94.410-.440 was a judicially-approved transfer and annexation process, with no statutory language expressing any particular jurisdictional intent?

III. STATEMENT OF THE CASE

To avoid repetition, Ronald adopts and incorporates the Statement of the Case from its Petition for Review and its Response Brief.³

³ Ronald also adopts and incorporates the facts recited in Ronald’s Motion for Reconsideration filed with Division I (the “Reconsideration Motion”) and the Statement of the Case in King County’s Supplemental Brief.

IV. ARGUMENT

A. The Superior Court had statutory authority to order the 1985 Annexation that was express and independent.

The Superior Court had express statutory authority to order the 1985 Annexation pursuant to RCW 36.94.410-.440. When the legislature adopted RCW 36.94.410-.440, it created a process by which the Superior Court is expressly empowered to order that a sewer transfer be accomplished in accordance with a transfer agreement between the transferring county and the receiving sewer district. As part of that process, the Superior Court is authorized to order that the “area served” be annexed to the district. No express language in RCW 36.94.410-.440 limits annexations to areas within a particular county, or to areas that had previously been legally annexed to the corporate boundary of the county’s sewer authority, or to areas outside the corporate boundaries of other sewer districts. Instead, RCW 36.94.420 simply states that “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.”⁴

This unusual language confirms the legislature’s intent to elevate practicality over formality—focusing on the *actual provision of service* rather than the mere establishment of corporate boundary. The legislature could have used language authorizing annexation of the “area within the corporate boundary” of the county’s sewer system, or annexation of its

⁴ RCW 36.94.420 (emphasis added).

“territory.” The legislature knew how to use that kind of language, which is found in other statutes, but it chose to use different language in RCW 36.94.420.⁵ The legislature’s decision to authorize annexation of the “area served by the system” was intentional, and it must be given meaning.⁶

The Superior Court’s authority to order the 1985 Annexation was independent. The authority granted to superior courts by RCW 36.94.410-.440 is independent from and supplemental to other statutory authority allowing sewer district annexations. In particular, it is independent from and supplemental to the withdrawal and annexation procedures in former chapters 56.24 and 56.28 RCW.⁷ RCW 36.94.430 explains that “[t]he provisions of RCW 36.94.410 and 36.94.420 provide an *alternative method* of accomplishing the transfer permitted by those sections.”⁸

⁵ For example, when the legislature wanted to limit the authority of a merged district in an overlapping area, the legislature referred specifically to an area “within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area.” See Substitute House Bill 352, 47th Legislature (1981), Laws of 1981, ch. 45 (“SHB 352”), § 7. Similarly, when the legislature wanted to limit the geographic area of transfers from districts to counties in 1975, it used language that specifically limited such transfers to a transfer from a district “to the county within which all of its territory lies.” See Engrossed Substitute Senate Bill 2737, Laws of 1975, 1st Ex. Sess., ch. 188 (“ESSB 2737”), § 7. See also RCW 35.13A.020(1) (authorizing assumption of a district “[w]henver all of the territory of a district is included within the corporate boundaries of a city”).

⁶ *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (holding that a “fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms”) (internal citations omitted).

⁷ See Opinion at 6, 7 n.10, 13, 13 n.16, 18–19, 19 n.21, 20, 20 n.22, 25 (citing former chapters 56.24 and 56.28 RCW).

⁸ RCW 36.94.430 (emphasis added). As explained in Section IV.B below, this express language is consistent with rules of construction that require courts to harmonize statutory frameworks like RCW 36.94.410-.440 with prior, related frameworks like former chapters 56.24 and 56.28 RCW.

Prior to the 1985 Annexation, KCSD #3 was contractually obligated to provide sewer service to the Point Wells Service Area in unincorporated Snohomish County, which included Standard Oil Company's property and the "Briggs" property.⁹ At the time, no other sewer district or any other entity was willing to serve that area.¹⁰ The "area" was being "served by" KCSD #3 within the meaning of RCW 36.94.420. In the sewer business, "area served" is an industry term that refers to areas where service is actually being provided or planned for the near future. Olympic View's own 2007 comprehensive sewer plan confirms that the entire Point Wells Service Area is (and has always been) "served by" Ronald—using the very same "served by" phrase the legislature used in RCW 36.94.420.¹¹ Accordingly, in the statutorily-authorized transfer agreement between King County and Ronald, the "area

⁹ CP 900-14 (Standard Oil Company agreements); CP 288 (recital in 1988 Briggs agreement stating that service commenced in 1972 "per agreement dated February 29, 1972"); CP 380 (Olympic View admission regarding 1972 Briggs agreement). Division I wrongly suggests that Ronald did not argue that the 1985 Annexation included the Briggs property. *See* Opinion at 11 n. 13 (citing map from Ronald's motion). Ronald included the map on page 3 of its motion (CP 1750) to illustrate the broader geographical context for the Point Wells Service Area. That map was not intended to depict the entire Point Wells Service Area, but it does include, in fact, include the Briggs property. Ronald's response brief also referred to the agreements with Standard Oil and "another property owner in Woodway" (i.e., Briggs), "whose properties collectively encompassed the Point Wells Service Area." CP 2113. Additionally, Ronald's motion referred to the legal description from the 1985 transfer agreement. CP 1756—57, 1767. As Division I acknowledged, that legal description included the Standard Oil and Briggs properties. *See* Opinion at 9. *See also* CP 1964—66 (survey map of Standard Oil property); CP 1968 (survey map of Briggs properties).

¹⁰ *See* Reconsideration Motion at 13—14 (citing audio recordings of Hearings before House Local Government Committee (January 17, 1984), available at: <https://www.digitalarchives.wa.gov/Record/View/5811CD17A140C4B17D327CEA2A0EE439> ("1/17/84 Audio")).

¹¹ CP 1448 (service area map from Olympic View's 2007 comprehensive sewer plan).

served” was appropriately defined to include the entire Point Wells Service Area.¹²

Division I erred when it accepted Olympic View’s argument that “area served” does not mean the entire area actually served and planned for future service, but instead means “only the area of the sewer system within the boundaries of the county making the transfer.”¹³ As explained below, Olympic View’s position disregards the clear statutory language and violates rules of statutory construction. Olympic View also relies on misguided policy concerns that have no place in statutory interpretation and are unfounded in any event.

B. Olympic View’s position violates rules of statutory construction.

Statutory construction begins with the statute’s “plain meaning,” which is discerned from “the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.”¹⁴ “[A]pparently conflicting statutes *must be reconciled* to give effect to each of them.”¹⁵

¹² See CP 1096 (legal description from 1985 transfer agreement).

¹³ See Opinion at 26–27; Brief of Appellant Olympic View at 24–34; Reply Brief of Appellant Olympic View at 19–30. See also Olympic View’s Answer at 14.

¹⁴ Opinion at 15 (citing *Lake*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010); *State v. Engel*, 166 Wn.2d 572, 579, 210 P.3d 1007 (2009)).

¹⁵ *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000) (emphasis added); *Tommy P. v. Bd. of Cty. Comm'rs of Spokane Cty.*, 97 Wn.2d 385, 391–92, 645 P.2d 697 (1982) (citing *State v. Fagalde*, 85 Wn.2d 730, 735, 539 P.2d 86 (1975)) (courts have a “duty” to “reconcile apparently conflicting statutes and to give effect to each of them, if this can be achieved without distortion of the language used”).

This Court can reconcile the transfer and annexation procedures in RCW 36.94.410-.440 with the withdrawal and annexation procedures in former chapters 56.24 and 56.28 RCW without distorting the statutory language—for example, by interpreting the authority in RCW 36.94.410-.440 as independent and supplemental. Olympic View and Division I did not even attempt such a reconciliation, prematurely declaring a “conflict” and modifying the statutory language in RCW 36.94.420 in an effort to resolve the “conflict.”¹⁶ That approach violates well-settled rules of construction.

Moreover, if an apparent conflict between two statutory provisions truly cannot be reconciled, then “the more specific and more recently enacted statute is preferred,”¹⁷ with the specific act “construed as an exception to, or qualification of, the general statute.”¹⁸ Here, RCW 36.94.410-.440 is more specific and more recently enacted. To the extent there was any irreconcilable conflict, RCW 36.94.410-.440 must be construed as an “exception” or “qualification.”¹⁹ That result is consistent with the doctrines of liberal construction and implied powers.²⁰

¹⁶ See Opinion at 24–26; Brief of Appellant Olympic View at 24– 34; Reply Brief of Appellant Olympic View at 19-30. See also Olympic View’s Answer at 16–17.

¹⁷ *Am. Legion Post #149 v. Washington State Dep’t of Health*, 164 Wn.2d 570, 585–86, 192 P.3d 306 (2008) (citing *Tunstall*, 141 Wn.2d at 210).

¹⁸ *Matter of Guardianship of Atkins*, 57 Wn. App. 771, 776, 790 P.2d 210 (1990) (citing *Wark v. Wash. Nat’l Guard*, 87 Wn.2d 864, 867, 557 P.2d 844 (1976); *Fifteen–O–One Fourth Ave. Ltd. P’ship v. Dept. of Rev.*, 49 Wn. App. 300, 303, 742 P.2d 747 (1987)).

¹⁹ *Id.*

²⁰ “Liberal construction requires that any statutory exceptions be narrowly confined.” *Dautel v. Heritage Home Ctr., Inc.*, 89 Wn. App. 148, 152 n.2, 948 P.2d 397 (1997) (citing *Mead Sch. Dist. No. 354 v. Mead Ed. Ass’n (MEA)*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975)). As explained in Section C below, the doctrines of liberal

Rather than applying the ordinary meaning of “area served,” Olympic View urges this Court to add geographically-qualifying words to the statute.²¹ This approach violates another rule of construction: a court “must not add words where the legislature has chosen not to include them.”²² Olympic View and Division I attempt to justify their modification of the statutory language by pointing to the canon of “absurd results,” which allows courts in limited circumstances to avoid a literal reading of a statute that produces “absurd results.”²³ But this case does not fall within the narrow range of circumstances where modification of statutory language is warranted,²⁴ and as explained in Section IV.C below, the 1985 Annexation was simply not an “absurd result.”

Olympic View also confuses and conflates distinct statutory terms. When the legislature uses different terms, courts presume it intended a different meaning.²⁵ The term “area served” is distinct from other terms like “territory” or “corporate boundary.” While the phrase “area served”

construction and implied powers apply here because of the proprietary nature of sewer service. The legislature also incorporated the rule of liberal construction into the relevant statutes. See RCW 36.94.910; RCW 57.02.030.

²¹ See Olympic View’s Answer at 13. See also Opinion at 21–27.

²² *State v. Arlene’s Flowers, Inc.*, 187 Wn.2d 804, 829, 389 P.3d 543 (2017), judgment vacated on other grounds in 138 S. Ct. 2671, 201 L. Ed. 2d 1067 (2018), *aff’d on remand* 193 Wn.2d 469, 441 P.3d 1203 (2019) (quoting *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) and citing *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)).

²³ See Opinion at 15–16 (invoking the “absurd results” canon and citing *Engel*, 166 Wn.2d at 579); *id.* at 24–26 (stating that “it would be unreasonable” to apply the plain meaning of RCW 36.94.420); Olympic View’s Answer at 9 n. 9

²⁴ See Ronald’s Petition at 17–21 (the absurd results cannon should be used “sparingly”) (citing *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 443 P.3d 1031, 1043 (2017) and related authorities).

²⁵ *Roggenkamp*, 153 Wn.2d at 625.

plainly refers to areas where service is actually being provided or planned for the future, “territory” and “corporate boundary” include areas where service is not being provided and no formal plans for service have been adopted.²⁶ Had the legislature intended to limit annexations to the “area served” that is outside “the corporate boundaries of another municipal corporation with sewer district powers” but “within the boundaries of the county making the transfer,”²⁷ it would have used that kind of express language—which is used elsewhere in the statutory framework.²⁸

Similarly, Olympic View conflates the “annexation” of new territory with a “transfer” of existing territory.²⁹ While the “annexation”

²⁶ As noted in the Opinion, RCW 36.93.090(4)(b) states that, for purposes of triggering BRB review for extensions of sewer service, the “service area” of a special purpose district includes “the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110.” See Opinion at 26 n. 24 (citing Laws of 1995, ch. 131, § 1, codified at RCW 36.93.090(4)(b)). Division I incorrectly analyzed RCW 36.93.090(4)(b) when it applied the rule of construction stating that, “where a law is amended and a material change is made in the wording, it is presumed that the legislature intended a change in the law.” See *id.* (citing *Guillen v. Pierce County*, 144 Wn.2d 696, 723, 31 P.3d 628, 34 P.3d 1218 (2001) and quoting *Home Indem. Co. v. McClellan Motors, Inc.*, 77 Wn.2d 1, 3, 459 P.2d 389 (1969), *rev’d in part on other grounds*, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003)). Here, the general presumption that the legislature intended a change is rebutted by the specific statutory provisions, legislative history, and record in this case (including Olympic View’s own sewer plan) confirming that “area served” was intended to mean the area actually served or planned for future service.

²⁷ See Opinion at 27.

²⁸ See, e.g., SHB 352, § 7 (referring to an area “within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area”); ESSB 2737, § 7 at CP 1797–1803 (referring to a transfer from a district “to the county within which all of its territory lies”).

²⁹ See Olympic View’s Answer at 10—11, 14. Division I also confused “annexation” with “transfer.” In Division I’s view, Ronald was seeking “an annexation of territory *from* Olympic [View]” that would require a “boundary adjustment *between* Ronald and Olympic [View],” triggering the statutory provisions that govern a “transfer” or “withdrawal” of territory from a sewer district. See Opinion at 8–9 n.12, 24, 27–31 (emphasis added).

of new territory to one district can result in an “overlap” with another district’s boundary, a “transfer” connotes a zero-sum transaction, in which the enlargement of one boundary necessarily results in the removal of territory from another boundary. Ronald’s “annexation” pursuant to RCW 36.94.420 did not involve any “transfer” or “withdrawal” of territory.³⁰

Olympic View also conflates distinct statutory language in RCW 36.94.410, which allows counties to transfer sewer systems to districts “*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” (emphasis added).³¹ Olympic View interprets “*in the same manner as*” to mean “*subject to the same geographical restrictions,*” but the ordinary meaning of “in the same manner as” is “following the same process,” not “subject to the same substantive restrictions.”³² More fundamentally, the geographic restriction in RCW 36.94.310, which refers to a “transfer” of a sewer system from a sewer district “to the county within which all of its territory lies,” had nothing to do with “annexation” of territory. RCW

³⁰ While RCW 36.94.410 refers to a “transfer” of the sewer system itself (i.e., the physical infrastructure and related assets and liabilities), RCW 36.94.420, the annexation provision, did not rely on a “transfer” of existing territory. Instead, RCW 36.94.420 allowed the creation of *new territory* to be added via “annexation” of the “area served by the system.” There was no “transfer” or “withdrawal.”

³¹ See Olympic View’s Answer at 13—14 (interpreting “in the same manner as” in RCW 36.94.410 to mean “limited to the same criteria”).

³² When a term has a well-accepted, ordinary meaning, a regular dictionary may be consulted to ascertain the term’s definition. *Tingey v. Haisch*, 159 Wn.2d 652, 658, 667152 P.3d 1020 (2007) (citing Webster’s Third New International Dictionary). Webster’s defines “manner” as “a mode of procedure or way of acting.” Webster’s Third New International Dictionary 13 (2002). See also *Szoboszlai v. Glessner*, 233 Kan. 475, 478–79, 664 P.2d 1327 (1983) (“It has generally been recognized that 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.”).

36.94.310-360 authorized “transfers” of sewer systems, but did not authorize “annexations” of territory, which are unique to RCW 36.94.410-440. Thus, Olympic View asks the Court to import and re-word the geographic restriction on district-to-county “transfers” from RCW 36.94.310 to state a mirror-image geographic restriction on “annexations.” Once again, Olympic View seeks to modify the plain language, violating rules of statutory construction.

This Court should consider “[t]he entire sequence of statutes” relating to sewer district annexations when ascertaining the intent behind those statutes,³³ and it may not render any statutory language meaningless.³⁴ Yet Olympic View renders meaningless a key statutory exception confirming that annexations pursuant to RCW 36.94.420 are not subject to the general statutory prohibition on overlapping sewer district boundaries in former RCW 56.04.070 (1985).³⁵ Section 2 of Senate Bill 1232 (“SB 1232”) clearly confirmed that the general prohibition on overlapping sewer district boundaries does not apply to annexations pursuant to RCW 36.94.420.³⁶ Olympic View also renders meaningless the entire sequence of prior and subsequent statutes recognizing that sewer

³³ *Little v. Little*, 96 Wn.2d 183, 189, 634 P.2d 498 (1981) (reviewing cases holding that “the entire sequence of all enactments should be examined”) (citing *Connick v. Chehalis*, 53 Wn.2d 288, 333 P.2d 647 (1958));

State ex rel. Chesterley v. Superior Court, 19 Wn.2d 791, 144 P.2d 916 (1944); *The Longview Co. v. Lynn*, 6 Wn.2d 507, 108 P.2d 365 (1940)).

³⁴ See *Arlene’s Flowers, Inc.*, 187 Wn.2d at 826 (courts must give effect to *all* of the language in an ordinance, rendering no portion meaningless or superfluous).

³⁵ See Opinion at 17 (citing Laws of 1941, ch. 210, § 5) (“former RCW 56.04.070”).

³⁶ See Reconsideration Motion at 15-16 (citing SHB 1232, Laws of 1985, ch. 141, and legislative history materials).

district boundaries may overlap, and that any conflicts in overlapping areas will be resolved by the first-in-time-to-serve framework created by the legislature.³⁷ Those statutes confirm the legislature’s intent to reward the first district to actually provide sewer service and to adopt formal plans for future service, not the first to merely establish corporate boundary.

C. Olympic View relies on misguided policy concerns.

To justify its addition of geographically-limiting words to RCW 36.94.420, Olympic View relies on misguided policy concerns, echoing Division I’s invocation of the doctrine of “absurd results.”³⁸ That doctrine does not apply, however, “when it merely appears that a different policy choice might have been preferable,” and Division I should not have added words to RCW 36.94.420 based on apparent policy preferences.³⁹ As explained below, Olympic View’s policy concerns are also unfounded,

³⁷ See, e.g., former RCW 56.04.070 (excepting overlaps created by annexations pursuant to RCW 36.94.420 from the general prohibition on the creation of overlapping sewer district boundaries); RCW 57.08.007 (“Except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district.”); RCW 57.08.065(2) (“Where any two or more districts include the same territory as of July 1, 1997, none of the *overlapping districts* may provide any service that was made available by any of the other districts prior to July 1, 1997, within the *overlapping territory* without the consent by resolution of the board of commissioners of the other district or districts.”) (emphasis added). See also *Little*, 96 Wn.2d at 183 (“. . . not only prior but subsequent statutes may be considered . . .”) (citing *The Longview Co.*, 6 Wn.2d at 521).

³⁸ See Olympic View’s Answer at 9—22.

³⁹ See Ronald’s Petition at 23 (citing *State v. Granath*, 200 Wn. App. 26, 38, 401 P.3d 405, *aff’d*, 190 Wn.2d 548, 415 P.3d 1179 (2018) (quoting *In re Dependency of D.L.B.*, 186 Wn.2d 103, 119, 376 P.3d 1099 (2016)). See also *Associated Press v. Washington State Legislature*, ___ Wn.2d ___, 454 P.3d 93, 101 (2019) (holding that courts “should resist the temptation to rewrite an unambiguous statute to suit our notions of what is good public policy”) (citing *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999) (quoting *State v. Enloe*, 47 Wn. App. 165, 170, 734 P.2d 520 (1987)).

and the 1985 Annexation was not an “absurd result” at all. On the contrary, it was exactly the type of annexation the legislature intended to authorize when it enacted RCW 36.94.420.

Olympic View repeatedly claims that Washington has adopted an absolute “public policy barring overlapping service areas for special purpose units of government,” with no exceptions.⁴⁰ Olympic View relies on *Alderwood Water District v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 382 P.2d 639 (1963) (“*Alderwood*”) and *Skagit County Public Hospital District No. 304 v. Skagit County Public Hospital District No. 1*, 177 Wn.2d 718, 305 P.3d 1079 (2013) (“*Skagit County*”),⁴¹ but those cases support Ronald’s position, not Olympic View’s. As Olympic View admits, the provision of sewer service is a proprietary function, not a governmental function.⁴² Accordingly, the common law “general rule” discussed in *Alderwood* and *Skagit County*, which generally prohibits two municipal corporations from operating in the same territory, simply does not apply to the 1985 Annexation.⁴³ This Court has consistently

⁴⁰ Olympic View’s Answer at 16; *see also id.* at 15, 20, 26.

⁴¹ *See id.* at 16 (citing *Alderwood*, 62 Wn.2d at 319; *Skagit Cty.*, 177 Wn.2d at 718; and 2005 Op. Att’y Gen. No. 5).

⁴² *Smith v. Spokane Cty.*, 89 Wn. App. 340, 362, 948 P.2d 1301 (1997) (“Furnishing sewer services is a proprietary function.”) (citing *City of Algona v. City of Pacific*, 35 Wn. App. 517, 520, 667 P.2d 1124 (1983)); Brief of Appellant Olympic View at 25, 30–31 (same); Reply Brief of Appellant Olympic View at 21 (same).

⁴³ *Skagit Cty.*, 177 Wn.2d at 723–28 (citing *Alderwood*, 62 Wn.2d at 319; *Pub. Util. Dist. No. 1 of Pend Oreille County v. Town of Newport*, 38 Wn.2d 221, 227, 228 P.2d 766 (1951). *See also Wash. State Hous. Fin. Comm’n v. Nat’l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 713, 445 P.3d 533 (2019) (citing *Skagit Cty.* and *Alderwood* and holding that “[t]aken together, these cases support the proposition that a party that has been delegated the authority to act *in a governmental capacity* in a particular area has an interest against interference from others who purport to exercise similar *governmental authority* without authorization”) (emphasis added).

recognized that the rule “applies only when the corporations exercise governmental functions as opposed to proprietary functions.”⁴⁴ Here, because sewer service is a proprietary function, Division I should have applied the doctrines of liberal construction and implied powers rather than the general common law rule from *Alderwood* and *Skagit County*.⁴⁵

Furthermore, this Court in *Alderwood* recognized that the “so-called general rule” prohibiting overlapping boundaries has itself been “virtually emasculated by the case law of this state.”⁴⁶ Rather than operating as a “rule,” it now serves “as a touchstone in the sense that it expresses a public policy against duplication of public functions, and that such duplication is *normally* not permissible *unless it is provided for in some manner by statute*.”⁴⁷ The purpose of the “general rule,” then, is merely to “alert courts, in situations akin to that of the instant case, to the necessity of closely examining *in toto* statutory provisions conferring authority upon the potentially competing municipal corporations.”⁴⁸ As explained above, the relevant statutory provisions expressly except sewer district annexations pursuant to RCW 36.94.420 from the general statutory

⁴⁴ *Skagit Cty.*, 177 Wn. 2d at 728 (citing *Pub. Util. Dist. No. 1 of Pend Oreille Cty.*, 38 Wn.2d at 227). This limitation of the general rule “is consistent with the tenet that when the legislature empowers a municipal corporation to engage in a business, the corporation may exercise its business powers much in the same way as a private entity.” *Id.* (citing *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 693–94, 743 P.2d 793 (1987); *Pub. Util. Dist. No. 1 of Pend Oreille Cty.*, 38 Wn.2d at 227–28)). See also 2005 Op. Att’y Gen. No. 5 (recognizing that “the rule is not absolute”).

⁴⁵ *City of Tacoma*, 108 Wn.2d at 693–95.

⁴⁶ *Alderwood*, 62 Wn.2d at 321.

⁴⁷ *Id.* (emphasis added).

⁴⁸ *Id.*

prohibition on overlapping boundaries.⁴⁹ Because the water district statute at issue in *Alderwood* contained no such exception, this Court’s substantive analysis of water district annexation authority is inapposite.⁵⁰ The Court’s emphasis on the need to closely examine all related statutory provisions, however, is apt.

Olympic View also raises policy concerns about process issues, alleging it “never consented” to the 1985 Annexation, but Olympic View admits that the legislature enjoys “plenary power” over annexations.⁵¹ As a result of this “plenary power,” the legislature was able to authorize the 1985 Annexation without Olympic View’s participation or consent,⁵² and there is no general statute or other authority requiring the involvement or consent of other districts when annexations occur. Further, as the legislative history shows, the legislature did not share Olympic View’s policy concerns about the annexation process authorized in RCW 36.94.410-440. On the contrary, in committee hearings on Substitute House Bill 1127(“SHB 1127”), the legislature discussed potential

⁴⁹ See Section IV.B, *supra* (citing SB 1232, §2).

⁵⁰ Division I has previously recognized that *Alderwood* “does not control” in situations where the relevant statute contains no “express or implied statutory prohibition against overlapping authority.” *King Cty. Water Dist. No. 75 v. Port of Seattle*, 63 Wn. App. 777, 787, 822 P.2d 331 (1992). It should have done the same here.

⁵¹ See Olympic View’s Answer at 3, 7, 10, 11, 11 n. 7, 18, 18 n. 12, 19, 24 n. 17 (alleging process issues regarding notice and consent); *id.* at 19 (citing *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn. 2d 791, 813, 83 P.3d 419, (2004) (legislature has plenary power over annexations)). Division I echoed Olympic View’s process concerns, stating that “[t]he result Ronald seeks is an annexation of territory from Olympic, without Olympic’s involvement, let alone consent.” See Opinion at 24.

⁵² See Olympic View’s Answer at 19 (quoting *Grant Cty. Fire Prot. Dist. No. 5*, 150 Wn.2d at 813).

involvement by other districts⁵³ and heard testimony confirming that, since King County had conducted an exhaustive survey of districts to determine which were interested in serving the areas in question, there was little potential for conflict.⁵⁴ Division I echoed Olympic View’s policy concerns about consent, citing the “consent” language in former RCW 56.08.060 (1981), but that provision requires consent for the *initiation of service* in an overlapping area, not for a boundary change.⁵⁵

Olympic View complains that the Boundary Review Board (“BRB”) never conducted any review before the 1985 Annexation, but the legislature expressly exempted annexations pursuant to RCW 36.94.420 from the BRB review process.⁵⁶ Because RCW 36.94.420 is exempt from BRB review and is supplemental to the annexation authority granted in former title 56 RCW, there is no merit to Olympic View’s suggestion that this Court should apply former RCW 56.02.060-.070, which required review either by the BRB or the local county legislative authority, to the 1985 Annexation.⁵⁷ The legislature expressly limited the review requirements of former RCW 56.02.060-.070 to annexations “under [former] chapter 56.24

⁵³ See Reconsideration Motion at 13-14 (citing SHB 1127, laws of 1984, ch. 147, and legislative history materials)

⁵⁴ See *id.*

⁵⁵ See Opinion at 18-19 (quoting former RCW 56.08.060 (1981), Laws of 1981, ch. 45, § 4). The “consent” provision in former RCW 56.08.060 is now codified in RCW 57.08.044. A related “consent” provision that specifically refers to “overlapping districts,” quoted in footnote 37 above, was adopted in 1996 and is now codified in RCW 57.08.065(2).

⁵⁶ SHB 1127, § 5 (codified at RCW 36.93.105(1) (“The following actions shall not be subject to potential review by a boundary review board: (1) Annexations of territory to a water-sewer district pursuant to RCW 36.94.410 through 36.94.440”)).

⁵⁷ See Olympic View’s Answer at 11, 15, 19 (citing former RCW 56.02.060-.070 and Opinion at 20–21).

RCW,” so those requirements do not apply to annexations under RCW 36.94.420.⁵⁸ Olympic View persuaded Division I that it was “unreasonable” for the legislature to have fully exempted such annexations from BRB review, based on the notion that the legislature should have anticipated “boundary issues with a sewer district not a party to the county transfer.”⁵⁹ But the legislature *did* anticipate such boundary issues, and the legislative history of SHB 1127 confirms that the legislature saw the Superior Court review process as a perfectly adequate substitute for BRB review.⁶⁰

Finally, Olympic View raises additional policy concerns about the fact that the Point Wells Service Area was outside King County’s boundaries, claiming that King County “could not transfer what it did not have.”⁶¹ As explained above, there was no need for King County to

⁵⁸ See Opinion at 20—21 (quoting former RCW 56.02.060-.070).

⁵⁹ See *id* at 24—26; Brief of Appellant Olympic View at 33. See also Olympic View’s Answer at 18 n.16 (citing SHB 1127, § 5). Division I’s policy concern was based in part on a misunderstanding of the BRB process. Division I stated that, “[i]f the legislature intended for the area being annexed by a sewer district to be solely within the boundaries of the county making the transfer, then no boundary issues with other districts are implicated” and therefore “[r]eview would serve no purpose.” Opinion at 25. This statement assumes the only purpose for BRB review is to adjudicate disputes between special purpose districts. On the contrary, the statutory framework allows BRB review not only for districts but also for other types of interested parties, such as registered voters and landowners in the area, as well as “[a]ny governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located.” See RCW 36.93.100(2) — (4). Clearly, the absence of a dispute between two districts does not automatically mean review would not “serve no purpose.” Division I erred when it relied on that flawed reading of the BRB process to justify its narrowing of the BRB exemption.

⁶⁰ See Reconsideration Motion at 14 (citing 1/17/84 Audio, *supra* n. 10).

⁶¹ See Olympic View’s Answer at 11, 14 (quoting Opinion at 30). See also Opinion at 24 (noting that “the area to be annexed was not within King County’s boundaries” and stating that “[i]t would be unreasonable to read the statute as authorizing

“transfer” any existing territory to Ronald.⁶² Additionally, the legislature had authorized multi-county districts by the time of the 1985 Annexation.⁶³ The fact that the annexation crossed the county line raises no policy concerns.

D. The Superior Court had subject matter jurisdiction.

Subject matter jurisdiction means the “general category” of case, without regard to the facts.⁶⁴ Here, the “general category” was a judicially-approved sewer transfer and annexation process, so the Superior Court had subject matter jurisdiction over such transfer and annexation processes *generally*, not over annexations *limited to particular geographic areas*.

When interpreting a statutory grant of subject matter jurisdiction, courts look for unequivocal legislative language demonstrating specific “jurisdictional intent,” like the clearly jurisdictional language in the Land Use Petition Act (LUPA), Chapter 36.70C RCW, stating that “[a] land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served.”⁶⁵ There is no such

King County to transfer territory, within another special purpose district, within another county, as part of its divestment of its own sewer system.”).

⁶² See Section IV.B, *supra*.

⁶³ See Ronald’s Corrected Response Brief at 3-5 (citing Engrossed Substitute Senate Bill 542 (1971) (bill text at CP 1780—91), Senate Bill 2945 (1975) (bill text at CP 1792-95), and House Bill 1145 (1982) (bill text at CP 1812—36; legislative history at CP 1837—61)).

⁶⁴ *Dougherty v. Dept. of Labor & Industries*, 150 Wn.2d 310, 317, 76 P.3d 1183 (2003).

⁶⁵ RCW 36.70C.040(2); *Weyerhaeuser Co. v. Bradshaw*, 82 Wn. App. 277, 283, 918 P.2d 933, 936 (1996) (one-year limitation period in statute was not jurisdictional because “[t]he plain words do not evince any jurisdictional intent”); *Keep Watson Cutoff Rural v. Kittitas Cty.*, 145 Wn. App. 31, 38, 184 P.3d 1278 (2008) (“filing deadlines and

“jurisdictional intent” in any of the statutory provisions that Olympic View alleges were violated. Instead, like the BRB’s jurisdiction, the Superior Court’s jurisdiction under RCW 36.94.410-.440 arises from the initial act of filing. In *Leer v. Whatcom County Boundary Review Board*, 91 Wn. App. 117, 120–23, 957 P.2d 251 (1998), Division I held that the BRB’s jurisdiction “arises from the filing of a notice of intention under RCW 36.93.090,” and that once a notice of intention was filed, “no further action was required for the Board to obtain jurisdiction over the matter.” The same is true here: once a petition is filed, the Superior Court has jurisdiction, and no further action is required.⁶⁶

Olympic View confuses subject matter jurisdiction with the authority to rule in a particular way.⁶⁷ It also ignores case law emphasizing the importance of finality in annexation decisions.⁶⁸

service on the proper parties are jurisdictional requirements” under LUPA, but statutory elements of LUPA petition are not jurisdictional).

⁶⁶ See *Leer*, 91 Wn. App. at 120–22; RCW 36.94.410 (incorporating the judicial review process from RCW 36.94.310–.340); RCW 36.94.340 (stating that “proceedings may be initiated in the superior court for that county by the filing of a petition”).

⁶⁷ See Petition at 15-17 (citing *Marley v. Dept. of Labor & Industries*, 125 Wn.2d 533, 541–43, 886 P.2d 189 (1994), *Housing Authority of City of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900 (2011) (courts should not confuse subject matter jurisdiction with statutory authority). Olympic View sidesteps this distinction and cites *Banowsky v. Guy Backstrom, DC*, 193 Wn.2d 724, 445 P.3d 543 (2019), but *Banowsky* does not help Olympic View. See Olympic View’s Answer at 20. In *Banowsky*, the parties agreed that the district court lacked jurisdiction over the case, and the majority of this Court “assume[d] without deciding that [the parties were] correct,” while other members of the Court concurred and dissented in separate opinions affirmatively holding that the district court *had* jurisdiction and *lacked* jurisdiction. 193 Wn.2d at 732–52. The statute at issue in *Banowsky* included language arguably demonstrating jurisdictional intent, stating that “the district court shall have jurisdiction and cognizance of the following civil actions and proceedings.” *Id.* (quoting RCW 3.66.030). Here, there is no jurisdictional language in RCW 36.94.410-.440 except perhaps the filing requirement, which was met.

V. CONCLUSION

For the foregoing reasons, Ronald respectfully asks the Court to reverse the Court of Appeals and affirm the trial court.

Respectfully submitted this 3rd day of February, 2020.

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⁶⁸ There is no merit to the two additional issues raised “conditionally” by Olympic View. *See* Olympic View’s Answer at 7 n. 7. First, RCW 36.94.410-.440 is not unconstitutional “special legislation,” and there is no basis for Olympic View’s “as-applied” theory of special legislation. *See* King County’s Answer at 22–23; Ronald’s Corrected Response Brief at 46 (citing *Island Cty. v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998); *City of Seattle v. State*, 103 Wn.2d 663, 667, 677, 694 P.2d 641 (1985) (legislation violates art. II, § 28 only when, on its face, it creates classifications for which there is no “rational basis,” such as population-based classifications that exclude all but a single city or county). Second, now that Olympic View concedes the legislature’s plenary authority over sewer district boundary changes, it has discredited its own due process argument. *See* Olympic View’s Answer at 19 (citing *Grant Cty. Fire Prot. Dist. No. 5*, 150 Wn. 2d at 813); Ronald’s Corrected Response Brief at 22-23 (because of the plenary nature of the legislature’s authority, constitutional due process requirements are satisfied “as long as the boundaries were set . . . in accordance with the pertinent statutes”) (citing *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 574, 229 P.3d 761, 770–71 (2010)0) and quoting *Port of Tacoma v. Parosa*, 52 Wn.2d 181, 193, 324 P.2d 438 (1958)).

CERTIFICATE OF SERVICE

I certify that I caused a copy of Respondent Imperium Terminal Services, LLC.'s Supplemental Brief to be served on all parties or their counsel of record on the date below as indicated.

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3rd day of February, at Seattle, WA.

s/ I'sha Willis

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