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No. 97599-0

No. ~~94637~~

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, a Washington municipal corporation; CITY OF SHORELINE,
a Washington municipal corporation,

Defendants.

REPLY BRIEF OF OLYMPIC VIEW
WATER & SEWER DISTRICT

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A. INTRODUCTION

Ronald Wastewater District (“Ronald”), the City of Shoreline (“Shoreline”) and King County (the “King County Plaintiffs” or “KCPs”) each filed a separate brief responding the opening brief of Olympic View Water & Wastewater District (“Olympic View”) and the brief of the Town of Woodway (“Woodway”). Olympic View submits this brief in reply.¹

Nothing in the KCPs’ briefs should dissuade this Court from applying traditional common law and statutory principles pertaining to municipal corporations and ruling in favor of Olympic View. Ronald/Shoreline simply have no right to serve customers in Snohomish County.

B. STATEMENT OF THE CASE

Amid the welter of legal claims and distortions of the record made in the KCPs’ briefs are key concessions by their failure to respond to the SCDs’ opening briefs. They *concede* that this case involves the future of utility services in southwestern Snohomish County where major developments are planned in Point Wells and within Woodway. They *concede* that if the KCPs prevail and Shoreline assumes Ronald in

¹ Olympic View, Woodway, and Snohomish County are collectively referred to as the “Snohomish County Defendants” or “SCDs.”

Snohomish County,² thousands of future County residents will unnecessarily pay millions of dollars more in sewer hook-up fees and monthly charges for the exact same sewer service.³

They *concede* that Ronald is not really a *bona fide* party with serious interests here; it is essentially a legal fiction⁴ intertwined with Shoreline with no employees or operational control of the sewer system. Its Commissioners have agreed to charge ratepayers in order to pay Shoreline almost a million dollars a year in franchise fees that would be unnecessary if Shoreline's assumption was simply finalized.⁵ That delay is a *concession* that *Ronald* will not serve future customers in Point Wells despite its claims that it has the exclusive right to serve them.

² Assumption means that a city takes over the provision of utility services from a special purpose government, putting that government out of business. See RCW 35.13A.

³ The sewage will still be treated at Edmonds' treatment plant but sewage will be pumped in a circuitous fashion with needless infrastructure and cost. CP 536-38, 3404-05.

⁴ Both Olympic View and Woodway below asserted that Ronald was so dominated by Shoreline that it was Shoreline's *alter ego*. CP 154, 397-401. The trial court never reached those issues. Since the time of the summary judgment, Ronald/Shoreline have entered into the referenced agreement that removes all doubt.

⁵ <http://www.shorelinewa.gov/services/search?q=Ronald%20wastewater;>
<http://www.shorelinewa.gov/government/council-meetings;> <http://ronaldwastewater.org/boardminutes.html>.

They *concede* that all of the arguments relating to exclusive rights to serve the disputed area apply only to special purpose districts under Title 57, not to a city like Shoreline.

They also *concede* that Shoreline's ultimate goal is to annex Point Wells, a part of Snohomish County, through Ronald, contrary to decades of Snohomish County GMA planning. Under that planning, the disputed area was slated for annexation by Woodway. Shoreline has never planned with Snohomish County entities, nor has it entered into an interlocal agreement with Snohomish County required to annex the affected area. CP 3406-07.

They *concede* that the Washington State Boundary Review Board for Snohomish County ("BRB") has twice rejected Shoreline's intention to assume Ronald's alleged service area in Snohomish County. Shoreline br. at 9.⁶

Finally, the KCPs concede that the only notice of the proposed annexation decades ago to the SCDs was a single classified ad in a King County newspaper, an ad that did not even mention the intent to annex.

⁶ Thus, a finding that the Transfer Order is not binding on Olympic View and Woodway, and that Ronald did not annex territory in Snohomish County would put an end to Shoreline's attempt to claim a service area in Snohomish County. However, as is *conceded*, since the BRB's decision is based upon the merits of whether the assumption should be allowed pursuant to the statutory criteria under RCW 36.93, *et seq.*, as considered in King County Superior Court Cause No. 17-2-20821-3 SEA, a ruling in favor of the KCPs would not resolve the controversy.

That hardly constituted “notice” to the SCDs sufficient to allow them to protect their vital interests.

In addition to the foregoing concessions, there is no real factual dispute about *material* facts as to what transpired. Olympic View here corrects the factual misstatements regarding the record presented to the court by the KCPs.

The following facts are undisputed:

- The entirety of the area claimed to be annexed is located within the corporate boundaries of Olympic View and was at the time of the Transfer Order. These areas were within Olympic View since the 1940s. Olympic View began providing water to Point Wells in the 1940s and has utility easements throughout the area. Olympic View was authorized to provide sewer service in the 1960s. Woodway operated its own sewer system within the Town until 2004 when it was conveyed to Olympic View. Woodway has given notice it will assume Olympic View in the future. The Briggs subdivision was always in Woodway. Woodway has now annexed the upper bluff of Point Wells.
- Ronald (also known in some of the documents as the Shoreline Wastewater District) was exclusively located in King County, with its northern boundary the King-Snohomish County line. It did not operate a sewer system in the northwestern part of King County. Rather, the sewer system located there known as the Richmond Beach Sewer System (“RBSS”) was initially operated by King County as a Sewerage District under Title 85, known as King County Sewerage District #3 (“KCSD#3”).⁷
- In the early 1970s, King County allowed two Snohomish County property owners (Standard Oil or Chevron and Daniel Briggs) to obtain sewer service by contract, connecting their

⁷ The legal status of KCSD #3 is significant because it never had any specific statutory rights to claim an exclusive right to serve.

properties to the RBSS. Such contracts are developer extension agreements where the property owner funds and builds the improvements and turns them over to the District. The agreement with Chevron for the construction of a lift station (now known as Lift Station #13) and a small amount of piping to connect to the RBSS was signed in September 1970. CP 675-76. KCSD also entered into an agreement with Chevron for an easement for the lift station to allow maintenance. CP 694. The agreement was “personal to the District” and could not be transferred without Chevron’s consent. CP 695.

- In 1972, Daniel Briggs entered into a contract with KCSD #3 for service to one residence which was then connected to Lift Station 13. CP 708. That situation remained in place for almost 15 more years.
- The constructed improvements for Lift Station #13 and the line to the Briggs residence were immediately adjacent to the County line. None of the constructed improvements had the capacity to serve the entirety of Point Wells. Service was limited to Chevron’s plant and the Briggs lot. There was no contractual duty to serve more than was these two private parties developed. KCSD #3 held no franchises in Snohomish County for any piping in the public right of way and only obtained the limited easement for the lift station on private property. CP 767. Ronald represented in 1995 that Lift Station #13 could only serve the Chevron plant and Briggs. CP 767.⁸
- In the mid-1980s King County wanted to get out of residential sewer service and focus on treatment. It sought to transfer the sewer systems it then operated. Although it was not necessary for KCSD #3, it secured passage of legislation that ultimately resulted in the Transfer Order at issue here.
- King County dissolved KCSD #3 and transferred its functions directly to King County government and then operated it under the authority of RCW 36.94. In doing so, King County

⁸ The significance of these undisputed facts is that the “area served” by KCSD #3 was the Chevron plant and Briggs as of the date of the Transfer Order.

prepared a plan for the RBSS. It described the District as “bordered on the north by Snohomish County.” CP 659, 661, 694. It also provided a map showing that KCSD #3 ended at the County line. CP 662. Moreover, the plans stated that “The service area of the system is within the local service area established by the King County Sewerage General Plan as adopted by County Ordinance 4035 on January 15, 1979.” CP 663. That ordinance only created local service areas in King County. <https://aqua.kingcounty.gov/council/clerk/OldOrdsMotions/Ordinance%2004035.pdf>. King County from then until the present never stated Point Wells was located within the Ronald service area, but rather was in Olympic View’s service area. CP 3406.

- King County then determined to transfer RBSS to Ronald, but before any transfer could occur, under the legislation referenced *supra*, a public hearing had to be held, ratepayers of the system had to be given specific notice of the hearing, and the notice of the hearing had to be published. That legislative requirement was not sufficient for the King County Council. It directed the Executive to give specific notice to all property owners in the area to be transferred on the divestment action and public hearing on the divestment ordinances. The Executive said he would do so. CP 683.
- The notice of the public hearing was published once in a classified ad in the *Seattle Times* on August 21, 1985. The notice says *nothing* about annexation generally or the transfer of Snohomish County service to Ronald. CP 680-81. King County departments and Ronald received the notice, but not the SCDs or any other Snohomish County governments.
- All the SCDs were property owners in the area to be transferred. Olympic View had utility easements. Snohomish County had a right-of-way where the pump station was located with sewer pipes in it; this is why Ronald later sought a franchise, that was granted by Snohomish County but could not be transferred without its permission. CP 767. Woodway had utility easements and a right-of-way. Even Chevron, whose permission was sought to transfer the easement, was not specifically told its property was to be annexed by Ronald. CP

693, even though this permission was sought prior to the public hearing and passage of Ordinance 7370.

- The King County Council conducted a public hearing and then approved Ordinance 7370 transferring RBSS to Ronald. In accordance with the statute that required the public hearing to determine if the transfer was in the “public interest,” the ordinance declared the “transfer” “is in the public interest and conducive to the public health, safety, welfare, and convenience,” evidencing an exercise of police powers. CP 677. The ordinance then authorized the Executive to petition the superior court for an order approving the Transfer agreement. The Executive did.
- The court ordered publication of one classified ad as to the time and place of the court hearing on the Transfer Agreement. There is no evidence this one ad mentioned anything about annexation.
- The only parties to the lawsuit were Ronald and King County. It was entirely collusive. The King County Executive told the Council as such. “As the agreements have been worked out with the Prosecuting Attorney’s Office, water and sewer district attorneys, and several bond counsels, we are confident that Superior Court approval will be given.” CP 683.⁹
- The Transfer Agreement presented to the Superior Court contained an addendum A that included the entirety of Point Wells and the Briggs property as the “area served.”

Apart from the foregoing, the KCPs play fast and loose with the record. For example, Ronald claims Olympic View “consented” to KCSD #3 service within its service area, and thus is foreclosed from any challenge now. Ronald br. at 26. There was *never* a clear request by

⁹ There was little likelihood there was any meaningful hearing or any disclosure that land in Snohomish County was being annexed in such an *ex parte* hearing.

KCSD #3 to Olympic View to serve an area in Point Wells permanently. It is *undisputed* that the referenced request “to letting the Department of Public Works, King County, to serve the lift station located approximately 180 feet north of the King County line on Richmond Beach Drive” was made by the *Seattle Water Department*, not KCSD #3 or King County. CP 912.¹⁰ The Olympic View response was not a resolution consenting to permanent service, but only for maintenance, and Olympic View noted the lift station was located “within our service area.” *Id.*¹¹ Olympic View did not consent to Ronald’s permanent service within its territory.¹²

Ronald/King County assert that they made substantial investments in infrastructure to serve Point Wells and engaged in serious planning to provide expanded service there. Ronald br. at 14-16; King County br. at

¹⁰ Why King County had this request made by the Seattle Water Department is unknown, but Olympic View is also a water district getting water from Seattle.

¹¹ Ronald also claims that the reference “within our service area cannot mean sewer because Olympic View was only a water district at the time.” Ronald br. at 10 n.31. That is wrong. Yet Olympic View was authorized to provide sewer service as of that date and did. CP 535.

¹² Under these circumstances to say Olympic View consented to another government providing permanent, competing service within a huge section of its territory is untenable. Equally untenable are the efforts of Ronald/Shoreline to cast aspersions on the ethics and integrity of the undersigned for the representation of Ronald when its elected commissioners challenged the validity of the assumption agreement with Shoreline and whether a public vote was required. Ronald br. at 19. Ronald’s counsel concedes the issue was never raised below, nor has it even been raised in years of litigation in this and other proceedings. This is but an unsupported red herring this Court can disregard.

4-5. However, KCSD #3 never made any infrastructure investment in the area. The property owners, Chevron and Briggs,¹³ did.¹⁴

Ronald notes an upgrade to Lift Station #13 in 1995, but it never put any of its own money into the project. That upgrade was funded by the State's Public Works Trust Fund and any repayment was completed years ago.¹⁵

Similarly, the claim by King County that it made substantial infrastructure investments to serve the area through Ronald has no factual basis. Rather, the County's lack of capacity to serve the area was

¹³ The development of the Briggs subdivision is discussed in more detail *infra*.

¹⁴ That is how the situation remains to this day, with two limited exceptions. King County hooked up one more connection in Point Wells bringing the total number of Ronald customers in Snohomish County to six. CP 3343-44. Because the infrastructure has functionally not changed since the 1970s, it is entirely possible today to delineate what was the "area served" by KCSD #3/King County at the time of the Transfer Order. CP 3344.

¹⁵ Its application for that funding is telling. At the time of the Transfer Order, Lift Station #13 was built only to serve the Chevron plant. CP 788. Ronald stated: "Lift Station #13 is located outside the District boundaries in Snohomish County." CP 792. It stated that the proposed improvement was commensurate with the countywide planning policies for King County, not Snohomish County. CP 793. Ronald further represented the upgrade was not to serve future customers in Point Wells, but to serve the "current population" which was in Shoreline, and there was a moratorium in place for new hook-ups. CP 788-92. Most significantly, Ronald stated that "If Ronald Sewer District is to provide service to the area in Snohomish County not presently service by #13 an agreement would have to be reached among Ronald, Metro, Woodway and any other affected municipalities." CP 795. Ronald never obtained such an agreement, yet it now claims that the SCDs somehow "changed position" to challenge its annexation of territory in Snohomish County, a position it never asserted for two decades after the Transfer Order in numerous transactions.

documented by that County's own 2014 needs assessment study.¹⁶ The report and modeling document there noted capacity limitations in the Richmond Beach lift station and the conveyance facilities (pipes carrying the sewage to Edmonds). CP 2889. Instead of identifying any investments actually made, the report stated that improvements would be made in the future "as development occurs." CP 6543.

Ronald's most egregious distortion of the factual record is its claim that its statements and conduct for decades that it never annexed any territory in Snohomish County could be attributed to a "loss of institutional memory." Ronald br. at 16 n.60. That is disingenuous where Ronald repeatedly stated that it had no territory in Snohomish County before and immediately after the Transfer Order was entered, as will be described below.

In 1968, Ronald entered into a contract with Olympic View, known as a "wheeling agreement" (that continues to this day), in which Ronald transferred to Olympic View sewer infrastructure it built north of the County line in Olympic View's territory. The contract states in relevant part:

¹⁶ King County also claims it had the right to contract outside King County with private parties for sewer service, quoting RCW 36.94.190, but specifically deleting the portion of the statute that limits contracting outside the county *to cities*. King County br. at 5.

Whereas, it is in the best interest of both Ronald and Olympic View that all property within Olympic View be served by Olympic View.

CP 2226. As a result of the agreement, Olympic View was to provide exclusive service within its territory, pay the sewage disposal rates, and provide an accounting, making Olympic View a ratepayer. CP 2229. The agreement also stated that although Ronald was serving an area north of the County line between Highway 99 and Greenwood, Olympic View had annexed the area so “It is proper for the District to convey said sewer lines to the said Olympic View Water District.” In 1970, Ronald entered into another contract with Olympic View reciting that “Olympic View was a duly organized water district immediately north of and adjacent to the King County-Snohomish line.” CP 2238.¹⁷

Prior to the January 1986 Transfer Order, Daniel Briggs entered into a contract with KCSD #3 to provide service to one residence on one lot. CP 708. Then in 1988, just two years after the Transfer Order, Briggs wanted to subdivide his lot for three more residences. He entered into a contract with Ronald that stated King County transferred RBSS to Ronald in 1986 and included an extension of service with an adjacent line to Briggs property, located in Woodway. CP 708. Tellingly, the agreement was for “interim service until such time when permanent service is

¹⁷ With such ongoing contractual obligations, Ronald can hardly claim it was unaware of Olympic View’s Snohomish County territory.

provided through the Town of Woodway.” CP 709. Woodway was to review the agreement as part of its process of deciding whether to permit the subdivision. It did so. CP 708.

In 1993, Ronald tried to enter into an agreement with Briggs to make the service permanent and it sought Woodway’s approval. The Briggs/Woodway correspondence, copied to Ronald is key:

You have advised that the Shoreline Wastewater Management District (formerly Ronald Sewer District) has requested an acknowledgement and authorization from the Town of Woodway for a modification of your agreement with Ronald dated November 7, 1988. Your request for the four lot subdivision was based upon the above agreement. Permission for the subdivision was granted because of that agreement and any modification at this date would be inappropriate and unacceptable... It would seem that the Commissioners of Shoreline Wastewater Management District should be honorable men and abide by the terms of the agreement which Woodway’s Planning Commission relied upon in the granting of your subdivision.

CP 712. The residents of those four residences are the only Ronald “voters” in Snohomish County. Yet for twenty some years those voters never voted in Snohomish County since they had a Shoreline address. CP 4353.¹⁸

After the Transfer Order, Ronald issued a comprehensive plan in 1990 that stated its boundary was the County line. CP 742. The maps

¹⁸ It is undisputed that the opinion letter that allowed them to vote in Snohomish County after 2007 never analyzed the validity of the Transfer Order or considered the express representations of Ronald that only interim service was provided and an annexation had not occurred. CP 4339-42.

accompanying that comprehensive plan show the area north of line within Woodway or Olympic View. CP 733-34.

In 1993, Ronald sought a franchise from Snohomish County for pipes in the right-of-way acquired from King County. It represented to Snohomish County that “these pipelines ... lie outside the SWMD (Ronald’s) boundary.” It also stated that Ronald was serving northwestern King County. CP 767-68. Ronald obtained the franchise from Snohomish County subject to the condition that it could not be transferred without County consent. CP 2826-27.

In 1995, the upgrade to Lift Station #13 occurred and as discussed above Ronald represented it was outside its boundaries.

In 2001, Ronald again issued a comprehensive plan stating its northern boundary was the County line. CP 2955 n.22.¹⁹

In 2007, *for the first time*, Ronald asserted in a sewer plan, not required to be submitted to Olympic View, that it had territory in Snohomish County in Point Wells.²⁰

¹⁹ In sum, there is no “loss of institutional memory” here. Rather, for two decades, Ronald stated that it had not annexed any Snohomish County territory. It behaved in accordance with that statement. The SCDs all relied upon its statements and conduct.

²⁰ Nevertheless, Olympic View wrote Ronald the same year about service in the Upper Bluff saying the area was “within Olympic View,” a statement that Ronald never disputed. CP 772.

In 2010, Ronald issued a sewer plan that purported to plan for service in Point Wells. Yet the plan had no feasibility study attached to it; Ronald had no franchise to construct sewers in Woodway. Ronald's plan still says it serves the Local Service Area of King County. CP 785. In that plan, Ronald made only a cursory reference to an agreement that would allow Shoreline to assume Ronald. CP 3378. It is only *after* Ronald abandoned its efforts to stop its assumption by Shoreline that the SCDs opposed the assumption in Snohomish County.²¹

After the BRB denied the assumption, Olympic View began planning to serve this area within its district so that a plan would be in place to provide sewer service when development occurs. CP 2957-58.

C. SUMMARY OF ARGUMENT

This case is about whether Ronald annexed certain land in Snohomish County by an order of the King County Superior Court in 1985 called the "Transfer Order." The claimed annexed area was, at the time of the Transfer Order, entirely within the corporate boundaries of Olympic View, a Washington municipal corporation providing water and sewer services. The claimed area consists of three different components. One is Point Wells, with a lower area along Puget Sound that Shoreline wants to annex because a major urban center development is slated there. The area

²¹ Ronald will never actually serve future Snohomish County since it will be dissolved, and Ronald even gave Shoreline a power of attorney to do so.

is currently in unincorporated Snohomish County. Woodway also has an annexation claim as to that part of Point Wells. Under the Snohomish County Comprehensive Plan, the area is designated as part of Woodway's GMA Municipal Urban Growth Area. The second Point Wells component is the area above the bluff that transects Point Wells, known as the Upper Bluff. This area has already been annexed by Woodway. The third area is a four lot area within Woodway's boundaries separate from Point Wells known as the Briggs subdivision. Because of unique facts pertinent to the Briggs subdivision, the legal issues relative to it differ from the other portions of Point Wells.

At the time of the Transfer Order, Olympic View provided sewer services and did so in a proprietary fashion. As a municipal corporation, it has constitutional rights. It had a property interest, a business expectancy, that it would provide sewer services to future customers within its boundaries. At the time of the Transfer Order, Woodway also provided sewer services within its boundaries. As a municipal corporation, it was similarly situated to Olympic View. In 2004, Woodway conveyed its sewer system to Olympic View, and entered into a contract with Olympic View that Olympic View would be the exclusive provider of sewer services within Woodway. Woodway has given Olympic View notice that it will assume Olympic View in the next few years.

Ronald/Shoreline's purported annexation relates to contract service KCSD #3 agreed to provide to Standard Oil in 1971, and also from a contract with Daniel Briggs to connect his house to KCSD #3's system. King County then took over KCSD #3, the RBSS, including the very limited contract for service in Snohomish County. King County later wanted to divest itself of local sewer system operations so it crafted legislation to allow it to do so. The Legislature passed such legislation, now codified in RCW 36.94.410-.440. That legislation provided that upon transfer by the county to a sewer district, the "area served" by the system could be annexed by a special purpose district by order of the superior court. Ronald and King County agreed on a transfer in which the entirety of Point Wells and the Briggs subdivision would be deemed the "area served" even though King County never provided sewer service throughout that area and had no sewer infrastructure to do so, except for the limited service to Chevron and Briggs. King County presented an agreed order to the King County Superior Court in a lawsuit in which none of the SCDs were joined or given personal notice. The only notice was by publication in a classified ad in a Seattle newspaper that never mentioned annexation.

For two decades following the Transfer Order, Ronald never claimed that it annexed territory in Snohomish County. It repeatedly

represented that Snohomish County was outside its boundaries. Ronald and Olympic View worked cooperatively for years together. It was not until 2010 when the development in Point Wells became known that Ronald claimed a Snohomish County service area was within its boundaries. By then, Shoreline was pressing to annex Point Wells and to use its contract for the assumption of Ronald as a means to facilitate its annexation of territory in Snohomish County. When it formally proceeded with Ronald's assumption, Shoreline was twice turned down by the Snohomish County BRB. It was only after the assumption had been denied and Ronald was slated to go out of business that Olympic View moved forward to insure the affected area had plans for sewer services.

If this Court decides there has been no annexation, the assumption battle in Snohomish County will be over, although Shoreline will have to operate the existing service for the useful life of the infrastructure. If this Court finds there has been an annexation binding upon the SCDs, then whether the assumption can proceed will depend on other litigation.

Here, Olympic View and the other SCDs assert the Transfer Order is not binding upon them and is subject to attack for several reasons. The King County Superior Court lacked jurisdiction to order the annexation of land in Snohomish County. The court lacked personal jurisdiction over Olympic View and the other SCDs that were not joined in the lawsuit and

deprived of due process which requires notice reasonably intended to reach the person's whose interests are allegedly being adjudicated. Notice was clearly inadequate here. This action is not in the nature of *in rem* jurisdiction that can bind non-parties. Nor is annexation within the inherent authority of the courts. The King County Superior Court lacked subject matter jurisdiction to enter the Transfer Order because there is a geographical limitation in RCW 36.94.410-.440. In addition, subject matter jurisdiction is also limited to annexation of just the area actually served by the system being transferred. If there is any doubt as to the meaning of the statute, statutory interpretation and associated statutes demonstrate no legislative intent to allow cross-county annexation creating overlapping special purpose districts. The interpretation urged by the KCPs would be impermissible special legislation.

Other grounds advanced by Ronald/Shoreline to support an order of summary judgment such as estoppel, laches, and acquiescence fail here because questions of fact existed as to each theory. However, there is no doubt Ronald represented to Woodway that the Briggs subdivision was outside its boundaries, it was only providing interim service, and Woodway relied upon those representations in allowing Briggs to subdivide his property. Thus, estoppel actually requires a judgment in favor of Olympic View/Woodway in regard to the Briggs subdivision.

D. ARGUMENT²²

(1) The Transfer Order Is Void, Not Binding Upon the SCDs

The Ronald and Shoreline briefs are confusing and often contradictory. For example, Shoreline argues that the trial court had “inherent authority” to enter the order based upon legislative enactment, Shoreline br. at 23, and it even argues that the case arises under article IV, § 6 of the State Constitution. Yet the KCPs admit that annexation is not part of the Court’s constitutional power and is the exclusive province of the Legislature.

In addition, they argue that CR 60 controls this case. But CR 60 relates to the ability of parties to a lawsuit to obtain relief from a judgment. It is undisputed that none of the SCDs were joined in the

²² As a threshold matter, in its responsive brief at 13, Shoreline argues that direct review by this Court is not warranted, claiming this is not a fundamental and urgent issue of broad public import requiring resolution by this court. This is inappropriate. It is an entirely improper effort to further supplement its answer to the Statement of Grounds for Direct Review. The KCPs had their opportunity to assert their position in their answer. This Court should disregard this effort. Ironically, Shoreline’s brief makes the case for direct review. At 9 and 10 in footnote 11, Shoreline details repeated proceedings involving these parties and whether Shoreline can assume and annex Point Wells. Since that time, there have additional appeals relative to compliance with GMHB orders. This case clearly involves public agencies spending substantial taxpayer dollars for extensive litigation, all of which relates to whether future residents of Snohomish County will be saddled with millions of dollars of unnecessary sewer hook- up fees and monthly sewer bills. Shoreline demonstrates the public importance of the issues here, particularly in light of the fact that related litigation has twice reached this Court. *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 322 P.3d 1219 (2014); *Chevron U.S.A., Inc. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 124 P.3d 640 (2005). RAP 4.2(a)(4) is satisfied.

lawsuit that resulted in the Transfer Order, thus CR 60 is inapplicable, but it is instructive.

CR 60 provides that relief from a judgment or order can be obtained where “The judgment is void.” CR 60(b)(5). A court is allowed to provide relief for “Any other reason justifying relief from the operation of the judgment.” CR 60(b)(11). Nor does the rule preclude a separate proceeding in that CR 60(c) provides: “Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.” In instituting this action, Ronald, joined by King County and Shoreline, waived any issue that this declaratory judgment action cannot properly consider the issue.

Nor is there any time limit bar to a CR 60(b)(5) motion. A challenge to jurisdiction may be asserted at any time during the course of a proceeding, in a post-judgment motion such as CR 60(b),²³ it may be raised for the first time on appeal, RAP 2.4, or it may be asserted collaterally in another proceeding. Karl B. Tegland, 14 *Wash. Practice, Civil Procedure, Subject Matter Jurisdiction* § 3:21.²⁴

²³ While CR 60(b) prescribes a one year window to make certain challenges, that time limitation does not apply to a challenge made under subsections (5) or (11).

²⁴ This Court can also note the concession from the KCPs’ responsive briefing that an order or judgment is void “where the courts lack jurisdiction of the parties, the subject matter, or the inherent power to enter the order involved.” Shoreline br. at 17 (citing *Mueller v. Miller*, 82 Wn. App. 236, 251-52, 917 P.2d 604 (1996)).

Two out of the three criteria for challenging the Transfer Order, lack of personal jurisdiction or inherent power, favor the SCDs. At issue here is who can provide sewer services to an area within Olympic View, what are Ronald's borders, and do they overlap because of a purported annexation created by the Transfer Order. The courts have no inherent right to create, or classify municipal corporations, including determining their boundaries. Under the Washington Constitution, art. XI, § 10, that power is reserved to the Legislature, and that body cannot change municipal boundaries by special legislation. The judicial power in the Washington Constitution, art IV, § 6 limits superior court jurisdiction to cases involving "title or possession" of real property. Ronald is not receiving any title to property or to possess a service area. At best, it is being given by legislative enactment the right to provide services to someone else's property. Thus, any claim of "inherent authority" to support the validity of the Transfer Order fails.

Nor is there personal jurisdiction over the SCDs. If they had been joined in the lawsuit, personal jurisdiction would be present. But the KCPs have offered *no explanation at all* as to why they failed to name the SCDs, whose interests were known and whose locations were well known. Ronald did not seek to notify Olympic View even though it had an on-going contractual relationship. This implicates implied covenants of good

faith and fair dealing, especially since in its contract Ronald said Olympic View should serve within its District. But apart from the publication of one classified ad that would not be seen in Snohomish County and that never mentioned annexation, Ronald never notified Olympic View of the lawsuit.

(a) The Superior Court Lacked Subject Matter Jurisdiction

The term *subject matter jurisdiction* is generally taken to mean the court's authority to hear and decide a particular kind of case.... Subject matter jurisdiction is essential to the entry of any valid order, judgment, or decree. An order or judgment entered without subject matter jurisdiction is void and may be challenged at any time....Subject matter jurisdiction exists or does not exist as a matter of law. The parties may not create, or vest the court with, subject matter jurisdiction that it does not otherwise have. Thus, subject matter jurisdiction will not be found on the basis of estoppel.

Karl B. Tegland, 14 *Wash. Practice, Civil Procedure, Subject Matter Jurisdiction* § 3:1.

(i) The Statute's Plain Language Forecloses Its Application in Snohomish County

For subject matter jurisdiction to be present, the Legislature must have empowered the Superior Court to annex territory in Snohomish County to Ronald as the courts have no inherent power to address this issue, as noted *supra*. The SCDs have asserted that subject matter jurisdiction is not present because the statute upon which the annexation

was based has a geographical limitation that only allows a transfer and annexation if it is limited to one county, the county transferring the system. The statutes upon which the KCPs rely to support the Transfer Order, RCW 36.94.410-.440, only allow a transfer from a county to a water-sewer district “in the same manner as is provided for the transfer of those function from a water-sewer district to a county in RCW 36.94.310 through 36.94.340.” RCW 36.94.410. There is no doubt that there is a geographical limitation contained in RCW 36.94.310. It allows a transfer from a district to a county “within which all of its territory lies.” The KCPs concede that RCW 36.94.310 plainly contains a geographical limitation. They fail to address the County Services Act powers contained in RCW 36.94.020 allowing counties to construct and operate systems of sewerage *only* “*within all or a portion of the county.*” The only permitted exception is if sewage operations are done in conjunction with another county.²⁵

Since the geographical limitation is clearly in the express language in RCW 36.94.310 and RCW 36.94.410 and companion statutes, Ronald/Shoreline try to avoid the plain meaning of the statute. Instead, they argue that “in the same manner” does not mean what it says, but is

²⁵ As noted *supra*, King County misquotes RCW 39.94.190 relating to contract service. It allows a county to contract only with a City outside the county for sewer service.

merely procedural, referring to court petitions and orders to effectuate the transfer. *See, e.g.*, Shoreline br. at 36.

This argument is baseless. RCW 36.94.410-.440 contain various requirements and procedures not found in RCW 36.94.310-.330, which Shoreline grudgingly concedes. Shoreline br. at 37. Other than the common requirement of a court process, the RCW 36.94.410-.440 process is entirely different, mandating a public hearing, with notice to ratepayers, and County Council determination that the transfer is in the public interest. The KCPs' assertion that relegation of the statutory requirements to mere procedure is wrong – the geographical limitation is clear.

Thus, where the enabling legislation that set up the transfer process contained a geographical limitation, the trial court erred in failing to respect that geographical limitation, and it lacked subject matter jurisdiction to enter the Transfer Order; the order is void.

(ii) The Statute's Legislative History Does Not Support the Concept that the Legislature Intended to Create Overlapping Districts

Even though the plain statutory language provides for a geographical limitation and the language in RCW 36.94.410 regarding “in the same manner” means more than a procedural “process,” the Ronald/Shoreline arguments demonstrate that the statute at issue is

ambiguous by having two reasonable interpretations. If so, then this Court is tasked with the job of statutory interpretation.²⁶

In addition to considering legislative history, the courts also employ canons of statutory interpretation that are particularly apt here. The relevant canon and the wealth of Washington case law utilizing that canon has been summarized as follows:

A second group of extrinsic canons focuses on the relationship of an enactment to the larger body of Washington statutory law and interprets the enactment in a fashion designed to render that statutory law a consistent whole...*in pari materia*, which says similar statutes should be interpreted similarly; the presumption against repeals by implication, the rule requiring interpretation of provisions consistently with subsequent statutory amendments, the rule of continuity, which assumes that the legislature did not create discontinuities in legal rights and obligations

²⁶ Questions of statutory interpretation are ultimately for the courts. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091, 1094 (1998). In analyzing statutory provisions, this Court employs well-developed construction principles and tools. The primary goal of statutory interpretation is to carry out legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington, this analysis begins by looking at the words of the statute. "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself. *Id.* Courts look to the statute as a whole, giving effect to all of its language. *Dot Foods, Inc. v. Wash. Dep't of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). Courts must look to what the Legislature said in the statute and related statutes to determine if the Legislature's intent is plain. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language is plain, that ends the courts' role. *Cerillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006). If, however, the language of the statute is ambiguous, courts must then construe the statutory language. A statute is ambiguous if it is subject to two or more reasonable interpretations. *State v. McGee*, 122 Wn.2d 783, 864 P.2d 912 (1993). In construing an ambiguous statute, a court may consider its legislative history and the circumstances surrounding its enactment to arrive at the Legislature's intent. *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003); *City of Seattle, v. Fuller*, 177 Wn.2d 263, 269-70, 300 P.3d 340 (2013). In the absence of a statutory definition, courts give words their common and ordinary meaning. *Zachman v. Whirlpool Financial Corp.*, 123 Wn.2d 667, 671, 869 P.2d 1078 (1994).

without some clear statement; and courts presume when the legislature acts, it intends to change existing law.

Philip A. Talmadge, “A *New Approach to Statutory Interpretation in Washington*,” 25 *Seattle U. L. Rev.* 1, 197-98 (2001).

Specifically, when it comes to changing the common law, this Court has held that the Legislature is presumed to be aware of the common law and any statute purporting to abrogate a common law principle requires the Legislature to do so *expressly*. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 76, 196 P.3d 691 (2008). Any statute overriding the common law is strictly construed. *Carson v. Fine*, 123 Wn.2d 206, 214, 867 P.2d 610 (1994).

At common law, this Court has rejected overlapping special purpose districts. *Skagit County Public Hosp. Dist. No. 304 v. Skagit County Public Hosp. Dist. No. 1*, 177 Wn.2d 718, 305 P.3d 1079 (2013). There, this Court considered whether one rural hospital district could operate a clinic within another district’s boundaries. The court concluded it could not, without permission. In doing so, it outlined how to employ statutory interpretation in cases relating to overlapping special purpose districts.

In *Alderwood [Water District v. Pope & Talbot*, 62 Wn.2d 319, 382 P.2d 639 (1963)] we considered the analogous issue of whether a municipal water district could furnish water outside its own boundaries and within those of

another water district. 62 Wash.2d at 320, 382 P.2d 639. A statute stated that “a water district may provide water services to property owners outside the limits of the water district,” *id.* (quoting former RCW 57.08.045 (1959), but we refused to mechanically conclude from this provision that a water district could supply water within the boundaries of other water district. We relied on “a general rule that there cannot be two municipal corporations exercising the same functions in the same territory at the same time.” *Id.* at 321, 382 P.2d 639; *see also* 2 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §7:8 (3D REV.ED. 2006). We noted that case law had eroded the rule but that “it continues to serve 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.” 62 Wash.2d 321, 382 P.2d 639. The general rule serves to “alert courts ... to the necessity of closely examining in toto statutory provisions conferring authority upon the potentially competing municipal corporations.” *Id.*

Id. at 724. This Court then construed “the relevant statutory framework as a whole.” *Id.*

With these principles of statutory principles in mind, there is no basis to believe that the Legislature intended to allow a cross-county border annexation so as to create overlapping special purposes districts. The entire legislative history of SHB 1127 that enacted RCW 36.94.410-.440 is in the record. *Nowhere* is the Legislature advised that this bill would allow cross-county annexation and the creation of overlapping special purpose districts. CP 1046-47, 1623-25, 1862-1906. Thus, it is not surprising that the Legislature never says that was what it intended to

do and was doing. As *Skagit County* makes clear, the common law rejects the creation of overlapping units of government. If the Legislature was changing the common law, it is required to do so expressly. *Potter*, 165 Wn.2d at 76. It did not when it enacted SHB 1127.

The entire history of legislative enactments in this area, prior to and subsequent to SHB 1127, also demonstrates no intention by the Legislature to create an overlapping and competing special purpose district that did not exist before. As noted in Olympic View's opening brief at 5-6, in 1967 the Legislature created the BRB process for the express purpose stated in RCW 36.93.010 of precluding the "haphazard extension of and competition to extend municipal boundaries." That legislation required the change in boundary of any special purpose district go to the BRB.

In 1981, only four years before the passage of the legislation that ostensibly allowed the Transfer Order, the Legislature passed SHB 352. Ronald asserts that this legislation created a "first in time, first in right principle." Ronald br. at 4-5. But that assertion fails to mention this legislation stated: "It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions [special purpose districts]." CP 1805. The legislation then added requirements for BRB approval of boundary changes for mutual water-sewer districts. CP 1806.

More significantly, however, this legislation also amended Title 56 relating to sewer districts by allowing such districts to enter into contracts to provide sewer services within or without the limits of the district with one major proviso to preclude duplication of service without consent.

PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

CP 1806-07.

The agreement approved in the Transfer Order specifically states that RBSS service in Snohomish County was by developer extension agreement. CP 575-76.²⁷ The contracts for sewer service in Snohomish County were then assigned to Ronald. CP 578. In other words, Ronald's service in Point Wells was by contract. CP 578. Since the area was located in Olympic View's district boundaries, under the provisions of SHB 352 applicable to sewer districts at the time, Ronald was precluded from legally providing sewer service "by contract or otherwise" without the consent of Olympic View's commissioners. Ronald never sought, nor received, such consent.

²⁷ The RBSS plan states that and the contracts with Standard Oil are attached as addendums of the agreements as referenced in Section 8 that says "The County has certain contractual rights and obligations in connections with the system." CP 576.

While admitting this is not an GMA case, Ronald br. at 7, Ronald does cite to the passage of the Growth Management Act as an effort by the Legislature to reduce conflicts among jurisdictions. In doing so, it implicitly admits that jurisdictions like Snohomish County and Woodway, have planning responsibilities and an interest as to how capital facilities, including sewer, are to be provided in their jurisdictions.

From this legislative history and principles of statutory construction, the KCPs' arguments that the Legislature authorized cross-county annexation and the creation of an overlapping district cannot pass the straight face test. The Legislature never said it was doing that. Legislative enactments prior to and following SHB 1127 are contrary to that principle. The position advanced by Ronald/Shoreline would constitute an implicit repeal of SHB 352 which required consent by resolution before service could be provided within the service area of another jurisdiction.

The better analysis is that the express language of RCW 36.94.410-.440 only permitted an annexation in the same county. That not only preserves the repeated expressions of legislative intent to avoid creating overlapping districts, it makes sense. Duplication is avoided because the planning agency for the county can determine, using its police power to determine what is in the public interest and how to avoid duplication of

services among districts, which can be the only plausible reason to exclude a transfer from county to district from the BRB process.²⁸

(iii) Even if the Court Had Subject Matter Jurisdiction, It Did Not Have Jurisdiction to Annex Territory that Was Not Served by KCSD #3 at the Time of the Transfer Order

In their briefs, Ronald/Shoreline focus only on geographical restrictions limiting the subject matter jurisdiction of the court, ignoring that the RCW 36.94.420 has another requirement that limits an annexation to the “area served” by the system being transferred. Other than a bald assertion, unsupported by any contract language to support the contention, that KCSD #3 had a contractual duty to serve the entirety of Point Wells, the KCPs do not dispute that the overwhelming portion of Point Wells was not “served” by any sewer service at the time of the Transfer Order or even now. CP 3344. Service was then, and is now, limited to the Chevron plant and the Briggs property. There is no other sewer infrastructure. It is undisputed that Lift Station #13 was sized basically to serve only the Chevron plant. There is a distinction between a “service area” and an “area served” in utility parlance. “Area served” is what is actually served

²⁸ There is no doubt the statutory requirement to determine the public interest is legislative, not proprietary, in nature. Other than claiming it is proprietary, the KCPs offer no authority allowing the King County Council to determine and legislate what is in the public interest *in Snohomish County*. Certainly forcing Snohomish County residents to pay millions in unnecessary sewer expenses is not in the public interest. If Ronald/Shoreline are correct in their claims that the Legislature acted in such a fashion that as to allow a cross-county annexation and the creation of an overlapping district, it only underscores this was impermissible special legislation.

with existing infrastructure. CP 3344-45. The statutes do not authorize a court order to approve a Transfer Agreement and annexation in excess of the “area served.”

It is undisputed that King County and Ronald simply agreed in the Transfer Agreement to define the “area served” as including areas that had no sewer service then, or even now. They buried large swaths of Snohomish County at the end of the lengthy legal description attached as an addendum to the transfer agreement. CP 575. In short, King County and Ronald agreed, and the court permitted in the Transfer Order, annexation of more than what the statute permitted to be annexed. That was error. “Parties may not create, or vest the court with, subject matter jurisdiction that it does not otherwise have.” Karl B. Tegland, 14 *Wash. Practice, Civil Procedure, Subject Matter Jurisdiction* at § 3:1. Moreover, even though a court may have subject matter jurisdiction to hear a kind of case, and even the specific case involved, that does not vest the court with plenary power to decide issues beyond its subject matter jurisdiction. It may still lack subject matter jurisdiction to take certain action or to decide a particular issue. Where that happens, the judgment is subject to collateral attack. *Id.* at § 3:2. Such is the case here. Even if the King County Superior Court had subject matter jurisdiction to address a cross-

county annexation in the Transfer Order, it only had such jurisdiction to allow annexation of territory actually being served by KCSD #3.²⁹

(b) By Failing to Join or Give Adequate Notice to the SCDs, the Court Lacked Personal Jurisdiction over the SCDs

(i) Notice to the SCDs Was Inadequate

In order for there to be jurisdiction for a judgment to be valid, it is undisputed that adequate notice has to be given to affected parties like the SCDs. “Under the due process clause, a Washington court may not assert personal jurisdiction over a defendant unless (1) the is given adequate notice and opportunity to be heard.” Karl B. Tegland, 14 *Wash. Practice, Civil Procedure, Personal Jurisdiction* at § 4:1. The notice must “reasonably calculated under all the circumstances” to reach the intended person.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950). Due process requirements apply whether the jurisdiction being sought is classified as *in personam*, *in rem*, or *quasi in rem*. *Id.* at §§ 4:2 and 5:2. Significantly, *Washington Practice* notes a recent trend in the case law to impose more rigorous requirements of notification in various types of actions; publication and posting may no

²⁹ Even now, delineating that area will not be difficult since the sewer infrastructure remains unchanged.

longer suffice.³⁰ *Id.* Since there is a lack of personal jurisdiction, the Transfer Order can be challenged on the basis of jurisdiction and is void.

The KCPs do not contend that the notice (one classified ad in Seattle paper that never mentioned annexation) met the required constitutional standard. They cannot. They ignore the fact that the King County Council directed that property owners in the area to be annexed be given specific notice. None of the SCDs, who were property owners (easements, right-of-way), were given the notice the Council required.

Instead, they avoid the constitutionally-mandated standard by claiming the Snohomish County governments had no “real” interest being adjudicated. Ronald claims Olympic View had already “consented” to permanent service by KCSD #3.³¹ As demonstrated *supra*, Olympic View’s property interest in its business expectancy that it had the right to

³⁰ Tellingly, the enhanced duty for more personal notice arises in the context of foreclosure of irrigation assessment liens, and other types of tax foreclosure. Publication of a notice of tax foreclosure is inadequate notice to a mortgagee or taxpayer. *Brower v. Wells*, 103 Wn.2d 96, 690 P.2d 1144 (1984); *Wenatchee Reclamation Dist. v. Mustell*, 102 Wn.2d 721, 684 P.2d 1275 (1984), *opinion modified*, (Oct. 9, 1984) (same), *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983). Ronald attempts to challenge the notice requirements by reliance on a case in the irrigation district assessment context. *Carlisle v. Columbia Irrigation District*, 168 Wn.2d 555, 229 P.3d 761 (2010). It ignores the enhanced notice requirement and also ignores that once a party’s property interest is affected, due process notice requirements must be followed. These decisions requiring enhanced notice were issued *before* the Transfer Order was entered.

³¹ This is obviously wrong because as pointed out above the only thing Olympic View consented to in a letter to the Seattle Water Department was allowing King County to do maintenance on Lift Station #13 within Olympic View’s service area.

provide exclusive service within its own district was immediately impacted by the Transfer Order.

Ronald/Shoreline next argue that the notice given was all that the Legislature required, and that was enough. *See, e.g.*, Shoreline br. at 31. That proposition was rejected in *Hasit LLC v. City of Edgewood (Local Improvement District #1)*, 179 Wn. App. 917, 955-58, 320 P.3d 163 (2014), noting due process requirements are contained in both state and federal law, the Fourteenth Amendment to the U.S. Constitution and art. I, § 3 of the Washington Constitution. Adherence to the requirements of state law does not alone establish that procedures for challenging an LID assessment satisfy constitutional due process. Division II there noted that the violation of due process and notice rights resulting from a City's procedures that comported with state law can create a jurisdictional defect. *Id.* at 958. The court found in the specialized LID context that usually when a jurisdictional defect is present it goes to the entire legality of the assessment roles, not singular assessments. However, the court ruled that an owner that did not receive adequate constitutional notice, as here, could challenge the assessments. *Id.*

Ronald tries to downplay the lack of adequate notice by claiming that all the statutory process was doing was setting up a procedural process by which a local government's boundaries are expanded so that there is

not a right to notice, a hearing, or the right to object, relying on *Carlisle*. Ronald br. at 29-30. Such reliance is misplaced.

Both *Carlisle and Hasit* are LID cases. Both recognize that the imposition of an assessment on property involve a deprivation of property so that affected owners have the right to a hearing as to whether the improvements will result in a special benefit to their properties and whether the assessment is proportionate to the benefit conferred. *Hasit*, 179 Wn. App. at 171. Both cases, particularly *Carlisle*, stand for the proposition that due process protects deprivation of property rights when there is a “direct and adverse effect” on property rights. *Carlisle*, 168 Wn.2d at 567 (*quoting Mustell*, 102 Wn.2d at 725). The *Carlisle* court recognized that an actual deprivation does not occur if it is contingent on a subsequent action, referencing a case involving Point Wells where it upheld Woodway’s designation of the Chevron property as a potential annexation area under the GMA. *Id.* at 568 (citing *Chevron U.S.A.*, 156 Wn.2d at 131). This Court noted that Chevron could use its property exactly as it had always done, and any effect on the property was contingent on a future event, an actual annexation, so Woodway did not have to give individualized notice. *Id.* at 568-69. However, this Court made clear that when there is an actual effect on property, for instance

annexation, due process required adequate notice and hearing. *Carlisle*, 168 Wn.2d at 568.

Here, there can be no dispute the annexation in the Transfer Order immediately affected Olympic View's property rights and business expectancies. Prior to it, it had the unfettered right to provide service throughout its district. That changed immediately when an overlapping special purpose district was allowed within its borders. Woodway that operated its own sewer system at the time, had a competitor thrust unwillingly upon it that is now claiming Woodway, by its successor Olympic View, does not have the right to serve the Briggs subdivision but also in the Upper Bluff which Woodway has annexed. Direct and adverse effects on property rights are implicated.

The absence of necessary notice to the SCDs, particularly Olympic View, precluded entry of the Transfer Order as to them.

(ii) The Court Did Not Have *In Rem* Jurisdiction

In an attempt to avoid the multitude of legal problems associated with the faulty annexation by the Transfer Order, the KCPs cling to the notion that in issuing that order the court was exercising *in rem* jurisdiction, so that the order was effective "against the world," binding all persons who have or may have an interest in the property.

Ronald/Shoreline fail to engage the arguments advanced by Olympic View in its opening brief.

Such a result applies only in a “pure” *in rem* proceeding adjudicating the status of, interests in, or title to property. Karl B. Tegland, 14 *Wash. Practice, Civil Procedure, In Rem Jurisdiction* at §§ 5:1 and 5:5. The purported annexation here did not involve an adjudication of interests in property or the *res*. Olympic View and none of the other SCDs had an interest in, or any claim to, title of any of the property ostensibly being annexed. Olympic View’s interest was clear – it had a continued right to provide sewer services within the boundaries of its district, a recognized service area.

At the time of the Transfer Order, Olympic View had the unfettered right to provide sewer service throughout its district unaffected by any principles of “first in time, first in right.” SHB 352, touted by Ronald, did not apply to counties or sewerage districts. As Ronald concedes, the Transfer Order created an overlapping district that impacted Olympic View’s existing propriety right to provide service within its district boundaries, effectively requiring Olympic View to obtain consent to serve its own district. Thus, the Transfer Order adjudicated Olympic View’s service rights, or those of Woodway, not status, interest in, or title to real property. As such, it was not a “pure” *in rem* proceeding, but in the

nature of a *quasi in rem* proceeding. That is because the proceeding is essentially being brought against known persons (Olympic View and Woodway that were capable of being joined) as to a business expectancy, and the proceeding does not arise out of Olympic View's or Woodway's ownership, use, or possession of the property in question. *Id.* at §§ 5:6 and 5:7. A *quasi in rem* proceeding, does not affect the interests of all persons, known or unknown, in designated property. The order or judgment only binds and affects the interests in the property to the parties to the proceeding. *Id.* at § 5:6. Thus, the Transfer Order was not an *in rem* judgment binding and conclusive on the Snohomish County governments. At best, it was a *quasi in rem* judgment applicable only to Ronald and King County, the parties to the proceeding that gave rise to the Transfer Order.

(2) If SHB 1127, Codified in RCW 36.94.410-440, Has the Meaning the KCPs Claim, It Is Constitutionally Prohibited as Special Legislation

The KCPs present no real arguments as to why their interpretation of RCW 36.94.410-440 is not constitutionally prohibited as “special legislation” prohibited by art. II, § 28 of the Washington Constitution. Olympic View is not claiming the statutes *per se* violates the special legislation prohibitions of the Constitution. If it is properly interpreted to allow annexation only within one county and not to create an overlapping

service, the statutes would be unobjectionable. The “area served” within the transferring county could be annexed to a district since there would be no overlapping district. However, an interpretation of the statutes allowing a cross-county annexation and the creation of overlapping districts runs afoul of the special legislation provisions for several reasons. The KCPs claim that this legislation affects a class of one, King County, that created the legislation. Shoreline br. at 41. But they point to no other place where the process they claim applies to “all counties” could result in a cross county border annexation. The record here is devoid of *any* evidence that this situation exists elsewhere. Shoreline then, without analysis, asserts “The test of special legislation is not what the law *includes* but rather what it *rationaly excludes*, RCW 36.94.410-.440 clearly satisfies this test.” Shoreline br. at 43.

It is irrational to believe the Legislature enacted legislation allowing the creation of overlapping districts, abrogating the policy of the common law and forty years of other contrary legislative enactments. It is irrational to uphold this tortured interpretation when all the KCPs admit the transfer from King County to Ronald could have been accomplished without this legislation. The irrationality of it all is demonstrated by years of litigation and hundreds of thousands of dollars of public dollars spent over this issue.

Moreover, as a result of this legislation only Ronald, soon to be out of business, received something no other special purpose district did – the special privilege of invading another district and upending its ability to serve its future customers. Surely, that is special legislation, giving special corporate “privileges.”

The KCPs’ claim that violation after violation of the rights of the SCDs and the lack of jurisdiction and illegality of the annexation in Snohomish County is sanitized by RCW 57.02.001 is baseless. Even if that provision did legalize the previously illegal acts of Ronald, it does not apply to King County acts or those of the superior court. It would also run afoul of article II, § 28(12) prohibiting the legalization of the unauthorized or invalid act of any officer.

The trial court erred in failing to address the special legislation issue.

(3) The KCPs Are Not Entitled to Judgment Based Upon Estoppel, Laches, or Acquiescence

Ronald’s attempts to assert various equitable grounds to justify the judgment. However, it did not seek relief below on the basis of equity, and the trial court never so ruled. It is not entitled to raise these arguments for the first time on appeal. RAP 2.5(a).³²

³² Ronald arguing equity is ironic. This is the same Ronald, acting at Shoreline’s behest, that claims Olympic View is invading its service area when the only

Woodway and Olympic View are, however, entitled to judgment as to the Briggs subdivision based upon the undisputed evidence that Ronald represented it was only providing interim service, Woodway would later serve the property, Woodway relied upon these representations in approving the subdivision, and it specifically informed Ronald of its reliance decades ago, which Ronald never challenged.

Ronald presents no authority that laches has ever been applied to a public entity with regard to a boundary line issue. It does not dispute that the doctrine of acquiescence was not adopted in *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 88, 951 P.2d 805, *review denied*, 136 Wn.2d 1003 (1998), a boundary line dispute between the Town of Ruston and the City of Tacoma. As that case also noted, taking different past positions, as here, would preclude the application of the acquiescence principle. Moreover, even when used in the property context, Ronald does not dispute that as an aspect of adverse possession, the requisite time for adverse possession (10 years) has not elapsed here since the SCDs challenged the Ronald claim it had territory in Snohomish County within the applicable time frame.

invasion of a district service area occurred when Ronald “invaded” Olympic View’s through the Transfer Order. At a minimum, questions of fact preclude any judgment on the basis of estoppel, laches, or acquiescence.

The true gravamen of Ronald's equitable claims is essentially that the superior court's erroneous decision on the Transfer Order cannot be collaterally attacked. In essence, Ronald argues that an erroneous legal interpretation morphs into a correct one by the mere passage of time. This Court has rejected such an outlandish concept. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846, *cert. denied*, 552 U.S. 1040 (2007). In *Bostain*, there was reliance on administrative regulations that specified how wage and hour calculations should be made were in place for nearly two decades and relied upon by the trucking industry. This Court rejected acquiescence and deference to an erroneous interpretation of law. *Id.* at 709-11.

Ronald also claims that municipal annexations should be treated specially and be exempt from any subsequent challenge. Ronald br. at 31. In doing so, it admits it lacks Washington legal authority to support that proposition, relying instead on *People ex. rel. Graff v. Village of Lake Bluff*, 795 N.E. 2d 281 (Ill. 2003). Such reliance is misplaced. There, the court considered whether a municipal annexation could be challenged in a *quo warranto* proceeding challenging whether the lands annexed were "contiguous" to the annexing city. The action followed two previous cases where the issue could have been raised by the petitioners who failed to do so. The court rejected the later challenge, but not for the reason that

municipal annexations cannot or should not be challenged later. Instead, the decision is predicated in a change to the Illinois Constitution as it relates to *quo warranto* proceedings. *Id.* at 287. That factor is not present here. The Illinois Supreme Court was also not sympathetic to allowing the challenge because there were two prior proceedings and the petitioners had the ability to challenge the continuity finding in those proceedings, assert the claim on appeal, or petition for post-judgment relief, but they failed to do so. *Id.* at 290.

That is obviously not the case here because the SCDs were never joined in the underlying lawsuit, they never received notice of it, there were decades of claims by Ronald to the contrary as to whether any annexation occurred, and the SCDs are only seeking the post-judgment relief through a declaratory judgment action.

Moreover, the SCDs' position is not really a collateral attack on the Transfer Order, the conveyance of the RBSS, or the annexation into Ronald of the territory served by the RBSS in King County. Rather, they simply seek to make clear that the annexation was not effective *in Snohomish County*.³³

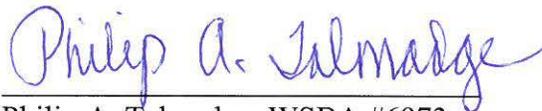
³³ Washington law allows clarification of judgments for this purpose and outside the family law context it is done by declaratory judgment. Karl B. Tegland, 4 *Wash. Practice, Rules Practice, CR 60* § 26.

D. CONCLUSION

For the foregoing reasons, this Court should reverse the order of partial summary judgment in favor of Ronald and the other KCPs and direct entry of summary judgment in favor of the SCDs. In the alternative, summary judgment should be entered in favor of the SCDs upholding the annexation only as to the actual “area served” by sewer service at the time of the Transfer Order, with the exception of the Briggs subdivision where summary judgment on the basis of estoppel should be granted to Woodway and Olympic View. Costs on appeal should be awarded to Olympic View.

DATED this 10th day of April, 2018.

Respectfully submitted,



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DECLARATION OF SERVICE

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: April 10, 2018, at Seattle, Washington.



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Comments:

(1) Olympic View's Motion for Leave to File Overlength Reply Brief of Appellant; and (2) Olympic View's Reply Brief of Appellant

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