

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 847 – Authorizing Acquisition of Real Property for the Purpose of Provision of Sewer Service Utility and Uses Related Thereto by Negotiated Voluntary Purchase, Under Threat of Condemnation, or by Condemnation
DEPARTMENT:	City Attorney Office
PRESENTED BY:	Margaret King, City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On October 15, 2018, as provided in Chapter 8.12 RCW, the City Council adopted Ordinance No. 844 authorizing acquisition of real property underlying a Ronald Wastewater District sewer lift station located in Snohomish County by negotiated voluntary purchase, under the threat of condemnation, or by condemnation. The purpose of this action was to obtain full fee title to the property for current, continued, and future provision of the sewer service utility.

Since the adoption of Ordinance No. 844, staff determined that additional land immediately adjacent was necessary to ensure continued access to the property and the wastewater pump station and related infrastructure. Tonight, Council is scheduled to adopt proposed Ordinance No. 847, which would provide for the authorization of this additional real property acquisition.

As was the situation with Ordinance No. 844, to permit adoption of proposed Ordinance No. 847 tonight, staff is requesting that the City Council waive Council Rule of Procedure 3.5, a rule generally requiring three readings of an ordinance, due to the expeditious nature of this item. In waiving Council Rule 3.5, public comment for this non-consent agenda item will be provided following the staff presentation and prior to City Council review and potential adoption of this ordinance as provided in Council Rule of Procedure 6.1(B).

RESOURCE/FINANCIAL IMPACT:

The financial impact of this action will depend on whether the City secures fee title or an easement. In addition, litigation costs are currently unknown. Regardless, fair market value is required.

RECOMMENDATION

Staff recommends that the City Council waive Council Rule of Procedure 3.5, allow for public comment as provided in Council Rule of Procedure 6.1(B), and adopt Ordinance

No. 847 authorizing the acquisition of real property by negotiated voluntary purchase under the threat of condemnation or by condemnation.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

Chapter 8.12 RCW authorizes and empowers cities to condemn land and property for certain public uses and benefit either in or outside of their municipal boundaries. Condemnation allows for the acquisition of property for projects deemed to be in the public's interest. The eminent domain statutes were written to prevent unreasonable demands or threats from being placed on public entities and to afford property owners value for their property. Proposed Ordinance No. 847 provides for this condemnation authority.

On October 15, 2018, as provided in Chapter 8.12 RCW, the City Council adopted Ordinance No. 844 authorizing acquisition of real property underlying a Ronald Wastewater District sewer lift station located in Snohomish County by negotiated voluntary purchase, under the threat of condemnation, or by condemnation. The purpose of this action was to obtain full fee title to the property for current, continued, and future provision of the sewer service utility. A copy of the October 15 staff report and related attachments for the adoption of Ordinance No. 844 can be reviewed at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport101518-8a.pdf>.

DISCUSSION

As noted in the October 15 staff report, the City's ownership of the property underlying the lift station was necessary for the current and future protection and continued operations of the Ronald Wastewater District's and, after completion of formal assumption, the City's sewer system, as well as the current and future provision of sewerage services to the entire corporate boundaries and service area of the Ronald Wastewater District. After further review and analysis of the area addressed in Ordinance No. 844, it was determined by staff that a small portion of immediately adjacent land was necessary to ensure adequate access for utility work trucks so as to service the sewer system infrastructure. Proposed Ordinance No. 847 (Attachment A) would authorize the commencement of condemnation for this additional land in fee title or as an easement. Exhibit A of Attachment A provides a depiction of the additional land.

The subject property identified in proposed Ordinance No. 847 is part of a larger parcel that is in single ownership and developed with a single residence. The subject property serves as driveway access to Richmond Beach Drive NW for that residence. If the City were to secure full fee title, the City would grant the property owner an easement over the property so as to retain access to their property. The benefit of the City in securing full fee title is the assurance of full and complete access to the lift station.

Notice of the City's intent to exercise its condemnation authority was sent to the property owner (physical and tax account address) on October 19, 2018 (Attachments B-1 and B-2). Legal counsel for the property owner was contacted via phone by the City Attorney notifying them of tonight's meeting and that the property owner (or legal counsel) may provide comments in writing or at the meeting. Final Action was posted at

City Hall on October 19, 2018 and published in the Everett Herald and Seattle Times on October 24, 2018 and October 31, 2018 (Attachment C)

Adoption of proposed Ordinance No. 847 by the City Council does not preclude agreement being reached with the property owner prior to the actual condemnation proceedings taking place, but it will enable the City to move forward in the event an impasse is reached.

Waiver of Council Rule and Public Comment

Tonight, Council is scheduled to adopt proposed Ordinance No. 847. To permit adoption of this ordinance tonight, staff is requesting that the City Council waive Council Rule of Procedure 3.5 and provide public comment as provided in Rule of Procedure 6.1(B).

Council Rule of Procedure 3.5 states that ordinances scheduled for City Council action will generally receive three readings, with the first reading being the scheduling of the item on the Council Agenda Planner, the second reading being a discussion by the City Council, and the third reading being review and action by the Council at a subsequent meeting. Staff is recommending waiver of Council Rule 3.5 due to the expeditious nature of this item.

In waiving Council Rule 3.5, public comment for this non-consent agenda item will be provided following the staff presentation and prior to City Council review and potential adoption of this ordinance as provided in Council Rule 6.1(B). Council Rule 6.1(B) states that public comment for a non-consent action items before the City Council for the first time is to be conducted in this manner.

RESOURCE/FINANCIAL IMPACT

Financial impact will depend on whether the City secures fee title or an easement. In addition, litigation costs are currently unknown. Regardless, fair market value is required as compensation.

RECOMMENDATION

Staff recommends that the City Council waive Council Rule of Procedure 3.5, allow for public comment as provided in Council Rule of Procedure 6.1(B), and adopt Ordinance No. 847 authorizing the acquisition of real property by negotiated voluntary purchase under the threat of condemnation or by condemnation.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 847
Attachment A - Exhibit A – Depiction of Subject Property
Attachment B-1 – Notice letter to property owner, October 19, 2018 (physical address)
Attachment B-2 – Notice letter to property owner, October 19, 2018 (tax account address)
Attachment C - Final Action Notice

ORDINANCE NO. 847

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY BY NEGOTIATED VOLUNTARY PURCHASE, UNDER THREAT OF CONDEMNATION, BY CONDEMNATION, OR BY SETTLING CONDEMNATION LITIGATION, FOR THE PURPOSE OF RETAINING AND/OR OBTAINING FULL FEE TITLE TO PROPERTY FOR PURPOSES OF CURRENT, CONTINUED AND FUTURE PROVISION OF SEWER SERVICE UTILITY IN SNOHOMISH COUNTY, WASHINGTON; FINDING PUBLIC USE AND NECESSITY; AUTHORIZING JUST COMPENSATION FROM THE GENERAL FUND; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on October 15, 2018, the City Council adopted Ordinance No. 844 authorizing the acquisition of real property by condemnation for the purposes of the current, continued, and future provision of sewer service utility in Snohomish County, Washington; and

WHEREAS, since the adoption of Ordinance No. 844, the City has determined that additional adjacent land is necessary to ensure full and complete access to the property addressed in Ordinance No. 844; and

WHEREAS, the City Council finds that the City’s acquisition of the ownership of property interests in a certain portion of the property generally depicted in Exhibit A, attached hereto (the “Acquired Property”), and referenced by Snohomish County Tax Parcel No. 27033500300200, is necessary for the protection of continued operations of the Ronald Wastewater District’s sewer system, as well as the current and future provision of sewerage services to the entire Ronald corporate boundaries and service area in accordance with the 2002 Interlocal Operating Agreement, the First Amendment to the Operating Agreement, the Services Agreement, the District’s Comprehensive Sewer Plan, and the ultimate assumption and provision of sewer services by the City as detailed in Ordinance No. 844, incorporated by reference herein; and

WHEREAS, just compensation for the Acquired Property can be funded through the City’s General Fund; and

WHEREAS, there will be sustained and continuous efforts to negotiate with the owner of the Acquired Property for the acquisition and eminent domain action will be taken judiciously after reasonable efforts to reach a negotiated settlement with the owner have been unsuccessful; and

WHEREAS, the property owner of the Acquired Property was given notice according to state statute that this condemnation ordinance was included for discussion by the City Council at the meeting of November 5, 2018, and were afforded an opportunity to comment at that meeting; and

WHEREAS, in the event that negotiated acquisition of the Acquired Property is not fully successful, it is essential that the City be prepared to initiate condemnation proceedings; and

WHEREAS, the City of Shoreline has the power to acquire lands through eminent domain for the purpose of providing utilities; and

WHEREAS, the City has provided notice of the adoption of this Ordinance in the manner set forth in RCW 8.12.005 and 8.25.290; and

WHEREAS, acquisition of the Acquired Property is categorically exempt from SEPA review under WAC 197-11-800(5)(a);

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. Condemnation Authorized. The City Manager is hereby authorized to take necessary steps to acquire all necessary property interests in the portion of land located in unincorporated Snohomish County, State of Washington commonly known as Tax Parcel Number 27033500300200 and addresses as 20530 Richmond Beach Drive, Woodway, Washington, as generally depicted in Exhibit A attached hereto and by this reference incorporated herein (the “Acquired Property”) as the property is necessary for the continued public use of the operation of a sewerage system, and is hereby condemned, appropriated and taken for such public use, subject to the making or paying of just compensation to the owner thereof in the manner provided by law.

The City Manager or her designee is hereby authorized and directed to execute all documents for the acquisition of all interests in the Acquired Property and bring proceedings in the manner provided for by law to condemn, take, damage, and appropriate the Acquired Property described in this ordinance pursuant to the powers granted to the City of Shoreline including RCW 35A.64.200 and Chapters 8.12 and 8.25 RCW. This authorization includes the right to condemn all reversionary interests, easements, and options in said Acquired Property.

The City Attorney is authorized to begin and prosecute legal proceedings in the manner provided by the law to purchase, condemn, take, appropriate, and otherwise acquire the land and all other interests and property rights and privileges necessary to carry out the purposes of this Ordinance. The City Attorney is also authorized to make minor amendments to any property descriptions or maps of property or properties generally depicted on the attached Exhibit A as may become necessary to correct scrivener’s errors or to correctly describe the Property required for the project.

Section 2. Finding of Public Use and Necessity. The Shoreline City Council finds that the acquisition of the Acquired Property is for a public use and purpose, to-wit: to operate and maintain and provide for a system of sewerage. The City Council further finds the property generally depicted in Exhibit A is necessary for the proposed public use and for the benefit of the public. The Whereas clauses set forth above are hereby incorporated into and made part of the Council’s findings.

Section 3. Compensation. Compensation to be paid to the owner of the property identified in Section 1, above, and costs and expenses of litigation authorized by this Ordinance, shall be paid from the City's General Fund.

Section 4. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON NOVEMBER 5, 2018.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Margaret J. King
City Attorney

Publication Date: _____, 2018
Effective Date: _____, 2018

Attachment A, Exhibit A

Attachment A - Exhibit A

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27033500303600

27033500300600

27033500302400

27033500303

RICHMOND B DR NW

 Subject Property



SHORELINE
CITY COUNCIL

Will Hall
Mayor

Jesse Salomon
Deputy Mayor

Susan Chang

Doris McConnell

Keith A. McGlashan

Chris Roberts

Keith Scully

October 19, 2018

Notice of Final Action

Planned Final Action Authorizing Acquisition of
Real Property Under Power of Eminent Domain

Sent by Regular and Certified Mail – Return Receipt Requested

Joseph Bundrant
Mary Bundrant
20530 Richmond Beach Drive
Woodway, WA 98177

RE: Acquisition of a Portion of Tax Parcel No. : 27033500300200

Located at: 20530 Richmond Beach Drive, Woodway, WA 98177

HEARING DATE: November 5, 2018 at 7:00 p.m.

**HEARING LOCATION: Shoreline Council Chambers
17500 Midvale Avenue North
Shoreline, WA 98133**

Dear Mr. and Mrs. Bundrant:

The City of Shoreline is the owner of certain property that is located adjacent to your property (City Property). Located on the City Property is a wastewater pump station and related infrastructure that provides sewerage service to your property and roughly 40-50 other residents that live both in the City of Shoreline and the Town of Woodway.

The City is seeking to obtain title to and/or acquire necessary property interests, including, but not necessarily limited to easements and/or fee title to a portion of your property that currently is being used as a driveway to your property, located immediately to the south of the City Property, in order to ensure continued access to the City Property and the wastewater pump station and related infrastructure in order to continue to provide current and future sewer service operations. A general depiction of the location of the property that the City is interested in acquiring is shown on the enclosed map.

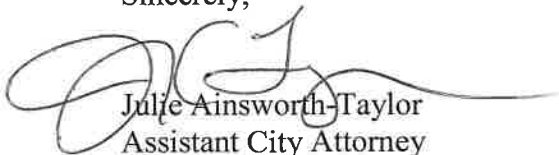
Notice of Final Action
Joseph and Mary Bundrant
October 19, 2018
Page 2

The City has the authority to acquire property under the power of eminent domain (condemnation) in compliance with Chapter 8.12 RCW and other State law. This notice is just the first step of required notice to you of the City's interest in acquiring a portion of your property. However, because access to the City Property is necessary for the operation of the sewer system, the City has begun the necessary steps to move forward with the consideration of condemnation proceedings to acquire the property. The City will continue to negotiate with you for the purchase of the property in advance of filing any condemnation suit.

The purpose of this letter is to notify you that pursuant to RCW 8.25.290, the Shoreline City Council will consider final action on November 5, 2018, at 7:00 p.m. or as soon thereafter as may be heard, at the Shoreline Council Chambers, 17500 Midvale Avenue North, Shoreline, WA 98133, for the purpose of considering this real property acquisition and making a final decision (Planned Final Action) on whether or not to proceed with condemnation of the property. The Planned Final Action would include the adoption of an ordinance authorizing a condemnation action to acquire your property. You, or your designated representative, may provide comment at the meeting, and you may submit written comments prior to or at the hearing. A copy of the Notice of Final Action is enclosed.

The City is very interested in working with you to reach a negotiated settlement for the purchase of the required property in lieu of condemnation. If you would like to discuss this further or if you have any questions, please contact Margaret King, City Attorney at (206) 801-2221.

Sincerely,



Julie Ainsworth-Taylor
Assistant City Attorney

Enclosures:
Property Map
Notice of Final Action



Shoreline City Hall
17500 Midvale Avenue North
Shoreline, Washington 98133
(206) 801-2230

SHORELINE CITY COUNCIL

FINAL ACTION NOTICE

PLANNED FINAL ACTION AUTHORIZING ACQUISITION OF PROPERTY UNDER POWER OF EMINENT DOMAIN

NOTICE IS HEREBY GIVEN pursuant to RCW 8.25.290 that on November 5, 2018, at 7:00 p.m. or as soon thereafter as may be heard, at the Shoreline Council Chambers, 17500 Midvale Avenue North, Shoreline, WA 98133, the Shoreline City Council will consider taking final action to adopt an Ordinance to authorize the acquisition of property interests through negotiation with property owners, and/or by use of eminent domain (condemnation).

The following property, or portions thereof, is the subject of the potential condemnation proceedings:

1. Tax parcel number: 27033500300200

Located at: 20530 Richmond Beach Drive, Woodway, WA 98177

The Council will consider condemnation of a portion of property of the tax parcel listed above. After having heard all testimony, the Council will consider taking Final Action to adopt a proposed condemnation ordinance authorizing acquisition of the properties or portions thereof by eminent domain and the filing of a condemnation action in Snohomish County Superior Court to determine that the proposed use of the properties is a public use and the just compensation for the properties.

All persons interested may appear at the time and place stated above and be heard on the matter of the Planned Final Action to acquire the property by eminent domain and adopt the condemnation ordinance. Written comments may also be submitted prior to or at the hearing.

For further information, contact:
Margaret King, City Attorney
City of Shoreline, 17500 Midvale Avenue North
Shoreline, WA 98133 -- email: mking@shorelinewa.gov
Telephone: (206) 801-2221

Date/Time:

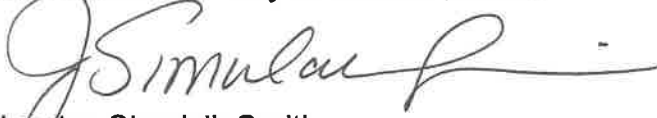
**Monday, November 5, 2018
7:00 p.m.**

Location:

**Council Chamber, Shoreline City Hall
17500 Midvale Avenue N.
Shoreline, WA 98133**

Any person requiring a disability accommodation should contact the City Clerk at 206-801-2231 in advance for more information. For TTY telephone service call 206-546-0457. Each request will be considered individually according to the type of request, the availability of resources, and the financial ability of the City to provide the requested services or equipment.

DATED this 19th day of October, 2018.

A handwritten signature in black ink, appearing to read 'J Simulcik Smith', with a long horizontal flourish extending to the right.

Jessica Simulcik Smith
City Clerk

An affidavit of posting has been filed with the City Clerk for the Shoreline City Council. October 24, 2018 and October 31, 2018 (Everett Herald) (Seattle Times).

27033500303900

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27033500303600



Subject Property

27033500303800

RICHMND B DR NW

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**Snohomish County Online Property Information**



0 145ft

Legend

- Street Names
- Cities
- Unincorporated County
-  Incorporated City
-  Tax Parcels
- Rural Miles
-  Township/Range Grid
- Section Grid
-  Airports
- 2012 Aerial Photo

Disclaimer:
All maps, data, and information set forth herein ("Data"), are for illustrative purposes only and are not to be considered an official citation to, or representation of, the Snohomish County Code. Amendments and updates to the Data, together with other applicable County Code provisions, may apply which are not depicted herein. Snohomish County makes no representation or warranty concerning the content, accuracy, currency, completeness or quality of the Data contained herein and expressly disclaims any warranty of merchantability or fitness for any particular purpose. All persons accessing or otherwise using this Data assume all responsibility for use thereof and agree to hold Snohomish County harmless from and against any damages, loss, claim or liability arising out of any error, defect or omission contained within said Data. Washington State Law, Ch. 42.56 RCW, prohibits state and local agencies from providing access to lists of individuals intended for use for commercial purposes and, thus, no commercial use may be made of any Data comprising lists of individuals contained herein.

Printed on: 10/19/2018

BUNDRANT PROPERTY



SHORELINE
CITY COUNCIL

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October 19, 2018

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Joseph Bundrant
Mary Bundrant
757 Main Street
Edmonds, WA 98020

RE: Acquisition of a Portion of Tax Parcel No. : 27033500300200

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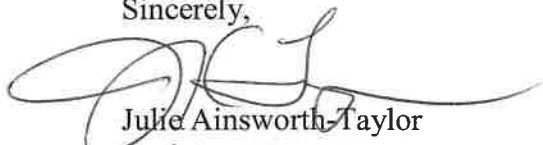
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The purpose of this letter is to notify you that pursuant to RCW 8.25.290, the Shoreline City Council will consider final action on November 5, 2018, at 7:00 p.m. or as soon thereafter as may be heard, at the Shoreline Council Chambers, 17500 Midvale Avenue North, Shoreline, WA 98133, for the purpose of considering this real property acquisition and making a final decision (Planned Final Action) on whether or not to proceed with condemnation of the property. The Planned Final Action would include the adoption of an ordinance authorizing a condemnation action to acquire your property. You, or your designated representative, may provide comment at the meeting, and you may submit written comments prior to or at the hearing. A copy of the Notice of Final Action is enclosed.

The City is very interested in working with you to reach a negotiated settlement for the purchase of the required property in lieu of condemnation. If you would like to discuss this further or if you have any questions, please contact Margaret King, City Attorney at (206) 801-2221.

Sincerely,



Julie Ainsworth-Taylor
Assistant City Attorney

Enclosures:

Property Map
Notice of Final Action



Shoreline City Hall
17500 Midvale Avenue North
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Located at: 20530 Richmond Beach Drive, Woodway, WA 98177

The Council will consider condemnation of a portion of property of the tax parcel listed above. After having heard all testimony, the Council will consider taking Final Action to adopt a proposed condemnation ordinance authorizing acquisition of the properties or portions thereof by eminent domain and the filing of a condemnation action in Snohomish County Superior Court to determine that the proposed use of the properties is a public use and the just compensation for the properties.

All persons interested may appear at the time and place stated above and be heard on the matter of the Planned Final Action to acquire the property by eminent domain and adopt the condemnation ordinance. Written comments may also be submitted prior to or at the hearing.

For further information, contact:
Margaret King, City Attorney
City of Shoreline, 17500 Midvale Avenue North
Shoreline, WA 98133 -- email: mking@shorelinewa.gov
Telephone: (206) 801-2221

Date/Time:

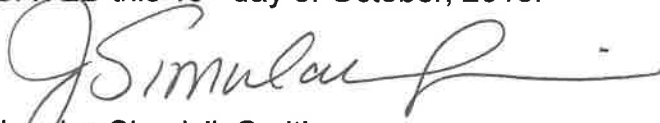
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DATED this 19th day of October, 2018.

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Jessica Simulcik Smith
City Clerk

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Snohomish County Online Property Information



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Printed on: 10/19/2018

BUNDRANT PROPERTY



Shoreline City Hall
17500 Midvale Avenue North
Shoreline, Washington 98133
(206) 801-2230

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FINAL ACTION NOTICE

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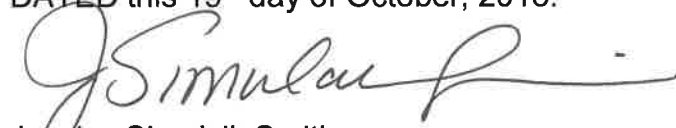
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Jessica Simulcik Smith
City Clerk

An affidavit of posting has been filed with the City Clerk for the Shoreline City Council. October 24, 2018 and October 31, 2018 (Everett Herald) (Seattle Times).