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VIA U.S. MAIL AND EMAIL

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Re: Olympic View Water and Sewer District
2007 Comprehensive Sewer Plan
Proposed Amendment No. 2

Dear Ms. Danielson:

This letter presents the comments of the Ronald Wastewater District (“Ronald”) on the above-referenced proposal by the Olympic View Water & Sewer District (“Olympic View”) to amend Olympic View’s 2007 Comprehensive Sewer Plan (the “Amendment”). The Amendment purports to address Olympic View’s “ability and intent to provide sewer service” to the Point Wells area.¹

Because Ronald currently provides sewer service to Point Wells, which is located within Ronald’s corporate boundaries and service area, Olympic View lacks the legal authority to invade Ronald’s territory and provide service to Point Wells. Moreover, the Amendment suffers from several other fundamental legal and technical flaws. For these reasons, as further explained below, Ronald strongly opposes the Amendment and asks Olympic View to withdraw the proposal.

Factual Background

As you know, Ronald and its predecessors have provided sewer service to the Point Wells area since the early 1970s.² The Amendment incorrectly states that Ronald currently provides sewer service to Point Wells “under a temporary service agreement executed in 1988 between the Town of Woodway and Ronald Wastewater District.”³ Rather, as explained below, sewer service was originally provided to Point Wells under a contract with a private party, and Ronald’s right to provide service in this area as part of its corporate boundary was later confirmed in 1985 by a court order.

¹ See Letter from Susan Boyd to Steve Szafran dated February 20, 2015 (transmitting copy of Amendment).

² See Ronald Wastewater District’s Hearing Brief dated August 28, 2014, pp. 2-4 ([Attachment 1](#)).

³ Amendment, p. 1.

In the early 1970s, Ronald's predecessor, the King County Sewer and Drainage District No. 3 ("KCSD 3") entered into agreements with Standard Oil Company, which later became Chevron USA, Inc. ("Chevron"), to construct a lift station⁴ in the Point Wells area, and began providing sewer service in the area.⁵ KCSD 3 continued to provide service to the area until the mid-1980s, when King County began a multi-step process of divesting itself of sewer collection operations.⁶

The first step in that process was a transfer of KCSD's water system (also referred to as the "Richmond Beach Sewer System") to King County. In February 1984, in anticipation of this first step, KCSD 3 adopted its Sewerage General Plan for Richmond Beach.⁷ The Sewerage General Plan recognized that KCSD 3 provided service to "a Chevron Petroleum plant on Point Wells just north of the King-Snohomish border."⁸ In June of 1984, KCSD 3 and King County then entered into a transfer agreement and filed a petition in King County Superior Court under RCW 36.94.340 seeking approval of a transfer of the Richmond Beach Sewer System to King County, which was approved in July of 1984.⁹

Next, in 1985, King County and Ronald (then called "Ronald Sewer District") entered into a transfer agreement and filed a petition in King County Superior Court under RCW 36.94.410-.420 seeking approval of a transfer of the Richmond Beach Sewer System to Ronald.¹⁰ RCW 36.94.420 provides as follows:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system.

Consistent with RCW 36.94.420, the transfer agreement between the County and Ronald stated that "the area served by the System shall be deemed annexed to and part of the District" after the transfer was completed.¹¹ The transfer agreement also stated that "the 'area served' by the System shall mean those parcels of property within the boundaries described in Addendum A."¹² Addendum A to the transfer agreement, which is titled "Legal Description Richmond Beach Sewer System," includes a description of two areas in King County and additional areas in Snohomish County, including the Point Wells area and a small area in the southwest corner of the City of Woodway.¹³

⁴ This lift station is now known as Lift Station 13.

⁵ Attachment 1, pp. 2-4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

On November 20, 1985, the Superior Court issued an Order Approving Transfer of Sewer System (the "1985 Transfer Order") that approved the proposed transfer from King County to Ronald.¹⁴ In the 1985 Transfer Order, the court found that "the transfer agreement is legally correct"; approved the transfer agreement; ordered that the transfer would be effective on January 1, 1986; and ordered that "the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer."¹⁵

While Olympic View has questioned the validity of the 1985 Transfer Order, the order has not been overturned. Moreover, Snohomish County has taken formal action recognizing that Point Wells is within Ronald's service area. For example, Olympic View's 2007 Comprehensive Sewer Plan, which included a service area map showing Point Wells as "served by Ronald Wastewater District," was approved by the Snohomish County Council on 2007.¹⁶ Similarly, in 2010, the Snohomish County Council approved Ronald's 2010 Comprehensive Sewer Plan, which states that Ronald's corporate boundaries include "a portion in Snohomish County" and notes that Ronald's Lift Station No. 13 "provides sewer service for a portion of unincorporated Snohomish County known as the Point Wells area."¹⁷

The inclusion of Point Wells within Ronald's corporate boundaries has also been confirmed by the Snohomish County Prosecutor's Office. In 2007, the Prosecutor's Office issued a "Memorandum of Advice" that discusses the history of Ronald's service area in Snohomish County.¹⁸ The Memorandum of Advice concludes that "by virtue of the court order of November 1985, the portion of Snohomish County in question was annexed into the Ronald Sewer District as of January 1, 1986."¹⁹ Because this portion of Snohomish County is within Ronald's corporate boundaries, registered voters residing in the area are currently eligible to vote in Ronald's elections and receive voter's pamphlets from Snohomish County listing Commissioner elections for Ronald.²⁰ You may recall that you were personally contacted by the County Prosecutor as part of his investigation into this issue.²¹ At that time, you confirmed that Olympic View has never provided service to Point Wells, and you did not object to the Prosecutor's decision to confirm that Point Wells was legally annexed to Ronald as a result of the 1985 Transfer Order.

In 2010, Ronald issued a certificate of sewer availability to the developer of the proposed mixed-use urban center development at Point Wells.²² It appears that Olympic View's recently-adopted position regarding Ronald's corporate boundaries is based on Olympic View's desire to assume Ronald's position as the sewer service provider for the Point Wells development. As explained below, however, Olympic View's desire invade Ronald's established territory is not

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* (citing Memorandum of Advice dated September 6, 2007) ("MOA").

¹⁹ *Id.*

²⁰ *Id.*

²¹ See MOA, Exhibit 10 to Attachment 1, p. 3.

²² See Ronald Wastewater District Certificate of Sewer Availability (Attachment 2).

supported by the law or the facts. On the contrary, Olympic View is absolutely prohibited from providing sewer service to Point Wells due to Ronald's well-established presence in that area.

Olympic View Lacks the Authority to Provide Service to Point Wells

The Amendment is premised on the incorrect assumption that Olympic View has the "right" and the "duty" to provide sewer service to Point Wells.²³ This assumption is contradicted by clear statutory and case law that prohibits Olympic View from providing service in an area where Ronald already provides service.

Washington Law Prohibits Olympic View from Invading Ronald's Territory

The general rule in Washington State is that no two public or municipal corporations are to exercise the same governmental function within the same territory at the same time. *Alderwood Water Dist. v. Pope & Talbot*, 62 Wn.2d 319, 382 P.2d 639 (1963). In two separate provisions of RCW Title 57, the Legislature has made it clear that this general rule applies specifically to water and sewer districts. First, RCW 57.08.007 provides as follows:

Except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district.

Second, RCW 57.08.065(2) provides as follows:

Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.

These laws establish a clear rule prohibiting a district from invading the territory of another district.

This rule applies regardless of the outcome of Olympic View's cross-appeal in the pending litigation surrounding the Snohomish County Boundary Review Board (BRB) proceeding.²⁴ In that cross-appeal, Olympic View has questioned the validity of the 1985 Transfer Order and claimed that Point Wells is not within Ronald's corporate boundaries. Ronald disagrees with this claim and is confident that, if Olympic View continues to pursue its challenge to the 1985 Transfer Order, a court will ultimately confirm that Point Wells is included as part of Ronald's corporate boundaries and service area. Even in the unlikely event that Olympic View were to prevail on that tenuous legal claim, however, Olympic View would still be prohibited from providing service to Point Wells because, as a purely factual matter, service is already available from Ronald in that area. As noted above, RCW 57.08.007 prohibits Olympic

²³ See, e.g., Amendment, p. 2 (asserting a "right and obligation" to serve).

²⁴ *City of Shoreline and Ronald Wastewater District v. Snohomish County Boundary Review Board*, Snohomish County Superior Court Cause No. 14-2-06687-1.

View from providing service “within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district.” Here, even if Point Wells were not within Ronald’s corporate boundaries, it is undisputed that service “is available” from Ronald in that area, and that further service is “planned to be made available” under Ronald’s adopted comprehensive plan.²⁵

The BRB Lacks the Authority to “Award” Ronald’s Assets and Service Area to Olympic View

In its BRB cross-appeal, Olympic View has argued that the BRB should have authorized it to take over Ronald’s assets in Snohomish County and “assume” sanitary sewer functions within Point Wells. Olympic View will not prevail on this frivolous claim. As support for this argument, Olympic View cites RCW 36.93.150, which authorizes the BRB to “[d]etermine a division of assets and liabilities between two or more governmental units where relevant.” RCW 36.93.150(3) (emphasis added). In this case, that language is clearly not relevant. The BRB’s jurisdiction is limited to issues raised in a Notice of Intention filed by a party seeking approval of a specific action subject to BRB review, and Olympic View never filed a Notice of Intention with the BRB. *See* RCW 36.93.090-.100.

More importantly, the BRB’s authority is limited to reviewing proposed government actions that are independently authorized in other statutes, such as Chapter 35.13A RCW, which authorizes cities to assume water or sewer districts. Accordingly, RCW 36.93.150(3) authorizes the BRB to “[d]etermine a division of assets and liabilities” only when such an action is made “relevant” by a proposed action authorized by some other statute, such as a partial assumption of a special purpose district by a city as authorized by Chapter 35.13A RCW. RCW 36.93.150(3) clearly does not grant the BRB independent authority to “award” the assets of a public entity to a third party who invoked the BRB’s jurisdiction but did not file a Notice of Intention and lacks any statutory authority to assume such assets. In Chapter 35.13A RCW, the Legislature granted assumption authority to cities as the favored providers of urban services, but the Legislature had not granted any similar authority to water or sewer districts. In short, Olympic View did not ask the BRB to review its proposed assumption of Ronald’s territory, and it lacks the authority to assume Ronald’s territory in any event.

We understand that your legal counsel has advised you on these issues, but we urge you to revisit them in light of these comments. Because Olympic View lacks the authority to provide sewer service to Point Wells without Ronald’s consent, which has not been granted, your efforts to provide service in that area, including the proposed Amendment, represent a tremendous waste of time and taxpayer resources.

The Amendment Fails to Address Costs

WAC 173-240-050(1) requires that amendments to comprehensive plans include a discussion and table showing “the cost per service in terms of both debt service and operation and maintenance costs, of all facilities (existing and proposed) during the planning period.” The Amendment fails to include such a discussion or table. By comparison, Ronald’s 2010

²⁵ *See* Excerpts from Ronald Wastewater District Comprehensive Plan dated January 2010 (Attachment 3).

Comprehensive Plan met this requirement to include a discussion and table showing the cost of upgrading the existing infrastructure to provide service to the proposed urban center development at Point Wells.²⁶ Had the Amendment included the required discussion of cost, that discussion would have confirmed that it would be much more costly for Olympic View to build new, high-risk infrastructure than for Ronald to upgrade its existing infrastructure.

The Amendment Fails to Address other Legal and Technical Barriers

The proposed Amendment fails to address several other legal and technical barriers to Olympic View's provision of service, including the issues relating to technical feasibility and environmental review of the Amendment under the State Environmental Policy Act (SEPA) outlined in Shoreline's comment letter.²⁷

The Amendment Cannot be Adopted without Shoreline's Consent

Under RCW 57.16.010, if an amendment to a water or sewer district's comprehensive plan "affects a particular city or town," then the amendment is "subject to approval" by that city or town. Here, the proposed Amendment clearly affects the City of Shoreline. As noted in the Amendment, Shoreline is seeking to assume Ronald and to continue providing service to Point Wells. Because the Amendment outlines Olympic View's competing plan to provide that same service, the Amendment cannot be adopted without Shoreline's consent, which has not been given.

Conclusion

For the reasons stated in this letter, Ronald asks Olympic View to withdraw the proposed Amendment and abandon all efforts to plan for sewer service to Point Wells. Ronald is already the exclusive service provider in that area and has already made plans to serve the proposed urban center development in Point Wells. Further efforts to invade Ronald's territory will only result in wasted time and resources for all parties.

Sincerely,

VAN NESS FELDMAN LLP



Duncan M. Greene

Special Counsel to the District

Attachments

²⁶ See *id.* The Amendment also incorrectly states that "Ronald Wastewater's agreements do not allow for extension of sewer service beyond its current infrastructure," suggesting that Ronald is legally barred from constructing upgrades that may be needed to serve Point Wells. Amendment, p. 19. On the contrary, Ronald has the authority to construct all necessary upgrades, including those examined in Ronald's 2010 Comprehensive Plan.

²⁷ See Comment letter submitted by City of Shoreline dated March 16, 2015. Ronald adopts and incorporates by reference the City's comments.