

ORDINANCE NO. 844

ORIGINAL

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, pursuant to Chapter 35.67 RCW and Chapter 35.92 RCW, the City has the authority to construct, condemn, purchase, acquire, add to, maintain, conduct, and operate systems of sewerage within and without of its limits; and

WHEREAS, RCW 35.13A.030 authorizes the City of Shoreline to assume full and complete management and control of the Ronald Wastewater District (“the District” or “Ronald”), a special purpose district organized under Title 57 RCW operating a system of sewerage; and

WHEREAS, on October 22, 2002, the City and the District entered into the *Interlocal Operating Agreement Between the City of Shoreline and Ronald Wastewater District Relating to Sanitary Sewer Services Within Shoreline’s City Limits* (“2002 Interlocal Operating Agreement”) as provided in Chapter 39.34 RCW and RCW 35A.13.070 so as to provide for the transfer to the City of the District’s facilities, property, rights and powers as provided in Chapter 35.13A; and

WHEREAS, the 2002 Interlocal Operating Agreement provided for a 15-year term to complete the transition and the assumption process, which caused the District and the City to work toward the mutual goal of having the City fully “assume” and incorporate the District into the City by October 22, 2017 (the “2017 Target Date”); and

WHEREAS, on December 9, 2013, the City Council adopted Ordinance No. 681 authorizing the City Manager to initiate the formal assumption process; and

WHEREAS, on May 19, 2014, by motion, the City Council authorized the City Manager to proceed with the notices of intent for the assumption with the King and Snohomish County Boundary Review Boards; and

WHEREAS, on September 11, 2014, the Snohomish County Boundary Review Board issued its decision denying the City’s assumption of that portion of the District within Snohomish County; and

WHEREAS, on October 16, 2014, the King County Boundary Review Board issued its decision approving the City's assumption of that portion of the Ronald Wastewater District within King County; and

WHEREAS, notwithstanding a Superior Court of King County Order Approving Sewer System Transfer, ("1985 Transfer Order"), Case No. 85-2-17332-5, that transferred and annexed the portion of the sewer system located in unincorporated Snohomish County ("Point Wells") to the District in 1985, third-party entities in Snohomish County have continually objected and challenged the City's formal assumption of the District before the Snohomish County Boundary Review Board and have taken actions to interfere with the District's system and provision of service in the Point Wells area; and

WHEREAS, as a result of the continued actions and challenges taken by these third-party entities related to the assumption on July 15, 2016, the District filed a First Amended Complaint for Declaratory Judgment and Injunctive Relief and Petition for Writ of Statutory and Constitutional Review, 16-2-15331-3 SEA. The parties to the suit filed cross claims, counter claims and numerous dispositive motions; and

WHEREAS, on May 9, 2017, the King County Superior Court entered an Order and Judgment Granting Ronald Wastewater District's Motion for Partial Summary Judgment & Declaratory Judgment and Denying Snohomish County's and Woodway's Motions for Summary Judgment. The Order confirmed that (1) the 1985 Transfer Order lawfully transferred the sewer system to Ronald and annexed the Point Wells Service Area to Ronald's corporate boundary and (2) held that the Snohomish County Defendants' challenges to the validity of the 1985 Transfer Order were without merit; and

WHEREAS, the Snohomish County Defendants requested certification of the Order and Judgment to allow for an immediate appeal. The Superior Court granted certification and stayed the remainder of the case on May 18, 2017. The Washington Supreme Court denied the request for direct review and the appeal was assigned to the Court of Appeals on June 6, 2018 and is awaiting oral argument; and

WHEREAS, on December 12, 2016, the City Council adopted Resolution No. 398 authorizing the re-filing of a notice of intent to assume with the Snohomish County Boundary Review Board; and

WHEREAS, on July 11, 2017, the Snohomish County Boundary Review Board issued its decision, once again denying the City's assumption of that portion of the District within Snohomish County, notwithstanding the 1985 Transfer Order. The City appealed the decision to Superior Court and the matter is stayed pending the outcome of the Declaratory Judgment appeal in order to avoid the needless expenditure of resources until that decision is final; and

WHEREAS, as a result of the extensive litigation and the continuing actions of third-parties to obstruct and oppose the City's planned assumption of the District on June 22, 2017, the City and the District entered into an amended document entitled *First Amendment of Interlocal Operating Agreement Between the City of Shoreline and Ronald Wastewater District Relating to Sanitary Sewer Services Within Shoreline's City Limits* (the "First Amendment"); and

WHEREAS, on October 23, 2017, as authorized by the First Amendment, Chapter 39.34 RCW (the Interlocal Cooperation Act), and RCW 35.13A.070, the City and District entered into a *Wastewater Utility Operating and Services Agreement Between the City of Shoreline and Ronald Wastewater District* (“Services Agreement”) that provides, among other things, for an extension of the date for final assumption an additional two years, with the ability for two additional two year extensions but, in the interim, for the City to take over providing for the operation and maintenance of the sanitary sewer system; and

WHEREAS, in accordance with the Services Agreement, in October 2017, the City began providing for the operation of all of the facilities of the District; and

WHEREAS, the lift station located on property in the Point Wells area that the Superior Court held was within the District’s service area and corporate boundaries currently provides sewer service to residences in the City of Shoreline, the Town of Woodway, and unincorporated Snohomish County, including property owned by BSRE Point Wells L.P. (“BSRE”); and

WHEREAS, on December 9, 2013, BSRE conveyed certain property, by Quit Claim Deed (“the Deed”) to the City “for and in consideration of Ten Thousand Dollars (\$10,000.00) in hand paid, and under threat of condemnation” in anticipation of the City’s assumption of the assets and operations of the District and the provision of services to Point Wells; and

WHEREAS, the Deed states that if the City had “not completed its assumption of Ronald by close of business on July 1, 2018, then [BSRE] at its election may repurchase the property on not less than 90 days advance written notice to the [City], in which case a purchase price of \$10,000 must be paid by [BSRE] to [City] in exchange for a deed transferring title to Grantor or its assignee;” and

WHEREAS, the City Council finds that the City’s retention of the ownership of certain portions of property generally depicted in Exhibit A, attached hereto (the “Acquired Property”), is necessary for the protection of continued operations of the 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; and

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

WHEREAS, there will continue to be sustained efforts to negotiate with the owners of the Acquired Property for the acquisition of the continued right of full fee ownership which will continue, and eminent domain action will be taken judiciously after reasonable efforts to reach a negotiated settlement with the Property; and

WHEREAS, the property owners of the Acquired Property were given notice according to state statute that this condemnation ordinance was included for discussion by the City Council

at the meeting of October 15, 2018, and were afforded an opportunity to comment at that meeting; 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, despite on-going efforts to acquire the Acquired Property by negotiation and agreement, in the event that negotiated acquisition of the 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, 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 portions of land located in unincorporated Snohomish County, State of Washington commonly known as Tax parcel number: 27033500303800 located at: 24233 Richmond Beach Dr., Edmonds, WA 98026; Tax parcel number: 27033500303000 located at: 24233 Richmond Beach Dr., Edmonds, WA, 98026; Tax parcel number: 27033500304100 located at, adjacent to, and/or east of 24233 Richmond Beach Dr., Edmonds, WA 98026; Tax parcel number: 27033500304400 located at 24233 Richmond Beach Dr., Edmonds, WA 98026; Tax parcel number: 27033500304500 located at 24233 Richmond Beach Dr., Edmonds, WA 98026; and Tax parcel number: 27033500304300 located at: 24233 Richmond Beach Dr., Edmonds, WA 98026; and 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 owners 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 owners of the properties 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 OCTOBER 15, 2018.



Mayor Will Hall

ATTEST:



Jessica Simulcik Smith
City Clerk

APPROVED AS TO FORM:



Margaret J. King
City Attorney

Publication Date: October 18, 2018
Effective Date: October 23, 2018

EXHIBIT A

QUARTER SW	SECTION 35	TOWNSHIP N.W.B.L. 27	RANGE E.W.M. 3
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Centerline --- Lot --- Block --- Section --- City Limits [Red dashed box]
 Gov Lot --- Subdiv --- ROW --- Quarter --- Tax Acct [White box]
 Major Water --- Other Lot --- Vac ROW --- 16th --- Easement [Dotted box]
 Minor Water --- Other Subdiv --- Vac Lot --- [Dotted box]

1 inch = 200 feet
 Map produced on August 31, 2018
 A product of the Assessor's Office
 Snohomish County, Washington

