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SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

RESOLUTION NO. 04- 023

ACTING TO COMPLY WITH THE FINAL DECISION AND ORDER ISSUED BY  
THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD  
CONCERNING THE USE OF SEWER LINES BY RURAL CHURCHES AND  
SCHOOLS

WHEREAS, on September 10, 2003, the County Council adopted Ordinance 03-104 as part of the 2003 docket process established pursuant to Chapter 30.74 SCC to implement a proposal to facilitate the connection to sewer service for churches and schools located in the rural area; and

WHEREAS, there had been early and continuous public participation in the review of the provisions of Ordinance 03-104; and

WHEREAS, Ordinance 03-104 adopted text amendments relating to the use of sewer lines by rural churches and schools consisting of amendments to Land Use Policy 1.C.4 and Utilities Policy 3.C.1; and

WHEREAS, Ordinance 03-104 amended SCC 7.44.030, 30.29.110, and 30.29.120 to allow and/or require rural churches and schools to connect to public sewer when the sewer line is located on or adjacent to the rural church or school; and

WHEREAS, Section 7 of Ordinance 03-104 contained a Severability/Savings Clause providing that "if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted"; and

WHEREAS, Ordinance 03-104 was adopted with the intention of protecting the rights of churches and schools where pre-existing sewer lines were located on or adjacent to their rural sites; and

WHEREAS, the director of the Washington State Department of Community, Trade, and Economic Development appealed the adoption of Ordinance 03-104 to the Central Puget Sound Growth Management Hearings Board (Board) in The Director of the Washington State Department of Community, Trade, and Economic Development v. Snohomish County, (CTED II) Case No. 03-3-0020, in which the Snohomish School District No. 201 appeared as an intervenor; and

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WHEREAS, on May 5, 2004, the Board issued its Final Decision and Order in CTED II; and

WHEREAS, the Board, in reliance on Thurston County v. The Cooper Point Assoc., 148 Wn.2d 1, 57 P.3d 1156 (2002), determined that RCW 36.70A.110(4) could not be broadly interpreted, and concluded: "The extension of urban governmental services into the rural area is prohibited except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment." CTED II, (Final Decision and Order, May 5, 2004) at 9; and

WHEREAS, the Board concluded that Ordinance 03-104 does not comply with the requirements of RCW 36.70A.110(4) by allowing the extension of urban governmental services into rural area, determined that the ordinance was invalid for violating the goals of the Growth Management Act, and remanded the ordinance to the County to take appropriate legislative action; and

WHEREAS, both the text amendments to the GPP and the amendments to the County's development regulations were invalidated by the Board's decision; and

WHEREAS, the Board recognized in Hensley VI, (Order Finding Validity of the Prior Plan and Regulations During the Remand Period and Rescinding Invalidity, October 13, 2003) at 2, that, upon a finding of invalidity, a savings clause, by operation of law, causes the invalid provisions to be changed back to the previous plan and regulations in place as if the invalidated ordinances were never adopted; and

WHEREAS, prior to the adoption of Ordinance 03-104, neither the GPPs nor the development regulations provided an exception to the general prohibition on the extension of sewer service to rural churches and schools; and

WHEREAS, after the finding of invalidity by the Board, the GPPs and development regulations amended by Ordinance 03-104 were by operation of law returned to their former policies and regulations; and

WHEREAS, the former provisions contained in the GPPs and development regulations comply with RCW 36.70A.110(4) and the Board's Final Decision and Order; and

WHEREAS, chapter 1.02 SCC charges the County Code Reviser with maintaining the County Code and revising the code as required by law.

NOW THEREFORE BE IT RESOLVED:

The County Council recognizes the Final Decision and Order issued by the Board and acknowledges the legal effect of the Severability Clause contained in Ordinance 03-104. If it has not already been accomplished, the County Code Reviser is directed to update the County Code to reflect the invalidity of Ordinance 03-104 and re-instate the former provisions. The Clerk of the Council is also directed to reflect the Board's Final Decision and Order where appropriate in the GPPs. The County Council further directs the Clerk of the Council to publish this resolution.

PASSED this 1<sup>st</sup> day of September, 2004.

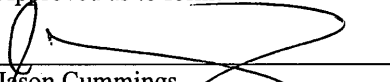
SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
Council Chair

ATTEST:

  
Clerk of the Council, *Asst.*

Approved as to form:

  
Jason Cummings  
Deputy Prosecuting Attorney

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