

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF AFFIRMING AN INTERIM)
ORDINANCE FOR PROCESSING OF BUILDING)
PERMITS IN RURAL AREAS OF)
UNINCORPORATED SPOKANE COUNTY)
ADOPTED UNDER RESOLUTION NO. 17-0059)

RESOLUTION

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington, (sometimes hereinafter referred to as the "Board"), has the care of the county property and management of county funds and business; and

WHEREAS, pursuant to the provisions of chapters 36.70 and 36.70A RCW, the Board has adopted a Comprehensive Plan for the unincorporated areas of Spokane County; and

WHEREAS, pursuant to the provisions of chapter 36.70 RCW, the Board of County Commissioners of Spokane County, Washington, created a Planning Commission, hereinafter referred to as the "Commission" and a Department of Building & Planning, hereinafter referred to as the "Department"; and

WHEREAS, pursuant to the provisions of chapters 36.70 and 36.70A RCW, Spokane County plans under the Growth Management Act codified under chapter 36.70A RCW and in conjunction therewith has adopted a Comprehensive Plan for the unincorporated areas of Spokane County; and

WHEREAS, Spokane County's Comprehensive Plan addresses water in various chapters and provides in part as follows:

(1) Chapter 10: Natural Environment

- a. NE. 18.1 Manage surface and ground waters throughout the county to stay within recharge capabilities.
- b. NE. 18.7 Discourage new water wells or increases in the extraction of water from existing wells in aquifers where water withdrawals exceed aquifer recharge, especially in the Little Spokane River Basin and the West Plains area. The provisions of public water service to these areas from sources outside the area shall be encouraged.
- c. NE.18.9 Support efforts to limit water use allowed under the state domestic exemption rule to provide supplies for single-family residences.

; and

WHEREAS, RCW 36.70.795 provides that:

"A board that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the board received a recommendation on the matter from the commission or department. If the board does not adopt findings of fact justifying its actions before this hearing, then the board shall do so immediately after this public

hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.”

; and

WHEREAS, RCW 36.70A.390 provides in pertinent part:

“A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for no longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer-period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.”

WHEREAS, moratoriums and interim zoning ordinances enacted under RCW 36.70.795 or RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, RCW 36.70.795 and RCW 36.70A.390 authorize the enactment of moratorium, interim zoning map, interim zoning ordinance or interim official control without holding a public hearing; and

WHEREAS, the State Environmental Policy Act codified in chapter 43.21C RCW provides that an environmental review must be conducted in conjunction with all major actions significantly affecting the quality of the environment. Washington Administrative Code provisions, specifically WAC 197-11-880 further provides:

WHEREAS, WAC 197-11-880 provides:

“Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety. To prevent an imminent danger to public or private property, to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.” and

WHEREAS, the specific provisions within the Growth Management Act address the County obligations to address water in rural areas. They include but are not necessarily limited to:

- (1) RCW 36.70A.020(10)
- (2) RCW 36.70A.030(15) (g), and
- (3) RCW 36.70A.070(5)(c)(iv).

; and

WHEREAS, RCW 19.27.097 sets forth the responsibilities of an applicant for a building permit to provide evidence of an adequate water supply. It provides as follows:

“RCW 19.27.097 Building permit application-Evidence of adequate water supply-Applicability-Exemption.

- (1) Each **applicant for a building permit** of a building necessitating potable water shall provide evidence of an **adequate water supply** for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.
- (2) Within counties not required or not choosing to plan pursuant to RCW 36.70.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of enterprises services to mediate or, if necessary, make the determination.
- (3) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties. (Emphasis added.)

; and

WHEREAS, on October 4, 2016, the Washington State Supreme Court filed its decision in *Whatcom County v. Hirst* (“*Hirst*”). Prior to issuance of the Mandate in the *Hirst* decision, Spokane County would issue building permits within the unincorporated areas of Spokane County based upon permit-exempt wells authorized under RCW 90.44.050, to demonstration that water was physically available, and information, or lack thereof, from the Department of Ecology to determine if the water was legally available. The *Hirst* decision provides that the County has the responsibility to determine if water is both factually and legally available prior to issuing a building permit, and cannot rely on the Department of Ecology’s inaction to determine that water is legally available. Legal availability of potable water generally means that supply of water by a particular method will not impair a senior water right holder. Various means can be used to substantiate the “legal” availability of water. They are set forth in RCW 19.27.097 and include:

- (1) A water right permit from the Department of Ecology.
- (2) A letter from an approved water purveyor stating the ability to provide water, or
- (3) Another form sufficient to verify the existence of an adequate water supply.

As a result of *Hirst*, the County can no longer simply accept an applicant’s recitation potable water will be provided through a permit exempt well authorized under RCW 90.44.050 to satisfy a determination of the legal availability of water without a showing by the applicant that the use of a permit exempt well will not impair a senior water right holder. A senior water right can be a water right authorized under federal or state law, or a water right established by an instream flow regulation adopted by the Washington State Department of Ecology under chapters 90.22 RCW and 90.54 RCW. Spokane County has six (6) Water Resource Inventory Areas (“WRIAs”), i.e. WRIA 55, 57, 56, 54, 34, and 43. The Washington State

Department of Ecology has adopted instream flow regulations in WRIA 55 (WAC 173-555) and WRIA 57 (WAC 173-557) to protect senior water rights. Other WRIA's have senior water rights, both surface water and groundwater, but no adopted instream flow regulations; and

WHEREAS, under RCW 19.27.097 referenced herein above and consistent with *Hirst*, the applicant for a building permit has the responsibility to provide evidence to Spokane County of a legally available "adequate" water supply; and

WHEREAS, pursuant to the provisions of RCW 36.70.795 and RCW 36.70A.390, the Board of County Commissioners adopted an Interim Zoning Ordinance under Resolution No. 16-0833 to address the Court's Decision in *Hirst*. The Board of County Commissioners subsequently adopted Resolution No. 16-0995 wherein the affirmed their action under Resolution No. 16-0833 for an additional time frame through June 13, 2017. The Board of County Commissioners also determined to hold a public workshop on Thursday, January 5, 2017 to consider proposed revisions/changes to the Interim Zoning Ordinance adopted under Resolution No. 16-0833 and affirmed under Resolution No. 16-0995; and

WHEREAS, after required public notice, the Board of County Commissioners of Spokane County held a public workshop on January 5, 2017 to consider proposed revisions/changes to the text of the Interim Ordinance adopted in Resolution No. 16-0833 and affirmed in Resolution No. 16-0995; and

WHEREAS, as a result of the public workshop and the information provided at said workshop the Board adopted a new Interim Ordinance under Resolution #17-0059 that provides greater flexibility and options for processing building permits in rural areas of Spokane County based upon the site location, aquifer condition, as well as providing further specificity than the previously adopted Interim Ordinance; and

WHEREAS, if the County were to continue public consideration of revisions/changes to the Interim Zoning Ordinance adopted under Resolution No. 17-0059 to address the terminology "adequate", as interpreted by *Hirst*, without first adopting interim ordinance based on site location and aquifer condition, those involved in the process of land use development would for all practical purposes be further limited in filing applications for building permits in rural area until the process was completed; and

WHEREAS, it is in the best interest of the public health, safety and welfare to adopt an Interim Ordinance as authorized under RCW 36.70.795 and RCW 36.70A.390 applicable to the processing of building permits in rural areas of unincorporated Spokane County.

WHEREAS, this measure is necessary to further implement the court's decision in *Hirst*; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this resolution is exempt from the requirements of a threshold determination under the State Environmental Policy Act.

WHEREAS, county staff estimates the completion of amendments to Spokane County Code with respect to processing of building permits in rural areas could take between six (6) months and one (1) year; and

WHEREAS, after required public notice, the Board of County Commissioners of Spokane County held a public hearing on February 21, 2017 to consider renewing for a six-month time frame, the Interim Ordinance initially adopted on January 10, 2017.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners that the Interim Ordinance adopted by Resolution No. 17-0059 shall remain in effect until August 21, 2017, unless renewed pursuant to applicable statute.

BE IT FURTHER RESOLVED that the Board of County Commissioners adopts each and every recital herein above as findings of fact to support the above action and additionally the Board does:

- 1) Direct the staff of the Spokane County Division of Building and Planning together with the Spokane County Planning Commission to expeditiously initiate an amendment to Spokane County Code with respect to the processing of building permits in rural areas.
- 2) Direct the Spokane County Division of Building and Planning to schedule and give proper notice of any hearings and meetings held under (1) above consistent with applicable regulations.
- 3) Acknowledge that the Interim Ordinance adopted herein may be effective for not more than six (6) months but may be effective for up to one (1) year if a work plan is developed for a longer period; and
- 4) Acknowledge that an Interim Ordinance may be renewed for one or more six (6) month period if a subsequent public hearing is held and findings of fact are made prior to each renewal.

BE IT FURTHER RESOLVED that the adoption of the Interim Ordinance is exempt from the requirements to the threshold determination under the State Environmental Policy Act pursuant to WAC 197-11-880.

PASSED, ADOPTED, AND EFFECTIVE as of 6:11 p.m. on the 21st day of February, 2017.



ATTEST:

Ginna Vasquez
Ginna Vasquez, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

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JOSH KERNS, VICE CHAIR

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