

NO. 17 - 0 5 3 7

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING AN)
INTERIM ORDINANCE FOR PROCESSING OF)
BUILDING PERMITS IN RURAL AREAS OF)
UNINCORPORATED SPOKANE COUNTY)
AND REPEALING PREVIOUS)
INTERIM ORDINANCE ADOPTED UNDER)
RESOLUTION NOS. 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 County property and the management of county funds and business; 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 provision 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, pursuant to the provisions of chapters 36.70 and 36.70A, the Board has adopted a Spokane County Zoning Code for the unincorporated areas of Spokane County; 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 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 action 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 that:

“A county or city governing body that adopts a 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 not 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.”

; and

WHEREAS, moratoriums and interim zoning ordinances enacted under RCW 36.70.795 or RCW 36.70A.390 are methods by which local governments may implement planning measures within their respective jurisdictions; and

WHEREAS, RCW 36.70.795 and RCW 36.70A.390 authorize the enactment of a 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:

“WAC 197-11-880 Emergencies.

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.” (Emphasis added.)

; 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 36.70A.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 enterprise 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 6, 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 Ecology under chapters 90.22 RCW and 90.54 RCW. Spokane County has six (6) Water Resource Inventory Areas (“WRIsAs”), 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 regulation; 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 affirmed adoption of Resolution No. 16-00833 under Resolution No. 16-0995 for an additional time frame through June 13, 2017 ; 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 affirmed in Resolution No. 16-0995; and

WHEREAS, as a result of the information discussed at the public workshop on January 5, 2017, the Board identified the need to repeal the Interim Ordinance adopted in Resolution No. 16-0833 and affirmed in Resolution No. 16-0995, and adopt a new Interim Ordinance 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, on January 10, 2017, the Board adopted Resolution No. 17-0059 which had the effect of repealing interim ordinance adopted under Resolution No. 16-0995 and replacing it with an Interim Ordinance that provided greater flexibility and options for processing building permits in the rural areas of Spokane County based on the site location, aquifer condition, as well as providing further specificity; and

WHEREAS, the Board is aware of numerous proposed bills that have been presented to and or considered by the legislative since the *Hirst* decision relating to use of permit-exempt wells for building permits, none of which appear likely to become law and provide legislative answers to the issues created under *Hirst*; and

WHEREAS, Spokane County has experts in its Environmental Services Department tasked with development of a water bank in WRIA 55, and the Board conducted a public workshop on April 19, 2017 and the water bank when fully implemented will allow more flexible options for processing building permits in rural areas of Spokane County through development of mitigation certificates; and

WHEREAS, Spokane County’s experts in its Environmental Services Department and the Department recommend changes in Resolution No. 17-0059 to further clarify and refine acceptable documentation as “... or another form sufficient to verify the existence of an adequate water supply” under RCW 19.27.097(1) for building permits that the County must process; and

WHEREAS, Spokane County has experts in its Environmental Services Department who developed language to further clarify and refine the definition of “adequate” under RCW 19.27.097 as previously set forth under Resolution No. 17-0059, to enable Spokane County to continue to process building permits in the rural areas of Spokane County consistent with its Comprehensive Plan and the holding in *Hirst*, which will further address and resolve applicants issues related to what may be acceptable documentation as “... or another form sufficient to verify the existence of an adequate water supply” under RCW 19.27.097(1) for building permits that the County must process; and

WHEREAS, if the County were to allow the expiration of the Interim Zoning Ordinance adopted under Resolution No. 17-0059 while continuing public consideration of revisions/changes to address the terminology “adequate”, as interpreted by *Hirst*, without first adopting a revised interim zoning ordinance based on current understanding of permitting, site location, aquifer identification, mitigation, and aquifer dependent distances, 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 a revised Interim Ordinance, as authorized under RCW 36.70.795 and RCW 36.70A.390, applicable to processing of building permits in rural areas in unincorporated Spokane County and at the same time Repeal the Interim Ordinance adopted under Resolution No 17-0059; and

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

WHEREAS, county staff estimates the completion of a new ordinance to implement the findings of *Hirst* could take between six (6) months and one (1) year; 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.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of RCW 36.32.120(6), RCW 36.70.795, RCW 36.70A.390, RCW 36.70A.130, Spokane County Comprehensive Plan Provisions Chapter 10: Natural Environment: NE: 18.1, NE: 18.7 and NE: 18.9 and WAC 197-11-880, that the Board declares an emergency and in so doing does adopt an Interim Ordinance as set forth in Attachment "A" attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that the Board of County Commissioners adopts each and every recital herein above 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 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) Determine to hold a public hearing on the Interim Ordinance within sixty (60) days of the adoption of this resolution.
- 4) 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
- 5) Acknowledge that an Interim Ordinance may be renewed for one or more six (6) month periods if subsequent public hearing is held and findings of fact are made prior to each renewal.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Spokane County, Washington, that effective as of the time and date of the passage of this Resolution that Resolution No. 17-0059 be and is hereby repealed.

PASSED, ADOPTED AND EFFECTIVE AS OF 2:13 P.M. on the
13th day of June, 2017.

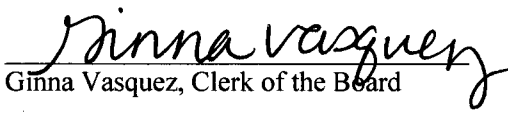


BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON


AL FRENCH, CHAIR

ATTEST:


JOSH KERNS, VICE-CHAIR


Ginna Vasquez, Clerk of the Board


SHELLY O'QUINN, COMMISSIONER

ATTACHMENT "A"

(Underlined Language Added, Lined Out Language Deleted)

INTERIM DEVELOPMENT REGULATION TO IMPLIMENT THE COURT'S HOLDING IN WHATCOM COUNTY V. HIRST

SECTION NO. 1: PURPOSE

The purpose of this regulation is to implement the Washington State Supreme Court's decision in *Whatcom County v. Hirst*, 182 Wash.2d 648 (~~No. 91475-3~~) filed on October 6, 2016.

SECTION NO. 2: DEFINITIONS

The following words and terms as used herein shall be held and construed to have the following meanings:

- (1) "Water Resource Inventory Area or WRIA" means the regional segments developed by the Department of Ecology to implement a comprehensive state water program as directed by the Water Resources Act of 1971 (RCW 90.54),
- (2) "WRIA's 55, 56, 57, 54, 34, and 43" shall be the same as identified and set forth in Washington Administrative Code (WAC) Chapter 173-500.
- (3) "Rural area" shall mean lands located outside the Urban Growth Area established by Spokane County and those areas located inside the Urban Growth Area established by Spokane County not served by a municipal water system.
- (4) "~~Domestic~~", "domestic purposes" and "domestic use" shall be the same as "Domestic Use" as defined in WAC 173-518-030.
- (5) "Beneficial Use" shall mean uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state. (~~RCW 90.54.020~~ WAC 173-500-050).
- (6) "Water well log" shall mean the well log submitted by a licensed driller to the Washington Department of Ecology after a water well is completed to describe the location, ownership, construction details and lithology of the constructed well.
- (7) "Sand and gravel aquifer" shall mean aquifers predominantly comprised of coarse-grained unconsolidated material (e.g., sand, gravel), that may also contain minor amounts of finer-grained material (e.g., silt, clay).
- (8) "Clay and silt aquifer" shall mean aquifers predominantly comprised of fine-grained unconsolidated material (e.g., silt, clay), and may contain minor amounts of coarse-grained material (e.g., sand, gravel).
- (9) "Bedrock aquifer" shall mean aquifers comprised mostly of granite, quartzite, schist, and gneiss, but can include thin discontinuous sand, gravel, clay and silt.
- (10) "Basalt aquifer" shall mean aquifers comprised of Columbia River Basalt and may include interbeds of

sand, gravel, clay, and silt.

- (11) “Individual well” shall mean a well that provides water to a single residence, or other structure for domestic purposes and is located on the same parcel as the residence.
- (12) “Shared well” shall mean a well that serves a residence, or other structure for domestic purposes on the parcel on which the well is located and a second residence on a separate parcel.

SECTION NO. 3: REGULATON

RCW 19.27.097 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 36.70A.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 enterprise 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.)

In reviewing applications for building permits that were counter complete and submitted to the Spokane County Department of Building and Planning after October 26, 2016, the County shall implement the Comprehensive Plan and RCW 19.27.097 as follows:

The terminology **“another form sufficient to verify the existence of an adequate water supply”** referenced in RCW 19.27.097(1) above shall mean, for an applicant for a building permit in the rural area of Spokane County located in WRIA 55, the following:

- A water right permit or water right certificate that legally authorizes year around, uninterrupted domestic water use in the proposed project location; or
- Demonstration of existing domestic water or group use exempt from permitting requirements of RCW 90.44.050 on the same parcel identified on the building permit application, and the following criteria are met:

- Water use must be associated with a structure recognized by the Spokane County Assessor as a permanent structure or structure built, placed, or reconstructed in accordance with a building permit accepted by the Spokane County Department of Building Planning on or before October 26, 2016; and
- Water use must be for domestic purposes.

or

- Provide mitigation with a water right in the Trust Water Program under Chapter 90.42 RCW that that has been determined to be valid by the Department of Ecology as mitigation for instream impacts from out of stream domestic use in the project location and meets the following conditions:
 - An established lateral distance between the proposed well and any well that has an established domestic or beneficial, or a well associated with a valid building permit as follows:
 - 500 feet of lateral distance between the proposed individual well and any existing well that has an established domestic or beneficial use, or a well associated with a valid building permit; and
 - 750 feet of lateral distance between the proposed shared well and any well that has an established domestic or beneficial use or a well associated with a valid building permit;

or

- An aquifer dependent lateral distance between the well designated to supply water in the building permit and any existing well that has an established domestic or beneficial use, or a well associated with a valid building permit. The designation of the appropriate aquifer must be done by a State of Washington licensed geologist (LG), hydrogeologist (LHG), professional engineer (PE), or a water well contractor with a full Well Operators License issued by the Washington State Department of Ecology. The aquifer designation shall be based on the water well log of the well designated to supply water in the building permit, a copy of which will be filed with the Department.

Aquifer dependent lateral distances are as follows:

- For individual wells:
 - Sand and gravel aquifer – 100 feet
 - Clay and silt aquifer – 200 feet
 - Bedrock aquifer – 200 feet
 - Basalt aquifer – 500 feet
- For shared wells:
 - Sand and gravel aquifer – 150 feet
 - Clay and silt aquifer – 300 feet
 - Bedrock aquifer – 300 feet
 - Basalt aquifer – 750 feet

or

- A hydrogeological report prepared by a LHG or PE licensed in the State of Washington that concludes that under average climate conditions and annual average pumping rates, of permit-exempt well use from the proposed well and all wells brought into service after October 26, 2016 and located within the radius of the applicable aquifer dependent lateral

distance associated with the building permit (area of applicability), is-are not estimated to cumulatively induce greater than 10 feet of additional water level drawdown in any existing well within the area of applicability that has an established domestic or beneficial use, or a well associated with a valid building permit. The conclusion shall be based on generally accepted hydrogeologic principals and techniques. The hydrogeologic report shall include all data and analysis used to support the report's conclusion.

The terminology **“another form sufficient to verify the existence of an adequate water supply”** referenced in RCW 19.27.097(1) above shall mean, for an applicant for a building permit in the rural area of Spokane County and located in the area subject to WAC 173-557:

- A mitigation certificate issued by the Washington Department of Ecology that satisfies the requirements of WAC 173-557-060(4).

The terminology **“another form sufficient to verify the existence of an adequate water supply”** referenced in RCW 19.27.097(1) above shall mean, for an applicant for a building permit in the rural areas of Spokane County and located in the areas of WRIA 54 and WRIA 57 not subject to WAC 173-557, WRIA 56, WRIA 34, and WRIA 43, the following:

- A water right permit or water right certificate that legally authorizes year around, uninterrupted domestic water use in the proposed project location; or
- Demonstration of existing domestic water or group use exempt from permitting requirements of RCW 90.44.050 on the same parcel identified on the building permit application, and the following criteria are met:
 - Water use must be associated with a structure recognized by the Spokane County Assessor as a permanent structure or structure built, placed, or reconstructed in accordance with a building permit accepted by the Spokane County Department of Building Planning on or before October 26, 2016; and
 - Water use must be for domestic purposes;

or

- 500 feet of lateral distance between the proposed individual well and any existing adjacent well that has an established domestic or beneficial ~~or domestic~~ use, or a well associated with a valid building permit; or
- 750 feet of lateral distance between the shared well and any existing well that has an established domestic or beneficial ~~or domestic~~ use, or a well associated with a valid building permit; or
- An aquifer dependent lateral distance between ~~individual~~ the well designated to supply water in the building permit and any existing ~~adjacent~~ well that has an established domestic or beneficial use, or a well associated with a valid building permit. The designation of the appropriate aquifer must be done by a State of Washington licensed geologist (LG), hydrogeologist (LHG), or professional engineer (PE), or a water well contractor with a full Well Operators License issued by the Washington State Department of Ecology. The aquifer designation shall be based on the water well log of the well ~~that will be used~~ designated to supply water for in the building permit, a copy of which will be filed with the Department. ~~or wells in the vicinity that represent aquifer conditions in the area where the well that will be used to supply water for the building permit will be drilled.~~

Aquifer dependent lateral distances are as follows:

- For individual wells:
 - Sand and gravel aquifer – 100 feet

- Clay and silt aquifer – 200 feet
- Bedrock aquifer – 200 feet
- Basalt aquifer – 500 feet
- For shared wells:
 - Sand and gravel aquifer – 150 feet
 - Clay and silt aquifer – 300 feet
 - Bedrock aquifer – 300 feet
 - Basalt aquifer – 750 feet

or

- A hydrogeological report prepared by a LHG or PE licensed in the State of Washington that concludes ~~that~~ under average climate conditions and annual average pumping rates, of permit-exempt well use from the proposed well and all wells brought into service after October 26, 2016 and located within the radius of the applicable aquifer dependent lateral distance associated with the building permit (area of applicability), ~~is~~ are not estimated to cumulatively induce greater than 10 feet of additional water level drawdown in any existing well within the area of applicability that has an established domestic or beneficial use, or a well associated with a valid building permit. The conclusion shall be based on generally accepted hydrogeologic principals and techniques. The hydrogeologic report shall include all data and analysis used to support the report's conclusion.