

CITY OF ARLINGTON, WASHINGTON

ORDINANCE NO. 1458

AN ORDINANCE ANNEXING TO THE CITY OF ARLINGTON A PORTION OF SECTION 8, SECTION 16, AND SECTION 17 OF TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., SNOHOMISH COUNTY, WASHINGTON, COMMONLY KNOWN AS THE ISLAND CROSSING ANNEXATION

WHEREAS, the matter of the passage of this ordinance came before the City Council this day; and

WHEREAS, the annexation comprised of approximately 210 acres and commonly known as the Island Crossing annexation was referred to the Snohomish County Boundary Review Board (“BRB”) pursuant to City of Arlington Resolution Number 673, adopted on December 15, 2003; and

WHEREAS, the City filed its notice of intent to annex with the BRB on or about January 12, 2004; and

WHEREAS, the legal description of said annexation was further modified by City of Arlington Resolution Number 675, adopted on February 17, 2004; and

WHEREAS, on February 13, 2004, the Snohomish County Council unanimously passed its Motion No. 04-043, in which the County Council found that the Island Crossing portion of the Arlington Urban Growth Area (UGA) “is an important part of the Arlington UGA...and as such will be the recipient of future urban growth for the City and the County”, and by which the Council affirmed it did not oppose the annexation and would not invoke BRB jurisdiction;

WHEREAS, the Stillaguamish Flood Control District filed a request with the BRB on February 25, 2004, which asked the BRB to invoke jurisdiction over the Island Crossing annexation; and

WHEREAS, there was also filed with the BRB a citizens’ petition by Robert Grimm and others (the “Citizens Petition”), which the BRB determined was untimely filed; and

WHEREAS on March 22, 2004, the Central Puget Sound Growth Management Hearings Board (“CPSGMHB”) issued a Final Decision and Order (“FDO”) which determined that Snohomish County’s Ordinance No. 03-063, which had previously amended the Arlington UGA to include a portion of the area within the Island Crossing annexation area, was not in compliance with the Growth Management Act (GMA) and invalidated that ordinance and remanded it to Snohomish County for further proceedings; and

WHEREAS, on April 12, 2004, the BRB determined that the Stillaguamish Flood Control District did not have standing as a “governmental unit affected” by the annexation under RCW 36.93.100; and

WHEREAS, the County Council, in order to comply with the CPSGMHB decision, conducted further hearings and, on May 24, 2004, did adopt its Emergency Ordinance No. 04-057, which adopted written findings and conclusions once again supporting the proposed expansion of the Arlington UGA to include the portion of the area within the proposed Island Crossing annexation; and

WHEREAS, on June 1, 2004, the CPSGMHB issued an “Order Rescinding the April 9, 2004 Order Rescinding Findings of Noncompliance and Invalidity” (“Order Rescinding”), which further held that the county’s plan including the Island Crossing UGA designation was invalid pending a compliance hearing; and

WHEREAS, the CPSGMHB on June 24, 2004 issued an Order Finding Continued Noncompliance and Continuing Invalidity and Recommending Gubernatorial Sanctions (“the Compliance Order”); and

WHEREAS, the County Council adopted its Resolution #05-001 on January 4, 2005, which stated its intention or policy to take no legislative action until the CPSGMHB decision was reversed by a court of competent jurisdiction; and

WHEREAS, the decisions of the CPSBMHB including the FDO and the Compliance Order were appealed by Snohomish County, by the City of Arlington and by Dwayne Lane to the Snohomish County Superior Court; and

WHEREAS, the CPSGMHB determined that Resolution 05-001 was sufficient to remove the request for gubernatorial sanctions; and

WHEREAS, the decision of the Boundary Review Board determining that the Stillaguamish Flood Control District had no legal standing to invoke the jurisdiction of the BRB was upheld by the King County Superior Court under King County Superior Court #04-2-10450-5 SEA, and that decision was never appealed and is therefore final; and

WHEREAS, although the Snohomish County Superior Court upheld the decisions of the CPSGMHB under consolidated Snohomish County Superior Court case #04-2-09180-1, Snohomish County, the City of Arlington, and Dwayne Lane subsequently appealed the decisions to the Court of Appeals; and

WHEREAS, the Court of Appeals, under City of Arlington, Snohomish County and Dwayne Lane v. Central Puget Sound Growth Management Hearings Board, 138 Wn. App. 1 (2007), reversed the decisions of the CPSGMHB, and held that the County’s decision to remove

the agricultural land designations and to include the Island Crossing area within Arlington's UGA was entitled to deference and should have been upheld by the Hearings Board; and

WHEREAS, the Court of Appeals held that "We hold the [CPSGMHB] erred in finding the County committed clear error in concluding that the land at Island Crossing had no long term commercial significance to agricultural production", and "we hold the [CPSGMHB] erred in finding the County committed clear error in including the land in Island Crossing within the newly expanded UGA"; and

WHEREAS, the decision of the Court of Appeals was appealed to the Washington State Supreme Court, and the Supreme Court issued an opinion on October 9, 2008, which upheld the decision of the Court of Appeals under Supreme Court case #80395-1, incorporated by reference the foregoing findings of the Court of Appeals as its own, and denied the appeal and upheld the decision of Snohomish County and the Court of Appeals; and

WHEREAS, the Supreme Court issued its mandate on November 5, 2008, which remanded the matter for a decision consistent with the opinion of the court, meaning that no further review is anticipated or appropriate; and

WHEREAS, under the provisions of Snohomish County Code §2.48.160 and well-established Washington law, Snohomish County Resolution 05-001 represents a statement of policy or opinion, but does not have the force of law; and

WHEREAS, with the issuance of the mandate by the Supreme Court, Snohomish County Ordinance 04-057 is presumed to be valid and in effect; and

WHEREAS, the Boundary Review Board has expressly determined that no party with legal authority under RCW Chapter 36.93 properly or timely invoked the jurisdiction of the Boundary Review Board to review said annexation and that the annexation is deemed approved by the BRB under the provisions of RCW 36.93.100; and

WHEREAS, while the controversy and multi-faceted legal battle over the Island Crossing Annexation principally involved the approximately 110 acres which was added to the Arlington UGA by Ordinance No. 03-063 and again in Ordinance No. 04-057, approximately 100 additional acres of land in areas not in dispute are within the proposed annexation area, and the property owners and residents within that additional area who have sought to annex to Arlington have continued to be adversely affected by the prolonged legal dispute and delayed in their efforts to develop their properties and annex to the City of Arlington; and

WHEREAS, the City of Arlington, believing that the County Council, which correctly and successfully argued its case before the appellate courts of this state, has fully complied with the requirements of the Growth Management Act, and believing that all of the residents of the County and owners within the proposed Island Crossing annexation area, including both the area of controversy and the upland areas which have never been in controversy, are entitled to

certainty and finality following the decision of the highest court of our state, now wishes to formally annex the area pursuant to the request from the property owners;

NOW THEREFORE, THE CITY COUNCIL OF ARLINGTON, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. The following described property be and it is hereby annexed to and included within the corporate limits of the City of Arlington, Snohomish County, State of Washington:

See legal description attached hereto as Exhibit "A",

said property to be assessed and taxed at the same general rate and on the same general basis as the property in the City of Arlington is assessed and taxed to pay for any presently outstanding indebtedness of the City of Arlington which has been contracted prior hereto, or exists at, the date of this annexation.

Section 2. The properties shall have the Comprehensive Plan land use designations of Airport Industrial and Highway Commercial and the zoning designations of Light Industrial and Highway Commercial as shown on Exhibit "B" (map of annexing area).

Section 3. The resident population of the annexed area shall be determined by, or under the direction of the Mayor, and the certificate shall be submitted, all in accordance with RCW 35A.14.700; the City Clerk shall submit five certified copies of this ordinance to the County Council of Snohomish County, through the Snohomish County Boundary Review Board; the City Clerk shall submit a certified copy of this ordinance to the Washington Survey and Rating Bureau; and the City Clerk shall take such other action as is required by law as a result of this annexation.

Section 4. If any provision, section, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 5. This ordinance shall be effective five days after its passage and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor, at a regular meeting of the City Council called on the 17th day of November, 2008.

CITY OF ARLINGTON

Margaret Larson, Mayor

ATTEST:

Kathy Peterson, City Clerk

APPROVED AS TO FORM:

Steven J. Peiffle, WSBA #14704
City Attorney