

IN THE MATTER OF THE PETITION

Case No. : 21CV41823

RESPONDENT'S FIRST OBJECTIONS

The Court should also deny Petitioner's RESOLUTIONS since Petitioner, without explanation, has for two years refused to itself of the mandated Special District bond measure process. The bond measure process would provide the expeditious legal

examination sought by Petitioner in 5 days after filing. And it could have been done a year or more ago. Petitioner has simply refused, no explanation. Therefore examination of the Resolutions by this Court would be an unnecessary use of judicial resources. For each of these reasons Respondent asks the Court to deny Petitioner's Petition.

RESPONDENT

Respondent Glenn Brown is an individual and at all times relevant herein has been a registered Oregon voter residing within the Panoramic Access Special Road District (PASRD) at 17007 Buck Horn Drive, Sisters, Deschutes County, Oregon 97759.

RESPONENT'S OBJECTIONS

The current PASRD Board and its predecessor Board have for two years now failed to, *refused* to, prepare and submit the RESOLUTIONS for a vote of all district electors under the mandated Sec 371 bond measure process. Petitioner has provided no allegation of difficulty or problems it would encounter if it were to proceed via bond measure. Instead Petitioner now asks this Court to sanction a dramatic and extreme deviation from Oregon election and property tax rights and laws spelled out by the Constitutional and the Legislature.

During the last two or so years PASRD has tried two strategies instead of submitting a bond measure application. First a vote of only property owners. Although there are about 221 registered voters in PASRD (Exh. 1), the Board only sent out apr. 147 ballots, and only to owners of in-district properties,

regardless ^{9CT3} ~~regardless~~ of residency. Between 70 and 80 registered District voters were denied ballots because they did not own property in PASRD. That was apparently done knowingly and intentionally. "We don't want renters voting." (former PASRD Commissioner.) The number of excluded ballots exceeded the margin of victory in the first property-owners-only vote.

The second process then appears to have stalled for months. Then the Commissioners dispensed with a voter election altogether in favor of a "Commissioners" vote to approve the Resolutions.

The result is the same in both. Non-property-owners are intentionally excluded, only property owners get to vote; in the Commissioner vote all but 3 property owners – the Commissioners – were excluded. During all this time and without justification the Commissioners failed to simply submit a bond measure for a district-wide vote.

B. The Court does not have personal jurisdiction over Respondent absent service of a Summons.

Respondent has not been served with a Summons. A judgment in rem may affect the interests of a defendant in the status, property, or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7 or other applicable rule or statute. ORCP 5 – JURISDICTION (In Rem)

Petitioner alleges that it acquired personal jurisdiction over its electors, including Respondent, by publication under ORS 33 et seq. However, ORS 33 requires Petitioner to serve Summons on any party whose property or other rights would be

seriously and adversely affected. ORS 33 et seq. It would appear that granting Petitioner's Prayers for Relief would significantly affect voting and property rights of over 200 of Petitioner's electors. ORS Sec 33 et seq, ORCP 5, and procedural and substantive due process (and fairness) dictate that prior to granting Petitioner's Examination the Court must require that all PASRD electors be served a Summons rather than relying on Notice publication.

A. The Court does not have subject matter jurisdiction.

Petitioner asserts that subject matter jurisdiction is provided by ORS 33 et seq. However, "[n]othing in this section 33.710 allows a governing body to have a judicial examination and judgment of the court without a justiciable controversy. [Amended by 1975 c.133 §1; 2003 c.548 §1; 2013 c.768 §124; 2015 c.767 §46]. ORS 33.710.

"A controversy is justiciable where there is an actual and substantial controversy between parties having adverse legal interests. The controversy must involve present facts as opposed to a dispute which is based on future events of a hypothetical issue. A justiciable controversy results in specific relief through a binding decree as opposed to an advisory opinion which is binding on no one. The court cannot exercise jurisdiction over a nonjusticiable controversy because in the absence of constitutional authority, the court cannot render advisory opinions." Brown v. Oregon State Bar, 293 Or. 446, 449, 648 P.2d 1289 (1982) (citing Oregon Cty. Mfgs. Ass'n v. White, 159 Or. 99, 109, 78 P.2d 572 (1938)).

A justiciable controversy requires a ripe controversy. The Petitioner must have first exhausted all of its administrative remedies before a Court is permitted to hear a case. Petitioner has not done so.

1. The Court does not have subject matter jurisdiction because the RESOLUTIONS have not been submitted to a district-wide, all-electror vote.

Where as here, a Special District Board has voted to approve an assessment and funding for a capital improvement, there is no ripe controversy and the Court has no subject matter jurisdiction unless and until there has been a vote of all electors. *Morgan vs. Sisters School District No. 6*, 301 P.3d 419. (no justiciable controversy and therefore no standing where special district had not yet put capital improvement funding measure to district-wide vote.)

In *Morgan* the School District challenged plaintiff's standing to contest the validity of a school capital improvement assessment and bond funding proposal. (Standing and subject matter jurisdiction require the same justiciable controversy analysis.) The School Board in *Morgan* had approved by Board vote a bond measure proposal, but had not yet submitted the bond measure to a district-wide, all elector vote. The Court found that the plaintiff in that case had no standing because there was no ripe controversy unless until an election of all electors had been held. *Id.*

The facts in this are strikingly similar. As in *Morgan*, Petitioner has adopted by Board vote a resolution to approve

capital construction plan but has not yet submitted it to a vote of ALL district electors. Here as in *Morgan* there is no justiciable controversy because an all-electors vote has not been held.

2. Petitioner has for two years now refused, without explanation, to submit a statutory bond measure proposal.

Petitioner has asked the Court for a dramatic remedy – to approve a novel, *unprecedented* approval and funding scheme for funding the paving of PASRD roads. Petitioner would, with the Court's sanction, dispense with a vote of electors altogether and trample the rights of more than 200 district electors in favor of the Commissioners' 3 votes. It should not be permitted to do so. This is extraordinary relief and an extraordinary request, some might say outrageous.

Petitioner already has a perfectly good remedy and does not need relief from the Court. ORS Sections 371 et seq, specifically entitled Road Districts and Road Assessment Plans, comprises a compete, specific, limited grant of administrative authority from the county to Special Road District Commissioners to assess and levy taxes for road improvements.

371.097. Levy of taxes - Application of Local Budget Law

(1) A road district may assess, levy and collect each year an **ad valorem** tax on all taxable property within the road district.

(2) Ad valorem taxes authorized by this section shall be paid in money and shall be levied and collected in the same manner as other county taxes.

(3) Notwithstanding ORS 294.316 (Exclusions from scope) (5), 294.305 (Sections constituting Local Budget Law) to 294.565 (Failure to file copy of required budget reports or other documents) apply to the road district for each fiscal year in which ad valorem taxes are assessed and levied by the district. [1987 c.667 §2] ORS 371.097 (Emphasis added)

In other words, PASRD could use the same bond measure process that every other Special District in Oregon employs.

If not one would expect that Petitioner would identify a problem that could not be adequately addressed by the statutory Sec. Petitioner in its pleadings has not alleged a single problem it would encounter using the Special Road District levy process prescribed, mandated, in ORS 371 et seq. Petitioner has simply refused to do so.

The only problem with the Sec. 371 levy process that has been referenced by a Commissioner of which Petitioner is aware is that the Board decided not to submit a 371 levy vote to all district electors because the Commissioners do not want renters voting. If so that would be an improper purpose, and would not sufficient justification for refusing to submit a statutory 371 bond measure to District voters.

Excluding non-owner electors violates Article II, Sec. 2 of the Oregon Constitution. Oregon's Constitution requires a vote of "electors", i.e citizens residing in the district, and at the same time prohibits property ownership as a pre-qualification as an elector in the SRD. The Oregon Supreme Court has held that *property ownership cannot be a pre-qualification of voting in a taxing election. Loe v. Britting, 132 Or 572, 287 P 74, decided in 1930, held unconstitutional as in conflict with Art II, § 2,*

an act of the legislature passed in 1929 (Oregon Laws 1929, ch 281), which provided that no person should be allowed to vote upon the question of levying a special tax or issuing public bonds unless such person was a taxpayer upon real or personal property situated within the particular tax-levying or bond-issuing district. *Peterkort & Co. v. County Zoning District*, 313 P. 2d 773 - Or: Supreme Court 1957.

If approved, the RESOLUTIONS would add unconstitutional voting limitations that exclude otherwise qualified electors. It has no authority to do so. Not even the Oregon Legislature could do so. See e.g. "That the legislature cannot add to the constitutional qualifications of voters, unless expressly provided therein, is too well established to admit of contradiction. *Livesley v. Litchfield*, 47 Or 248, 83 P 142; *Loe v. Britting*, supra; *Peterkort v. East Washington County Zoning District*, 211 Or 188, 313 P2d 773, 314 147*147 P2d 912.

There is no problem with the Sec 371 levy process. Most if not all Oregon Special Districts in Oregon use it and have for decades. The Board is simply persisting in its refusal so submit a statutory levy vote to its electors, without providing the Court any proper reason. Commissioners' personal wish to exclude non-property-owner electors from voting on an assessment would clearly not be proper or sufficient justification. Before granting Petitioner should be made to identify a compelling and legal reason why it has refused for about two years not to let everyone vote in a Sec 371 election. So far none is evident.

Petitioner should also be made to first specifically delineate any obstacles or problems preventing it from funding using the statutory Sec 371 levy vote process. It indisputably has an unused administrative remedy available to Petitioner, and this Court has no subject matter jurisdiction until and unless Petitioner.

3. Petitioner could have obtained the requested relief within 5 days of filing for a Sec 371 Bond Measure but has refused to do so for two years.

Not later than the fifth business day after receiving a prospective petition for an initiative measure, the elections officer shall determine in writing whether the initiative measure meets the requirements of section 1 (2)(d) and (5), Article IV of the Oregon Constitution. ORS 255.140 (emphasis added.)

FIVE DAYS AFTER FILING. There is no apparent reason why Petitioner has instead chosen complicated, expensive litigation with all its uncertainties and refused an efficient, fast, authoritative examination of the Resolutions. Why?

4. Examining Petitioner's Request prior to a Sec. 371 levy vote would be a waste of the Court's resources.

The Sec. 371 levy process provides administrative resolution of issues of legality and constitutionality under ORS 255.140 which provides that after submission of a Sec Sec 371 levy to the County, the County tax authorities make a determination whether the proposal meets all the legal requirements.

"Not later than the fifth business day after receiving a prospective petition for an initiative measure, the elections officer shall determine in writing whether the initiative

measure meets the requirements of section 1 (2)(d) and (5), Article IV of the Oregon Constitution." ORS 255.140(1).

That is the same relief Petitioner is seeking from this Court. In five days after filing! With all due respect the Court could not likely resolve those issues within 5 days of the Petitioner's filing. The reason is simple, Oregon has elections and tax authorities in place to provide fast and fair resolutions to these issues. Petitioner could avoid this waste of judicial resources by simply submitting a statutory 371 funding proposal.

Instead Petitioner has chosen litigation for no stated reason. As long as Petitioner maintains its unjustified refusal to do submit a statutory Sec 371 funding proposal, the Court should deny Petitioner's request as an unnecessary waste of judicial resources.

The Court should deny Petitioner's Request for Examination because it would unjustly enrich PASRD Commissioners at the expense of their less wealthy neighbors.

1) The RESOLUTIONS propose a uniform lump sum assessment on each properties regardless of value. That is inherently unfair. PASRD is gentrifying along with the rest of Central Oregon. Many electors own or live in modest homes which they have held for years.

For example, one district property is for sale for more than \$2,000,000. On the other hand there district properties worth only around \$200,000. Both would be assessed at the same lump sum, both would receive a similar per centage increase in value. The wealthy owner would realize about \$200,000, the poorer owner just \$20,000. This would unjustly enrich the

wealthier owners at the expense of less wealthy neighbors, , and would constitute an unfair subsidy of the wealthy property owners and speculators by the less wealthy, long-term residents. The Board's response so far has been "Well, maybe not everybody can afford to live here." (former PASRD Commissioner). Indeed, especially if the Court approves the RESOLUTIONS.

There appears to be no limit to the amount of an assessment the Board could impose on electors under the RESOLUTIONS. This time it's some \$5500 or so. If freed of the constraints of the Sec 371 statutory system of elector votes, why could the same three wealthy Commissioners assess \$10,000 or \$20,000 on each lot for a club house for example? Where does it stop?

There's nothing fair about it and they know it. That was an arbitrary and capricious finding that should be rejected out of hand by the Court, and the Court would be justified in doing so without more.

CONCLUSION

The Court should DENY Petitioner's request for examination of the Resolutions, ORDER Petitioner to prepare and file a bond measure application, and retain jurisdiction over its ORDER to ensure compliance. Doing so would provide the requested relief and best conserve judicial resources.

PRAYER FOR RELIEF

WHEREFORE,

RESPONDENT seeks the following relief from the Court:

1. An Order denying DENYING Petitioner's Prayers for an examination of the Resolutions.

2. An Order ordering PASRD to submit its paving proposal via a Sec. 371 bond measure and in compliance with ORS 255 et seq.
3. An ORDER enjoining PASRD Commissioners Head, Wittington and Becker, and any other PASRD Officer or Road Committee member with actual notice of the ORDER, from expending any further PASRD funds for the subject paving proposal UNLESS and UNTIL a prior vote of ALL PASRD electors and otherwise in accordance with OES 371 et seq. has been held.
4. An ORDER enjoining each PASRD Commissioner, Officer or Road Committee member who receives actual notice of the ORDER, from telling or otherwise representing any third party that a paving proposal has been passed, will be passed, or that PASRD roads will be paved, UNLESS and UNTIL a prior vote of ALL PASRD electors and otherwise in accordance with OES 371 et seq. has been held.
5. An ORDER ordering an AUDIT of PSARD's prior surveys, polls, votes and elections to determine whether and if so to what extent SPARD voters were improperly excluded from
6. An ORDER for an ACCOUNTING of PSARD's assets, liabilities, funds and expenditures, including but not limited Resolutions 2021, 2022, and prior paving proposals put forth by PASEF since January 1, 2018.
7. An ORDER granting Respondent its costs and attorneys fees.
8. Any other legal and equitable relief that the Court finds warranted.

Dated this 25th day of January, 2022

A handwritten signature in black ink, appearing to read 'Glenn Brown', written over a horizontal line.

Glenn Brown,
Respondent

Glenn Brown
17007 Buck Horn Drive
Sisters, Oregon 97759

541-815-5513 (voice)

glennbrown27@gmail.com

County: DESCHUTES
User Name : Dennison, Steve

District Voter Counts (Legal Size)

Date 10/1/2021 7:43:01 AM
Report No. DP-003

District : All Status : Active

	TOTAL	DEM	REP	NAV	OTH	CON	IND	LBT	PGP	PRO	WFP
Deschutes Public Library District, Zone 4	29353	9586	7959	9463	144	30	1777	270	74	25	25
Deschutes Public Library District, Zone 5	30451	12635	5838	9672	152	24	1727	263	82	40	18
Bend Metro Park & Recreation District	73777	27524	16390	23989	371	82	4439	652	191	81	58
La Pine Park & Recreation District	10881	2200	3865	3904	78	22	678	65	20	6	43
Redmond Area Park & Recreation District	35630	8024	12839	11947	215	55	2135	305	38	15	57
Sisters Park & Recreation District	7995	2552	2648	2158	59	16	481	56	16	1	8
West La Pine Livestock District Annex Petition #2	132	28	55	43	1	0	5	0	0	0	0
Deschutes County 911 Service District	152646	47222	44185	49170	875	198	9101	1287	306	120	182
West La Pine Livestock District Annex Petition #1	74	9	39	19	0	1	4	2	0	0	0
Beaver Special Road District	90	28	32	19	0	0	6	1	3	0	1
Cascade View Estates Tract 2 Special Road District	538	99	196	199	4	2	27	11	0	0	0
Crooked River Ranch Special Road District	346	64	162	85	1	0	31	1	0	2	0
Deschutes County Special Road District #8	725	141	272	244	7	1	49	6	1	0	4
Fall River Estates Road District	104	32	32	24	1	0	13	1	0	0	1
Forest View Special Road District	337	72	116	127	2	0	17	3	0	0	0
Howell Hilltop Acres Special Road District	130	28	56	33	2	0	10	1	0	0	0
Lazy River Special Road District	173	42	61	61	0	0	6	2	1	0	0
Newberry Estates Special Road District	369	88	131	125	2	1	17	2	1	2	0
Panoramic Access Special Road District	221	66	73	68	4	0	5	5	0	0	0
Pinewood Country Estates Special Road District	53	11	28	11	0	0	3	0	0	0	0
Ponderosa Pines East Special Road District	124	20	51	44	1	2	6	0	0	0	0
River Bend Estates Special Road District	205	59	62	68	2	0	11	3	0	0	0
River Forest Acres Special Road District	137	66	32	27	1	0	11	0	0	0	0

Exh. 1

CERTIFICATE OF SERVICE

I, Glenn Brown, certify that a true and accurate copy of the Complaint was served on Petitioner's counsel by being deposited in first class mail, postage prepaid, on January 31, 2012 at the following address:

Karnopp Peterson LLP

301 SW Bond Street, Suite 400
Bend, Oregon 97702

Plaintiff also transmitted a courtesy copy electronically to Petitioner.

DATED: January 25, 2022

A handwritten signature in dark ink, appearing to read 'Glenn Brown', is written over a horizontal line.

Glenn Brown, Respondent