

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
TWENTY-FIFTH JUDICIAL CIRCUIT

FILED

FEB 23 2016

SUE BROWN,
CIRCUIT CLERK, PHELPS COUNTY, MO.

IN RE THE FORMATION OF THE)
MOVE ROLLA TRANSPORTATION)
DEVELOPMENT DISTRICT,)
)
CITY OF ROLLA, MISSOURI, et al.,)
)
Petitioners,)
)
v.)
)
MISSOURI HIGHWAY AND)
TRANSPORTATION COMMISSION,)
)
Respondent.)

Cause No. 15PH-CV01751
Div. 1

**MOTION OF THOMAS J SAGER TO INTERVENE OR, IN THE ALTERNATIVE,
FOR LEAVE TO FILE SUGGESTIONS AMICUS CURIAE**

Thomas J. Sager moves the Court for leave to intervene as a respondent in this matter pursuant to Rule 52.12 (b)(2), Mo. R. Civ. P, or, in the alternative, for leave to file suggestions amicus curiae.

Motion to Intervene

In support of his motion to intervene as a respondent in this matter, Mr. Sager states:

1. Mr. Sager wishes to assert the defenses set forth in his Answer in Intervention, attached hereto as Exhibit A. These defenses and the main action have a question of law or fact in common.

2. In particular, the statute which is a subject of this action requires that, in order to form a transportation development district, the petitioners must show that the proposed district area is contiguous (property separated only by public streets, easements, or rights-of-way or connected by a single public street, easement, or right of-way is considered contiguous under the statute).

3. The proposed district area in this matter, however, would not be contiguous, as shown in attached Answer.

4. Further, the statute which is the subject of this action requires that the proposed district not be unjust or unreasonable.

5. The proposed district in this matter, however, would be unjust and unreasonable, as explained in the attached Answer.

Wherefore, Thomas J. Sager respectfully requests that his motion for leave to intervene as a respondent in this matter be granted, and that the Court order that the attached Answer be filed.

Alternative Motion for Leave to File Suggestions Amicus Curiae

In the alternative, Thomas J. Sager moves the Court for leave to file suggestions amicus curiae. In support of this motion, Mr. Sager states:

6. This court has discretion to grant this motion for leave to file suggestions as an amicus curiae for the purpose of aiding the court in resolving the current controversy. See, e.g., *Matter of Additional Magistrates for St. Louis Cty.*, 580 S.W.2d 288, 294 (Mo.

banc 1979) (“Usually an amicus acts either as a defender of the court’s dignity and honor where such is impugned, or as an assistant to the court to aid it in resolving a controversy”).

7. Mr. Sager seeks leave to file the attached suggestions in opposition to the petition to show that the petition does not conform to the requirements of the enabling statute. As demonstrated in the Suggestions of Amicus Curiae Thomas J. Sager, attached hereto as Exhibit B, the proposed district area is not contiguous as required by the subject statute. Further, as demonstrated in the attached Suggestions, the proposed district would be unjust and unreasonable.

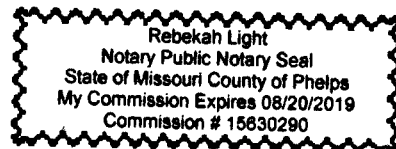
Wherefore, Thomas J Sager respectfully requests that if this Court does not grant his motion to intervene as a Respondent in this matter, that the Court grant his motion for leave to file the attached Suggestions Amicus Curiae.

State of Missouri, County of Phelps.
On this 25 day of Feb
in the year 2016 before me,
Rebekah Light ~~Thomas J. Sager~~ a Notary Public in
and for said state, personally appeared
Thomas Sager known to me
to be the person who executed the within
Monon
and acknowledged to me that he executed
the same for the purposes therein stated.

Thomas J. Sager

Thomas J. Sager
8 Laird Avenue
Rolla, MO 65401

Rebekah Light
Rebekah Light



CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of February 2016, complete copies of the Motion of Thomas J Sager To Intervene Or, In The Alternative, for Leave To File Suggestions Amicus Curiae were served upon counsel of record by enclosing the same in envelopes and depositing said envelopes, with first class postage fully prepaid, in a United States post office box in Rolla, Missouri, addressed to:

Mark A. Spykerman
211 N. Broadway, Suite 2350
St. Louis, MO 63102

Bryce D. Gamblin
512 Ruthland
St. Louis, MO 63125

Thomas J. Sager

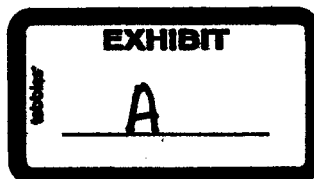
IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
TWENTY-FIFTH JUDICIAL CIRCUIT

IN RE THE FORMATION OF THE)	
MOVE ROLLA TRANSPORTATION)	
DEVELOPMENT DISTRICT,)	
)	
CITY OF ROLLA, MISSOURI, et al.,)	
)	
Petitioners,)	
)	Cause No. 15PH-CV01751
v.)	Div. 1
)	
MISSOURI HIGHWAY AND)	
TRANSPORTATION COMMISSION, et al.,)	
)	
Respondents.)	

ANSWER OF THOMAS J. SAGER IN INTERVENTION

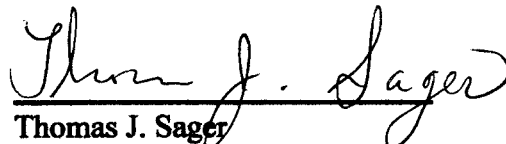
Respondent Thomas J. Sager (“Intervenor”), by leave of court, for his answer to Petitioners’
Petition (the “Petition”), alleges as follows:

1. Intervenor admits the allegations contained in paragraphs 1-11 of the Petition.
2. Intervenor denies the allegations contained in paragraph 12 of the Petition and further states that the proposed Move Rolla Transportation Development District (“MRTDD”) is not composed of contiguous land as required by RSMo § 238.207 because part of the MRTDD area consists of noncontiguous land which is separated by more than only public streets, easements, or rights-of-way or connected by a single public street, easement, or right of-way, as required by the statute.
3. Intervenor admits the allegations contained in paragraphs 13-18 of Petition.



4. Intervenor denies the allegations contained in paragraph 19 of Petition. Intervenor further states that the MRTDD would be unjust and unreasonable because the MRTDD has been designed so as to systematically and deliberately exclude Phelps County registered voters from the opportunity to approve or disapprove the MRTDD; the MRTDD includes an increased sales tax and an additional tax on essential food items, and will drastically change the character of the City of Rolla both directly and indirectly by causing the need for further development of infrastructure accompanied by additional taxes. Further, the MRTDD would be unjust and unreasonable because new businesses in the MRTDD will benefit from subsidies which will cause these businesses to compete unfairly with other businesses in the area.
5. Intervenor admits the allegations contained in paragraphs 20-21 of Petition.

WHEREFORE, Intervenor requests that this Court enter judgment declaring that the petition be denied on the ground that the proposed district area is not composed of contiguous land as required by section 238.207, R.S. Mo., and also on the ground that the proposed district would be unjust and unreasonable.


Thomas J. Sager
8 Laird Avenue
Rolla, MO 65401

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
TWENTY-FIFTH JUDICIAL CIRCUIT

IN RE THE FORMATION OF THE)
MOVE ROLLA TRANSPORTATION)
DEVELOPMENT DISTRICT,)

CITY OF ROLLA, MISSOURI, et al.,)

Petitioners,)

v.)

MISSOURI HIGHWAY AND)
TRANSPORTATION COMMISSION,)

Respondent.)

Cause No. 15PH-CV01751
Div. 1

SUGGESTIONS AMICUS CURIAE OF THOMAS J SAGER

The Petition to form the Move Rolla Transportation Development District (MRTDD) should be denied because the proposed district area would not be contiguous

Section 238.207, R.S. Mo., governs the creation of Transportation Development Districts. The formation of the proposed Move Rolla Transportation Development District is governed by subsection 5 of that statute. That subsection requires that,

“The proposed district area shall be contiguous . . .”, and further provides that, “[p]roperty separated only by public streets, easements, or rights-of-way or connected by a single public street, easement, or right-of-way shall be considered contiguous.”

Section 238.207.5 (2), R.S. Mo.

It appears from the map of the proposed district, as provided by the petitioners (Appendix D of Petition to form the MRTDD), that the property does not meet the statute’s definition of “contiguous”. Rather, it appears from the map that there is at least



one other parcel of property which would need to be included within the proposed district in order to meet the statutory definition of “contiguous”. It would appear from the map of the MRTDD that at least part of the property bordered by Pine St., Elm St., Bishop Ave (Highway 63) and 18th St would be necessary to achieve contiguity by connecting the portion of the proposed TDD to the East of Elm St. along Bishop Ave with the remainder of the TDD. This property includes the building at 1740 North Bishop Ave which contains Checks Into Cash and PCA Guns & More and several residential houses as well. The map in appendix D of the Petition to form the MRTDD does not show this property as belonging to the MRTDD. A photo of this parcel taken from the North side of Bishop Ave. is attached as exhibit 1.

The Petition to form the Move Rolla Transportation Development District (MRTDD) should be denied because it is unjust and unreasonable

BECAUSE PHELPS COUNTY REGISTERED VOTERS HAVE BEEN SYSTEMATICALLY AND DELIBERATELY EXCLUDED FROM THE MRTDD IT IS UNJUST AND UNREASONABLE

1. The MRTDD has been gerrymandered to the point of ridiculousness (see map at Appendix D of Petition to form the MRTDD). It has been created to systematically and deliberately exclude all registered voters from the MRTDD. It looks like a patchwork quilt after the dog ate most of the patches.

2. Voters and other consumers will ultimately pay through increased sales taxes for the MRTDD. Having been systematically and deliberately excluded, they will have no say in the formation or activities of the MRTDD.

THE MRTDD IS UNJUST AND UNREASONABLE BECAUSE THE CUSTOMERS OF THE MERCHANTS IN THE MRTDD HAVE NO OPPORTUNITY TO APPROVE OR DISAPPROVE OF THE MRTDD AT THE BALLOT BOX

3. The MRTDD is simply an end-run around the voters to institute an almost city-wide sales tax without voter approval.

4. The City of Rolla has already formed the Forum Plaza Community Improvement District (FPCID) imposing an additional one percent sales tax.

5. The MRTDD, if formed as envisioned, would impose a one percent sales tax on much of the remaining enterprises in Rolla.

6. If the MRTDD is successful there will likely be other similar projects in the future to impose a sales tax without registered voter approval on many of the remaining businesses not included in the recently formed FPCID or the MRTDD.

7. If the Rolla city council and the Phelps County commission believe so strongly that the proposed MRTDD is to the benefit of the general public and cannot be done without additional taxation, they should put a tax to pay for it on the ballot and ask the voters to approve it.

GROCERIES ARE A NECESSITY OF LIFE. IT IS UNJUST AND UNREASONABLE TO PLACE AN ADDITIONAL SALES TAX ON FOOD ITEMS WITHOUT VOTER APPROVAL

8. The recent FPCID added an extra one cent sales tax to the Price-Chopper grocery store without voter approval. (Minutes of the Rolla City Council meeting of

December 15, 2014, pages 2 through 3, IV New Business (A),

<http://www.rollacity.org/admin/agenda/minutes/20141215.pdf>).

9. The MRTDD, if adopted and implemented as envisioned, will add an additional one cent sales tax to the Walmart, Kroger and Aldi - all the three remaining full supermarkets within the Rolla area. The next closest supermarket is the Country Mart in St. James, approximately 10 miles from Rolla.

10. Groceries are a necessity of life. Many in the Rolla area do not own vehicles and are unable to afford to travel to a comparable store outside the Rolla area. Many have budgets already stretched to the limit, and should not be further burdened by an additional sales tax to pay for projects which are unlikely to provide significant benefits to them.

DEVELOPING MRTDD IS LIKELY TO HURT OTHER PARTS OF ROLLA.
THIS IS UNJUST AND UNREASONABLE

11. Much of the project is designed to develop land proximate to the 184 mile exit off of I-44. This could have a detrimental effect on other properties in and around the city of Rolla. The city should create a level playing field for all residents and property owners. It is unjust and unreasonable to favor certain properties over others. It is unjust and unreasonable to favor certain businesses over others.

12. Since new businesses in the newly developed area will receive public subsidies which are estimated to amount to tens of millions of dollars, both through infrastructure

improvements funded by taxpayers in the proposed MRTDD and tax abatements from the proposed Westside Marketplace TIF Redevelopment Project (WMTIF), it is grossly unfair to other properties in the Rolla area that will not receive such public subsidies and benefits.

13. It boggles the imagination to believe that if Menards opens a store, as planned, in the WMTIF, it would not negatively effect Lowes, Meeks and Family Store which are already taxpaying members of the Rolla community, and have received no such public subsidies or assistance in the development of their properties.

14. For example, if a large music store such as Palen's were to take advantage of the public subsidies to open a music store in the WMTIF, it boggles the mind to think that this would not hurt Merle's Music, a small business in Rolla which receives no such public subsidies.

15. We pay lip-service to home-grown small businesses, while providing subsidies to large corporations which then compete unfairly. For example: the new Starbucks in the Price-Chopper enjoys public assistance as part of the FPCID; while the Coffee Mine, a local home-grown business, perhaps 100 yards away must struggle against unfair competition to make it on its own.

IT IS UNJUST AND UNREASONABLE THAT A PROJECT THAT COULD CHANGE THE WHOLE CHARACTER OF THE CITY OF ROLLA NOT BE PUT TO A VOTE OF THE PEOPLE

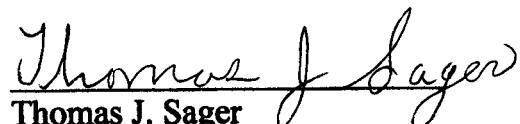
16. The Move Rolla Transportation Development District and The Westside

Marketplace TIF Redevelopment Project may change the whole character of the City of Rolla. Growth that might come with a shopping district that attracts travelers off the Interstate could necessitate infrastructure improvements in the form of increased expenditures on police, fire and schools far beyond what is now envisioned. This might require additional taxes. It is unjust and unreasonable for a relatively small group of people to embark on such massive and expensive changes at public expense without a vote of the people.

CONCLUSION

For these reasons, the Court should find that the petition to create the Move Rolla Transportation Development District should be denied because the proposed district area would not be contiguous, and should be denied because the proposed district would be unjust and unreasonable.

Respectfully Submitted,


Thomas J. Sager
8 Laird Avenue
Rolla, MO 65401



EXHIBIT

1