

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

FILED
MAY 16 2016
SUE BROWN, CIRCUIT CLERK
PHELPS COUNTY, MO.

**MOTION OF THOMAS J. SAGER FOR LEAVE TO FILE
SUGGESTIONS AMICUS CURIAE**

Comes now Thomas J. Sager (pro se) and respectfully moves the Court for leave to file suggestions amicus curiae.

1. 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”).

2. In Order of March 30, 2016 granting Thomas J. Sager leave to file suggestions amicus curiae, Judge William E. Hickie states, “The TDD act does not

prohibit the filing of such suggestions. Moreover, the Court has the authority to permit a person not entitled to intervene the right to file an amicus brief. In *Committee for Educational Equality v. State*, 294 S.W.3d 477 (Mo Banc 2009), the Missouri Supreme Court held that the trial court erred in granting permissive intervention to a party, but found that the intervening party could have instead filed an amicus brief, stating, 'Defendant-Intervenors could have sought leave to express their views in an amicus brief, rather than through intervention,' Id. at 487"

3. Thomas J. Sager seeks leave to file the suggestions attached to this motion as Exhibit A in opposition to petitioners' Motion For Leave To Amend Petition And Order New Publication, filed on May 12, 2016, to show that said Motion for Leave to Amend contains errors of fact and does not serve the cause of justice.

4. Wherefore, Thomas J Sager respectfully requests that this Court grant his motion for leave to file the attached Suggestions Amicus Curiae.

Respectfully Submitted,

Thomas J. Sager

Thomas J. Sager
8 Laird Avenue
Rolla, MO 65401

State of Missouri, County of Phelps.
On this 16 day of May
In the year 2016 before me,
Rebekah Light a Notary Public in
and for said state, personally appeared
Thomas Sager known to me
to be the person who executed the within
Court Document
and acknowledged to me that he executed
the same for the purposes therein stated.

Right



CERTIFICATE OF SERVICE

The undersigned certifies that on this 16TH day of May, 2016, complete copies of the Motion of Thomas J. Sager 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

will mail today - TJS.

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

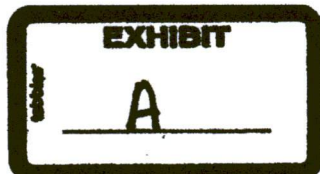
Thomas J. Sager
Thomas J. Sager

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,)
)
Respondent.)

SUGGESTIONS AMICUS CURIAE OF THOMAS J SAGER
IN OPPOSITION TO PETITIONER'S MOTION FOR
LEAVE TO AMEND AND ORDER NEW PUBLICATION

1. Petitioner's Motion for Leave to Amend and Order New Publication filed on May 12, 2016 should be denied because it contains errors of fact and does not serve the cause of justice.



Abbreviations

- “MRTDD” - Move Rolla Transportation Development District
- “Leave to Amend” - Motion for Leave to Amend and Order New Publication
- “N. Bishop Ave. property” - property at 1740 N. Bishop Avenue
- “Original Petition” - Petition for the Creation of a Transportation Development District
- “proposed Amended Petition” - Petition as proposed in Leave to Amend
- “Motion to Intervene” - Motion of Thomas J. Sager to Intervene or, in the Alternative, for Leave to File Suggestions amicus Curiae
- “Response to Motion to Intervene” - Petitioner's Response to Motion of Thomas J Sager to Intervene
- “First Suggestions” - Suggestions Amicus Curiae of Thomas J. Sager
- “Sager” - Thomas J. Sager

Petitioner's Motion for Leave to Amend should be denied because contrary to petitioner's allegations, no alleged "potential free-rider" has been shown to benefit from the proposed MRTDD

2. In paragraph 1 of Leave to Amend, petitioner states, "The revised boundaries ... will eliminate a potential free-rider (i.e. a business that would benefit from projects undertaken by the MRTDD without being subject to the MRTDD's potential sales tax)."

3. Assuming this refers to the proposed International House of Pancakes and the location 1730 N. Bishop Ave. as reported in the Rolla Daily News on March 3, 2016 (<http://www.therolladailynews.com/article/20160303/NEWS/160309557>), it boggles the mind to think that a restaurant on a major highway (Hwy 63) would benefit from a transportation project like MRTDD that routes through traffic that formerly passed in front of its doorstep to a different location.

4. One also has to wonder at the propriety of calling a prospective business that has expressed its intention to open a restaurant in Rolla a "potential free-rider."

5. Since contrary to petitioner's allegation, no "potential free-rider" has been shown to benefit from the proposed amended MRTDD, petitioner's motion for Leave to Amend should be denied.

**Petitioner's Motion for Leave to Amend should be denied,
because contrary to petitioner's allegation, the property at
1740 N Bishop Avenue is not on the original map of the MRTDD**

6. In paragraph 2 of Leave to Amend, petitioner states, "1740 N. Bishop Avenue (which was falsely claimed to be outside the MRTDD's proposed boundaries in the suggestions of amicus curia [sic] Thomas J Sager...) was included in the boundaries described in the Original Petition and is included in the boundaries described in the Amended Petition."

7. In Exhibit B of petitioner's Response to Motion to Intervene, petitioner's professional land surveyor, Sylvester Farris Furse IV, testified in a signed affidavit, dated

March 11, 2016, "I have also reviewed the map attached as Exhibit D to the aforementioned petition [The Original Petition]. This map also shows the property located at 1740 N. Bishop Avenue as within the MRTDD boundaries."

8. Contrary to petitioner's allegations, and land surveyor Furse's affidavit, the original map of the MRTDD (Exhibit D of the Original Petition) does not include the property at 1740 N. Bishop Avenue as part of the MRTDD.

9. The original map (Exhibit D of Original Petition) with a yellow circle around the N. Bishop Ave. property is attached as **Exhibit 1**. A blowup of the N. Bishop Ave. area of the map at Exhibit D with a yellow circle around the N. Bishop Ave. property is attached as **Exhibit 2**. It is easy to see from the blowup (and possible to see from the original) that the N. Bishop Ave. property is not a part of the original MRTDD.

10. Since the Court's computer system does not appear to permit pro se movants to file electronically and motions on paper are scanned by the Court in black and white, the above exhibits are posted on the internet at tomsager.org/amicus-suggestions/exhibit-1.pdf and tomsager.org/amicus-suggestions/exhibit-2.pdf respectively.

11. Section 238.207, R.S. Mo., governs the creation of Transportation Development Districts. The formation of the proposed MRTDD is governed by subsection 5 of that statute.

12. The inclusion of the N. Bishop Ave. property in the original map is important because:

13. Section 238.207.5 (3)(d), R.S. Mo. requires that petitioners set forth "A specific description of the proposed district boundaries including a map illustrating such boundaries;" If the map does not show the N. Bishop Ave property within the MRTDD, then it is not within the MRTDD

14. Section 238.207.5 (2), R.S. Mo. 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." Without the N. Bishop Ave. property the MRTDD is not contiguous and the Original Petition is defective.

15. One might surmise that the overriding reason for filing Leave to Amend is to correct this error in the Original Petition concerning the N. Bishop Ave. property; but petitioners do not wish to admit to this egregious error.

16. Leave to Amend should be denied because contrary to petitioner's allegations, the N. Bishop Ave. property is not in the original MRTDD.

Petitioner's Motion for Leave to Amend should be denied, because contrary to petitioner's allegation, Justice will not be served by granting Motion for Leave to Amend

17. Petitioner requests Leave to Amend under Rule 55.33(a) of Missouri Rules of Civil Procedure which states that a pleading may be amended “only by leave of court ... and that leave shall be freely given when justice so requires.” In paragraph 3 of Leave to Amend petitioner also claims “Justice is best-served by amending the proposed MRTDD boundaries, as described in the Amended Petition...”

18. In Suggestions Amicus Curiae of Thomas J. Sager filed April 6, 2016 (“First Suggestions”), Sager stated numerous ways in which the proposed MRTDD was unjust and unreasonable. The Amended Petition as proposed will do nothing to correct any of these injustices. In particular:

19. In paragraph 1 of First Suggestions, Sager stated, "The MRTDD has been gerrymandered to the point of ridiculousness." In fact, the boundaries of the MRTDD are so unreasonable, that petitioners were incapable of drawing a correct map of their own proposed boundaries. The proposed Amended Petition does nothing to correct this injustice or to simplify the MRTDD boundaries or make them more reasonable.

20. In paragraph 2 of First Suggestions, Sager pointed out that the public who would ultimately pay in increased sales tax for the MRTDD were systematically excluded from having any say. Not only does the proposed Amended Petition not correct this injustice, it revels in it. Petitioners state in paragraph 1 of Leave to Amend, "The Amended Petition makes certain minor changes ... including ... the exclusion of certain

properties that are not expected to generate retail sales." (i.e. residential property that might contain a potential registered voter.) The proposed Amended Petition does nothing to correct this injustice.

21. In paragraphs 8-10 of First Suggestions, Sager pointed out that the MRTDD as proposed would add one cent sales tax to three of Rolla's four supermarkets (Kroger, Wal-mart and Aldi) and the fourth (Price Chopper) already charges an extra cent of sales tax as part of a Community Improvement District. Sager adds, "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." The proposed Amended Petition does nothing to correct this injustice.

22. In paragraphs 11-14 of First Suggestions, Sager pointed out that the MRTDD, through infrastructure improvements and a proposed TIF, will favor some businesses over others. It boggles the imagination to believe that if Menards opens a store, as planned, in Rolla West, it would not negatively effect Lowes, Meeks and the Family Center which are already taxpaying members of the Rolla community, and have received no such public subsidies or assistance in the development of their properties. The Amended Petition does nothing to correct this injustice.

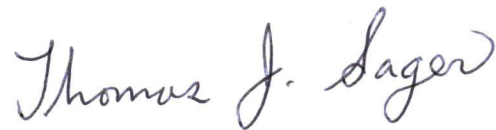
23. Section 238.210 2. R.S. Mo. states in part, "... If the court shall thereafter determine the petition is defective or the proposed district is illegal or unconstitutional, or shall be an undue burden on any owner of property within the district or is unjust and unreasonable, it shall enter its declaratory judgment to that effect and shall refuse to make the certifications requested in the pleadings. ..." Thus, while the above may perhaps be constitutional and legal in a very narrow sense, it is enough that the above be "unjust and unreasonable" for the court to deny petitioner's pleading.

24. Leave to Amend should be denied because contrary to petitioner's allegations, justice would not be "best-served by amending the proposed MRTDD boundaries, as described in the proposed Amended Petition." The proposed Amended Petition would do nothing to correct the numerous injustices present in the Original Petition.

CONCLUSION

25. The Court should deny petitioners Motion for Leave to Amend and Order New Publication because said motion contains misstatements of fact and amending the Original Petition as proposed by petitioners would not serve the cause of justice.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Thomas J. Sager".

Thomas J. Sager
8 Laird Avenue
Rolla, MO 65401

**MAP FROM EXHIBIT D OF PETITION FOR THE CREATION
OF A TRANSPORTATION DEVELOPMENT DISTRICT
SHOWING PROPERTY AT 1740 NORTH BISHOP AVE. CIRCLED IN YELLOW**
(full color exhibit posted at tomsager.org/amicus-suggestions/exhibit-1.pdf)

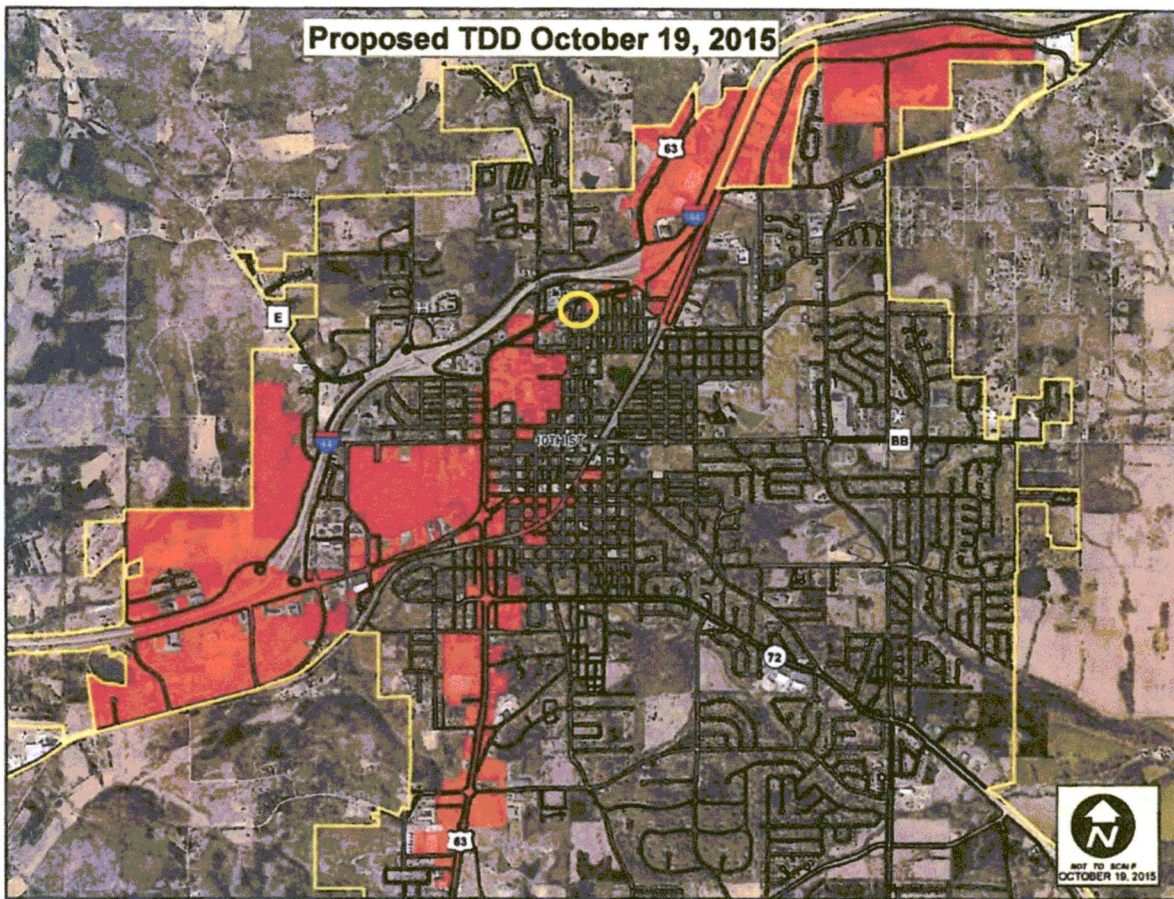


EXHIBIT 1

**BLOW UP OF MAP FROM EXHIBIT D OF PETITION FOR THE CREATION
OF A TRANSPORTATION DEVELOPMENT DISTRICT
SHOWING PROPERTY AT 1740 NORTH BISHOP AVE. CIRCLED IN YELLOW
(full color exhibit posted at tomsager.org/amicus-suggestions/exhibit-2.pdf)**

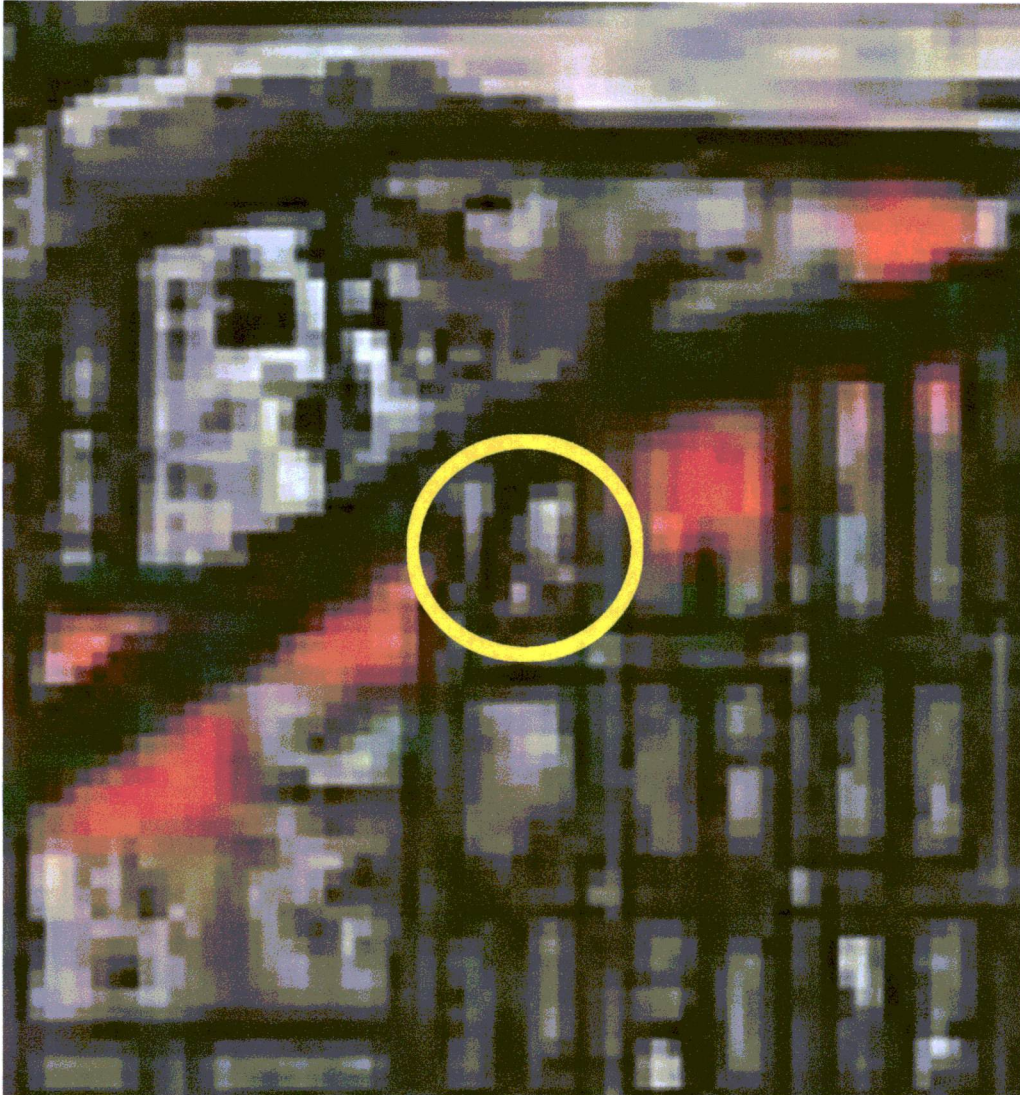


EXHIBIT 2