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Attorney for Plaintiffs

**MONTANA FOURTH JUDICIAL DISTRICT COURT
 MISSOULA COUNTY**

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| <p>SCOTT T. SMITH; MICHAEL D. STOCK; ROBERT M. SKILES; CURTIS S. FRIEDE; DAVID STEWART; and JOHN DOES A-Z,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SEELEY LAKE SEWER DISTRICT; and JOHN DOES 1-10,</p> <p style="text-align: center;">Defendants.</p> | <p>Cause No. _____ Dept. No. _____</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY JUDGMENT AND WRIT OF MANDATE</p> |
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The Plaintiffs submit the following Complaint for a Declaratory Judgment under Mont. Code Ann. § 27-8-101 *et seq.*, and for a Writ of Mandate under Mont. Code Ann. § 27-26-101 *et seq.*

PARTIES

1. The Plaintiffs Scott T. Smith, Michael D. Stock, Robert M. Skiles, Curtis S. Friede, David Stewart, and John Doe Plaintiffs A-Z (“Landowners”) are owners of various parcels of real property located within the Seeley Lake Sewer District.
2. The Defendant is the Seeley Lake Sewer District (“Sewer District”), which was established under Mont. Code Ann. § 7-13-2201. The Sewer District acts through its Board of Directors (“the Board”).
3. John Doe Defendants 1-10 are other individuals who may be responsible for implementing the Resolutions that have been adopted by the Sewer District.

JURISDICTION AND VENUE

4. Jurisdiction and venue are appropriate in this Court because the Sewer District is located in Missoula County, the properties owned by the Plaintiffs and affected by this action are located in the Seeley Lake Sewer District in Missoula County, and the conduct described herein occurred in Missoula County.

ALLEGATIONS COMMON TO ALL COUNTS

5. The Sewer District was formed in 1992.
6. According to the original Bylaws of the Sewer District, the express purpose of the District was “to determine if a sewer system is needed..., and if so, to construct, purchase, lease, or otherwise acquire and operate and maintain a sanitary sewer.”

7. This stated purpose is consistent with the powers set forth in Mont. Code Ann. §§ 7-13-2217 through 7-13-2220.
8. There are approximately 400 individual wastewater treatment systems, comprised of on-site septic tanks and drain fields, within the Sewer District boundaries in Seeley Lake.
9. Consistent with the authority set forth in Mont. Code Ann. §§ 7-13-2217 through 7-13-2220, the Sewer District adopted Resolution 09072016 on September 7, 2016, proposing the installation of a Sewage Treatment Plant, collection lines, and lift stations for sewer services, creating subdistricts, proposing assessments to pay for the improvements, and reserving the right to issue revenue bonds.
10. On November 8, 2017, the Board adopted Resolution No. 11082017, proposing roughly \$15,000,000 of costs and notifying the real property owners within the Sewer District an opportunity to protest the proposed levy of assessments used to pay for special assessment bonds for funding the sewer system.
11. In accordance with Mont. Code Ann. § 7-13-2281 the notice of levy of assessments was published in the Missoulian and the Seeley Swan Pathfinder and was mailed to the owner of each lot.
12. The majority of the property owners did not protest, so the Board moved forward with plans to implement the sewer system.

13. On December 21, 2017, the Board adopted Resolution No. 12212017 which authorizes the District to levy special assessments to finance the project through one or more special assessment bonds, which are currently estimated to provide \$5,790,000 in funding.

14. The special assessment bonds include one bond of approximately \$1,488,000 to pay a portion of the cost of the collection system, and two bonds of approximately \$3,000,000 and \$1,302,000 to pay a portion of the cost of a sewage treatment plant.

15. On August 15, 2019 the Board passed Resolution 8152019A requiring all property owners to connect to the sewer system within 90 days of it being operational.

16. On July 16, 2020 the Sewer Board passed Resolution 07162020B which provides:

The Seeley Lake Sewer District Board recommits to the installation of the SBR sewer system as designed by Great West Engineering and approved by DEQ and USDA-RD after meeting all the requirements of the funding agency and bond counsel.

17. Resolution 07162020B further provides:

The Seeley Lake Sewer District Board commits to schedule and participate in a work session with bond counsel to educate themselves on the funding options and may consider a bond election to fund the project rather than the approved assessment bonds to more equitably spread the construction costs of the system.

18. On November 19, 2020 the Board passed Resolution 11192020 in which the Board voted to refuse the special assessment funding in favor of a General

Obligation (GO) bond, because the General Obligation bond funding is a better way of generating the revenue that would have been raised by the special assessment financing.

19. Specifically, Resolution 11192020 states:

WHEREAS, the Board as presently constituted, has determined that rather than proceeding with the Special Assessments contemplated by the Resolution Approving the Special Assessments, it now desires to

- (i) hold an election on bonds to finance a portion of the costs of the Sewage Treatment Plant and of the Collection System, and
- (ii) provide for a methodology that in the Board's estimation spreads the costs of the Improvements in a manner that is more equitable than the methodology employed under the Resolution Approving the Special Assessments; and

WHEREAS, the election on the bonds authorized by this Resolution supersedes, replaces, and renders of no further force or effect the authority to levy the Special Assessments conferred upon the Board by the Resolution Approving the Special Assessments.

20. In accordance with Resolution 11192020 a public vote on the GO Bond will be put to the owners and residents of the Seeley Lake Sewer District on February 23, 2021.

21. If the GO bond fails, the federal and state grant funds that have been approved will either expire or be reallocated to other projects, and there is no guarantee that this grant funding can be replaced.

22. Despite having adopted multiple Resolutions requiring the installation of the sewer system, and requiring all property owners to connect to the sewer system, the Sewer District refuses to proceed with the sewer system project.

23. Some of the members of the Board of the Sewer District have publicly opposed the implementation of the sewer system.

24. The resolution of this issue is urgent because a portion of the funding that has been secured by way of state and federal grants is set to expire in May of 2021.

COUNT I--DECLARATORY JUDGMENT

25. The Plaintiffs allege the preceding paragraphs.

26. The Court has the authority to issue a declaratory judgment under Mont. Code Ann. § 27-8-101 *et seq.* to declare the rights, status, and other legal relations under a statute, municipal ordinance, contract, or franchise.

27. Under Montana law, a board must act in accordance with its resolutions, and if a board fails to implement its resolutions, such board has arbitrarily failed to comply with the law. *Martinell v. Bd. of Cty. Comm'rs*, 2016 MT 136, ¶¶ 20-21, 383 Mont. 486, 373 P.3d 34.

28. The Plaintiffs request that the Court declare that the Board is obligated to comply with the duly-adopted Resolutions discussed herein, including but not limited to: (a) completing the GO bond vote in accordance with Resolution 11192020 for the purposes of paying for the costs of the sewer system; (b) installing

the sewer system as designed by Great West Engineering and approved by DEQ and USDA-RD, as required by Resolution 07162020B; and (c) requiring all property owners to connect to the sewer system within 90 days after it has become operational, as required by Resolution 8152019A.

29. The Court should additionally declare that Resolutions 07162020B requiring the installation of the sewer system, and Resolution 8152019A requiring all property owners to connect to the system within 90 days of it becoming operational, must be implemented whether or not the voters approve the General Obligation bond.

30. The Court should further declare that the Sewer District's Board is required to take all other actions reasonably necessary to fully implement the intent of these Resolutions.

31. The Court should further issue an award of attorney's fees to the Plaintiffs under *City of Helena v. Svee*, 2014 MT 311, ¶¶ 17-27, 377 Mont. 158, 339 P.3d 32, because the Sewer District has the power and authority to proceed in accordance with its adopted Resolutions, but has refused to do so, requiring this lawsuit to be filed.

COUNT II--WRIT OF MANDATE

32. The Plaintiffs allege the preceding paragraphs.

33. In the alternative, or in addition to Count I, the Plaintiffs request that the Court issue a writ of mandate under Mont. Code Ann. § 27-26-101 *et seq.* requiring the Board to implement the Resolutions described herein.

34. Under Montana law, a writ of mandate is available where the applicants demonstrate that they are entitled to the performance of a clear legal duty by the party against whom the writ of mandate is sought. *Beasley v. Flathead County Board of Adjustment*, 2019 MT 120, ¶ 16, 350 Mont. 171, 205 P.3d 812.

35. If the applicant demonstrates that a clear legal duty to perform a non-discretionary act exists, and if there is no speedy and adequate remedy available in the ordinary course of law, “the district court must grant a writ of mandate.” *Beasley*, ¶¶ 16-17.

36. The Resolutions discussed above, which have been duly adopted by the Sewer District, require the Sewer District to proceed with the performance of non-discretionary acts.

37. The Sewer District Board should be compelled via a writ of mandate to comply with the duly-adopted Resolutions discussed herein, including but not limited to: (a) completing the GO bond vote in accordance with Resolution 11192020 for the purposes of paying for the costs of the sewer system; (b) installing the sewer system as designed by Great West Engineering and approved by DEQ and USDA-RD, as required by Resolution 07162020B; and (c) requiring all property

owners to connect to the sewer system within 90 days after it has become operational, as required by Resolution 8152019A.

38. The Court should additionally mandate that Resolutions 07162020B requiring the installation of the sewer system, and Resolution 8152019A requiring all property owners to connect to the system within 90 days of it becoming operational, must be implemented whether or not the voters approve the General Obligation bond.

39. The Court should award attorney's fees to the Plaintiffs under the equitable exception set forth in *Foy v. Anderson*, 176 Mont. 507, 511-12, 580 P.2d 114, 116-17 (1978).

WHEREFORE, the Plaintiffs request the following relief:

A. A Declaratory Judgment that the Sewer District Board is obligated to comply with the duly-adopted Resolutions discussed herein, including but not limited to: (a) installing the sewer system as designed by Great West Engineering and approved by DEQ and USDA-RD, as required by Resolution 07162020B; (b) requiring all property owners to connect to the sewer system within 90 days after it has become operational, as required by Resolution 8152019A; and (c) completing the General Obligation Bond vote in accordance with Resolution 11192020 for the purposes of paying for the costs of the sewer system;

B. Alternatively, a writ of mandate directing the Sewer District Board to: (a) install of the sewer system as designed by Great West Engineering and approved by

DEQ and USDA-RD, as required by Resolution 07162020B; (b) require all property owners to connect to the sewer system within 90 days after it has become operational, as required by Resolution 8152019A; and (c) complete the General Obligation bond vote in accordance with Resolution 11192020 for the purposes of paying for the costs of the sewer system;

C. An Order declaring that Resolution 07162020B requiring the installation of the sewer system, and Resolution 8152019A requiring all property owners to connect to the system within ninety (90) days of it becoming operational, must be implemented whether or not the voters approve the General Obligation bond.

D. An award of reasonable attorney's fees and costs; and

E. Such further relief as the Court deems equitable.

DATED this 15th day of December, 2020.

SULLIVAN, WAGNER & LYONS, PLLC

By: /s/ Nathan G. Wagner

Nathan G. Wagner

Attorney for Plaintiffs