

RECEIVED 4:44

APR 20 2011

CA

WITHERSPOON KELLEY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PEND OREILLE

Eric & Mary Anderson, et al.,

Petitioners,

v.

Sacheen Lake Water and Sewer District,

Respondent.

No. 10-2-00231-2

RESPONDENT'S MOTION and
MEMORANDUM FOR
PREHEARING ORDER

LCR 16; CR 16

I. MOTION FOR CR 16 PREHEARING ORDER

Pursuant to Local Court Rule ("LCR") 16 and Civil Rule ("CR") 16, Respondent, Sacheen Lake Water and Sewer District moves this court to conduct a scheduling conference on April 28, 2011 at 1:00 p.m. and to issue a Prehearing Order with consideration for:

- (1) the simplification of the parties and issues on appeal before this court;
- (2) the sufficiency of the bond filed by each proper appellant/petitioner pursuant to RCW 57.16.090;
- (3) the scope of the record on appeal pursuant to RCW 57.16.062 and 57.16.090;
- (4) the standard of review pursuant to RCW 57.16.090;

RESPONDENT'S MOTION and MEMORANDUM
FOR PREHEARING ORDER - 1

K:\1729296\00006\17161_TO\17161P2023

K&L GATES LLP
618 WEST RIVERSIDE AVENUE
SUITE 300
SPOKANE, WA 99201-5102
TELEPHONE: (509) 624-2100
FACSIMILE: (509) 456-0146

COPY

1 (5) the preferential and expedited scheduling of the date set for the appeal
2 hearing; and

3 (6) the establishment of a briefing schedule for the parties' appellate briefs.

4 Respondent respectfully requests this court to enter a Prehearing Order addressing
5 the issues as further set forth herein and concerning any other matter deemed necessary by
6 the court to aid in the disposition of the action.
7

8 II. INTRODUCTION AND PROCEDURAL BACKGROUND

9 This matter is an appeal of a legislative action under RCW 57.16.062, brought by
10 approximately 115 named appellant/petitioners¹ ("Appellants") challenging the
11 jurisdiction or authority of the Respondent Sacheen Lake Water and Sewer District
12 ("District") to proceed with the formation of Local Improvement District #2 ("LID #2").
13 In the interest of simplifying the proceedings, the District requests the issuance of a
14 Prehearing Order to clarify the nature of the proceedings, establish the scope of the
15 official record for appellate review, define the standard for judicial review and ensure that
16 the legislative requirement for an expedited and preferential hearing of this appeal is
17 satisfied.
18

19 1. PROCEDURAL BACKGROUND OF THE FORMATION OF LID #2 BY SACHEEN 20 LAKE WATER AND SEWER DISTRICT

21 On September 1, 2010, the Sacheen Lake Water & Sewer District Board of
22 Commissioners ("Board") adopted Resolution No. 10-03 expressing its intention to form
23

24 ¹ The appellant/petitioners are identified in the caption individually, as couples and as
25 groups or corporate entities. The identification of the proper status of each appellant as an
owner of property within the boundaries of LID #2 is an issue to be resolved by this Court
in determining the appropriate parties and appeal bonds.

1 LID #2 for the construction of and installation of sewer improvements within the
2 boundaries of the proposed LID #2. (RP 2.1-2.20.) Notice of the adoption of Resolution
3 No. 10-03 and the required public hearing on the creation of LID #2 was published in *The*
4 *Newport Miner* on September 15 and 22, 2010. (RP 4.2.) The public hearing on the
5 formation of LID #2 was scheduled for October 2, 2010. Notice of the public hearing and
6 the intent to form LID #2 was also provided to "each owner or reputed owner of any lot,
7 tract, parcel of land, or other property within the proposed improvement district" by
8 mailing the notice to "the owner or reputed owner listed on the tax rolls" of the Pend
9 Oreille County Treasurer, as required by RCW 57.16.060. (RP 1.5.)

11 The notices for the public hearing advised property owners within the
12 improvement district that they had ten days following the date of the hearing to file
13 written protests to the formation of the proposed local improvement district with the
14 secretary of the Board of Commissioners. (RP 1.5; 4.2) RCW 57.16.060. The
15 jurisdiction of the Board to proceed with formation of LID #2 would be "divested by
16 protests filed with the secretary of the board within ten days after the public hearing,
17 signed by the owners, according to the records of the applicable county auditor, of at least
18 forty percent of the area of land within the proposed improvement district." RCW
19 57.16.062. If the area of land owned by protesting property owners was less than forty
20 percent (40%) of the total area of LID #2, the Board could proceed with the formation. *Id.*

23 Following the public hearing and the protest period, the secretary of the Board
24 collected, validated, and tabulated the area of land owned by protesting land owners
25 within LID #2, arriving at a protest area of approximately 120 acres. (RP 7A.1- 7A.168;

1 11.1-.14). On November 3, 2010, the secretary reported to the Board that the protests
2 represented less than 40% of the total acreage of LID #2. This was calculated by dividing
3 the combined area of acres owned by the protesting property owners by the total area
4 of land within the boundaries of LID #2, resulting in a protest area percentage of 35.8%.
5 (Official Minutes, 11/3/10) The total area of land within the boundaries of LID #2 was
6 calculated by Pend Oreille County employees and formally represented to the Board as
7 337.44 acres by letter dated October 26, 2010 from the Pend Oreille County Community
8 Development Department. (RP 8.1.) On November 18, 2010, the Board adopted
9 Resolution No. 10-04 ordering the local improvements and forming LID #2. (RP 12.1-
10 12.7.) Notice of the adoption of Resolution No. 10-04 and formation of LID #2 was
11 published in *The Newport Miner* on November 24, 2010. (RP 14.1.) This appeal
12 followed.
13
14

15 2. PROCEDURAL BACKGROUND OF THE APPEAL AND MOTION PRACTICE

16 This appeal was timely filed on December 15, 2010. On March 10, 2011, the
17 District fulfilled the overdue obligation to file the certified transcript of the LID #2
18 formation proceedings with the court and filed the Transcript/Record of Proceedings.²
19 An Amended Transcript/Record of Proceedings was filed on March 16, 2011 to correct
20 the absence of Bates numbers on the documents. Subsequently, and based on the oral
21

22 ² The delay in filing the transcript of the formation proceedings was initially due to
23 changes in the District's legal counsel and the transfer of the records between the firms,
24 but after late-January 2011 was due to the District's attempt to accommodate Appellants'
25 requests to review the transcript prior to filing. When the review continued to be delayed
repeatedly, the District then filed the certified transcript with the Court as required by
RCW 57.16.090, billing the Appellants for the cost. The Appellants promptly paid the
District for the transcript preparation cost and have thus complied with that specific
procedural requirement .

1 agreement of counsel for the parties, Appellants filed a Note for Trial Setting and
2 Certificate of Readiness on March 17, 2011. The court administrator issued a Notice of
3 Trial Setting on March 31, 2011 and the appeal is presently set to be heard by the
4 Honorable Allen C. Nielson on May 25, 2011 at 9:00 a.m. as a second setting on the trial
5 docket, which means it may not be heard on that date.
6

7 Despite certifying the readiness of this matter for hearing, Appellants subsequently
8 filed on, April 1, 2011, a Motion to Strike and Supplement the Record, a Memorandum in
9 Support of Motion to Strike and Supplement the Record, the Declaration of Stanley M.
10 Schwartz in Support of Motion to Strike Portions of the Record and Motion to
11 Supplement (with five exhibits) (collectively, "Motion to Strike"), and a Declaration of
12 Josh Shelton (with four exhibits). The Motion to Strike is set for April 28, 2011 at 1:00
13 p.m. with Judge Nielson.³
14

15 Rather than engaging in a piecemeal rescheduling of the Motion to Strike or
16 additional hearings on the scope of the appeal or issues on appeal, the District has noted
17 this Prehearing Conference to allow the parties and the Court to simplify and conform the
18 proceedings to the statutory requirements of Ch. 57.16 RCW, establish a briefing
19 schedule, and ensure the appeal is afforded the preferential and expedited review
20 contemplated by the statute. Such clarification by the court will benefit the parties and the
21 court by increasing the efficiency of the appeal and motion process, all as provided for
22 under CR 16 and LCR 16.
23

24 ³ Counsel for the District had previously advised counsel for Appellants that she was
25 unavailable on the April 28th hearing date. In the interest of expediency and obtaining
clear procedural direction from this court, counsel for Appellants has since cancelled her
conference registration and brought this Motion for Prehearing Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

III. AUTHORITY AND ARGUMENT

LCR 16(a) provides, "Upon the motion of a party or the court's own initiative, the presiding judge or, in the case of a preassigned case, the judge so designated will decide whether any civil case would benefit from a pretrial scheduling conference." CR 16(a) provides for the consideration of simplification of the issues, the avoidance of unnecessary proof or evidence, and "such other matters as may aid in the disposition of the action." Based on the standard in the Civil Rules and the Local Court Rules, the District seeks a Prehearing Order addressing the following issues for the reasons set forth below.

1. SIMPLIFICATION OF THE ISSUES ON APPEAL

In a unique matter such as this appeal of a legislative action to form a local improvement district, careful attention to the details of the controlling statute aids in both simplification and in the speedy disposition of the action. Here, simplification requires clarification of the proper parties to this appeal, clarification of the exact nature of the issues on appeal, and clarification of the standard for judicial review.

The statute allows property owners thirty days from the date of publication of notice of formation to appeal and challenge the jurisdiction or authority of the district to proceed by filing a lawsuit appealing the formation. RCW 57.16.062. The property owners bringing such an appeal must follow the detailed procedures set forth under RCW 57.16.090, including service of written notice of the appeal on the District secretary, filing of a minimum bond in the penal sum of \$200.00 by the appellant, and compliance with certain filing deadlines. Once the resolution has been adopted and notice published, this statutory right of appeal is the sole method by which the formation of LID #2 can be

1 contested or challenged in any manner, except for an appeal of the final assessment roll
2 under RCW 57.16.090. The starting point for judicial review of legislative acts is that a
3 presumption of validity and regularity supports the official acts of public officials and, in
4 the absence of clear evidence to the contrary, courts presume they have properly
5 discharged their official duties. United States v. Chemical Found., Inc., 272 U.S. 1, 14-15,
6 47 S.Ct. 1, 71 L.Ed. 131 (1926).

7
8 *a. Only property owners are proper parties in this appeal*

9 RCW 57.16.062 expressly limits the persons who can bring an appeal challenging
10 the jurisdiction or authority of the District in forming LID #2 to "property owners." Five
11 individuals, six couples and one group are named as Appellants in the Notice of Appeal,
12 but do not appear on the District's official list of property owners. (*See generally* RP 5.)

13 Peterson v. Cascade Sewer Dist., 20 Wn. App. 750, 753-54, 582 P.2d 895 (Div. I
14 1978) (overruled on other grounds, In re Des Moines Sewer Dist., U.L.I.D. No. 29, 97
15 Wn.2d 227, 229-30, 643 P.2d 436 (1982)) instructs the court on this issue. In Peterson,
16 the Court of Appeals affirmed the superior court's finding that individuals who did not
17 own property located within the boundaries of a Utility Local Improvement District
18 (ULID) did not have standing to appeal an assessment under former RCW 56.20.080. In
19 particular, the court relied on the following statutory language, "[t]he judgment shall
20 confirm, correct, modify or annul the assessment insofar as the same affects the property
21 of the appellant." *Id.* at 754. Based on this language, the court held that "persons not
22 having property affected by the assessment roll have no remedy to seek in the proceeding,
23 and hence, have no standing. The special proceeding provided by the statute may not be
24 employed by persons not affected by the statutory roll." *Id.* RCW 57.16.090 contains the
25 same language that the Peterson court relied upon to determine that individuals who did

1 not own property within the ULID did not have standing to challenge the assessment. The
2 same analysis would apply here in determining who is a proper party to challenge the
3 formation of an LID. The formation of LID #2 will have no effect on individuals who are
4 not the record property owners within the boundaries of the proposed improvement
5 district.

6 Absent clear evidence from these parties of their current status as owners of
7 property within LID #2, the District requests the court to dismiss the following
8 "Appellants" from the appeal proceedings:

9 Sally Fox
10 Lynn & Pam Herman
11 Eymer & Jill Holland
12 Susan & Blake Lindskog
13 Reed McGinn
14 John & Vickie Peick
15 Calvin & Linda Platz
16 "Sacheen Lake Concerned Property Owners"
17 Carl & Lyn Short
18 Steve Tregellas
19 Angela Wheat

20 In addition, Anna Sorenson appeals "by Judy McDonald." Although the official
21 records reflect Ms. Sorenson is a property owner of record within LID #2, there is no
22 record filed with this court to demonstrate Ms. McDonald's authority to initiate this
23 appeal on Ms. Sorenson's behalf. The District requests the court to obtain clarification of
24 this purported authority prior to the appeal hearing.

25 ***b. The Validity of the Formation of LID #2 is the Only Proper Issue on Appeal***

Appellants' claim that the improvements ordered by Resolution No. 10-04 provide
no special benefit must be raised on appeal of the final assessment roll and is prematurely
brought at this stage. (See NOA pg. 6.) In Forsgreen v. Spokane, 28 Wn. App. 919, 923,

1 627 P.2d 118 (1981), property owners contended that their properties should not have
2 been assessed or included within the LID because they would receive no special benefit.
3 The court noted that "inclusion of Appellants' property within the LID was statutorily
4 authorized. The validity or extent of the assessments can be raised only in a subsequent
5 hearing on the assessment roll." *Id.*

6 In Citizens for Underground Equality v. Seattle, 6 Wn. App. 338, 342, 492 P.2d
7 1071 (1972), the court held that in a challenge to an LID's formation, property owners
8 cannot "question whether the benefits are special or general." See also In re Appeals of
9 Jones, 52 Wn.2d 143, 324 P.2d 259 (1958) (appeal from confirmation of assessment roll
10 presents question as to whether property is specially benefited by a local improvement);
11 Matthews v. Ellensburg, 73 Wash. 272, 279, 131 P. 839 (1913) (the argument that a water
12 distribution system constitutes a general benefit and is of no special benefit can be urged
13 to the council only on a hearing upon the assessment roll); Chandler v. City of Puyallup,
14 70 Wash. 632, 633, 127 P. 293 (1912) (the purpose of the initial hearing is "not to accord
15 a hearing upon the validity of the assessment or as to the benefit therefrom to the property
16 within the district, but to accord a hearing as to the limits of the district and as to whether
17 the district should be formed at all").

18 Appellants also contend the formation of LID #2 was improper because the
19 District's Comprehensive Plan had not been adopted. Appellants' counsel has previously
20 stated this element of the appeal will be abandoned because they acknowledge it is
21 factually incorrect.

22 *c. The Standard of Judicial Review is Established by Statute*

23 RCW. 57.16 establishes the process to be followed in the formation of local
24 improvement districts by a water and sewer district and further clearly establishes the
25

standards that govern the disposition of every appeal challenging the validity of the District's decision to form a local improvement district. It provides:

The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon a fundamentally wrong basis or a decision of the board of commissioners thereon was arbitrary or capricious, or both, in which event the judgment of the court shall correct, modify, or annul the assessment insofar as it affects the property of the appellant.

RCW 57.16.090. This statutory standard of review reflects the same standard that is applied by courts whenever they review a legislative decision of an elected body, placing the heavy burden on the one challenging the legislative action to prove that the Board acted illegally and improperly. Abbenhaus v. City of Yakima, 89 Wn. 2d 855, 860-61, 576 P.2d 888 (1978). In an appeal involving decisions regarding special assessment districts like LID #2, a reviewing court looks at the propriety of the process and does not undertake an independent evaluation of the merits. Bellevue Assocs. v. City of Bellevue, 108 Wn. 2d 671, 674, 741 P.2d 993 (1987). Simply put, the courts do not second-guess the decisions of elected officials acting in their legislative capacity.

In a case challenging an LID assessment roll, the Washington Supreme Court defined "arbitrary and capricious" as follows:

"Arbitrary and capricious" has a well-established meaning in this state. It refers to willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.

Abbenhaus, 89 Wn.2d at 858-59 (citations omitted) (emphasis added.). See also Miller v. Tacoma, 61 Wn.2d 374, 390, 378 P.2d 464 (1963) ("Arbitrary and capricious action has

1 been defined as willful and unreasoning action, without consideration and regard for facts
2 and circumstances. A finding of fact made without evidence in the record to support it,
3 and an order based upon such finding, is arbitrary.”)

4 The term “fundamentally wrong basis”:

5 refers to some error in the method of assessment or in the procedures used
6 by the municipality, the nature of which is so fundamental as to necessitate
7 a nullification of the entire LID, as opposed to a modification of the
8 assessment as to particular property.

9 Abbenhaus, 89 Wn.2d at 859 (quoting Cammack v. Port Angeles, 15 Wn. App. 188, 548
10 P.2d 571 (1976)). These are the appropriate judicial standards for this court to apply in
11 reviewing and ruling on all matters in this appeal.

12 **2. INDIVIDUAL APPELLANTS MUST EACH FILE SEPARATE APPEAL BONDS**

13 In addition to the simplification and clarification of the parties and issues on
14 review, there are some procedural matters that the court should address in its Prehearing
15 Order. One is the collective filing of a single bond by all of the named Appellants and
16 property owners. The District argues that each Appellant must deposit a separate appeal
17 bond for the court, representative of their individual status as appellants here. Case law
18 supports the District’s position.

19 Appellants have only deposited with the court a single bond of \$200.00 to comply
20 with the filing prerequisites of RCW 57.16.090.⁴ The bond provision “relates to the
21 individual property owners making objection” to the District’s action. In re ULID 1 v.
22 Water Dist. 2, 53 Wn.2d 270, 275, 333 P.2d 670 (1958). There is no provision in this
23

24 ⁴ Although coun
25 was deposited w
15, 2010, the Di
statement is ma

253322

l this attorney that a single bond of \$200.00
llowing the filing of the appeal on December
umentation of the deposit. Accordingly, this
lief.

1 statute for a "class action" appeal of formation, rather this action is necessarily a matter of
2 individualized appeal because a protestor and an appellant must be the "property owner"
3 according to the records of the Pend Oreille County Auditor. *Supra*; RCW 57.16.062;
4 RCW 57.16.090.

5
6 Based on the plain language of the statute and case law, each of the valid
7 Appellants must be ordered to file a bond in the minimum amount of \$200, especially in
8 light of the stated purpose of the bond to ensure the prosecution of the appeal "without
9 delay." RCW 57.16.090. Further, the Washington state Supreme Court has characterized
10 the purpose of the bond as "to prevent harassment of commissioners by lengthy
11 litigation." In the Matter of An Appeal of Des Moines Sewer District, ULID No. 29, 97
12 Wn. 2d 227, 231, 643 P.2d 436 (1982). Absent the deposit of this nominal bond, the
13 individual appellants have demonstrated they have no motivation to timely proceed with
14 the statutory appeal hearing, nor do they have any motivation to avoid the filing of
15 frivolous motions and extraneous declarations designed to muddy the record and delay the
16 continued progress of the sewer project that the majority of property owners within the
17 boundaries of LID #2 support.

18
19 Accordingly, the District seeks entry of a Prehearing Order requiring each property
20 owner of record who is a party to this appeal to deposit with the court a bond or cash
21 security in the sum of \$200 each, and to establish a date certain for the submittal of said
22 bond and for dismissal of the individual appeal if the bond is not deposited.
23
24
25

1 **3. THE RECORD ON APPEAL MUST BE LIMITED TO THE RECORD BEFORE THE**
2 **DISTRICT AT THE TIME OF THE CHALLENGED ACTION**

3 In an appeal of the formation of an LID, judicial review is limited to the record of
4 proceedings before the legislative body. "The reviewing court looks at the propriety of
5 the process and does not undertake an independent evaluation of the merits." Bellevue
6 Assoc. v. Bellevue, 108 Wn.2d at 674; *See also* Abbenhaus v. City of Yakima, 89 Wn.2d
7 at 859; Time Oil Co. v. Port Angeles, 42 Wn. App. 473, 479, 712 P.2d 311 (1985).

8 [T]he superior court should be considering the material presented to the
9 [municipality] and determining whether it adequately supports the action of
10 the municipality. The superior court can perform this function properly
11 and completely upon the basis of the record before the municipality.

12 Abbenhaus, 89 Wn.2d at 859. Further, a party objecting to an LID must first present its
13 complaints to the municipality:

14 ... complaining parties ... [must] place all relevant information and
15 objections before the proper decision-making body, the council prior to the
16 municipality's decision, instead of permitting later attack in the superior
17 court based upon information which the municipality did not have the
18 opportunity to consider.

19 Id. at 860 (emphasis added). Finally, Washington courts look to the record before the
20 municipality; evidence of the purposes or motives of the members of the municipality's
21 legislative body is inadmissible. Goebel v. Elliott, 173 Wash. 444, 447, 35 P.2d 44
22 (1934).

23 Despite the well established rule that the appeal must be based on the record, the
24 Appellants have filed a Motion to Strike and Supplement the Record. This Motion to
25 Strike seeks to fundamentally change the record and information that was before the
26 Board of Commissioners during the period of time when they were initiating the
27 formation of LID #2, hearing oral testimony at the October 2, 2010 public hearing,
28 calculating the total area of LID #2, calculating the percentage of record property owners

1 within the boundaries of LID #2 who had filed a timely written protest, and proceeding
2 with the adoption of Resolution No. 10-04.

3 Appellants' Motion is unequivocally **improper** in its effort to alter the official
4 record before the Commissioners when they deliberated and adopted, by a formal
5 legislative act, Resolution No. 10-04. Although the District is in the process of preparing
6 it's response to the Motions to Strike and Supplement, it must be noted that it is precisely
7 this type of frivolous motion practice and distortion of the issues on appeal that the
8 Legislature must have contemplated when it required payment of the appeal bond – and
9 that the Washington Supreme Court contemplated when it recognized the need to prevent
10 harassment of the Board of Commissioners. RCW 57.16.090; Des Moines Sewer Dist.,
11 ULID No. 29, 97 Wn.2d at 231. The District respectfully requests entry of a Prehearing
12 Order limiting the record on appeal to the official Transcript/Record of Proceedings for
13 the formation of LID #2, certified by the Secretary of the District and filed with this Court
14 on March 16, 2011.

15
16 **4. THE APPEAL HEARING DATE AND BRIEFING SCHEDULE SHOULD BE
EXPEDITED**

17 The statute also contains several express provisions to expedite an appeal
18 challenging the District's authority or jurisdiction to form LID #2. RCW 57.16.090.
19 These include: (1) requirement that appellant file the transcript with the Court within ten
20 (10) days of filing the notice of appeal; (2) requirement that appellant provide written
21 notice of filing the transcript within three days; and (3) requirement that the written notice
22 "state a time, not less than three days from the service thereof, when the appellant will call
23 up the cause for hearing." RCW 57.16.090. As further evidence of the Legislature's
24 intention of expedient resolution of these matters, RCW 57.16.090 mandates that "[t]he
25

1 appeal shall have preference over all civil causes pending with the court, except eminent
2 domain proceedings and actions of forcible entry and detainer.”

3 Using the schedule established by the Legislature, an appeal of the formation of
4 LID #2 should have been heard no less than **forty-three days** after the notice of formation
5 was published in *The Newport Miner*. We are now well over **one hundred and twenty-**
6 **five days** since the publication of the notice of formation and the hearing is over a month
7 away. Based on the convoluted and dilatory proceedings engaged in by Appellants since
8 the initial filing of their appeal over four months ago (especially the most recent attempt to
9 substantially alter the l record), it is anticipated that the issuance of an appropriate
10 prehearing order will bring this appeal back into the speedy statutory appeal schedule
11 contemplated by the Legislature, all in conformance with the policies of CR 16.

12
13 As noted previously, the Transcript/ Record of Proceedings was filed by the
14 District on March 10, 2011 and an Amended Transcript/Record of Proceedings was filed
15 by the District on March 16, 2011. The Petitioner filed the Note for Trial Setting and
16 Certificate of Readiness on March 17, 2011 and the appeal hearing is presently set for
17 May 25, 2011, as a second setting on the trial docket. Thus, as presently scheduled it is
18 possible that the appeal will not be heard on May 25th, but will require rescheduling if the
19 first set trial proceeds as scheduled.
20

21 The District requests the Court to set the appeal hearing at the earliest possible
22 date, giving it precedence over all civil causes pending, except actions for eminent domain
23 or forcible entry and detainer. Further, the District seeks imposition of a reasonable, but
24 limited, briefing schedule that keeps in mind the statutory presumption that three days is a
25

1 sufficient period between filing of the Transcript/Record of Proceedings is adequate to
2 brief the issues in this type of an appeal. The standard of review and the actual record of
3 review are so well defined by the Legislature that briefing on the questions of whether the
4 act of forming LID #2 was "fundamentally wrong" or "arbitrary and capricious" is all that
5 is required. In light of the limited nature of this appeal, the District respectfully suggests
6 that the parties file their briefs with the court five days prior to the date set for the hearing.
7 Similarly, the District proposes that oral argument, if needed, should be limited in time to
8 fifteen minutes per side, just as oral argument is proscribed before this State's courts of
9 appeal.
10

11 IV. RELIEF REQUESTED

12 Based on the statutory requirements for an expedited hearing of the appeal
13 challenging the authority of the District to form LID #2, the District requests the court for
14 the entry of a Prehearing Order as follows:
15

16 (1) Dismissal of all Appellants who are not record owners of property located
17 within the boundaries of LID #2.

18 (2) Requiring the immediate payment of the \$200 statutory appeal bond by each
19 record owner(s) of property appealing the formation of LID #2 and providing property
20 owners with a deadline upon which the requisite bond must be paid or face dismissal of
21 the individual appeal.
22

23 (3) Limiting the record on appeal only to the materials before the Board of
24 Directors during the proceedings that constitute their legislative record and acts of
25

1 formation of LID #2, *to wit*, the Transcript/Record of Proceedings filed by the District on
2 March 16, 2011.

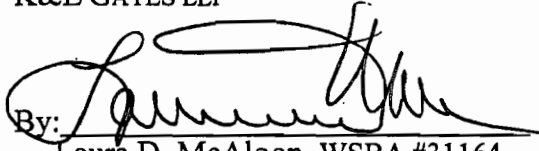
3 (4) Limiting the issues on appeal to those set forth in RCW 57.16.090, *to wit*:

- 4 a. Is the formation of LID #2 founded upon a fundamentally wrong basis;
5
6 b. Was the decision of the Board of Directors of the District to form LID
7 #2 arbitrary or capricious, or both?

8 (5) Establishing an expedited date for the hearing of this appeal and establishing
9 an expedited and abbreviated briefing schedule for the respective parties.

10 DATED this 20 day of April, 2011.

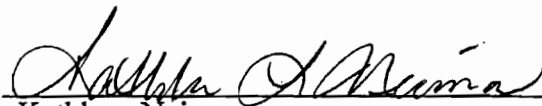
12 K&L GATES LLP

13
14 By: 
15 Laura D. McAloon, WSBA #31164
16 Thaddeus O'Sullivan, WSBA #37402
17 Attorneys for Respondent
18 Sacheen Lake Water and Sewer
19 District
20
21
22
23
24
25

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 20 day of April, 2011, I caused a true and correct
4 copy of the foregoing **RESPONDENT'S MOTION AND MEMORANDUM FOR**
5 **PREHEARING ORDER** to be served upon the persons listed below in the manner
6 indicated:

Stanley M. Schwartz Nathan G. Smith WITHERSPOON - KELLEY 422 W. Riverside Ave, Suite 1100 Spokane, WA 99201-0300	<input type="checkbox"/> U.S. Mail
	<input checked="" type="checkbox"/> By Hand Delivery
	<input type="checkbox"/> Overnight Delivery
	<input type="checkbox"/> Facsimile Transmission

12
13
14
15 
16 Kathleen Neiman