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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

RESPONSIBLE GROWTH *NE
WASHINGTON; CITIZENS AGAINST
NEWPORT SILICON SMELTER; THEODORE
& PHYLLIS KARDOS; DENISE D. TEEPLES;
GRETCHEN L. KOENIG; SHERYL L.
MILLER; JAMES W. & ROSEMARY
CHANDLER; and PAMELA BYERS LUBY,

Petitioners -Plaintiffs,

v.

PEND OREILLE PUBLIC UTILITY DISTRICT
NO. 1; PEND OREILLE COUNTY; and HITEST
SAND, INC.,

Respondents-Defendants.

)
) **No. 18202551-1**
)
) **DEFENDANT PEND OREILLE**
) **COUNTY'S REPLY BRIEF**
) **IN SUPPORT OF DEFENDANT**
) **PUBLIC UTILITY DISTRICT NO. 1**
) **OF PEND OREILLE COUNTY'S**
) **MOTION AND MEMORANDUM**
) **FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant Pend Oreille County ("County") submits this Reply Brief in support of the Motion for Summary Judgment filed by Public Utility District No. 1 of Pend Oreille County ("District"). The County also joins in and adopts by reference the arguments made by both the District and Defendant HiTest Sand, Inc. ("HiTest") in their respective replies to, and any supporting documents thereto, Plaintiffs' Cross-Motion for Summary Judgment and

1 Memorandum in Support of Plaintiffs' Cross-Motion for Summary Judgment and Response
2 to Defendant's Motion for Summary Judgment (collectively, "Plaintiffs' Motion and
3 Response").

4 Having already joined in the District's Motion for Summary Judgment and adopting
5 by reference the arguments made by the District in their Memorandum for Summary
6 Judgment and any supporting documents thereto, as well as the replies of the District and
7 HiTest, this Reply Brief is limited to the County's argument that its sale of Parcel No. 19182
8 to the District, along with the authorizing Resolution No. 2017-22, complied with
9 Washington law governing the sale of property by the County and was not *ultra vires* as a
10 matter of law.
11

12 **II. FACTS**

13 The County incorporates by reference the fact section set forth in Section II of the
14 District's Motion and Memorandum for Summary Judgment.
15

16 **III. DISCUSSION**

17 Neither Plaintiff's Complaint nor Plaintiffs' Motion and Response assert any
18 allegations against the County or state a claim against the County upon which relief can be
19 granted. Plaintiffs make no argument that the County's actions were not within its
20 constitutional and statutory authority or that the County's sale of Parcel No. 19182 to the
21 District was *ultra vires* and should be declared void.
22

23 **A. RESOLUTION NO. 2017-22 IS VALID AND NOT *ULTRA VIRES*.**

24 Plaintiffs' generally allege, without any citation to facts or law, that "the land
25 transactions by Pend Oreille County and the PUD are *ultra vires* and void as a matter of law."
26

1 Plaintiffs’ Motion and Response at 1. In making their argument, Plaintiffs’ allege, in part,
2 that District Resolution No. 1399 is void because it is *ultra vires*. *Id.* at 17-18. Plaintiffs’
3 make no claims or assert any arguments that County Resolution No. 2017-22 (“Resolution
4 No. 2017-22”) is likewise void because it is *ultra vires*.

5
6 The Pend Oreille County Board of Commissioners (“County Board of
7 Commissioners”) adopted Resolution No. 2017-22 on June 20, 2017. It was within the
8 County Board of Commissioners’ power to adopt Resolution No. 2017-22 because the sale of
9 Parcel No. 19182 was within the authority granted by Chapter 36.35 RCW.

10 The purpose of Chapter 36.35 RCW is to “increase the power of county legislative
11 authorities over tax title lands.” RCW 36.35.010. Specifically, RCW 36.35.120 allows the
12 County to sell real property acquired by tax foreclosure when it is found to be in the best
13 interest of the County. RCW 36.35.120(1). RCW 36.35.120 further requires the County to
14 establish the minimum price for each unit of tax title property and to determine whether the
15 sale will be for cash or whether a contract will be allowed. RCW 36.35.120(2).

16
17 Pursuant to RCW 36.35.150, the County may sell tax title property by direct
18 negotiations, without a call for bids, under certain circumstances. Direct sale for a price not
19 less than the principal amount of the unpaid taxes is authorized when (a) the sale is to any
20 governmental agency and for public purposes, or (b) when the county legislative authority
21 determines that it is not practical to build on the property due to the physical characteristics of
22 the property. RCW 36.35.150(1).

23
24 As specific to the County, Plaintiffs’ Complaint only requests declaratory judgment
25 “that Pend Oreille County Resolution No. 2017-22 is void, to the extent that it purports to
26

1 authorize the PUD to Purchase Parcel #19182.” Plaintiffs’ Motion and Response does not set
2 forth that the County’s actions authorized the District to act in any way. Plaintiffs do not
3 otherwise challenge the validity of Resolution No. 2017-22 or otherwise request that this
4 Court should declare Resolution No. 2017-22 void.

5 Plaintiffs’ claim is without merit as Resolution No. 2017-22 does not authorize or
6 “purport” to authorize any action by the District. Resolution No. 2017-22 did nothing more
7 than authorize the County Treasurer to sell Parcel No. 19182 to the District by direct
8 negotiation, no later than August 15, 2017, for a minimum price equal to the total appraised
9 value. Eichstaedt Dec., Ex. I.

10 Resolution No. 2017-22 was adopted pursuant to the power and authority granted to
11 the County and the sale of Parcel No. 19182 met the requirements prescribed by Chapter
12 36.35 RCW. The County exercised their lawful statutory authority to sell tax title property to
13 another municipality and Plaintiffs’ make no argument to the contrary.

14
15
16 **B. PLAINTIFFS’ DO NOT ARGUE THAT THE COUNTY’S SALE OF PARCEL NO.**
17 **19182 IS ULTRA VIRES.**

18 Plaintiffs’ submit that the “fundamental question in this case is whether the land
19 transactions failed to meet the substantive requirements of Washington law and are therefore
20 *ultra vires.*” Plaintiffs’ Motion and Response at 4. When referencing the “land transactions”
21 at issue, Plaintiffs’ also fail to state any claim or make any argument that the County’s sale of
22 Parcel No. 19182 to the District is *ultra vires.*

23 Instead, Plaintiffs’ explicitly reference and argue that the District’s purchase of Parcel
24 No. 19182 from the County, and the District’s sale of Parcel No. 19182 to HiTest are *ultra*
25 *vires.* *Id.* at 12 (emphasis added). Plaintiffs’ focus exclusively on those transactions, without
26

1 reference to the County’s sale of Parcel No. 19182. For example, to quote from Plaintiffs’
2 Motion and Response (with emphasis added):

3 “The [District’s] **purchase of the parcel from the County** and the **subsequent sale**
4 to PacWest... failed to comply with Washington law governing the purchase and sale
5 of property by government entities.”

6 “When the PUD **purchased the land from Pend Oreille County**, the PUD acted
7 outside of its statutorily granted authority.”

8 “The PUD does not have general statutory authority to buy land, but only to buy and
9 sell land for energy purposes **causing the purchase of Parcel #19182** by the PUD
10 from Pend Oreille County to clearly be *ultra vires*.”

11 “...the **sale of Parcel #19182 by the PUD** to PacWest is *ultra vires* because the PUD
12 lacked authority to sell land that was not properly made surplus and could not be made
13 surplus because it did not meet the requirements as prescribed by RCW § 54.16.180.”

14 Plaintiffs’ request this Court to “enter a declaratory judgment that the land transactions
15 by Pend Oreille County and the PUD are *ultra vires* and void as a matter of law.” Plaintiffs’
16 Motion and Response at 1. Notably, Plaintiffs make that request without any claim or
17 supporting arguments that the County’s actions were not within its constitutional and statutory
18 authority.

19 Parcel No. 19182 is a tax title property acquired by the County through a tax
20 foreclosure auction. Eichstaedt Dec., Ex. I. RCW 36.35.120 allows the County to sell real
21 property acquired by tax foreclosure when it is found to be in the best interest of the County,
22 and requires the County to establish the minimum price for each unit of tax title property and
23 to determine whether the sale will be for cash or whether a contract will be allowed. *Id.*

24 Plaintiffs’ set forth that a “contract is *ultra vires* when ‘performed with no legal
25 authority and [] characterized as void on the basis that no power to act existed, even where
26 proper procedural requirements are followed.” Plaintiffs’ Motion and Response at 13.

1 Plaintiffs', however, make no arguments specific to the County in support of their allegations
2 that the "land transactions by Pend Oreille County" – that is, the County's sale of Parcel No.
3 19182 to the District – was done in violation of applicable statutes and is therefore *ultra vires*
4 and void as a matter of law.

5
6 **IV. CONCLUSION**

7 For the foregoing reasons, the County respectfully requests that the Court grant the
8 District's Motion for Summary Judgment, in which the County joins and supports, against
9 Plaintiffs' Complaint and all claims therein; deny Plaintiffs' Cross-Motion for Summary
10 Judgment; and deny Plaintiffs' request to enter a declaratory judgment that the land
11 transactions by the County and the District are *ultra vires* and void as a matter of law.

12 DATED this 14th day of December, 2018.

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14
15 KUTAK ROCK, LLP

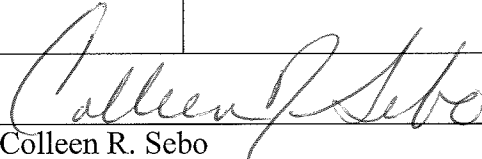
16
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 14th day of December, 2018, I caused a copy of the foregoing PEND OREILLE COUNTY'S REPLY BRIEF to be served on the following by the method indicated:

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