

STATE OF MINNESOTA  
COUNTY OF WINONA

IN DISTRICT COURT  
THIRD JUDICIAL DISTRICT

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Reinhart Real Estate Group, Inc.,  
Edward J. Hengel, Nancy Hengel,  
And Helm Dog, LLC.,

Court File No. 85-CV-18-1598

Plaintiffs,

vs.

**ORDER**

Town of Dresbach

Defendants.

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The above-titled matter came before the undersigned Judge of District Court on March 12, 2019. The Plaintiffs were represented by attorney Mark Thieroff. Defendant was represented by attorney Jason Hill. The parties made oral arguments and the Court took the matter under advisement.

Based on the file, records, and proceedings herein, the Court makes the following:

**ORDER**

1. Plaintiffs' Motion for Summary Judgment pursuant to Minn. R. Civ. P. 56 is **GRANTED.**
2. The Dresbach sanitary sewer Subordinate Service District is void, invalid, and a nullity for all purposes.
3. The service charge imposed through the October 17, 2017, resolution entitled "Resolution Setting the Initial Charges for the Dresbach Wastewater Subordinate Service District" is invalid and unenforceable.
4. The Town shall record this Order in the Winona County Recorder's Office.

5. Any dispute regarding the service charges already collected by Defendant relating to the SSD shall be referred to mediation.
6. The attached Memorandum is incorporated herein.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**BY THE COURT:**

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**Nancy L. Buytendorp**  
**Judge of District Court**

**JUDGMENT**

I hereby certify that the foregoing Order constitutes the Judgment of this Court.

Karrie Espinoza  
Court Administrator

By \_\_\_\_\_  
Deputy

## MEMORANDUM

On August 9, 2018, Plaintiffs filed a Summons and Complaint alleging that the Defendant improperly attempted to create a subordinate sewer district (“SSD”). Plaintiffs sought to have the district voided and Defendant enjoined from collecting any fees associated with the district. On January 16, 2019 Plaintiffs filed a Motion for Partial Summary Judgment. The parties made oral arguments on March 12, 2019 and the matter was taken under advisement at that time.

### STATEMENT OF UNDISPUTED FACTS

In March 2011, Defendant circulated a petition calling for the establishment of an SSD. The SSD would provide wastewater services for some the properties within the town of Dresbach. Owners of 52 parcels in Dresbach signed the petition. The petition did not include the territorial boundaries of the proposed SSD.

In April 2011, the Town’s Board of Supervisors (“the Board”) adopted Resolution No. 10, entitled “Resolution Declaring a Hearing on Establishing a Subordinate Service District.” Resolution No. 10 called for a public hearing on the establishment of the proposed subordinate service district to be held on April 28, 2011. The public notice for the April 28 hearing identified and described the proposed area of the subordinate service district as follows: “Township 105 North, Range 4 West, portions of Section 18 and 20 with the territorial boundaries to encompass the ‘downtown’ area of the Township, including the following parcel code numbers: ...” Resolution No. 10 then listed the parcel numbers for 114 properties.

The Board held the public hearing on April 28, 2011. On May 3, 2011, the Board adopted Resolution No. 12, entitled “Resolution to Establish ‘Subordinate Service District’.” Through Resolution No. 12, the Board resolved to establish a subordinate service district for an area described as follows: “Township 105 North, Range 4 West, portions of Section 18 and 20 with

the territorial boundaries to encompass the ‘downtown’ area of the Township, including the following parcel code numbers: ...” (“the SSD”). Resolution No. 12 then listed parcel numbers for the 114 properties that were listed in Resolution No. 10.

On August 2, 2011, the Board adopted a resolution entitled “Resolution Defining the Dresbach Subordinate Service District.” Therein, the Board determined and declared that the boundaries of the SSD. The boundaries were depicted on an attached map and the area contained 88 properties. Thus, between May 3, when Resolution No. 12 was adopted, and August 2, the Board removed 26 of 114 properties comprising the SSD.

On October 17, 2017, the Board adopted a resolution entitled “Resolution Setting the Initial Charges for the Dresbach Wastewater Subordinate Service District.” The resolution imposed a service charge on 66 property owners within the SSD, to recoup \$597,904 in planning- related expenses. The first payments of \$919.86 were collected in 2018.

### **SUMMARY JUDGMENT STANDARD**

Both parties moved for summary judgment under Minn. R. Civ. P. 56. Any party “against whom a claim, counterclaim, or cross-claim is asserted ... may, at any time, move ... for summary judgment in the party’s favor as to all or any part thereof.” Minn. R. Civ. P. 56.02. Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact ...” Minn. R. Civ. P. 56.03. “A material fact is one which will affect the result of the outcome of the case depending on its resolution.” *Musicland Grp., Inc. v. Ceridian Corp.*, 508 N.W.2d 524, 531 (Minn. Ct. App. 1993), *review denied* (Minn. Jan. 27, 1994).

The party moving for summary judgment has the burden to demonstrate that no genuine issue of material fact exists. *Ahlm v. Rooney*, 143 N.W.2d 65 (Minn. 1966); *Ritter v. M.A.*

*Mortenson Co.*, 352 N.W.2d 110 (Minn. Ct. App. 1984). “Evidence must be viewed in the light most favorable to the nonmoving party, and any doubt as to whether there is a factual issue should be resolved in favor of that party.” *Lloyd v. In Home Health, Inc.*, 523 N.W.2d 2,3 (Minn. Ct. App. 1994). However, the nonmoving party must present specific facts that give rise to a genuine issue of material fact for trial. *W.J.L. v. Bugge*, 573 N.W.2d 677 (Minn. 1998).

Both parties agree that there are no genuine issues of material fact. The issues before the Court are, given the agreed upon facts, whether a valid SSD was created and whether the subsequent resolution imposing charges for the SSD was enforceable.

**THE SUBORDINATE SEWER DISTRICT WAS NOT LAWFULLY ESTABLISHED  
BECAUSE THE TOWN OF DRESBACH FAILED TO COMPLY WITH THE  
RELEVANT STATUTORY REQUIREMENTS**

The requirements for establishing a subordinate service district are set forth in Minn. Stat. § 365A.04. Those requirements include the following:

- a) A petition “signed by at least 50 percent of the property owners in the part of the town proposed for the subordinate service district.” (Minn. Stat. § 365A.04, subd. 1.)
- b) “The petition must include the territorial boundaries of the proposed district.” (Minn. Stat. § 365A.04, subd. 1.)
- c) “Upon receipt of the petition, and the verification of the signatures by the town clerk, the town board shall, within 30 days following verification, hold a public hearing on the question of whether or not the requested district shall be established.” (Minn. Stat. § 365A.04, subd. 2.)
- d) “The notice of public hearing must specify the special services to be provided within the subordinate service district and must specify the territorial boundaries of the requested district.” (Minn. Stat. § 365A.04, subd. 2.)
- e) “Within 30 days after the public hearing, the town board by resolution shall approve or disapprove the establishment of the requested district.” (Minn. Stat. § 365A.04, subd. 3.)
- f) “An approving resolution must specify the special services to be

provided within the subordinate service district and must specify the territorial boundaries of the district.” (Minn. Stat. § 365A.04, subd. 3.)

The statute requires that a petition proposing an SSD describe the proposed district’s territorial boundaries. *See* Minn. Stat. § 365A.04, subd. 1. Defendant’s proffered petition lacked the required geographical description. Because the underlying petition was improper, the SSD it was used to establish is invalid.

Even if Defendant’s petition contained the necessary territorial boundaries, it still lacked the required number of signatures. Resolution No. 12 outlined an SSD containing 114 parcels. Minn. Stat. § 365A.04 subd. 1, requires that an SSD petition be “signed by at least 50 percent of the property owners in the part of the town proposed for the subordinate service district.” Thus, Defendant would have been required to gather the signatures of 57 property owners. Only 52 property owners signed Defendant’s petition.

Defendant’s petition to establish an SSD failed to comply with the statutory requirements. The Petition did not include the territorial boundaries of the proposed district. Nor was the Petition signed by the required number of property owners. Therefore, the SSD could never have been validly established and is void.

**DEFENDANT’S RESOLUTION REDUCING THE SSD’S SIZE DID NOT COMPLY WITH STATUTE**

Defendant also sought to improperly redraw the SSD after approving Resolution No. 12. The August 2, 2011, “Resolution Defining the Dresbach Subordinate Service District,” attempted to reduce the size of the SSD, creating an 88-parcel district. The only time that a township can modify the size or boundaries of a subordinate service district is at the time of establishment. “A resolution approving the establishment of the district may contain amendments or modifications of the district’s boundaries or functions as set forth in the

petition.” Minn. Stat. § 365A.04, subd. 3. Here, Defendant attempted to change the boundaries of an SSD it had purportedly already established. Even with a proper petition, the resulting district was improperly altered and would also, therefore, be invalid.

**THE RESOLUTION SETTING THE INITIAL CHARGES FOR THE SSD WAS  
INVALID**

Minn. Stat. § 365A.08 provides that a town may finance a subordinate service district either through a “property tax levied only on property of the users of the service within the boundaries of the district” or a levy of a “service charge against the users of the service within the district” or a combination of the two. Through the “Resolution Setting the Initial Charges for the Dresbach Wastewater Subordinate Service District,” Defendant divided the “Initial Costs” of \$597,904.00 among 65 different parties owning land in the District. It then levied a service charge in the amount of \$9,198.57 against 65 parcels owned by those parties. In other words, the Town divided the costs not among the parcels in the district, but among the owners, some of whom own more than one parcel.

The Resolution setting the initial charges for the SSD was invalid. It sought to recoup expenses incurred for the creation of a district which was never lawfully established. Even if a district consisting of 114 parcels was established, requiring the owners of only 89 of those parcels to cover the full costs incurred by the district would run afoul of the statutory requirement that a service charge for a subordinate service district be just and equitable. *See* Minn. Stat. § 444.075, subd. 3, 3(a)(4).

**CONCLUSION**

For the foregoing reasons Plaintiffs’ Motion for Summary Judgment is **GRANTED**. The Town of Dresbach’s SSD is void and any service charges imposed pursuant to said SSD are invalid and unenforceable.