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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 266141-III

COURT OF APPEALS, DIVISION III

THE STATE OF WASHINGTON

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JANET CARLISLE, ROBERT ARMSTRONG, KENT BELL, KELLY BRAZIL, DAWN BRACKENSICK, STEVEN BRACKENSICK, JOHAN CURTISS, MICHAEL CURTISS, GARY FORD, MELINDA FORD, WILLIAM GABEL, ALFRED GARCIA, CLIFFORD HAMPTON, ERIKA HARLOW, BILL HUEBNER, EUGENE JUTEAU, CONNIE KRULL, COLLEEN MILLER, KENNETH MILLER, STEVEN MYRICK, HEIDI NEWSOME, TODD NEWSOME, CRAIG NIGHSWONGER, MICHAEL PRATHER, JOSEPH PRAINO, MARK REPKO, CHRISTINE SCRIBNER, LAURA SPRINGER, LINDSAY WAGNER, TYLER WAGNER, ALLISON WALSH, TOM WALSH, DANIEL WANDLER, SHELLY WANDLER, RICHARD ZELMER,

Appellants,

vs.

COLUMBIA IRRIGATION DISTRICT,  
a municipal corporation

Respondent.

---

**BRIEF OF RESPONDENT**

---

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Attorney for Respondent  
Columbia Irrigation District  
7409 W. Grandridge Blvd. Ste C  
Kennewick, WA 99336

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1  
2  
3 **INTRODUCTION**

4 Appellants have challenged Respondent, the Columbia Irrigation  
5 District's ("District" or "CID") addition to the District of land referred  
6 to as the Belmont neighborhood and challenged the formation of a local  
7 improvement district ("LID") in Belmont. Appellants have also  
8 challenged petitions by several property owners that were filed in  
9 support of the addition of Belmont to the District. Finally, Appellants  
10 contend that irrigation district statutes for the addition of land to a  
11 district and for the formation of an LID are unconstitutional.  
12  
13

14 The CID moved to dismiss by summary judgment. Only one of  
15 the thirty-four (34) Appellants filed sworn testimony in opposition.  
16  
17 The District's motion was granted.

18 This Appeal followed. Other than citing a single additional case  
19 on standard review and notice (Appellants' Brief, P. 15, 26) and  
20 reformatting to satisfy RAP 10.3, Appellants present the identical  
21 arguments rejected by the trial court.  
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3 Bill mailed in September 2006. Slade. CP 258. A copy of the City's  
4 Notice is Exhibit "A" to Slade. CP 260-261.

5 The public meeting was held on September 19, 2006 at William  
6 Wiley Elementary School, 2820 South Highlands Blvd., which is  
7 adjacent to Belmont. Larry Fox, the Secretary/Manager of the District  
8 used a PowerPoint presentation at the public meeting. Fox. CP 220-  
9 221. A copy of the PowerPoint is Exhibit "A" to Fox. CP 221, 223-  
10 227.  
11

12  
13 The notice and PowerPoint made it clear that adding Belmont to  
14 the District was one process and forming an LID was a separate  
15 process. CP 286, 225. Land that is added to the District but which has  
16 no water right is not assessed. CP 286. The PowerPoint set the  
17 submittal of petitions to the CID Board for "the regular meeting on  
18 November 7<sup>th</sup>" and a possible public hearing for the December 5<sup>th</sup>  
19 regular Board meeting. CP 225.  
20

21  
22 Johan Curtiss, the only Appellant to respond individually to the  
23 District's motion for summary judgment, attended the public meeting  
24 and signed a sign-in sheet. Affidavit of J. Curtiss ("Curtiss") CP 326-  
25

1  
2  
3 327.

4 In advance of the public meeting, CID staff drafted petition  
5 forms for property owners using property descriptions from County  
6 Assessor records. Brown. CP 284.  
7

8 The District received Petitions for the addition of Belmont to the  
9 District starting September 11, 2006. Brown. CP 284.  
10

11 In October 2006, the City of West Richland included an article  
12 about the CID's addition of Belmont and formation of an LID in its  
13 two-page newsletter *City Scene* that it included with monthly water  
14 bills. Slade. CP 258. A copy of the newsletter is Exhibit "B" to Slade.  
15 CP 262-263.  
16

17 CID Manager, Larry Fox, knew from experience that property  
18 owners would not usually act on petitions to add land to District unless  
19 a deadline existed. CP 11. Because of that and to make the process  
20 efficient, Mr. Fox set a deadline of October 27, 2006 for petitions. The  
21 deadline was subject to change and 12 petitions were accepted after the  
22 deadline but before submitting the petitions to the CID Board on  
23 November 7<sup>th</sup>. CP 11, 60-171.  
24  
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3 On November 7, 2006, at its regular monthly meeting, the CID  
4 Board accepted petitions covering 276 acres more or less within a 430  
5 acre area. CID Meeting Minutes, for November 7, 2006, Exhibit "B"  
6 to Brown. CP 283, 288-297. None of the Appellants attended the  
7 November 7<sup>th</sup> Board meeting. CP 288.  
8

9 Likewise for the December 5, 2006 regular Board meeting, the  
10 Board meeting on the day tentatively scheduled for the public hearing  
11 on adding Belmont to the District. None of the Appellants attended.  
12 December 5 Meeting Minutes. CP 11, 13-25.  
13

14 For cost reasons, the Boundary Review Board ("BRB") process  
15 was completed on the Belmont area before the adding of land to the  
16 District was finalized. This delayed the public hearing date from  
17 December 2006 until February or March 2007. Fox CP 11.  
18

19 On or about January 24, 2007, the CID, acting through its  
20 attorney Terry E. Miller, submitted its Application to the Benton  
21 County Boundary Review Board for the addition of Belmont to the  
22 District. Affidavit of Terry E. Miller ("Miller"). CP 309; RCW  
23 87.03.001; RCW 36.93.  
24  
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3 At its regular Board Meeting on Tuesday, February 6, 2007, the  
4 CID Board adopted Resolution 2007-1 ratifying the procedure to that  
5 point for adding Belmont to the District. The Resolution is Exhibit "C"  
6 to Brown. CP 284, 300-301. This Resolution was in response to a  
7 request from the BRB. Miller. CP 309. At the same meeting, the CID  
8 Board directed District staff to take the necessary steps to set up the add  
9 lands hearing for the Belmont project for March 6, 2007 in West  
10 Richland. Minutes of the meeting are Exhibit "D" to Brown. CP 284,  
11 300-302.  
12  
13

14 After February 6, 2007, the CID Manager, Larry Fox, caused  
15 Notice of the filing of the Petition to be published in the *Tri City*  
16 *Herald* on February 17, February 24 and March 3, 2007. The Notice as  
17 published and Affidavit of Publication are Exhibit "B" to Fox. CP 221,  
18 228-229.  
19  
20

21 The CID received notice from the BRB that the Belmont  
22 Addition was allowed/approved. Miller. CP 309.  
23

24 On March 6, 2007, the Board held a Public Hearing on the  
25 Petition to add Belmont to the District. There were no written  
26  
27  
28

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3 objections to the addition of Belmont and there was no one present at  
4 the public hearing that objected to the addition. The Board by  
5 unanimous vote added Belmont to the District. Meeting Minutes of  
6 March 6, 2007, Exhibit "E" to Brown. CP 284, 303-307.  
7

8 At its regular monthly Board Meeting held Tuesday, April 3,  
9 2007, the CID Board adopted Resolution 2007-02 declaring the  
10 District's intention to establish a LID in Belmont. The Resolution is  
11 Exhibit "C" to Fox. CP 221, 230-234.  
12

13 On May 1, 2007, the CID mailed Notice of the District's  
14 intention to create an LID in Belmont to owners of all lots, tracts and  
15 parcels within Belmont. CP 221. The Notice gave the date and time  
16 of the public hearing and provided in pertinent part:  
17

18 It is the intention of the Board to order improvements  
19 that benefit [Belmont] . . . .

20 . . .

21 . . . The entire actual cost and expense of the  
22 Improvements, including costs of financing, shall be  
23 borne by and assessed against the property specially  
24 benefitted by the Improvements. . . .  
25

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3 The Board shall hold a public hearing regarding the  
4 proposed Improvements and the formation of the LID to  
5 finance the costs of the Improvements at William Wiley  
6 Elementary School, located at 2920 S. Highland Blvd.,  
7 West Richland, Washington on May 10, 2007, at 7:00  
8 p.m.. At such time and place all persons interested may  
9 appear before the Board and show cause for or against  
10 the proposed Improvements, formation of the LID and  
11 the issuance of bonds to finance the costs of the  
12 Improvements, and any other matters relating thereto.  
13 Unless a majority of the holders of title or of evidence of  
14 title to lands within the LID file their written protest at or  
15 before the public hearing authorized by this resolution,  
16 consent to the Improvements will be implied.

17  
18 Notice and Affidavit of Mailing: Exhibit "D" to Fox. CP 221, 235-  
19 238.

20 The Notice of the District's intention to create the Belmont LID  
21 was also published in the *Tri City Herald* on April 30 and May 7, 2007.  
22 The Published Notice and Proof of Publication are Exhibit "E" to Fox.  
23 CP 221, 239-241.

24 The District Board held a Public Hearing on May 10, 2007 at  
25 William Wiley Elementary School. The meeting was continued to June  
26 5, 2007 and June 19, 2007. Written objections to the formation were  
27 made, some being made by Appellants in this action. Some of  
28

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3 Appellants were represented at the continued hearing by their counsel  
4 in this action. At the conclusion of the public meeting on June 19,  
5 2007, the CID Board voted unanimously to form the Belmont LID. The  
6 meeting minutes are Exhibit "F" to Fox. CP 222, 242-249.  
7

8 The CID Board adopted Resolution 2007-03 finalizing the LID  
9 at the Board's regular monthly meeting held Tuesday, July 3, 2007.  
10 The Resolution is Exhibit "G" to Fox. CP 222, 250-254.  
11

12 This action was filed August 3, 2007. Complaint CP 324.

13 **FACTS RE: CHALLENGED PETITIONS**

14 Swanson Parsons, LLC is a two member LLC managed by its  
15 members. Affidavit of Doris Lohnes ("Lohnes"). CP 267, 270-271.  
16 Dan Swanson signed the Petitions for a total of 26.95 acres owned by  
17 the LLC. CP 173, 180.  
18

19 A. M. Properties, LLC is a two member LLC that was formed  
20 July 1, 2002. The Certificate of Formation indicated that the LLC  
21 would be manager managed. CP 267, 282. In 2004, the LLC filed an  
22 on-line report indicating that it was to be manager managed and  
23 identifying both members Mohinder Sohal and Anokh Singh as  
24  
25

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3 managers. Lohnes. CP 267, 277.

4 On November 1, 2005, A.M. Properties, LLC was  
5 administratively dissolved. Lohnes. CP 309, 278. One of the LLC  
6 managers Mohinder Sohal signed add lands petitions for the LLC on  
7 October 13, 2006. Miller. CP 309, 278. A.M. Properties, LLC applied  
8 for reinstatement by the Secretary of State, October 17, 2006. Lohnes.  
9 CP 267, 274. CID staff contacted both members, Mohinder Sohal and  
10 Anokh Singh by telephone. Both members said they supported the  
11 addition of the LLC property to the District. Miller. CP 309, 310.  
12  
13

14 The LLC was apparently reinstated on or before November 3,  
15 2006. CP 309, 310.  
16

### 17 ARGUMENT

18 Even after Appellants' challenges, Petitions for more than Fifty  
19 percent (50%) of the acreage are valid.  
20

21 Appellants ignore the CID's validation of the Swanson Parson, LLC  
22 Petition and the AM Properties, LLC Petition. Although the District did not  
23 receive all of the documentation that it requested, it did fully validate both the  
24 Swanson Parson, LLC Petition and the AM Properties, LLC Petition. CP  
25

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3 212, 309, 310. Swanson Parson, LLC's Certificate of Formation  
4 provides "the business and affairs of the Company shall be managed by  
5 the members". Lohnes. CP 267, 270-271. Dan Swanson is identified  
6 by the Certificate of Formation as a member and signed the petitions to  
7 add the Swanson Parson, LLC's property to the District. Lohnes; CP  
8 267, 270-271. Complaint ¶ 2.17. CP 173.

9  
10 The Swanson Parson, LLC petitions are valid because Dan  
11 Swanson, as a member, was authorized to sign the petition and did so.  
12 Swanson Parson is a member managed LLC. A member signed the Petition.  
13 There is no evidence that the District had knowledge that Dan Swanson  
14 lacked authority. RCW 25.15.150(1). Appellants claim that Dan Swanson  
15 lacked authority under a membership agreement but concede that the District  
16 did not have the agreement. Appellants' Brief page 7 line 6. CP 180.

17  
18  
19 A.M. Properties, LLC's Petition is Valid because It is Signed by Its  
20 Manager/Partner.

21 RCW 25.15.150(1) applies to A.M. Properties, LLC if it was an LLC.  
22 The LLC's Certificate of Formation provides that the LLC is to be manager  
23 managed. Lohnes, CP 267, 282. In a subsequent filing, the LLC re-stated  
24 that it would be manager managed and identified its two members, Mohinder  
25

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3 Sohal and Anokh Singh as managers. Lohnes, CP 267, 277. Mohinder Sohal  
4 signed the petition for the LLC's properties to be added to the District. CP  
5 309.

6 Since the LLC had been administratively dissolved and not yet  
7 reinstated at the time the petition was signed the action of signing could  
8 be analyzed as one of winding up the LLC. RCW 25.15.295. The  
9 manager of a manager managed LLC could sign instruments affecting  
10 LLC property as part of winding up the LLC. *Id.*

11  
12  
13 If the LLC was reinstated after the petition was signed it would  
14 be "as if the administrative dissolution had never occurred". RCW  
15 25.15.290(3). If the dissolution never occurred the petition signed by  
16 a manger or a manager managed LLC would be valid.

17  
18 Since the LLC had been administratively dissolved and not yet  
19 reinstated at the time the petition was signed, October 13, 2006, the  
20 petition could also be analyzed as one by a partnership. *See*, RCW  
21 25.05.055. Washington law further provides:

22  
23 Each partner is an agent of the partnership for the  
24 purpose of its business. An act of a partner, including  
25 the execution of an instrument in the partnership name,  
26 for apparently carrying on in the ordinary course, the

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3 partnership business or business of the kind carried on by  
4 the partnership binds the partnership . . . .

5 RCW 25.05.100.

6 If, due to the administrative dissolution of A.M. Properties,  
7 LLC, the property was held as partnership property, the District verified  
8 with both (according to them) partners/managers that the petition was  
9 valid and that the partners/managers desired that their property be  
10 added to the District. Miller. CP 309, 310.

11  
12 The CID's Addition of Belmont was in Compliance with State  
13 Law.

14  
15 The procedure for adding land to an irrigation district is set out  
16 in RCW 87.03.560 through 580.

17  
18 The holder or holders of title, or evidence of title,  
19 representing one-half or more of any body of lands may  
20 file with the board of directors of an irrigation district a  
21 petition in writing, praying that the boundaries of the  
22 district may be so changed as to include such lands. . . .

23 Such petition must contain the assent of the petitioners to  
24 the inclusion within the district of the parcels or tracts .  
25 .. and it must be acknowledged . . . .

26  
27 RCW 87.03.560.

1  
2  
3 [N]otice of the filing of such petition to be published in  
4 the same manner and for the same time that notice of  
5 special elections for the issue of bonds are required by  
6 this chapter to be given. The notice shall state the filing  
7 of such petition and the names of the petitioners, a  
8 description of the lands mentioned in said petition, and  
9 the prayer of said petition, and it shall notify all persons  
10 interested in or that may be affected by such change of  
11 the boundaries of the district to appear at the office of  
12 said board at a time named in said notice, and show  
13 cause in writing, if any they have, why the change in the  
14 boundaries of said district, as proposed in said petition,  
15 should not be made.

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RCW 87.03.565.

The manner and time for notice of special bond elections is  
found at RCW 87.03.200:

Notice of such bond election must be given by  
publication of such notice in some newspaper published  
in the county where the office of the board of directors of  
such district is required to be kept, once a week for at  
least two weeks (three times).

RCW 87.03.200.

The board of directors, at the time and place mentioned  
in said notice, . . . shall proceed to hear the petition and  
all the objections thereto presented in writing by any  
person . . . The failure by any person interested in said  
district, or in the matter of the proposed change of its  
boundaries, to show cause in writing, as aforesaid, shall  
be deemed and taken as an assent on his part to a change

1  
2  
3 of the boundaries of the district as prayed for in said  
petition, . . .

4  
5 And the filing of such petition with said board, as  
6 aforesaid, shall be deemed and taken as an assent on the  
7 part of each and all of such petitioners to such a change  
of said boundaries . . . .

8 RCW 87.03.570.

9 [I]f they deem it for the best interests of the district that  
10 the boundaries of said district be changed, and if no  
11 person interested in said district, or the proposed change  
12 of its boundaries, shows cause in writing why the  
13 proposed change should not be made, . . . the board may  
order that the boundaries of the district be so changed. .

14 RCW 87.03.580.

15  
16 Sufficient petitions representing more than 215 acres in the 430  
17 acre Belmont area were filed with the District and accepted by the  
18 Board of Directors. RCW 807.03.560. Meeting Minutes for November  
19 7, 2006, Exhibit "B" to Brown. CP 288. Notice of the filing of the  
20 petitions and of the public hearing was published in the Tri-City Herald  
21 once a week for two weeks (three times) and set the hearing for the  
22 District Board's next regular meeting, March 6, 2007. RCW 87.03.565;  
23 RCW 87.03.200, Exhibit "B" to Fox. CP 228. At the regular Board  
24  
25

1  
2  
3 meeting held March 6, 2007, the District Board heard the Petition.  
4 There were no objections. RCW 87.03.570. Thereupon the Board  
5 ordered the change to the District boundary. Exhibit "E" to Brown.  
6 RCW 87.03.580. CP 306.  
7

8 The CID's Formation of the Local Improvement District was in  
9 Compliance with State Law.

10 An alternate procedure for forming an LID within an irrigation  
11 district is set out at RCW 87.03.480-490.  
12

13 [T]he board of directors may initiate the organization of  
14 a local improvement district . . . .

15 To so organize a local improvement district the board  
16 shall adopt and record in its minutes a resolution  
17 specifying the lands proposed to be included in such  
18 local improvement district or by describing the exterior  
boundaries of such proposed district or by both. . . .

19 Said resolution shall fix a time and place of hearing  
20 thereon and shall state that unless a majority of the  
21 holders of title or of evidence of title to lands within the  
22 proposed local improvement district file their written  
protest at or before said hearing, consent to the  
improvement will be implied.

23 A notice containing a copy of said resolution must be  
24 published once a week for two consecutive weeks  
25 preceding the date of such hearing and the last  
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3 publication shall not be more than seven days before  
4 such date, and shall be mailed on or before the second  
5 publication date by first class mail, postage prepaid, to  
6 each owner or reputed owner of real property within the  
7 proposed local improvement district, as shown on the  
8 rolls of the county treasurer as of a date not more than  
9 twenty days immediately prior to the date such notice  
10 was mailed, and the hearing thereon shall not be held in  
11 less than twenty days from the adoption of such  
12 resolution. Such notice must be published in one  
13 newspaper, of general circulation, . . . .

14 At the time and place of hearing named in said notice, all  
15 persons interested may appear before the board and show  
16 cause for or against the formation of the proposed  
17 improvement district and the issuance of bonds or the  
18 entering into of a contract as aforesaid. Upon the hearing  
19 the board shall determine as to the establishment of the  
20 proposed local improvement district. . . .

21 RCW 87.03.485.

22 (1) If decision shall be rendered in favor of the  
23 improvement, the board shall enter an order establishing  
24 the boundaries of the improvement district . . . . .

25 RCW 87.03.490.

26 The CID followed the statutes explicitly. The Board of  
27 Directors initiated the process by adopting Resolution 2007-02. Fox,  
28 Exhibit "C". CP 231. Notice of the hearing was given by first-class  
mail to the property owners as required. Fox, Exhibit "D". CP 235.

1  
2  
3 Notice of the Resolution and hearing was published once a week for  
4 two consecutive weeks preceding the date of the hearing and the last  
5 publication was not more than seven (7) days before the hearing. Fox,  
6 Exhibit "E". CP 239. The mailing list for Notice was obtained from  
7 the County Treasurer not more than twenty (20) days prior to the date  
8 of mailing. Fox. CP 235. At the hearing, property owners were given  
9 the opportunity to show cause for or against the formation and to file  
10 a written protest. Fox, Exhibit "F". CP 242. The public hearing was  
11 continued twice to give the opponents to formation additional time and  
12 opportunity to object. During part of this time, the objectors were  
13 represented by John Ziobro, counsel for Appellants. At the conclusion  
14 of the public hearing, the Board of Directors voted unanimously to  
15 form the local improvement district. *Id.*

16  
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19  
20 Appellants Have Been Afforded Due Process.

21 Appellants claim that they have been denied due process in both  
22 the addition of Belmont to the District and in the formation of the LID.  
23 Appellants also claim that RCW 87.03.560, the Statute for adding  
24 lands, and RCW 87.03.485, the Statute for the formation of the LID,  
25

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3 are both unconstitutional. Given the fact that the District more than  
4 complied with the Statutes and without more detailed allegations or  
5 proof, the CID interprets the claims as simply the same claim re-stated:  
6 the Statutes are unconstitutional because they deny due process.  
7

8 An act of the legislature is presumed to be constitutional and  
9 valid and ought not be declared invalid unless it appears to be so  
10 beyond a reasonable doubt. *State v Primeau*, 70 Wn.2d 109, 111, 422  
11 P.2d 302 (1966).  
12

13 One who challenges the constitutionality of a statute carries a  
14 heavy burden of demonstrating its invalidity. *State v Landford*, 29  
15 Wash.App. 455, 628 P.2d 829 (1980), *review denied*.  
16

17 At a minimum, procedural due process requires notice and an  
18 opportunity to be heard. *Silver Firs Town Homes, Inc. v Silver Lake*  
19 *Water Dist.*, 103 Wn.App. 411, 425, 12 P.3d 1022 (2000), *review*  
20 *denied*, 143 Wn.2d 1013 (2001).  
21

22 Appellants Were Afforded Ample Notice and Opportunity to Be  
23 Heard in the Add Lands Procedure.  
24

25 Although the Add Lands Statute only requires published notice,  
26

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3 Appellants and other property owners received not one but three  
4 individual mailings advising them of the CID's intentions to both add  
5 the land and form an LID. Brown, Exhibit "A" CP 286; Slade, Exhibits  
6 "A" CP 260 and "B" CP 262. Appellants were afforded the  
7 opportunity to be heard at the September 19, 2006 public meeting, then  
8 at regular CID Board meetings in October, November, December, 2006  
9 and January, February and March 2007 before the Board actually added  
10 the land. The only Appellant to respond to the District's motion for  
11 summary judgment, Johann Curtiss does not deny receiving the several  
12 notices. Instead she says that she thought the add lands hearing would  
13 be December 5<sup>th</sup>, 2006. She does not explain why she did not attend  
14 that meeting or the November 7<sup>th</sup> meeting when petitions were  
15 submitted. Ms. Curtiss could have forced a true election by filing a  
16 single written object to the addition of Belmont, RCW 87.03.480, 485,  
17 490. Surely due process does not require more when a person with  
18 actual notice forgoes multiple opportunities to speak or act.  
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23 Property owners could have also been heard in the BRB process  
24 which has its own requirements for notice and hearing. RCW 36.93.  
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3 The private interest to be protected in the Add Lands procedure  
4 was nominal at most. The addition of Belmont to the District, without  
5 the formation of an LID, would not subject the newly added lands to  
6 assessments because newly added lands, without more, would be  
7 classified as non-irrigable and would not have a right to water. CP 39.

9 As for balancing interests, the Appellants' interests and the  
10 District's interests in the Add Lands process are similar to those found  
11 in the annexation by cities, RCW 35.13.130-150; RCW 35A.14.120-  
12 140, and by Public Hospital Districts, RCW 70.44.200. In each of  
13 those statutory procedures, property is annexed to a city or taxing  
14 district with apparently the same opportunity to be heard but with less  
15 notice i.e. published and posted rather than published and direct mail.  
16  
17

18 The Notice for LID Formation Satisfied Due Process.

19 Notice by regular mail of an LID proceeding satisfies due process.  
20 *Pratt v Water Dist.*, 58 Wn.2d 420, 424, 363 P.2d 816 (1961); *Tiffany Family*  
21 *Trust v City of Kent*, 119 Wn.App. 262, 271, 77 P.3d 354 (2003). The  
22 District's Notice by publication and by regular mail satisfied the due process  
23 requirement.  
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3 Appellants Proposed Validation of Add Lands Petitions is Not a  
4 Panacea.

5 Appellants suggest that if an irrigation district's petitions to add land  
6 were validated by a process like RCW 35A.01.040 (for city annexations) then  
7 that would be acceptable.

8  
9 An examination of the statute shows that much of what it requires was  
10 done for the District's Add Lands Petition. Signatures were examined and  
11 the property owners identified on the Petitions were compared with County  
12 records. CP 89, 284. There is no evidence or reason to believe that the  
13 District's comparison of petition with county records would differ from some  
14 other entities comparison of the exact same documents.

15  
16 An examination of the city annexation statute also shows that the  
17 process would not address issues about which Appellants complain. Neither  
18 LLCs nor Partnerships are addressed by the statute. Property transferred after  
19 a petition is signed is not addressed. Any lag between a property sale and the  
20 recording of an instrument is not addressed. The statute refers to by-law  
21 authority for corporations but corporations by-laws are required to only  
22 address the number of directors. RCW 23B.02.060.



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3 As with a deadline for petitions, there is no statutory time line for the  
4 date of the public hearing after the submittals of petitions to Add Lands. CID  
5 Manager, Fox has explained that the delay in the public hearing on Add  
6 Lands was the result of the District's decision to save costs and to undertake  
7 the BRB Review before continuing with the Add Lands process. CP 11.  
8

9 The District's acceptance of petitions after a "deadline" and delay of  
10 the public hearing from a projected date can be characterized as an exercise  
11 of discretion or as quasi-legislative.

12 The act of changing boundaries of a political subdivision is an  
13 exercise of quasi-legislative power.

14 *Port Townsend School District v Brouillet*, 21 Wn.App. 646, 650, 587 P.2d  
15 555 (1978).

16 If the actions were an exercise of discretion there is no judicial review  
17 save for cases of abuse or for action that is arbitrary and capricious.  
18

19 It is well established that courts will not review, except for  
20 clear abuse, the discretion vested in public officers,

21 *Metzger v Quick*, 46 Wn. (2d) 477, 483, 282 P. (2d) 812 (1955).

22 If the action of the board, in and of itself, was not arbitrary  
23 and capricious, it follows that this court will not interfere.

24 *Lillions v Gibbs*, 47 Wn.2d 629, 289 P.2d 203 (1955).  
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3 If changing the deadline and public hearing dates were part of the  
4 quasi-legislative action, the court should not substitute its judgment for that  
5 of the District.

6 Courts will not substitute their judgment for that of any  
7 agency exercising quasi-legislative power unless the agency's  
8 action is outside the scope of its statutory authority or so  
9 arbitrary and capricious as to do violence to a fundamental  
10 right.

11 *Port Townsend School District v Brouillet*, 21 Wn.App. 646, 651.

12 Appellants Carelessly or Intentionally Intermix the Separate and  
13 Distinct Procedures for Adding Land to the District and for Forming a Local  
14 Improvement District ("LID").

15 The statutes for adding land to the District are RCW 87.03.560  
16 through 640. The statutes for forming and managing LIDS are RCW  
17 87.03.480 through 527. The District's addition of the Belmont property to the  
18 District was governed entirely by RCW 87.03.560 through 580. The  
19 District's formation of the LID within Belmont was governed entirely by  
20 RCW 87.03.485 and 490.

21 Appellants were Not Denied Any Voting Right or Equal Treatment.

22 The Addition of Land Process Did Not Violate Article I § 19 of the  
23 Washington Constitution.

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3 The petition method of annexation does not interfere with the right to  
4 vote, either directly or indirectly, and therefore does not violate Article I § 19  
5 of the Constitution. See, *Fire Protection District v Moses Lake*, 145 Wn.2d  
6 702, 718, 42 P.3rd 394 (2002). The Court in *Fire Protection, supra*, engaged  
7 in an exhaustive review of the petition method of annexation for cities, both  
8 code and non-code, and concluded that to the extent that it provides an  
9 alternate to an election process, the petition method of annexation does not  
10 violate Article I § 19. *Id.* at 715-718.

11  
12 While the LID Formation Resembled an Election, It Was Not.

13 Appellants complain that the notice to property owners of the LID  
14 formation said a poll would be taken but that instead an election was held.  
15 The statute, RCW 87.03, allows those objecting to file a written protest at or  
16 before the public hearing. Since the District's authority to proceed is  
17 dependent upon the protests, it is necessary for the District to systematically  
18 receive and review the protests to determine whether the protesters are, in  
19 fact, "holders of title or evidence of title". The process has an appearance of  
20 formality. It is however just a "poll" or "vote" but not a true election <sup>1</sup>.

21  
22  
23  
24 <sup>1</sup> Definition of poll: The casting and registering of votes in an election . . .  
25 A canvassing of a selected sample group of persons to analyze public  
26 opinion on a particular questions. Definition of vote: A formal expression  
27 of preference . . . for a proposed resolution of an issue. That by which  
28

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3 Irrigation district elections are governed exclusively by irrigation district law.  
4 RCW 87.03.030. Although RCW 87.03.580-590 provides for an election on  
5 the issue of adding land neither the Add Lands procedure or LID formation  
6 as implemented involved an election.

7  
8 The Appellants complaint is largely one of semantics. The required  
9 notice was given. Written protests were received and tallied. The protest  
10 was made by less than the required majority. Non-protesting property owners  
11 impliedly consented to the formation. The District formed the LID pursuant  
12 to the statutes.

13 There Can Be No Violation of Washington Constitution Article I § 19  
14 because There was No Election.

15  
16 Neither statutory scheme, neither the procedure for adding land nor  
17 the procedure for forming the LID required an election. No election was  
18 held.

19 [Article I § 19 of the Washington State Constitution] does not  
20 mean that voters may go to the polls at any time and vote on  
21 any question they see fit, but only at the stated times provided  
22 by the statutes relating to elections.

23 *State v Smith*, 137 Wash. 125, 241 P. 970 (1925).

24 \_\_\_\_\_  
25 such a preference is made known, as a raised hand or a ballot.  
26 *The American Heritage Dictionary of the English Language* - College  
Edition, Houghton Mifflin Co., Boston, © 1980.

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3                   Appellants were Treated Equally and Fairly.

4                   The Appellants along with other property owners in Belmont received  
5 individual mailed notices of the District's plan which included both  
6 procedures: adding the land to the District and formation of an LID. In the  
7 notice, Appellants received notice of the public meeting of September 19,  
8 2006 and the subsequent regular monthly Board meetings of the District's  
9 Board of Directors for November 7, 2006 and December 5, 2006. Appellants  
10 were free to attend those monthly open public Board meetings along with any  
11 other Board meetings of the District. RCW 87.03.115, RCW 42.30.  
12 Appellants were free to make public records requests and to review and copy  
13 District records. RCW 42.56. Appellants were free to participate in the  
14 addition of lands procedure by objecting in writing. Had they done so, they  
15 could have forced the issue to an election. RCW 87.03.480, 485, 490. The  
16 Appellants were free to participate in the LID formation process and  
17 presumably did so. Appellants were free to object to the LID formation in  
18 writing and presumably did so.

19  
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21                   Silence As Consent Does Not Violate the Constitution.

22                   Appellants complain that "non-votes" controlled the outcome of the  
23 LID formation process. Non-votes controlling the outcome of an election is  
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25

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3 expressly constitutional. Article VII § 2A<sup>2</sup> requires two-thirds ( $\frac{2}{3}$ ) of forty  
4 percent (40%) of voters in the previous general election to authorize new  
5 taxes. With such a requirement, a unanimous yes vote combined with a  
6 thirty-nine percent (39%) turn out would allow the non-votes to determine the  
7 outcome of an election. Put another way, Appellants complain that the LID  
8 was formed despite the fact that the majority of those registering their  
9 preference opposed it.  
10

11 Appellants suggest that the majority of those voting should control the  
12 outcome of an election. That, of course, is not true. A super majority can be  
13 required as it is in school bond elections. *See*, discussion above. Similarly,  
14 a minimum voter turn out can be required to validate an election. *See*,  
15 Washington Constitution Article VII § 2. In forming LIDs in cities a super  
16 majority is required to stop the process. RCW 35.43.180.  
17

18 The District followed the statutes. The LID formation process was  
19 completed. The LID was properly formed.  
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26 This Constitutional provision is most familiar as the school bond election  
27 procedure. RCW 84.52.052.  
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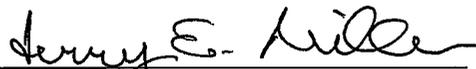
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3 Properties, LLC/Partnership. The signatories both had statutory  
4 authority to sign for the respective entities.

5 The Columbia Irrigation District complied in every respect with  
6 the statutory requirements for adding the Belmont neighborhood to the  
7 District and for the formation of the local improvement district in the  
8 Belmont neighborhood.  
9

10 Finally, the Columbia Irrigation District has afforded Appellants  
11 and the other property owners ample notice and ample opportunity to  
12 be heard on both the addition of Belmont to the District and to the  
13 formation of the local improvement district.  
14

15 The trial court dismissal should be affirmed.  
16

17 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of March 2008.  
18

19  
20   
21 Terry E. Miller, WSBA #14080  
22 Attorney for Respondent  
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