

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway , Golden, CO 80401	DATE FILED: August 7, 2020 1:23 PM FILING ID: 647CDDDBDBFE91 CASE NUMBER: 2005CV3035
INTHE MATTER OF ORGANIZATION OF FOSSIL RIDGE METROPOLITAN DISTRICTS NO. 2 AND 3	▲ COURT USE ONLY ▲
PETITIONER:  John Henderson. #50508 2167 S. Juniper St. Lakewood, Colorado 80228 <a href="mailto:Jkhjr1@gmail.com">Jkhjr1@gmail.com</a> 316-295-0084	Case No. 2005 CV 3035   Division 1
<b>RESPONSE TO FRMD BOARD OPPOSITION TO RECALL PETITION</b>	

The petitioner respectfully responds to the Fossil Ridge Metropolitan District's and Mr. Waterman's opposition to appointing a designated election official pursuant to CRS 32-1-909.

1. This petition invokes the provision under CRS 32-1-909 for the court to simply appoint a designated election official. The Court's jurisdiction over this matter is defined by the statute and necessarily limited to the ministerial function of making an appointment.

2. The statute is plain:

"(1) A recall petition shall not be circulated until it has been approved as meeting the requirements of this section as to form.

**(2) The proposed form of a recall petition shall be filed with the court as defined in section 32-1-103 (2) for the special district. Within five business days of receipt of a proposed form of recall petition for a special district director, the court shall issue an order appointing a designated election official who shall perform the duties set forth for the recall. The designated election official shall not be the director sought to be recalled by the petition or the spouse or civil union partner of the director sought to be recalled by the petition.**

CRS 32-1-909 (emphasis added)

3. Once the appointment is made, "The designated election official shall approve or disapprove a petition as to form . . . ". CRS 32-1-909

4. "The electors of the special district are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds on which the recall is sought, and said grounds are not subject to a protest or to judicial review." CRS 32-1-909

5. Once the signatures are collected, the designated election official determines whether or not they are sufficient and ultimately holds a hearing if there is any objection (typically raised by the board members). CRS 32-1-910

6. "The designated election official shall serve as the hearing officer. All testimony in the hearing must be given under oath. The hearing officer has the power to issue subpoenas and compel the attendance of witnesses. The hearing must be summary and not subject to delay and must be concluded within forty days after the petition is filed. No later than five business days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient." CRS 32-1-910 (3)(D)(IV)

### Discussion

7. The board members, and in this case the lead board member who was appointed by the developer Brookfield, Mr. Waterman, are asking the Court to appoint their agent - Sue Blair - as the designated election official.

8. This statute was passed in 2018 to correct the prevailing practice of having the developer's agent - their attorney - act as the designated election official. The fox guarding the henhouse with a clear conflict of interest.

9. The statute expressly prohibits the director who is the subject of the recall or his spouse or partner from being the designated election official. CRS 32-1-909(2) In like manner, the agent, Sue Blair, of CRS is not an appropriate candidate. Neither is the law firm representing Mr. Waterman and the board.

10. The Jefferson County Clerk/Recorder on the other hand performs this same function for citizens initiatives: first, are the petitions sufficient in form; and, second, are the signed petitions sufficient in the number of verified signatures.  
<https://www.jeffco.us/DocumentCenter/View/11832/Citizen-Initiative-Information-Packet--> The Jefferson County Clerk/Recorder is also completely neutral and have no agency relationship with the board or Mr. Waterman who are the subject of the recall.

11. Mr. Waterman, also seeks to litigate whether or not he should be the subject of a recall.

12. First, that issue is beyond the limited scope of the court's current jurisdiction. Pursuant to CRS 32-1-909 the court's authority is limited to **"the court shall issue an order appointing a designated election official"**.

13. Second, the issue is not ripe. If the electors sign the petition to recall Mr. Waterman and if the signatures are sufficient, then Mr. Waterman will have opportunity to raise this issue.

14. Third, if or when it is time for a court to address the merits of the issue, Mr. Waterman provides no authority to contradict the clear statement by the legislature: "Any

director elected or appointed to the board of any special district **who has actually held office for at least six months** may be recalled from office by the eligible electors of the special district . . . ". Mr. Waterman has actually held office since 2015, when he was appointed by Brookfield.

15. Mr. Waterman suggests that he could be recalled within days of the most recent election. That issue is not before us. That issue is not before the court.

What is before the court is a director, originally appointed by Brookfield in 2015, who, with three days notice to the residents, without responding to residents' questions, ordering that there would be no discussion or answering of questions, refusing to reinstate the residents' right to vote on new bond debt, following a 2 hour secret meeting (executive session), simply voted along with the other board members (most of whom who he initially appointed) - without any discussion - to issue \$10 million in bonds to write a check to Brookfield - all at the disenfranchised cost to the residents. Residents who now seek a recall.

The statute does not include the limiting language Mr. Waterman seeks to write into the statute. It does not state that the time he has "actually held office" starts to be counted with each new election.

Indeed, no one ran against him at the last election - he was continued in office by default - no one voted for him and the election was "cancelled".

Moreover, Mr. Waterman did not disclose prior to the election that he intended to suppress the residents' right to vote on new bond debt. He did not disclose that he intended to unilaterally issue new bond debt to pay Brookfield \$10 million. He did not disclose that he intended to impose a tax debt on the residents of \$10 million plus interest equal to about an additional \$10 million at a cost to the residents of at least \$500,000 per year for likely 40 years. Mr. Waterman has now made that disclosure and in response, the residents seek his removal from office - an office that he has held since 2015.

For these reasons, the petitioner respectfully requests the Court appoint a designated election official pursuant to CRS 32-1-909. That ministerial function is the only matter before the court at this time.

For these reasons the petitioner respectfully requests the court appoint the Jefferson County Clerk and Recorder as the designated election official to fulfill the duties set forth in Title 32, beginning with CRS 32-1-909.

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/s/  
John Henderson #50508  
Dated: August 7, 2020

**Certificate of Service**  
I certify that on August 7, 2020, I served the foregoing document by electronic mail through the electronic filing system and via email to counsel for the boards of directors.



