

STATE OF OREGON  
CLACKAMAS COUNTY COURTS  
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**ENTERED**

**AUG 13 2018**

**By: KLC**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

IN THE MATTER OF THE VALIDATION PROCEEDING TO  
DETERMINE THE REGULARITY & LEGALITY OF THE CITY OF MILWAUKIE'S  
CONTRACTS AND DECISION IN CONNECTION WITH  
RESOLUTION 18-2016

**18CV19211**

DECISION ISSUED AUGUST 10, 2018.

Argued and submitted on August 6, 2018.

Before Hon. Susie L. Norby.

Timothy V. Ramis of Jordan, Ramis PC argued the cause for the City Council of the City of Milwaukie. With him on the brief was Christopher Dolan of Jordan, Ramis PC..

Thomas C. Madden Jr. of the Historic Milwaukie Neighborhood District Association briefed and argued the cause in opposition to the City of Milwaukie's request for court validation.

Both parties consented to a stipulated facts trial and both submitted Declarations, Exhibits and written argument to this court. At oral argument, both parties stipulated to accept a decision by this court as a binding determination on the question of the legality of the City's proposed actions under Resolution 18-2016 and Ballot Measure 3-477.

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1 JUDGE SUSIE L. NORBY

2 The Milwaukie City Council (“City”) filed this validation proceeding pursuant to  
3 ORS 33.710 *et seq.*, which vests this Court with subject matter jurisdiction only if a justiciable  
4 controversy exists. When Thomas Madden of the Historic Neighborhood District Association  
5 (“Opponent”) filed an Answer in Opposition to Validation, a justiciable controversy arose. The  
6 City seeks court confirmation of the regularity and legality of the actions it has taken to allow  
7 implementation of an approved final plan for the improvement of the Ledding Library, including  
8 the use of \$9.2 million in bond proceeds to fund the project, pursuant to the voters’ approval of  
9 Ballot Measure 3-477 in 2016.

10 This dispute is rooted in the City’s adoption of Resolution 18-2016, which  
11 initiated a 2016 voter referendum that secured citizen approval for the City to issue up to \$9.2  
12 million in general obligation bonds to fund improvements, repairs and technological upgrades to  
13 Milwaukie’s Ledding Library. Ballot Measure 3-477 was approved by voters on May 17, 2016.  
14 Thereafter, the City formed a Library Construction Task Force and a Project Management Team  
15 to develop a final Ledding Library improvement plan commensurate with the approved budget.  
16 In Spring of 2018, a final plan for improving the Ledding Library was approved. Components of  
17 the plan include replacement of the current primary structure with a new, updated and expanded  
18 primary structure, sale of an auxiliary structure (the Pond House) to augment the project budget,  
19 and repair of environmental issues on the property surrounding the structure.

20 The Opponent objects that the City’s final plan violates the letter and the spirit of  
21 Ballot Measure 3-477, therefore it cannot be funded by the bonds that Measure authorized. The  
22 gravamen of his argument is that the Measure prohibited full replacement of the existing primary  
23 structure at the Ledding Library property, and required the City to retain some original internal

1 or external component of that structure. This argument interprets the words “Library Repairs” in  
2 the Measure to mean “Library *Building* Repairs,” and to preclude repair-by-replacement of the  
3 existing primary structure.

4 Both parties agree that “bond proceeds may be used only for the purposes  
5 authorized by the voters at a bond election” under Friends of Morningside Hill v. City of Salem,  
6 158 Or App 80, 83 (1999).<sup>1</sup> Therefore, the key question submitted to this court is whether Ballot  
7 Measure 3-477 limited the City’s authority to prohibit use of the approved bond proceeds to  
8 update the existing primary structure of the Ledding Library by completely replacing it.

9 For the following reasons, this Court holds that: (1) The City acted in good faith  
10 throughout the election process on Ballot Measure 3-477; and (2) the City’s approved 2018 final  
11 plan for improving the Ledding Library property is consistent with the meaning of the election  
12 summaries published as Ballot Measure 3-477. Accordingly, the City’s proposal to use \$9.2  
13 million dollars in general bond revenue for the Ledding Library improvements, as outlined in its  
14 approved 2018 final plan is confirmed to be lawful.

15 **I. CRITERION OF GOOD FAITH IN ELECTION PROCESS**

16 The Objector’s Answer in this case challenges the City’s good faith in funding its  
17 planned improvements with the bond proceeds approved in Ballot Measure 3-477. (Answer,  
18 p. 7, lines 3-7.) Good faith in elections process is an important factor when a court determines  
19 whether a municipality can reap the benefits of voter approved funding for a particular project.  
20 Generally, a city has broad authority to create capital improvement plans to enhance city  
21 facilities and services. Citizens may participate in the process of developing such plans through  
22 public comment, but do not have veto power over final plans properly adopted by a city.

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<sup>1</sup> Further, ORS 294.100 prohibits any public official from expending money for a purpose other than as authorized by law.

1 When a city requests to incur bond debt at citizen expense to pay for a capital improvement plan,  
2 citizens have the collective authority to approve or deny the request by vote. In such cases, the  
3 city is obligated to act in good faith to present a Ballot Title and Explanatory Statement that  
4 inform the citizens fairly about the nature of the bonding request. If the city acts in bad faith by  
5 making material misrepresentations to fraudulently induce voter approval, then voter approval is  
6 voidable. If the city acts in good faith in seeking voter approval, and makes no material  
7 misrepresentations, then voter approval is valid and may be acted upon.

8       There is case precedent to guide this Court’s analysis of the criterion of good faith by a  
9 municipality in seeking bonding authority from voters for a project that some citizens later  
10 challenge as inconsistent with the terms described in the election process. In Gurdane et. al. v.  
11 North Wasco County P.U.D., 183 Or 565, 578 (1948), the Oregon Supreme Court quoted the  
12 following excerpt from a California case with approval:

13       “\* \* \* The rule is that public bodies may submit bond propositions in broad and  
14 general terms. Such a body may make its order of submission ‘just as broad, and  
15 just as narrow,’ or just as specific as it is willing to be bound by. [*Citation*  
16 *omitted.*] When the authorities having the power and responsibility of proposing  
17 the bond issue have not, by the forms employed in submitting the proposition to  
18 the electors, confined themselves to an absolutely definite and inflexible plan of  
19 construction and expenditure, and have proceeded, free from fraud and in good  
20 faith, in accordance with the program based upon estimated costs, no good reason  
21 appears why they should not be permitted to carry on the improvement to the  
22 extent of the funds available. Williams v. City of Stockton, 195 Cal 743, 756.

23 In this case, the content of the City’s election summaries in light of the context surrounding the  
24 Measure in 2016 reveals no fraud or manifest abuse of discretion. No evidence exists in the  
25 record before this Court to suggest that the City intentionally misled the public in the election  
26 process on Ballot Measure 3-477. In 2016, the City had goals for the Library Improvement  
27 Project, but no final plan for achieving them. The City’s goals were broadly and fairly stated in  
28 the Measure. Therefore this Court concludes that the City acted in good faith.

1 **II. MEANING OF PUBLISHED ELECTION SUMMARIES**

2 The remaining question is whether the language used by the City in the  
3 summaries published to explain the purpose of Ballot Measure 3-477 was broad enough to allow  
4 all actions proposed in the 2018 Ledding Library Improvement project final plan. Under  
5 ORS 174.010, when construing law: “the office of the judge is simply to ascertain and declare  
6 what is, in terms or in substance, contained therein, not to insert what has been omitted, or to  
7 omit what has been inserted; and where there are several provisions or particulars such  
8 construction is, if possible, to be adopted as will give effect to all.” The most vital part of  
9 Measure 3-477 is the Ballot Title, which said that the Measure: “AUTHORIZES GENERAL  
10 OBLIGATION BONDS FOR MILWAUKIE LIBRARY REPAIRS AND IMPROVEMENTS.”

11 That language is uncomplicated, yet the parties’ different notions of what the “Milwaukie  
12 Library” is lead them to opposite conclusions about the Measure’s meaning. The City’s  
13 argument focused on the term “improvements,” while the Objector’s focused on the term  
14 “repairs.” But, it was apparent in their presentations that the fulcrum of the debate is actually the  
15 term “library.” The City believes that the term “library” as used in the Measure described the  
16 Ledding campus facility as a whole, including both structures and land.<sup>2</sup> The Objector believes  
17 that the term “library” described *only* the primary structure.<sup>3</sup> Resolution of this ambiguity is vital  
18 to interpretation of the meaning of all other parts of the published summaries.

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<sup>2</sup> At the conclusion of the oral argument, the City’s attorney noted that his perception of the meaning of “library” in the Ballot Measure as the entire library campus. “I viewed the word ‘library’ as being a campus.”

<sup>3</sup> The following excerpt from the oral argument hearing shows the Objector’s focus on the primary structure:

Court: . . .you said that . . . you knew they weren’t committed to a particular plan.

Objector: I’m not committed to so many square feet, or a two story or a one story building, or the color of it or design of it. What I believe can be done, and what can be accomplished, is what we voted on, and that is the repair of the current structure, bringing it back into good shape, and expansion of it. . .

1           This Court begins its search for the meaning with the origination of Milwaukie’s Ledding  
2 Library, as described in Ex. 3, p. 104 of Leila Aman’s Declaration in Support of the City’s  
3 Validation Proceedings. That exhibit reveals that Florence Ledding “bequeathed her *home and*  
4 *property*” to the City of Milwaukie, and required that “the *property* should be used for library  
5 purposes only” as “the Ledding Library.” (*Emphasis added.*) The City both remodeled the  
6 Ledding home and built a new structure on the property to host an expanded collection of books  
7 that included some of Mrs. Ledding’s personal books, books bought with a bequest from her, and  
8 the City’s existing library<sup>4</sup> that had been publicly available in the City Hall for a quarter century  
9 before they were moved to the Ledding Library property.

10           Although the Ballot Title for Measure 3-477 refers generally to “Milwaukie *Library*  
11 *Repairs and Improvements*,” the Summary and Explanatory Statement include particular  
12 improvement goals that clearly reach beyond the primary structure. They identify improvement  
13 project possibilities that extend to “the Pond House,”<sup>5</sup> “the parking lot” and “the building  
14 exterior.” Reading all the published language together, it encompasses a vision of the  
15 “Milwaukie Library” as a destination, comprised of both grounds *and* buildings dedicated to  
16 library purposes. This implicit vision of the “Milwaukie Library” matches Florence Ledding’s  
17 explicit vision of the “Ledding Library” at the time she bequeathed both her “home and  
18 property” for library purposes. In fact, the only definition of the term “library” that makes sense  
19 when consistently applied to the word throughout the published summaries of Ballot Measure  
20 3-477 is the more expansive definition favored by Florence Ledding herself.

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<sup>4</sup> Here, the term “library” is used as defined in the initial clause of the Online Dictionary of Library and Information Science: “A collection or group of collections of books and/or other print or non-print materials organized and maintained for reading, consultation, study, and/or research use. By extension, the room, *building, or facility* that houses such a collection, usually but not necessarily built for that purpose.” Notably, this precise definition incorporates both the City’s notion of a “facility” and the Objector’s notion of a “building” as logical extensions of the “library” concept.

<sup>5</sup> The Pond House is both an accessory structure and part of the view from the Ledding Library grounds.

1 The court concludes that the term “library” in Ballot Measure 3-477 encompasses both  
2 structures and grounds at Milwaukie’s Ledding Library. This conclusion settles the question of  
3 whether the Ballot Measure limited the City to undertake repairs of the primary structure, or  
4 whether the City’s plan to repair environmental issues on the Ledding Library grounds satisfies  
5 the stated goal to do “repairs” with some bond proceeds authorized by the Measure. The City’s  
6 repair of environmental issues on the Ledding Library grounds is within the meaning of the  
7 Measure summaries, and the City is not required to perform separate limited repairs on the  
8 existing primary structure. It may replace that structure to accomplish the goals of update and  
9 expansion. The 2018 final plan for the Ledding Library Improvement project is consistent with  
10 the meaning of the published election summaries for Ballot Measure 3-477.

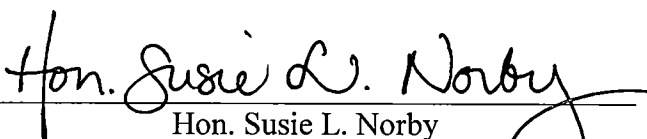
11 **III. CONCLUSION**

12 For the reasons set forth in this opinion, this Court rules as follows:

- 13 1. The City acted in good faith in its actions throughout the election process on Ballot Measure
- 14 3-477.
- 15 2. The City’s approved 2018 final plan for improving the Ledding Library property is consistent
- 16 with the meaning of the election summaries for Ballot Measure 3-477.
- 17 3. The City’s intention to use \$9.2 million dollars in general bond revenue for the
- 18 improvements to the Ledding Library as outlined in its approved 2018 final plan is consistent
- 19 with the voters’ approval of Ballot Measure 3-477, and is confirmed to be lawful.

20 **IT IS SO ORDERED, this 10<sup>th</sup> day of August, 2018.**

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24 Hon. Susie L. Norby  
Clackamas County Circuit Court Judge