

Michael Green  
D. Wiley Barker  
CROWLEY FLECK PLLP  
900 N. Last Chance Gulch, Ste. 200  
P. O. Box 797  
Helena, MT 59624-0797  
Telephone: (406) 449-4165

Attorney for Petitioners

**FILED**  
JAN 25 2022  
ANGIE SPARKS, Clerk of District Court  
By [Signature] Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY**

RGB INVESTMENTS, LLC; 80 PROOF  
LLC; CAS HOLDINGS LLC; and  
MAUREEN BLATTER, as Trustee of the  
MAUREEN BLATTER FAMILY TRUST,

Petitioners,

vs.

CITY OF HELENA,

Respondent.

Case No. CDV-2022-59

Judge: \_\_\_\_\_

**KATHY SEELEY  
PRESIDING JUDGE**

**PETITION FOR DECLARATORY  
JUDGMENT AND REFUND**

Petitioners RGB Investments, LLC ("RGB"), 80 Proof LLC ("80 Proof"), CAS Holdings LLC ("CAS Holdings") and Maureen Blatter, trustee of the Maureen Blatter Family Trust ("Blatter Trust"), by and through their counsel, hereby seek declaratory judgment and an order requiring refund of illegally collected assessments against Respondent City of Helena ("City"). In support of this Petition, Petitioners state as follows:

1. RGB is a Montana limited liability company with its principal place of business in Helena, Lewis and Clark County, Montana which owns real estate within the exterior boundaries of the City. RGB's properties include real property located at 2823 Airport Road, with Lewis and Clark County Assessment Code 21407 (the "Airport Road Parcel").

2. 80 Proof is a Montana limited liability company with its principal place of business in Helena, Lewis and Clark County, Montana which owns real estate within the exterior boundaries of the City. 80 Proof's properties include real property at the following addresses in the City with Lewis and Clark County Assessment Codes:

- a. 1100 E. Lyndale Ave., Assessment Code 3695 (the "Loose Caboose Parcel"); and
- b. 1827 Prospect Ave., Assessment Code 5436 (the "4-Js Parcel).

3. CAS Holdings is a Montana limited liability company with its principal place of business in Helena, Lewis and Clark County, Montana which owns real estate within the exterior boundaries of the City. CAS Holdings' properties includes real property at the following addresses in the City with Lewis and Clark County Assessment Codes:

- a. 908 Euclid Ave., Assessment Code 5482; and
- b. 1151 Partridge Place, Assessment Code 36299.

4. The Blatter Trust is a family trust managed by trustee Maureen Blatter with its principal place of trust administration in Helena, Lewis and Clark County, Montana, which owns real property within the exterior boundaries of the City. The Blatter Trust's properties include real property located at 2500 N. Cook St. in the City, with Lewis and Clark County Assessment Codes 40046 and 7281.

5. Respondent City is municipal corporation incorporated as a subdivision of the State of Montana subject to the Constitution and the laws of Montana and the City's own code and ordinances.

6. The City's authority to levy taxes and assessments on property within the City is governed by the Constitution and the laws of Montana and the City's own code and ordinances.

7. This action arises out of the City's illegal taxation of Petitioners' property. This Court has jurisdiction over this matter pursuant to Mont. Code Ann. § 15-1-406 or 27-10-201. Venue is properly before this Court pursuant to Mont Code Ann. 25-2-126 and 15-1-406.

### **BACKGROUND ON DISTRICT TAXES**

8. The City created Street Maintenance District No. 1 (the "District") for the purpose of providing maintenance to public streets.

9. The District is the only street maintenance district within the City and includes all property within the exterior boundaries of the City.

10. The District does not confer an identifiable specific benefit to any parcel in the District.

11. In 2015, the City passed Ordinance 3213 amending City Code Section 7-1-8 governing the District to add "improvements" to streets within the purpose of the District.

12. The City Code authorizes the City Commission to assess "the assessable property with the city that received the benefit of the maintenance or improvement." Helena City Code, 7-1-8B.

13. The City levies annual assessments on all properties within the City for the stated purpose to defray the cost of street maintenance and improvements (the "District Tax"). The District Tax is collected by the Lewis and Clark County Treasurer through the normal property tax levy and collection process. Historically the District Tax assessment is identified as "STREET MAINT #1" on Lewis and Clark County property tax bills.

14. Lewis and Clark County mailed property tax bills, including District Tax levies, for 2021 to all taxpayers in the City on October 28, 2021.

15. The City Commission sets the annual levy rate for the District Taxes through regular resolutions. Resolutions back to 2010 are available through the City's website.

16. Historically, the City has set rates for residential, vacant, mobile home and commercial parcels.

17. In 2010, the City Commission passed Resolution 19754 which increased the fiscal year 2011 base assessment rate of District Taxes by 11.72% over the prior year, and set the rates as follows:

<b><u>Type of Property</u></b>	<b><u>Assessment Rates</u></b>
Vacant or Residential lots	\$ 124.12 flat rate per lot or parcel
Manufactured or Mobile Home Dwelling Units, located within a licensed mobile home park	\$ 49.65 flat rate per dwelling unit
Commercial lots (6,000 square feet or more)	\$0.02068 per assessable square foot
Commercial lots (less than 6,000 square feet)	\$ 124.12 flat rate per lot or parcel

18. In 2015, the City Commission passed Resolution 20188 which increased the fiscal year 2016 base assessment rate of District Taxes by 3.0% over the prior year, and set the rates as follows:

<b><u>Class of Property</u></b>	<b><u>Proposed Maximum Assessment Rate and Method</u></b>
Vacant or Residential	Flat rate of \$140.37 per lot or parcel of land
Mobile Home Park	\$ 56.14 per manufactured home or mobile home site
Commercial lots with an area of less than 6,000 square feet	\$140.37 flat rate per lot or parcel
Commercial lots with an area of 6000 square feet or more	\$0.02338 per square foot for the first 1 million square feet per lot or parcel



19. Effective for fiscal year 2017, the City began assessing commercial property at a higher rate.

20. In 2016, the City Commission passed Resolution 20266 which imposed a higher increase on commercial properties for the first time. For fiscal year 2017, the City Commission increased the base assessment rate of District Taxes by “up to 7.0% on residential, vacant, and mobile home properties, and up to 10.6% for commercial properties” and set rates as follows:

<b><u>Class of Property</u></b>	<b><u>Proposed Maximum Assessment Rate and Method</u></b>
Vacant or Residential	Flat rate of \$150.20 per lot or parcel of land
Mobile Home Park	\$ 60.07 per manufactured home or mobile home site
Commercial lots with an area of less than 6,000 square feet	\$155.16 flat rate per lot or parcel
Commercial lots with an area of 6000 square feet or more	\$0.02586 per square foot for the first 1 million square feet per lot or parcel

21. Resolution 20266 does not describe the basis for differentiating between commercial and other properties for purposes of assessing District Taxes.

22. The City continued this differential rate structure and imposed significant annual rate increases through the current fiscal year.

23. In 2017, the City Commission passed Resolution 20356 which increased rates by “up to 7.0% for residential, vacant and mobile home properties and up to 13.5% for commercial properties for fiscal year 2018.” Resolution 20356 does not describe the basis for differentiating between commercial and other properties for purposes of assessing District Taxes.

24. In 2018, the City Commission passed Resolution 20456 which increased the base assessment rate of District Taxes by “up to 18.14% for residential and vacant properties, up to 47.7% for mobile home parks, and up to 29.6% for commercial properties for fiscal year 2019;

and up to a 29.6% increase in the commercial per square foot assessment rate on all lots or parcels within the District for fiscal year 2019.”

25. One of the recitals of Resolution 20456 indicates the “Commission has determined that commercial properties generate a larger amount of vehicle trips than residential, vacant and mobile home properties and such disparate vehicle trip generation results in a higher level of impacts to streets within the District; and therefore should pay a higher annual assessment. . . .” However, the Commission’s records regarding consideration and adoption of Resolution 20456 do not include any data presented to the Commission to support the conclusion stated in this recital.

26. In 2019, the City Commission continued its pattern of double-digit rates of increase but departed from its long-standing practice of including a stated percentage increase in its resolution. In Resolution 20537, the City Commission imposed rates as follows:

	CURRENT FY2019	PROPOSED FY2020	PROPOSED FY2021
<b>Vacant or Residential:</b>			
All lots/parcels	\$171.96	\$206.16	\$206.16
<b>Mobile Home Parks</b>			
Per manufactured home or mobile home site	\$68.78	\$82.46	\$82.46
<b>Commercial:</b>			
Lot Area			
less than 6,000 sq. ft.	\$228.23	\$360.00	\$360.00
6,000 sq. ft or more*	\$0.03804/ sq. ft	\$0.0600/ sq. ft.	\$0.0600/ sq. ft.

This change increased the base assessment rate of District Taxes for fiscal years 2020 and 2021 by 19.9% on residential and vacant properties and mobile home parks, and by 57.7% on commercial properties as compared to the 2019 rates.

27. From fiscal year 2011 to 2021, the base rate of assessment for District Taxes has increased: 1) for vacant and residential properties by 66.1% from \$124.12 to \$206.16 per lot; 2) for mobile home units by 66.1% from \$49.65 to \$82.46 per unit; and 3) for commercial lots by 190.1% from \$0.02068 to \$0.0600 per foot and from \$124.12 to \$360.00 per lot smaller than 6,000 square feet.

28. The City has not publicly provided a description of how it determined the differential rates to apply to commercial and other properties.

29. The City assesses vacant parcels and residential properties with between one and four residential units at the same rate regardless of value, size, use, occupancy. Similarly, the City assesses commercial properties up to 6,000 square feet at the same rate regardless of value, size, use or occupancy. The City assesses all other larger parcels based solely on size with no consideration for value, use or occupancy.

30. Upon information and belief, the City has not conducted any analysis to determine whether the benefit conferred by the maintenance and improvements carried out by the District are commensurate with the rate of District Taxes assessed.

31. Upon information and belief, the annual amount of District Taxes levied since at least 2010 have exceeded the amount of District Taxes levied in 1996.

32. Upon information and belief, District funds generated through District Taxes have been expended for projects other than street maintenance or improvements, including installation, replacement or improvement of sidewalks, trailheads and trails and conducting studies.



### **EXAMPLES OF IMPACT ON PETITIONERS' PROPERTY AND TAXES**

33. RGB's Airport Road Parcel is a partially developed parcel of real property which consists of approximately 10.1 acres of land, with three office buildings and adjoining parking lots consisting of approximately 11,319 square feet of commercial office space. Currently over 9,000 square feet of rentable office space is unoccupied. Approximately 70% of the Airport Road Parcel is undeveloped raw land. The Airport Road Parcel has a single access onto Airport Road.

34. The portion of Airport Road accessed by the Airport Road Parcel is designated as part of the State of Montana's urban highway system.

35. In 2014, the total property tax assessment on Airport Road Parcel was \$33,675.42, of which \$9,616.53 or 32.92% was District Tax.

36. In 2021, and the total property tax assessment on Airport Road Parcel was \$44,770.86, of which \$26,342.47 or 58.83% was District Tax.

37. The market value of the Airport Road Parcel assessed by the Montana Department of Revenue for 2021 is \$1,187,700, with a taxable value assessed of \$22,448. When measured against the assessed taxable value, the 2021 District Tax assessment on the Airport Road Parcel is the equivalent of a 1,173.49 mill levy (where mills = (tax/taxable value) x 1000).

38. Between 2014 and 2021 the District Taxes on the Airport Road Parcel increased by 164% while the remainder of the taxes levied decreased by more than 22% from \$23,709.18 to \$18,428.38.

39. The District Tax levies have not been and are not commensurate with the benefit received by the Airport Road Parcel.

40. 80 Proof owns a fully developed 28,000 square foot parcel of real property located at 1827 Prospect Avenue in the City ("4-Js Parcel") which consists of a 4,209 square foot



commercial building and adjoining parking lot which is currently operated as a casino and restaurant. The 4-Js Parcel fronts on a portion of Prospect Avenue which is a Montana State Highway over which the City has no responsibility for maintenance. The 4-Js Parcel has a secondary access point on North Hannaford Street.

41. In 2014, the total property tax assessment on the 4-Js Parcel was \$8,437.12, of which \$635.60 or 7.5% was District Tax.

42. In 2021, the total property tax assessment on the 4-Js Parcel was \$13,370.14, of which \$1,680 or 12.6% was District Taxes.

43. The market value of the 4-Js Parcel assessed by the Montana Department of Revenue for 2021 is \$681,900, with a taxable value assessed of \$12,888. When measured against the assessed taxable value, the 2021 District Tax assessment on the 4-Js Parcel is the equivalent of a 130.3 mill levy (where mills = (tax/taxable value) x 1000).

44. Between 2014 and 2021 the District Taxes on the 4-Js Parcel increased by 164% while the remainder of the taxes levied increased 49.8% from \$7,801.52 to \$11,690.14.

45. The District Tax levies have not been and are not commensurate with the benefit received by the 4-Js Parcel.

46. CAS Holdings owns commercial real properties within the City which are subject to District Taxes. The District Tax levies have not been and are not commensurate with the benefit received by CAS Holdings' properties.

47. The Blatter Trust owns commercial real properties within the City which are subject to District Taxes. The District Tax levies have not been and are not commensurate with the benefit received by the Blatter Trust's properties.

48. All property owners within the City are subject to the District Taxes. The District Tax levies have not been and are not commensurate with the benefit received by any individual property within the City.

**COUNT I- DECLARATORY JUDGMENT- ILLEGAL ASSESSMENT**

49. Petitioners re-allege all preceding paragraphs as if stated fully herein.

50. The District Taxes constitute a property tax, not a special assessment.

51. The City's assessment of District Taxes is unlawful because it fails to comply with the provisions of Helena City Code § 7-1-8 and Mont. Code Ann. § 7-12-4422.

52. The City's assessment of District Taxes is unlawful because it violates Mont. Code Ann. § 15-10-402 and the City has failed to comply with Mont. Code Ann. § 15-10-420.

53. The City's assessment of District Taxes is unlawful because it violates Art. VIII, Sections 3 and 4, of the Montana Constitution because it does not use the Montana Department of Revenue's assessed value of property within the City as the basis for the assessment of District Taxes.

54. The City's assessment of District Taxes is unlawful because it violates Petitioners' rights of due process and equal protection.

55. The City has not provided an opportunity or method for a taxpayer to appeal District Taxes, and the appeals identified in Mont. Code Ann. § 15-1-402 are not available for taxpayers to appeal District Taxes.

56. A declaratory judgment pursuant to Mont. Code Ann. § 15-1-406 is exclusive remedy for Petitioners to challenge the District Taxes or obtain a declaration regarding the validity of the District Taxes.

57. Therefore, Petitioners seek a declaration pursuant to Mont. Code Ann. § 15-1-406 and 407 that the City has unlawfully imposed District Taxes on Petitioners and all similarly situated property owners within the City.

58. This claim is timely pursuant to Mont. Code Ann. § 15-1-406(2), because Petitioners filed their claim less than 90 days after Lewis and Clark County mailed 2021 tax bills for 2021.

### **COUNT II- REFUND OF PROTESTED DISTRICT TAXES**

59. Petitioners re-allege all preceding paragraphs as if stated fully herein.

60. RGB, 80 Proof and the Blatter Trust timely protested their District Taxes for 2021 pursuant to Mont. Code Ann. § 15-1-402. CAS Holdings did not protest the first half of 2021 District Taxes but intends to protest the second half payments for both of its properties.

61. Petitioners request the Court enter an order pursuant to Mont. Code Ann. §§ 15-1-406 and 407 requiring the City to refund to Petitioners and all similarly situated taxpayer all illegally collected District Taxes and statutory interest.

### **COUNT III- DECLARATORY JUDGMENT- ILLEGAL DISTRICT**

62. Petitioners re-allege all preceding paragraphs as if stated fully herein.

63. The City's creation and operation of the District is unlawful because it does not comply with Mont. Code Ann. § 7-12-4402 requiring a city to be divided into separate districts.

64. The City's creation and operation of the District is unlawful because the City expends funds generated through District Taxes on projects which are not authorized street maintenance or improvements.



65. Petitioners seek a declaration pursuant to Mont. Code Ann. § 15-1-406 and 407 in favor Petitioners and all similarly situated property owners in the City that the City's creation and operation of the District exceeded the City's authority under Montana law and is invalid.

66. Petitioners intend to submit a claim demanding repayment of illegally collected District Taxes pursuant to Mont. Code Ann. § 15-16-603.

#### **COUNT IV- DECLARATORY JUDGMENT- ALTERNATIVE RELIEF**

67. Petitioners re-allege all preceding paragraphs as if stated fully herein.

68. To the extent the Court were to determine that Mont. Code Ann. § 15-1-406 does not apply to any portion of Petitioners' claims, Petitioners request the Court grant declaratory judgment pursuant to the Uniform Declaratory Judgments Act that the City's creation and operation of the District and assessment of District Taxes are illegal and exceed the City's authority, and declare City Code § 7-1-8 and all actions taken pursuant to that section invalid.

#### **COUNT V-ATTORNEYS' FEES**

69. Petitioners are entitled to recover their attorneys' fees and costs incurred in pursuing this action from the Department under the Private Attorney General Doctrine. Petitioners have been forced to pursue this action because the City has violated its statutory and constitutional obligations regarding tax assessments within the District.

70. Petitioners' resulting costs of litigation will likely far exceed the limited financial benefit Petitioners will receive if successful.

71. The corrections ordered as a result of this litigation will directly benefit all other taxpayers within the City and will resolve an issue of statewide significance.

72. Petitioners also seek recovery of their attorneys' fees and costs from the City pursuant to Mont. Code Ann. §§ 25-10-711 and 27-8-313.

73. Alternatively, Petitioners are entitled to reimbursement of their attorneys' fees and costs from the City and/or all benefited taxpayers out of the common fund consisting of refunded property taxes resulting from the refunds ordered in this case.

WHEREFORE, Petitioners demand judgment against the City for the following relief:

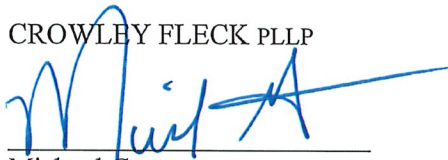
1. For a declaration that the City has unlawfully imposed District Taxes on Petitioners and all similarly situated property owners within the City.
2. For an order requiring the City to refund to Petitioners and all similarly situated taxpayer all District Taxes plus statutory interest;
3. For a declaration that the City's creation and operation of the District exceeded the City's authority under Montana law and is invalid;
4. For an order granting Petitioners their reasonable attorneys' fees and costs of suit incurred in connection with this action; and
5. For such additional relief the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Petitioners demand a trial by jury on all issues so triable.

Dated this 25th day of January, 2022.

CROWLEY FLECK PLLP



Michael Green  
Attorneys for Petitioners