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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

BLAINE COUNTY, a political subdivision of the State of Idaho; ARCH COMMUNITY HOUSING TRUST, INC., an Idaho corporation; BLAINE COUNTY HOUSING AUTHORITY, a public agency of the State of Idaho; and John Does 1-5,

Appellants,

vs.

KIKI LESLIE A. TIDWELL, an individual; and THE MADISON JEAN TIDWELL QUALIFIED SUBCHAPTER S TRUST, a legal entity organized under the laws of the State of Idaho,

Respondents.

Docket No. 48799-2021
Blaine County Case No. CV07-18-551

APPELLANTS' BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

HONORABLE MICHAEL P. TRIBE
District Judge, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

III. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a District Court decision limiting the use of the real property located at 3702 Buttercup Road, in Blaine County, Idaho ("Parcel C" or "Property"). Parcel C had been dedicated to Blaine County ("the County") for "public use," and was subsequently transferred to the Blaine County Housing Authority ("BCHA") for the development of a single affordable housing duplex by ARCH Community Housing Trust ("ARCH"). The lawsuit that is the basis of this appeal was brought by Respondent and Cross-Appellant Kiki Leslie Tidwell and the Madison Jean Tidwell Trust (collectively "Tidwell"), who opposed the proposed affordable housing project. In their Complaint, Tidwell asserted claims for injunctive and declaratory relief as well as damages pursuant to 42 U.S.C. Section 1983. Appellants and Cross-Respondents Blaine County, ARCH, and BCHA (collectively "County Defendants") responded that Tidwell lacked standing, application of the merger doctrine was necessary because the term "public use" on the final plat and warranty deed was unambiguous, and that the Section 1983 claims should be dismissed.

The District Court twice determined that Tidwell had standing, dismissed the Section 1983 claims, and initially granted summary judgment in favor of the County Defendants on the merger question. The Court then reconsidered its decision and found that the term "public use" was ambiguous, which necessitated a three-day court trial to determine the intent of the dedication and acceptance of Parcel C. At the close of trial, the District Court determined that Parcel C was dedicated to Blaine County as an easement to be used exclusively for "open space or recreational use," which prohibited construction of the affordable housing duplex on Parcel C. This appeal followed.

B. Course of the Proceedings Below and Disposition

On September 14, 2018, Tidwell filed a three count Complaint seeking: (1) declaratory

relief; (2) injunctive relief; and (3) damages for violation of procedural and substantive due process pursuant to 42 USC § 1983 ("Section 1983"). (Clerk's Record on Appeal ("R") at 20-34). The same day, Tidwell filed a Motion for Preliminary Injunction requesting that the District Court prohibit the County, BCHA and ARCH from constructing any housing on Parcel C. (R. at 35-49). After hearing oral argument on the motion, the District Court denied Tidwell's request for a preliminary injunction, but found that Tidwell had standing to proceed. (R. at 236-237).

On November 23, 2018, ARCH and BCHA filed a motion for partial summary judgment on Tidwell's Count I arguing that the doctrine of merger should be applied to the Final Plat for the Valley Club West Nine P.U.D. ("Final Plat"), and that the dedication of Parcel C for "public use" was clear and unambiguous and allowed for affordable housing to be constructed on that parcel. (R. at 238-250). Shortly thereafter, on December 10, 2018, the County filed a motion to dismiss Tidwell's Section 1983 claims. (R. at 251-264).

On March 5, 2019, the District Court granted ARCH's and BCHA's joint partial motion for summary judgment on Plaintiffs' Count I stating:

> The Final Plat labels Parcel C simply as 'Public Use." Similarly, the Deed reads, 'Public Use Parcel C, . . . according to the official plat thereof.' Since the Final Plat and the Deed are the final recorded instruments in this instance they are the foundation from which any analysis must be made, not the Final Decision.
>
> The term 'Public Use' is meant to be flexible so as to comport to the needs and wants of the community and benefit the public welfare or economy.
>
> The Board exercised its authority as the governing body of the county to approve a use that would benefit a portion of the inhabitants of the county . . . As noted above, the Final Plat and the Deed label Parcel C as 'Public Use' with no more specific reference to its intended purpose. Had a narrower use been the intent of the parties such language could have been included in the recorded instruments.

(R. at 371-375). The District Court also granted the County's Motion to Dismiss the Section 1983 claim. (R. at 358-366). On March 11, 2019, the District Court issued a Judgment dismissing all of Tidwell's claims with prejudice. (R. at 376-378).

On March 25, 2019, Tidwell filed a Motion for Reconsideration of the District Court's Decision Granting Partial Summary Judgment. (R. at 379-393).[1] On July 1, 2019, the District Court reversed itself, determining that the term "public use" was now ambiguous and, as such, it is "appropriate for the Court to hear additional evidence on Count I of Plaintiffs' Complaint rather than resolving the matter through summary judgment." (R. at 439-445).

Thereafter, on October 30, 2019, ARCH and BCHA filed a second motion for partial summary judgment on the basis that Tidwell lacked standing. (R. at 446-455). On November 1, 2019, Tidwell filed a motion for summary judgment on Counts I (Declaratory Judgment) and II (Injunctive Relief). (R. at 471-493).

On December 30, 2019, the District Court issued a Memorandum Decision denying ARCH's and BCHA's second motion for partial summary judgment stating that Tidwell and the Trust had standing. (R. at 751-761). Shortly thereafter, on February 4, 2020, the District Court denied Tidwell's motion for summary judgment stating that although it viewed the term "public use" as ambiguous, there were genuine issues of material fact regarding the Valley Club, Inc.'s (the "Developer" or "Valley Club") intent in making the dedication of Parcel C. (R. at 762-777).

A three-day court trial was held via Zoom on November 12-13, 2020 and December 9, 2020 to determine the parties' intent with regard to Parcel C. At the conclusion of the trial, the District Court took the matter under advisement and, on March 2, 2021, issued its Findings of Fact

[1] No reconsideration was sought on the dismissed Section 1983 claim.

and Conclusions of Law (the "Findings"). (R. at 945-969). Shortly thereafter, the District Court entered its Judgment (the "Judgment") dated March 12, 2021, as follows:

1) The Final Plat and Warranty Deed limit the use of Parcel C to "open space or future recreational use as determined by Blaine County and the Blaine County Recreation District;"
2) The Final Plat and Final Decision do not permit ARCH's proposed community housing development on Parcel C;
3) The Building Permit is void;
4) The County, BCHA and ARCH are bound by the conditions set forth in the Final Decision and Final Plat;
5) The County, BCHA and ARCH are "permanently enjoined from constructing or allowing any party to construct or otherwise build any structure on Parcel C other than those for the sole purpose of public open space or recreational use."

(R. at 970-972).

The County Defendants timely filed a Joint Notice of Appeal on April 22, 2021 appealing the District Court's Judgment. (R. at 1062-1070). On May 13, 2021, Tidwell and the Trust filed a Notice of Cross Appeal. (R. at 1079-1082).

C. Statement of Facts

1. PUD Application

In January 2004, the Valley Club submitted an application (the "Application") to the County to develop the Valley Club West Nine PUD, which proposed a planned unit development ("PUD") that would include a 9-hole addition to the Valley Club's existing 18-hole golf course, as well as 48 residential free market housing units on Residential Block 1 (the "Village Green Parcel"), 12 community or employee housing units on Community Housing Block 2 (the "Community Housing Parcel"), a fire station parcel, and two fire station employee housing units for a total of 62 lots/residences/units. (R. Plaintiffs' Ex. 1). The Valley Club's primary goal in submitting this application was to construct a new 9-hole golf course, which would be paid for by the sale of lots within the Village Green Parcel. (November 12, 2020, Trial Tr. at 37:9-13).

The Blaine County Code recognizes PUDs as a special category of subdivision, which allow for increased densities, clustering and more flexibility in the development design that could accommodate a golf course, clustered housing, and public amenities. (R. Defendants' Ex. A). Specifically, the Blaine County Code requires superior design and amenities associated with a proposed planned unit development, which includes a requirement that at least twenty (20%) of the land within the proposed planned unit development be open space. (R. Defs.' Ex. A).

The proposed golf course addition easily satisfied the 20% open space requirement. (R. Pls. Ex. 14 at 14; Nov. 12, 2020 Trial Tr. at 139:16–140:4, 148:22–149:4). As for amenities, the Valley Club proposed to dedicate a parcel of land for a fire station and two housing units, as well as a separate parcel where 12 affordable housing units[2] would be constructed. (R. Pls.' Ex. 1). All of these public amenities would be located on a narrow sliver of land between the bike path and Hiawatha Canal and Buttercup Road. (R. Pls.' Ex. 3).

2. <u>PUD Approval Proceedings</u>

The County's Planning and Zoning Commission ("Commission") first reviewed the Valley Club's application and recommended that the Board approve it with certain conditions. (R. Pls.' Ex. 1). In response to a proposal from the Wood River Land Trust to construct a fishing pond on land south of the Community Housing parcel, the Commission recommended that a .5-acre parcel be transferred to the Blaine County Recreation District ("BCRD") at that location, but it did not recommend that a fishing pond be developed there.[3] (R. Pls.' Ex. 1 at 11). After receiving the

[2] During this time, the Blaine County Board of Commissioners (the "Board") viewed the affordable housing situation in Blaine County as an acute issue and attempted to provide as many affordable housing opportunities as possible through the superior design and amenities requirement. (December 9, 2020 Trial Tr. at 18:15–20:19). The affordable housing crisis has only grown worse in Blaine County since then. (Dec. 9, 2020 Trial Tr. at 19:16–20:1).

[3] Due to the parcel's proximity to the bike path, the Developer and County representatives presumed that the BCRD would be a willing partner in developing these parcels, but in the meeting room, BCRD representatives expressed concern over having the resources to maintain these recreational uses over time. *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 36:30-40:20; R. Pls.' Ex. 14 at 11).

Commission's recommendation, the Board held several public hearings on April 7, 2005, April 26, 2005, May 3, 2005, May 19, 2005 and June 14, 2005 to review and discuss the Application. (R. Defs.' Exs. C, E, F, G, I, J, N, O).

During these hearings, and in response to public comment and comment from the Board, the Developer proposed to dedicate as many as three parcels to the County, in addition to the Community Housing parcel. (R. Pls.' Ex. 8). Initially, a variety of uses were discussed for the public parcels such as a fire station, fire employee housing, a park, a fishing pond, and a bike path rest area, which were intended to satisfy the superior design and amenity requirement.[4] The discussions of these multiple uses led to multiple descriptions of the public parcels within the written documentation trying to keep up with the public hearing process.[5] Such descriptions included "open space," "open space or future recreational use as determined by the County and the Rec. District," "future fire station," "recreation/public amenity for bike path rest area," "County Recreation Parcel," and "public parcels."[6] Each of those specific uses, however, were problematic for the Developer, the Board, or third parties due to feasibility concerns, a lack of water, or an inability to perform ongoing maintenance.[7]

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[4] *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 34:05-36:10; Min. 37:20-40:26; Min. 40:26-42:53; Min. 44:14-46:43); R. Pls.' Ex. 6 (May 3, 2005 3 of 4B (Noise Reduced) at Min. 6:48-7:30; Min. 8:28-9:21).

[5] Commissioner Bowman, a member of the Board at that time, described the process as requiring some "give and take" between the Board and an applicant to assist the applicant in getting approval of its proposed planned unit development while complying with the County's requirements, which often required changes to the development application. (Dec. 9, 2020 Trial Tr. at 15:4–17:2).

[6] R. Pls.' Ex. 2 (April 7, 2005 BCC Minutes – "future fire station"); R. Pls.' Ex. 4 (April 26, 2005 BCC Minutes – "future fire station"); R. Pls.' Ex. 7 (May 3, 2005 BCC Minutes – "future fire station"); R. Pls.' Ex. 11 (May 19, 2005 BCC Minutes – "recreation/public amenity for bike path rest area"); R. Pls.' Ex. 14 (May 26, 2005 Preliminary Findings – "County Recreation Parcel," "for public open space or future recreational use as determined by the County and Rec. District"); R. Pls.' Ex. 16 (June 9, 2005 Staff Report – "County Recreation Parcel," "for public open space or future recreational use as determined by the County and Rec. District"); R. Pls.' Ex. 18 (June 14, 2005 BCC Minutes – "two public parcels totaling approx. 1.6 acres"); R. Pls.' Ex. 19 (June 15, 2005 JWP Final Plat Findings – "parcel for a future fire station with two housing units on .7 acres," "County Recreation Parcel," "for public open space or future recreational use as determined by the County and Rec. District"); R. Pls.' Ex. 21 (June 23, 2005 Final Decision – "Public Use Parcel," "for public open space or future recreational use as determined by the County and Rec. District").

[7] *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 36:30-40:20; R. Pls.' Ex. 14 at 11).

Apparently frustrated that the prolonged discussion of these specific uses was bogging down the overall project, the Developer's attorney, Mr. Phillips, stated at the May 3, 2005 hearing, that it was "up to the Board" how to structure the dedication of Parcels B and C as to specific uses, including affordable housing on the public parcels.[8] Similarly, Mr. Ruscitto, the Developer's architect, offered to modify the draft plat to leave the use of Parcels B and C "more open" and merely transfer them to the County on May 19, 2005.[9] In agreement with the Developer's offer to leave the uses of Parcels B and C "up to the Board" and "more open," Chairperson Sarah Michael requested that Parcels B and C be renamed "community" parcels on the draft plat at the May 19, 2005 hearing.[10] Commissioner Dennis Wright then suggested that the parcels be relabeled on the draft plat as "public use" parcels, which became the chosen descriptor for both Parcels B and C.[11] Five days later, on May 24, 2005, the Developer submitted a draft plat that depicted "Public Use Parcel B" and "Public Use Parcel C". (R. Defs.' Ex. K).[12] As the proceedings moved towards final approval, a draft plat was submitted by the Developer on June 6, 2005, that depicted "Public Use Parcel B" and "Public Use Parcel C". (R. Defs.' Ex. M).

The progression in draft plats culminated in the signed Final Plat in July, 2005. (R. Pls.' Ex. 22). The Final Plat encompasses, among other parcels, Parcel B and Parcel C which are labeled as "Public Use," with no plat note qualifying, limiting or restricting their use. (*Id*.) The Final Plat is signed by Doug Rhymes on behalf of the Developer as well as the Developer's land surveyor, Mr. Robinson, and various representatives of the County. (*Id*.) The Final Plat was recorded as

[8] *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 41-42).
[9] *See* R. Pls.' Ex. 10 (May 19, 2005 3 of 3A (Noise Reduced) at Min. 11:15-12:35).
[10] *See* R. Pls.' Ex. 10 (May 19, 2005 3 of 3B (Noise Reduced) at Min. 3:46-4:35; Min. 7:58-8:20).
[11] *See* R. Pls.' Ex. 10 (May 19, 2005 3 of 3B (Noise Reduced) at Min. 3:46-4:35; Min. 7:58-8:20).
[12] James Robinson of Benchmark Associates, PA testified at trial that he was hired by the Developer to draft the plats and submit them to the County on behalf of the developer during the PUD process. (November 13, 2020 Trial Tr. at 30:11–31:11, 32:13–34:22). He described the platting process as an evolutionary one, where it is common for several draft plats to be submitted by the development team during the proceedings. (Nov. 13, 2020 Trial Tr. at 28:7-18).

Instrument No. 523431 in the records of Blaine County, Idaho on July 22, 2005, and "Public Use Parcel B" and "Public Use Parcel C" are clearly depicted. (*Id*.; R. Defs.' Ex. Q).

After the Final Plat was recorded, Brian McCoy, on behalf of the Developer, executed the Warranty Deed, which was recorded as Instrument No. 523434 in the records of Blaine County, Idaho (the "Warranty Deed"). (R. Defs.' Ex. R). The recorded Warranty Deed does not incorporate any limitations or restrictions on the use of either Parcel B or Parcel C and simply refers to the two public parcels as follows:

> Public Use Parcel B and Public Use Parcel C, of THE VALLEY CLUB WEST NINE P.U.D., according to the official plat thereof, recorded on July 22, 2005, as Instrument No. 523431, records of Blaine County, Idaho.

(R. Defs.' Ex. R).

Over ten years later, and in September, 2015, the Board passed Blaine County Resolution 2015-32 which conveyed Public Use Parcels B and C to BCHA for the express purpose of developing affordable housing on those parcels, which, the Board had determined, was a suitable "public use" for the Parcels. (R. at 26, ¶ 39; R. at 96-97). Following the transfer of the Parcels, BCHA entered into an agreement with ARCH to construct affordable housing on Parcel B. (R. at 97). A deed-restricted affordable housing unit was relocated onto Parcel B in 2015. (R. at 97). On April 20, 2016, BCHA entered into a Ground Lease (the "Ground Lease") with ARCH to construct an affordable housing duplex on Parcel C. (R. at 149). ARCH was subsequently issued a building permit to construct the duplex on or around February 6, 2018. (R. at 149).

Tidwell appealed[13] the issuance of the building permit to the Board and on May 1, 2018, the Board held an appeal hearing. (R. at 28, ¶ 48). Following an appeal hearing, the Board issued

[13] As will be discussed in greater detail, Tidwell never participated in the Valley Club West 9 PUD proceedings. At the time she filed her appeal of the ARCH building permit, Tidwell owned property located at 300 Let'Er Buck Road, Blaine County, Idaho, which was approximately one (1) mile to the south and west of Parcel C. (R. at 143, 154).

its decision on June 5, 2018, in which it denied Tidwell's appeal of the issuance of the Building Permit.[14] (R. at 28, ¶ 54). On June 12, 2018, the Board issued a revised decision upholding its initial denial of Tidwell's appeal and upholding issuance of the ARCH building permit. (R. at 28, ¶ 55). Thereafter, on September 14, 2018, Tidwell filed a Petition for Judicial Review of the revised decision, which was later withdrawn. Tidwell then filed the lawsuit which is the basis for this appeal.

IV. ISSUES PRESENTED ON APPEAL

1. **Whether the District Court Erred When It Ruled that Tidwell Had Standing;**

2. **Whether the District Court Erred in Determining That the Term "Public Use" is Ambiguous;**

3. **Whether the District Court Erred When It Refused to Apply the Merger Doctrine to Exclude Extrinsic Evidence;**

4. **Whether the District Court Erred in Finding that "Public Use" Actually Means "Open Space and Recreational Use;"**

5. **Whether the District Court Erred in Finding that Blaine County was Dedicated an Easement in Parcel C;**

6. **Whether the District Court Erred in Discrediting Tom Bergin's Credible, Corroborated, and Uncontroverted Testimony; and**

7. **Whether the District Court Mischaracterized Tom Bowman's Trial Testimony.**

[14] In its Decision, the Board stated that Tidwell's "aggrieved" status as a property owner living approximately one mile from the subject property is tenuous and unsupported by factual evidence aside from her statements that the development of the subject property could impact her." (R. at 99).

V. STANDARD OF REVIEW

There are three separate issues addressed in this Brief. The first issue, standing, was addressed by the District Court during preliminary injunction and summary judgment. The second issue, regarding the merger doctrine, was addressed by the District Court during summary judgment. The third issue is whether the District Court erred in its findings of fact and conclusions of law, which were issued following the trial in this matter.

Jurisdictional issues, such as standing, are questions of law. *Martin v. Camas County ex rel. Bd. Com'rs*, 150 Idaho 508, 512, 248 P.3d 1243, 1247 (2011). Standing is a preliminary question to be determined by this Court before reaching the merits of the case. *Young v. City of Ketchum*, 137 Idaho 102, 104-05, 44 P.3d 1157, 1159-60 (2002). The doctrine of standing is a subcategory of justiciability. *Id*. Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. *Id*. Upon review, this Court exercises free review over jurisdictional issues. *Paslay v. A&B Irrigation District*, 162 Idaho 866, 868, 406 P.3d 878, 880 (2017).

Summary judgment is only proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*.; I.R.C.P. 56(d). This Court conducts a de novo review of the record before the District Court to determine whether, after construing the facts in the light most favorable to the nonmoving party, there exist any genuine issues of material fact. *Schneider v. Howe*, 142 Idaho 767, 770, 133 P.3d 1232, 1235 (2006). If no disputed issues of material fact exist, then only a question of law remains, and the court may grant summary judgment. *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002). This Court exercises free review over questions of law. *Id*.

The applicable standard of review regarding a trial court's factual findings and legal conclusions after a bench trial is limited to ascertaining whether the evidence supports the findings of

fact, and whether the findings of fact support the conclusions of law. *Caldwell Land and Cattle, LLC v. Johnson Thermal Systems, Inc*., 165 Idaho 787, 795, 452 P.3d 809, 817 (2019). A trial court's findings of fact will not be set aside unless the findings are clearly erroneous. *Id*. If the findings are supported by substantial and competent, though conflicting, evidence, clear error will not be deemed to exist. *Id.* Substantial and competent evidence exists if there is evidence in the record that a reasonable trier of fact could accept and rely upon in making the factual finding challenged on appeal. *Id*. However, this Court exercises free review over matters of law and is not bound by the legal conclusions of the trial court, but may draw its own conclusions from the facts presented. *Morgan v. New Sweden Irr. Dist*., 160 Idaho 47, 51, 368 P.3d 990, 994 (2016).

VI. ARGUMENT

There are three main issues in this case, all of which will be addressed separately below. The first issue involves whether Tidwell had standing to bring her claims.

1. The District Court Erred When It Ruled That Tidwell Had Standing

As expressed above, this lawsuit arose after ARCH was granted a building permit to construct a duplex on a parcel owned by BCHA in 2018. Parcel C is a .6-acre, rectangular shaped parcel bordered by Buttercup Road to the west, the Hiawatha Canal, Wood River Trails Bike Path, and the Valley Club Golf Course to the east, vacant land owned by Valley Club to the south, and residential development to the north. (*See* R. Pls.' Ex. 22). Immediately north of Parcel C is Agave Place, which consists of twelve residential apartments ranging in size from 500 to 1,000 square feet each. (R. at 164). The Agave Place development was originally platted for community housing as part of the Valley Club West 9 planned unit development, but later became free market housing units. (R. at

164). Parcel B is immediately north of Agave Place and has already been developed as affordable housing. (*See* R. Pls.' Ex. 22; R. at 97).[15]

Despite a complete lack of participation in the Valley Club West 9 PUD proceedings, Tidwell was a vocal opponent of the ARCH building permit, even though her primary residence was located nearly a full mile from the proposed duplex. (R. at 97-98, 107). In fact, Tidwell's residence was located across Buttercup Road, across a bike path, behind utility poles, and behind a mature grove of trees that made it "difficult to understand" how a structure on Parcel C would be visible from the Tidwell property. (R. at 143, 154, 158). The Trust owns one parcel of vacant land located .4 miles from the proposed duplex, across several holes on the golf course, and behind a stand of large trees. (R. at 143, 154, 158). The record is devoid of any information explaining how the Trust Parcel would be impacted by the duplex.

At the Preliminary Injunction phase of the proceedings, the District Court found that Tidwell had standing, ruling as follows:

> So it's the Court's opinion that, all together, that there is -- and the testimony was that the housing would change the nature of that parcel, would potentially block views, and really just the nature of the use -- so I think all together, I believe there is an injury in fact and find that she has standing and that the preliminary injunction would prevent the complained of injury if it was granted. And I recognize that the third prong of the Jerome County case is the injury must not be suffered by all citizens alike. And part of my rationale is that she has several potential violations or potential things that would aggrieve her, but all those taken together allow her to have standing.

(Oral Ruling on Pls.' Mot. Prelim. Inj. Tr. 9:15–10:4, Oct. 30, 2018). Similarly, in denying County Defendants' Motion for Summary Judgment on the standing issue, the District Court stated that,

> [t]he Court agrees that these additional items each do nothing more than add weight to the Court's original determination that Plaintiffs will suffer an injury. Each alone may not be enough to meet the threshold but collectively, the Court finds that there is an injury in fact.

[15] No allegation has challenged the presence of affordable housing on Public Use Parcel B.

(R. at 758).[16]

Blaine County submits that the District Court erred in stacking Tidwell's perceived and unsupported "injuries" onto one another in order to confer standing upon her.

a. The Duplex Will Not Impact Tidwell or the Trust Property

It is "a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing." *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). In order to satisfy the standing requirement, a plaintiff must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

Tidwell and the Trust have no property interest at stake in these proceedings. Parcel C was dedicated to Blaine County for public use as part of a PUD. Parcel C is now owned by BCHA, and a building permit has been issued to ARCH to construct an affordable housing duplex. The mere location of the Tidwell and Trust properties, being .9 miles and .4 miles from the proposed duplex respectively, are insufficient to confer standing. *See Butters v. Hauser*, 131 Idaho 498, 501, 960 P.2d 181, 184 (1998) (location of Butters property alone did not confer standing).

In *Butters*, Hauser applied for a conditional use permit to erect a radio transmission tower on a ridge top. *Id.* at 499. The application was granted and surrounding property owners appealed the decision. *Id.* The Court found that Butters had standing to pursue a declaratory judgment action because she owned land in close proximity to the tower, the tower loomed over her land, and the physical invasiveness of the tower affected her enjoyment of her property. *Id.* at 501. The Court

[16] The District Court also ruled that Tidwell had standing based on the language of the Final Plat. (R. at 757). This was clearly error as it is well established that the doctrine of standing does not focus on the issues central to the litigation, but on the party seeking relief. *See Miles*, 116 Idaho 635.

further found that Butters had spent $1,500 on a new telephone system to eliminate the tower's radio signal from her telephone. *Id*. This expenditure, the Court found, made Butters' harm peculiarized and fairly traceable to both the ordinance amendment and the conditional use permit at issue. *Id*.

None of the factors that were present in *Butters* are present here. Tidwell and the Trust properties are some distance from the proposed duplex, which will be far from "looming" and almost completely out of sight of the two properties. Tidwell has made no claim that she will be out of pocket for anything once the duplex is constructed. Tidwell must therefore establish that she has standing through some other means.

b. Tidwell's Property Values Will Be Unaffected

During the Preliminary Injunction stage of the proceedings, Tidwell stated that converting the vacant lot into a duplex would significantly devalue her real property as well as the real property of others in the vicinity. (R. at 48). Tidwell admitted that she did not know the amount by which her real property would be devalued. (R. at 48-49). Despite that, Tidwell has continued to maintain that her property values will be negatively impacted by the duplex. (R. at 610). What was entirely lacking, however, is any factual evidence of diminished value. *See Martin*, 150 Idaho at 515, 248 P.3d 1250 (Martin failed to show that he suffered or is likely to suffer an injury as he merely speculated that increased competition will decrease the future value of his property.)

Tidwell's assertions are bare allegations based on a hypothetical injury, which do not confer standing. *See State v. Philip Morris, Inc.*, 158 Idaho 874, 882, 354 P.3d 187, 195 (2015) ("Indeed, when standing is challenged, mere allegations are not sufficient, and the party invoking the court's jurisdiction must demonstrate facts supporting this allegation"). Unlike Tidwell, the individuals in *In re Jerome County Bd. of Com'rs*, 153 Idaho 298, 302, 281 P.3d 1076, 1080 (2012) did present evidence of compromised resale values of existing homes in the area. In that case, an application for

a livestock confinement operation ("LCO") large enough to accommodate 8,000 animals was proposed on property surrounded by resident farms. *Id*. The Court found that the record contained sufficient allegations that the LCO could potentially harm property values because there was evidence demonstrating compromised resale value, odors, and health concerns. *Id*. at 309.

Tidwell did not provide any evidence showing loss of value. Instead, the District Court was presented with affidavits from Valdi Pace, former Blaine County Assessor, and Patricia Lentz, a residential real estate appraiser in Blaine County. Ms. Pace stated that she had yet to be presented with market evidence that supported the argument that proximity to affordable housing would result in diminished values for nearby properties. (R. at 111, ¶ 7). Ms. Lentz similarly stated that based upon market research and more than 25 years of appraising, the proposed development would not have a negative impact on the market value of surrounding residences. (R. at 166). Thus, the only evidence presented as to Tidwell's diminution of value claim firmly established that the presence of the duplex would result in no diminution of value for surrounding property owners.

In its oral ruling on the preliminary injunction, the District Court agreed that there was nothing before the Court regarding a loss of value. (Oral Ruling on Pls.' Mot. Prelim. Inj. Tr. 8:9-14). Nevertheless, the District Court ultimately determined that Tidwell had standing. To the extent the District Court determined that Tidwell had standing based upon an unproven diminution of value, that finding was in error.

c. Tidwell's Injuries are Speculative, Hypothetical, and Generalized

Standing requires a showing of a distinct palpable injury and a fairly traceable causal connection between the claimed injury and the challenged conduct. *Coalition for Agriculture's Future v. Canyon County*, 160 Idaho 142, 146, 369 P.3d 920, 924 (2016). A palpable injury is an injury that is easily perceptible, manifest, or readily visible. *Id*. The injury cannot be one suffered alike by all

citizens in the jurisdiction. *Id*. A speculative harm is not sufficient to confer standing. *Martin*, 150 Idaho at 514, 248 P.3d at 1249. Further, bare allegations are insufficient and standing can never be assumed based on a merely hypothetical injury. *In re Writ of Prohibition*, 2021 WL 3720965, at *9, -- P.3d – (Aug. 23, 2021) (*citing Philip Morris, Inc.*, 158 Idaho at 882, 354 P.3d at195).

Since her residential status is insufficient to confer standing, Tidwell must establish a peculiar or personal injury that is different than that suffered by any other member of the public. *See Bopp v. City of Sandpoint*, 110 Idaho 488, 490, 716 P.2d 1260, 1262 (1986) (Only those who sustain some special or peculiar injury, differing in kind and not merely in degree from that sustained by the general public, are entitled to complain of a street vacation.) Standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens. *Martin*, 150 Idaho at 513, 248 P.3d at 1248.

During the Preliminary Injunction stage of the proceedings, Tidwell alleged that she was injured because she will have to look at the duplex while she drives by Parcel C to access her home, rides her bike on the bike path that is adjacent to Parcel C, and while she plays golf on the 27-hole Valley Club golf course. (Oral Ruling on Pls.' Mot. Prelim. Inj. Tr. 7:22–8:4). While making those allegations, Tidwell also alleged that she was not alone, and that all of the citizens of Blaine County would suffer the same harm, and that many other citizens own real property in the vicinity of Parcel C that would also be impacted. (R. at 48-49). By Tidwell's own admission, her alleged injuries are generalized and applicable to most everyone in Blaine County.

Tidwell has also alleged that she has an interest in maintaining the recreational and aesthetic values of Parcel C. (R. at 610, 758). In *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 374, 913 P.2d 1141, 1144 (1996), individuals alleged that an ordinance threatened their individual and collective environmental, aesthetic, and recreational interests in the state and federal lands,

waters, and natural resources in the county. The Court found that all of the individuals, with the exception of one person, failed to demonstrate an injury in fact, and did not demonstrate an injury that is not suffered alike by all citizens of the county. *Id*. at 375. The one person who did have standing was a professional guide who demonstrated that he would lose business as a result of the challenged action, rendering his interest both peculiar and specific to him. *Id*. All of those with generalized grievances did not have standing to proceed. *Id.; see also Selkirk-Priest Basin Ass'n, Inc. v. State ex rel. Batt*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996) (The members' occasional use of the area for recreational or aesthetic enjoyment did not create a particularized injury that was not shared in a substantially equal measure by all or a large class of citizens).

In this case, the District Court expressed the following in finding that Tidwell had standing,

> Plaintiffs claim they have an interest in maintaining the recreational and aesthetic values of Parcel C. They both own property within one mile of Parcel C, and both take access off Buttercup Road, driving past Parcel C. That experience will be diminished by the threatened harm.

(R. at 758). The District Court failed to explain how traveling past a duplex exposes Tidwell to a "diminished experience," let alone a peculiarized injury. As was stated in *Butters*, the location of property alone does not confer standing. *Butters*, 131 Idaho at 501. And as explained in *Boundary Backpackers*, generalized claims of harm are insufficient to confer standing. *Boundary Backpackers* 128 Idaho at 375. It is undisputed that Parcel C is visible to the public at large from a busy highway (Highway 75), a busy county road (Buttercup Road), and the main, public bike path connecting the cities of Hailey and Ketchum/Sun Valley. (Mot. Hr'g Tr. 61:5-16, Oct. 29, 2018). Tidwell's aesthetic and recreational claims that she has to look at the duplex are no different than hundreds, perhaps thousands, of others. As such, they are generalized grievances that do not confer standing.

d. There is No Causal Link Between the Duplex and any Perceived Injury

As expressed by this Court in *Coalition for Agriculture's Future*, 160 Idaho at 146, 369 P.3d

at 924, standing requires a showing of a distinct palpable injury and a fairly traceable causal connection between the claimed injury and the challenged conduct. In this case, the record is devoid of ***any*** causal link demonstrating how the construction of a single duplex adjacent to multiple units of similar housing will impact Tidwell or the Trust specifically and uniquely. *See Coal. for Agriculture's Future*, 160 Idaho at 148, 369 P.3d at 926 (Coalition members failed to show that real property in which they had an interest was adversely affected by the comprehensive plan or by a zoning change made pursuant to that plan). Despite having two prominent examples of affordable housing in the immediate vicinity of the proposed duplex (Parcel B and Agave Place), Tidwell offered no evidence to show a causal connection between the presence of that affordable housing and any palpable injury to her. Evidence of this causal link does not exist. (*See* R. at 111, ¶ 7; R. at 166).

Simply stated, the construction of a duplex on Parcel C will result in little to no impact at all. The duplex will not interfere with traffic on Buttercup Road or the public's use of the bike path. It will not "loom over" adjacent properties as was the case in *Butters.* It will not result in health issues, odors, or noise as was the case with *In re Jerome County*. It will not interfere with play on the Valley Club golf courses or the operations at the Club. (R. at 457). It is a small duplex that will be occupied by local residents under deed restrictions intended to keep it affordable at a time when there is an affordable housing crisis in Blaine County. (R. at 97, 101-102). Instead of showing some injury in fact, Tidwell has essentially expressed annoyance and disappointment that she will have to travel past this duplex. As this Court has recently held, standing requires more than mere disappointment. *See In re Writ of Prohibition*, 2021 WL 3720965, at *11 ("It is hardly a stretch to assume that almost every bill passed by the legislature has an opponent somewhere who feels personally aggrieved, yet standing requires more than mere disappointment."). The duplex will simply have no impact on Tidwell's day to day life or her property interests and thus no causal connection can be established.

e. Tidwell's Valley Club Membership Does Not Confer Standing

Perhaps sensing that her standing claim was weak, Tidwell raised her Valley Club membership as evidence of her standing for the first time in response to County Defendants' *Second Motion for Partial Summary Judgment*. (R. at 606-607). Tidwell alleged that she has a financial interest in her membership in the Valley Club and that her membership would be impaired by the construction of the duplex. (R. at 563 ¶ 7, 611, 758). She further alleged that her membership has a distinct monetary value, and that the Valley Club's bylaws allow for the sale of such memberships. (R. at 607).

As explained above, her claims that she will have to view the duplex as she golfs on one of the Valley Club's 27 holes are generalized and non-specific as they apply to the entirety of the Valley Club's membership, as well as its employees and guests. Furthermore, there has been no specific allegation that the duplex will impact or interfere with her golfing "experience," or her access and enjoyment of other Valley Club facilities. In fact, it is difficult to fathom how Tidwell's membership could be impacted by the construction of an offsite duplex that is obscured from the golf course by mature trees, across the Hiawatha Canal and bike path, and next to an existing condominium development.

As with her other claimed bases for standing, Tidwell's perceived injury is generally applicable to each individual member of the Valley Club. In addition, her claim that the value of her membership would be impacted is purely speculative and hypothetical, as no evidence or causal connection was established demonstrating that such an injury would result from construction of the duplex. Finally, Tidwell's membership agreement contradicts her allegations. Specifically, her membership agreement provides:

> Applicant acknowledges and represents that Applicant is not acquiring the Membership with the expectation that Applicant will derive a profit or any financial

> gain or return as a result of Applicant's purchase of the Membership. Applicant acknowledges that in accordance with the Bylaws the value of the membership may fluctuate at the discretion of the Board of Directors.

(R. at 599) (*emphasis added*). Tidwell's membership agreement establishes her acknowledgement that the construction of a duplex near the golf course will have absolutely no effect on the value of her membership as her membership's value fluctuates not on market factors, but "at the discretion of the Board of Trustees." Similarly, Tidwell's membership agreement makes clear that it comes with no expectation of profit or financial gain, further negating any claimed injury to her contractual membership interest.

Despite the fact that Tidwell's membership agreement specifically states that she does not have an expectation of any financial gain, and despite the fact that there is no evidence of a causal connection, the District Court still found that Tidwell's contractual benefit would be impaired by a duplex on Parcel C. (R. at 758). The District Court based its conclusion off of bare allegations and essentially found that Tidwell's speculative and general allegations were sufficient to confer standing. Specifically, the District Court found that each injury that Tidwell alleged, judged alone, may not be enough to meet the standing threshold, but collectively there was a sufficient injury. (R. at 758).

Contrary to the District Court's conclusion, standing is not a cumulative inquiry. There must be a distinct injury, particular to the party asserting the claim, and there must be a causal link between that distinct injury and the complained of action. No matter how many weak and speculative claims Tidwell makes, she has failed to demonstrate an injury that is specific to her and that would result from the construction of the duplex. The District Court erred when it found that Tidwell had standing and the Court lacks subject matter jurisdiction to hear this case.

2. The District Court Erred in Determining That the Term "Public Use" is Ambiguous.

Even assuming, *arguendo*, that Tidwell has standing to bring this lawsuit, Parcels B and C were dedicated to Blaine County for "Public Use," as clearly delineated upon the Final Plat and the Warranty Deed. Although the District Court initially held in its March 5, 2019 Memorandum Decision ("3/5/19 Decision") that the term "public use" is unambiguous and encompasses ARCH's proposed affordable housing development, it later reversed itself in its Memorandum Decision Re: Motion for Reconsideration ("7/1/19 Decision"), wherein it found that "it was error to grant Defendants' Motion for Partial Summary Judgment as there are differing reasonable interpretations of 'Public Use' thus making the Final Plat ambiguous." (R. at 443). This allowed the Court to consider extrinsic evidence surrounding the proceedings leading up to the Final Plat, and in effect, proceed with judicial review of a 15-year-old land use application. This concocted judicial review process was unnecessary.

Courts interpret plat maps in the same manner as a deed. *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 211, 268 P.3d 1159, 1163 (2012). "In interpreting and construing deeds of conveyance, the primary goal is to seek and give effect to the real intention of the parties" to the transaction. *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006). "When the written instrument is complete on its face and is unambiguous, extrinsic evidence of prior or contemporaneous representations or negotiations are inadmissible 'to contradict, vary, alter, add to, or detract from' the instrument's terms." *Kepler-Fleenor*, 152 Idaho at 211 (*quoting Howard v. Perry*, 141 Idaho 139, 141, 106 P.3d 465, 467 (2005)).

In reversing itself, the District Court relied upon Tidwell's following argument:

> The [3/5/19] Memorandum Decision did not address the fact that the Final Plat clearly and unambiguously designates Block 2 for 'Community Housing,' which it defines as 'development of 12 community housing units

> in accordance with the P.U.D. master plan.' The Court must wrestle with why the Valley Club would have labeled Parcel 'C' as 'Public Use' while labeling Block 2 as 'Community Housing' if it ultimately intended that community housing would be permissible on Parcel C. One permissible inference may be that community housing was one of the many uses to which Parcel C might be put. But the Court cannot ignore the other permissible inference, that the Valley Club meant that Parcel C would be used for something different than Block 2.

(R. at 443). The District Court also relied upon Tidwell's reference to certain Idaho Code sections which reference the term "Public Use" and, without going into specifics, it nebulously concluded that those statutes defined "Public Use" in a manner "which is inconsistent with the use planned and hoped for by the Defendants." (R. at 443). Following the court trial in this matter, the 7/1/19 Decision was specifically incorporated into the District Court's Findings as follows:

> The Court reiterates that the interpretation of the term 'public use' as used to describe Parcel C on the Final Plat is ambiguous as a matter of law because there are at least two different reasonable interpretations of that term's meaning . . . (1) 'community housing' is specifically designated on 'Community Housing Block 2' of the Final Plat, raising a reasonable inference that community housing was not intended for Parcel C, which contains no such designation; and (2) 'public use' does not have a uniform definition in Idaho law.

(R. at 372-373; 964-965).

It is well settled that ambiguity is not established "merely because different possible interpretations are presented to a court" rather, it only exists "when reasonable minds might differ or be uncertain as to its meaning." *McKay v. Boise Project Bd. of Control*, 141 Idaho 463, 469–70, 111 P.3d 148, 154–55 (2003). The District Court erred in its overly simplistic ruling that a particular use, identified on a separate parcel of land within the plat, somehow established ambiguity on another parcel that was dedicated for "Public Use." Indeed, there is nothing in logic

or law supporting the notion that ambiguity is created merely because a specific term is used to describe one parcel of land and not another.[17]

"Public use" is a broad term that includes any use deemed to be of public benefit and it is commonly used to include a variety of uses, including, but not limited to, affordable housing. The term "public use" has been defined by both the Idaho Constitution and Idaho Code. For instance, Article I, Section 14 of the Idaho Constitution defines "public use" as "necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants" and, thus, "subject to the regulation and control of the state." Likewise, the Idaho legislature has defined "public use" as "[p]ublic buildings and grounds for the use of any county . . . roads, streets, alleys, and **all other public uses for the benefit of the state or of any county**, incorporated city or the inhabitants thereof." I.C. § 7-701(2) (*emphasis added*). Of particular importance here, the Idaho legislature has specifically recognized affordable housing as a public use. I.C. § 31-4202(c).

Furthermore, the United States Supreme Court has held that courts may not substitute their judgment for a legislative body's judgment as to what constitutes a public use "unless the use be palpably without reasonable foundation." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241 (1984) (*quoting United States v. Gettysburg Elec. R. Co.*, 160 U.S. 668, 680 (1896)). Specifically, the Court stated:

> [s]ubject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia or the States legislating concerning local affairs . . . The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one.

[17] Notably, neither The District Court nor Tidwell has explained how affordable housing is permissible on Parcel B, which was also dedicated for "Public Use" and has since been developed as affordable housing.

Berman v. Parker, 348 U.S. 26, 32 (1954) (*internal citations omitted*). This is true even if the decision was not made by Congress but instead by the legislative body of a city, county or state. *Hawaii Housing Authority*, 467 U.S. at 244; *Kelo v. City of New London*, Conn., 545 U.S. 469, 488–89 (2005).

Finally, Idaho Code Section 50-1312 is explicit and unambiguous when it comes to a dedication shown on a plat, and provides that "recording of such plat is equivalent to a deed in fee simple of such portion of the premises as is on such plat set apart for public streets or *other public use.*" Parcels B and C were dedicated to the County for "Public Use" by recording of the final plat and warranty deed. Designating them as "Public Use" parcels was clearly intended to be a broad dedication of the uses to which the County could put those parcels. Contrary to the District Court's determination, the presence of a Community Housing Parcel on the plat is of no import to Parcels B and C, and does not magically create ambiguity as to the term "Public Use." A broad category of allowed uses does not implicitly exclude a narrow subcategory. For example, a parking lot that has spaces restricted for handicapped parking does not mean that other spaces within the parking lot preclude the use for handicap parking. Likewise, the mere fact that another parcel on the Final Plat is restricted to the use of "community housing" does not in any way imply that affordable housing would not be allowed on Parcel C.

Use of the phrase "Public Use" as applied to Parcels B and C was clear and unambiguous. Judicial restraint should lead to this Court's deference to the Board's determination that "Public Use" unambiguously encompasses ARCH's proposed development and, as such, it should overturn the District Court's contrary findings as a matter of law. *Kepler-Fleenor*, 152 Idaho at 212 (whether a document is ambiguous is a question of law).

3. The District Court Erred When it Refused to Apply the Merger Doctrine to Exclude Extrinsic Evidence.

"For purposes of the parole evidence rule, plats are complete instruments." *Kepler-Fleenor*, 152 Idaho at 211-12. Accordingly, when a plat is unambiguous, such as the Final Plat in this case, not only does the plain language of the instrument control but the doctrine of merger applies. *Camp Easton Forever, Inc., v. Inland Northwest Council Boy Scouts of Am.*, 156 Idaho 893, 899, 332 P.3d 805, 811 (2014). "The merger doctrine merges a prior contract into a deed when the deed is delivered and accepted as performance of a conveyance contract. *Id*. Even when a deed's terms vary from an earlier contract, courts must look to the deed alone to determine parties' rights." *Id.* (*internal citations omitted*). In the *Camp Easton Forever, Inc.* case, the Court reviewed a deed that conveyed real property "for use of the Boy Scouts" and held that it unambiguously transferred fee simple title to the property with no restriction on the manner in which the property was used because it did not contain a reversion or further alienation. *Id*. at 900, 902. Since the deed was unambiguous, the court applied the merger doctrine to preclude extrinsic evidence, which included meeting minutes that explained the grantor's desire that the property's use be limited to a camp for boys. *Id*. at 899. Likewise, in *Kepler-Fleenor*, the Court excluded an affidavit from the engineer who prepared the plat at issue explaining his intent that the road be private was improper extrinsic evidence because the Court determined that the plat was unambiguous. *Kepler-Fleenor,* 152 Idaho at 207.

These cases stand for the proposition that when a party acquires title to a parcel or lot described on a Final Plat or conveyed by deed, that party is only bound by the Plat or deed, and does not need to "look behind the curtain" to ascertain the circumstances leading up to the plat and deed. Here, Parcels B and C were conveyed by deed to the County for "Public Use," and much like the *Camp Easton Forever* case, that deed unambiguously transferred fee simple title without

restriction, reversion, or further alienation. Since the term "Public Use" is unambiguous as delineated and dedicated on the Final Plat and Warranty Deed, the doctrine of merger precludes the consideration of any extrinsic evidence, which made it improper and unnecessary for the District Court to conduct a court trial to determine the parties' intent as to the dedication. Accordingly, the District Court erred as a matter of law.

4. The District Court's Findings Were Clearly Erroneous

Even if the District Court properly found that the term "Public Use" as delineated on the Final Plat is ambiguous and, thus, the doctrine of merger does not apply, it still erred in prohibiting ARCH's community housing development because neither the Developer nor the County intended to restrict Parcel C to open space or recreational use.

A trial court's findings of fact will not be set aside on appeal unless the findings are clearly erroneous. *Akers v. D.L. White Const.*, Inc., 156 Idaho 37, 44, 320 P.3d 428, 435 (2014). If the findings of fact are based upon substantial evidence, even if the evidence is conflicting, they will not be overturned on appeal. *Id.* Substantial and competent evidence exists if there is evidence in the record that a reasonable trier of fact could accept and rely upon in making the factual finding challenged on appeal. *Caldwell Land and Cattle, LLC*, 165 Idaho at 795.[18] The Court must then consider whether the findings of fact support the conclusions of law. *Id.*

When a term is found to be ambiguous, the Court must determine the intent of the parties which requires it to "look at the circumstances attending and leading up to [the final plat's] execution, from the subject matter, and from the situation of the parties at the time." *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006). Notably, this Court previously recognized that a transaction that involves a dedication of real property to the public involves two

[18] In our Notice of Appeal, we mischaracterized the applicable standard of review as an abuse of discretion standard. Upon further research, review of the District Court's Findings are reviewed using a clearly erroneous standard.

parties: (1) the owner of the land being offered for dedication, which is the Developer, and (2) the public body accepting the land, which is the County. *Worley Highway Dist. v. Yacht Club of Coeur d'Alene, Ltd*., 116 Idaho 219, 223, 775 P.2d 111, 115 (1989). To effectuate a public dedication of land, the owner must "dedicate' the property to the public" and the public body must accept the offer by the acknowledgement and recording of a plat. *Id*; *see also* I.C. §§ 50-1312 and 1313.

All ambiguities or doubts relating to "the intention of the dedicator must ordinarily be construed most strongly against him or her, and in favor of, or to the reasonable advantage of, the public or grantees of the dedicated use." 23 Am.Jur.2d Dedication § 30 Extent of Dedication as Determined by Interpretation of Plat or Map; *see also* 26 C.J.S. Dedication § 71 Construction–Plats ("any doubt or ambiguity in the meaning of the plat or any writing on it is construed most strongly against the dedicator and to the reasonable advantage of the grantees of the dedicated use."). Finally, evidence that does not pertain to either the Developer's or the County's intent is not appropriate and should not be considered. *See Benninger*, 142 Idaho at 489.

After failing to apply the merger doctrine to the clear and unambiguous meaning of the term "Public Use," this case proceeded to a court trial where evidence, both direct and extrinsic, would be considered to determine the meaning of "Public Use" within the Final Plat and Warranty Deed. Testimony was presented from a former County Commissioner, the planner who had processed the application and drafted the relevant staff reports and decisions, and an engineer who prepared and submitted the draft plats on behalf of the Developer. Tidwell presented only the testimony of the current general manager of the Valley Club and a former Valley Club board member.

The vast weight of this testimonial evidence established: (1) Parcels B and C were dedicated to the County without "strings attached;" (2) the Developer abandoned the "open space and recreational use" designation in favor of a broad "Public Use" dedication; and (3) references in the

Findings to Parcel C as being for "open space and recreational use" were remnants from earlier drafts and only remained in those documents as editing errors due to the rushed nature of the project. Despite this evidence, the District Court re-imposed the "open space and recreational use" restriction that had been abandoned during the platting process. In making this determination, the District Court ignored the intent of the parties and re-construed the term "Public Use" to actually mean something far narrower and restrictive than the Final Plat and Warranty Deed dedicated. County Defendants submit that the District Court erred in making this determination on several grounds.

a. The District Court Erred in Finding that "Public Use" Actually Means "Open Space and Recreational Use"

The District Court's legal conclusion[19] that the County and Valley Club intended for Parcel C to be dedicated to the County with the limitation that it only be "for public open space and recreational use" ignores the plain language of the final plat and warranty deed, and prohibits nearly all viable uses. The decision disregards a mountain of evidence presented by individuals who were in the meeting room during the consideration of the Valley Club West 9 PUD who agreed that the "Public Use" dedication was intended to be broad, with "no strings attached."

The District Court's own findings demonstrate that there was no limitation intended for Parcel C aside from "Public Use." Those Findings are as follows:

> During the May 19, 2005, public hearing, the Developer's representative, Mr. [Ruscitto], offered to modify the draft plat that was being reviewed to leave the use of Parcels B and C "more open" instead of trying to define a specific use for each of those parcels and to just transfer them to the County. *Plf. Ex. No. 10* (3 of 3B (Noise Reduced) at Minute 11:15-12:35). (R. at 950, ¶ 25);
>
> During that hearing, Chairperson Sarah Michael requested that Parcels B and C be called "community" parcels. Commissioner Dennis Wright then suggested that they be relabeled on the draft plat as "public use" parcels, which the Developer's

[19] The District Court's actual legal conclusion is as follows: "Based on the Court's Findings of Fact set forth above, the Court concludes that both the County and the Valley Club intended for Parcel C to be dedicated to the County with the limitation that it be "for public open space or future recreational use as determined by the County and the Rec. District…." *Final Decision* p. 4, ¶ 6. (R. at 965, ¶ 7).

> representatives accepted and began referring to them as such. *Plf. Ex. No. 10* (May 19, 2005 3 of 3B (Noise Reduced) at Minute 3:46-4:35; Minute 7:58-8:20). (R. at 950, ¶ 26);
>
> A specific "public use" was never decided for either Parcel B or C during the PUD approval process. *Tr. Vol I* at 31:21-32:7; 58:1-5; *Tr. Vol. III* at 25:2-20. (R. at 951, ¶ 27);
>
> The May 24 Draft Plat for the first time designates both Parcels B and C as "Public Use." It includes no plat notes. (R. at 951, ¶ 30);
>
> At the end of the June l4, 2005, hearing, the Board unanimously approved the Final Plat, which labeled Parcels B and C as "public use" with no limitations nor any plat notes addressing restriction on "public use." *Plf. Ex. 17* (June l4, 2005, 3 of 5B Noise Reduced) at Minute 39:08-39:49), *Plf. Ex. 22*. (R. at 958, ¶ 42);
>
> Except for Condition No. 6, the Final Decision appears to have been edited from prior drafts to refer to both Parcels B and C as "public use," with no further designation or limitation. (R. at 958, ¶ 44); and
>
> The general manager of the Valley Club, Barry Bevers, testified that that the Valley Club intended to dedicate Parcels B and C to the County with "no strings" attached. *Tr. Vol. I* at 24:2-22; 27:5-8. Nor was he aware of any conversations between the Valley Club board member trying to prohibit the County from developing either Parcel B or C. *Id*. at 36:1-10; 37:19-24. (R. at 961-62, ¶ 57).

Those Findings clearly show Parcel C was conveyed to the County without strings attached, and that specific uses, such as fire stations, open space, a fishing pond, or recreational facilities had been abandoned in favor of the broad term "Public Use." This broad designation postponed any County decision on how to use the parcels and served the dual purpose of (1) allowing the Board to make a positive finding on the public amenities of the PUD and (2) giving the applicant the speedy approval they sought.

The District Court also disregarded evidence showing that Parcel C was not intended to be restricted to open space and recreational use. This evidence included additional statements by the Developer's representatives that the "Public Use" designation was intended to be broad (R. Pls.' Ex. No. 10 (3 of 3B (Noise Reduced) at Min. 11:15-12:35) (R., p. 950, ¶ 25), a plat note that required

an easement for "water lines and water improvements, wastewater lines, facilities and improvements, and domestic wells" for Parcel C (Nov. 13, 2020 Trial Tr. at 56:15–59:6)[20], and testimony from the Valley Club's general manager stating that the Club did not oppose affordable housing on either Parcel B or C as a proper "Public Use." (Nov. 12, 2020 Trial Tr. at 43:2-5). The series of draft plats submitted by the Developer further demonstrate that the Developers' intent with the public parcels shifted from specified uses, such as a fire station, open space and/or recreational use, to a "Public Use" dedication that was "up to the Board" and "more open" as to possible uses.[21] *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 41-42); R. Pls.' Ex. 10 (May 19, 2005 3 of 3A (Noise Reduced) at Min. 11:15-12:35).[22] Contemporaneous with the removal of the "open space and recreational use" limitation in favor of the broad "public use" designation on the draft plats, there was a significant decrease in the land being dedicated to the County to the south of the Community Housing Parcel. (*Id.*) It can be inferred that this decrease in dedicated land was consideration for the removal of any open space and recreational restriction.

The District Court's findings, the above disregarded testimony, and the record as a whole, shows that there was no meeting of the minds between the County and the Valley Club on a specific use for Parcels B and C, and to move the project along, the parcels were dedicated with a broad, "Public Use" limitation. In making this dedication, the Valley Club intended to dedicate Parcels B and C to the County with "no strings attached." The District Court's decision wholly ignored this

[20] Plat note No. 16, which calls for an easement to deliver water to Parcel C for various improvements, clearly establishes that the intended uses were far broader than merely open space. Mr. Robinson, the engineer working for the Developer, testified that such an easement could provide water for domestic uses. (Nov. 13, 2020 Trial Tr. at 56:15–59:6, 71:18-21).

[21] Five different plats were generated by the developer and submitted to the County. Those plats are as follows: (1) preliminary plat dated April 1, 2005 ("First Plat"); (2) second draft plat dated May 10, 2005 ("Second Plat"); (3) third draft plat dated May 24, 2005 ("Third Plat"); (4) fourth draft plat dated June 6, 2005 ("Fourth Plat"); and (5) the Final Plat. (R. Defs' Exs. D, H, K, M, Q).

[22] County Planner Tom Bergin testified that the Developer is solely responsible for drafting and submitting the draft plats leading up to Final Plat. (Nov. 12, 2020 Trial Tr. at 123:23-24).

evidence and completely relied upon a flawed and error prone documentary record. For this reason, the District Court's ultimate findings were clearly erroneous and must be reversed.

b. The District Court Erred in Finding that Blaine County was Dedicated an Easement in Parcel C

Not only did the District Court incorrectly rule that the dedication of the "Public Use" parcels was restricted to "open space and recreational use," but it also incorrectly concluded that the County only received an easement from the Valley Club, which prevented the County from transferring Parcel C to BCHA or ARCH for the development of an affordable duplex. (R. at 966, ¶ 12). Specifically, the District Court made the following erroneous legal conclusions in its Findings:

> When a plat designates the use of a property to be transferred to a public agency, subject to a restriction such as the public use restriction in this case, the property interest transferred is an easement and "does not give the public the same right to sell or dispose of the same that a private party has to land for which he holds the title in fee simple." *Neider v. Shaw*, 138 Idaho 503, 507 (2003); I.C. § 50-1312. Further, the easement is limited to the purposes set forth on the plat. *Mochel v. Cleveland*, 51 Idaho 468 (1930). (R. at 966, ¶ 10).
>
> In this case, Parcel C was created by the Final Plat and transferred to the County by deed rather than by effect of statute. The intent of the parties as to both the Final Plat and the Parcel C deed was to restrict Parcel C to "Public Use" as the Court has interpreted that term. *See Neider*, 138 Idaho at 507 (transfer of property interest to public entity conveys only property interests needed for the intended public use). (R. at 966, ¶ 11).
>
> Therefore, the County received only an easement from the Valley Club to construct and maintain open space and/or recreational uses on Parcel C. As the County's property rights were so limited, it could not and did not transfer to BCHA or ARCH property rights sufficient to construct and/or maintain community housing on Parcel C. (R. at 966, ¶ 12).
>
> As a result, the County's issuance of Building Permit #2017-157 was unlawful because the applicant did not own the property rights necessary to construct community housing on Parcel C. (R. at 967, ¶ 13).

The record in this case does not support this legal conclusion. The Developer clearly and unambiguously conveyed both "Public Use" Parcels to the County by Final Plat and Warranty

Deed. Conveyance of the "Public Use" Parcels was an express condition of PUD approval, which rendered a descriptive plat note explaining that the Parcels were for "Public Use" unnecessary. (R. Plaintiffs' Ex. 17).[23] The Warranty Deed specifically conveys the "Public Use" Parcels to the County "TO HAVE AND TO HOLD the said premises, with their appurtenances unto Grantee and to Grantee's heirs and assigns **forever**." (R. Defendants' Ex. R) (*emphasis added*). Not only does the Deed unequivocally grant fee simple interest to the County with no reversionary interest, it also does not include any qualifications, limitations, or restrictions on the type of "Public Use" for either Parcel B or C – it merely identifies the parcels as "Public Use Parcel B and Public Use Parcel C." (*Id.*) One of these parcels, Parcel B, has since been developed and transferred as affordable housing in reliance upon this clear dedication. Accordingly, the Final Plat and Warranty Deed conveyed fee simple title to the County. *See* I.C, § 50-1312 ("effect of acknowledging and recording plat"); I.C. § 55-604 ("fee simple title to real property is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended").[24]

As expressed above, the approved Final Plat conveyed Parcels B and C to the County for "Public Use" and consistent with the Final Plat, the Warranty Deed conveyed a fee simple interest to "Public Use" Parcel B and "Public Use" Parcel C. (R. Defs.' Ex. R). The Deed contains no reference to the "open space and recreational use" restriction manufactured by the District Court and there is no "right of way" language pertaining to, or reserving, an easement for the Valley Club's benefit. Parcels B and C were therefore transferred to the County with no qualifications, limitations or restrictions.

[23] *See* R. Plaintiffs' Ex. 17 (June 14, 2005 3 of 5A (Noise Reduced) at Minute 40:28-41:44).

[24] The District Court's heavy reliance on the *Neider* and *Mochel* cases is unfounded. In *Neider*, the Court stated that the use of the term "right-of-way" in the substantive portions of a conveyance instrument creates an easement. *Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003). In *Mochel*, the dedicated interest concerned a street that was subsequently vacated by the City. *Mochel v. Cleveland*, 51 Idaho 468 (1930). This case involves the dedication of parcels of land – not rights of way or streets – making these cases both clearly distinguishable and inapplicable to the facts here.

Since the deed clearly and obviously conveyed fee simple title to the County, it was clearly erroneous for the District Court to rule that the County merely held an easement.

c. The District Court Erred in Discrediting Tom Bergin's Credible, Corroborated, and Uncontroverted Testimony

Tidwell and the District Court have relied entirely upon the documentary record to awaken an "open space and recreational use" designation that was abandoned prior to the approval of the Final Plat. Blaine County Land Use Director Tom Bergin, who has worked for the County for over 25 years, testified that he was the planner responsible for steering the application through the hearing process. (Nov. 12, 2020 Trial Tr. at 118:1-5, 138:24–139:15). He testified that the "open space and recreational use" designation was originally considered as part of the discussion into how the applicant would satisfy the public benefit standard of evaluation for the PUD. (Nov. 12, 2020 Trial Tr. at 131:9–138:23). Possible public amenities put forward by the development team to satisfy this standard included dedicating parcels of land for a fire house, firefighter housing, affordable housing, a fishing pond, or a park or bike path amenity. (Nov. 12, 2020 Trial Tr. at 141:18–143:8).[25] In the meeting room, however, Bergin testified that the developer, Commission, and Board struggled with determining appropriate uses for the parcels, which resulted in a more "open" approach where the parcels would be dedicated to the County with a broad "Public Use" designation. (Nov. 12, 2020 Trial Tr. at 144:23–148:4).

Bergin further testified that he was responsible for drafting the staff reports and the various findings and decisions for this application, and that inclusion of references to "open space and recreational use" in the Final Decision were editing errors carried over from prior recommendations, findings and staff reports. (Nov. 12, 2020 Trial Tr. at 139:9-15, 170:19–172:1, 173:12-22). These

[25] Bergin also testified that some sort of development was always contemplated for Parcel C, and that it was never viewed by the parties as undevelopable "open space". (Nov. 12, 2020 Trial Tr. at 144: 4-22).

errors in the Final Decision, Bergin stated, were attributable to: (1) a rush to approve the project; (2) a scheduled vacation during the time when the findings and decision were prepared; and (3) a lack of any appeal being threatened or likely.[26] (Nov. 12, 2020 Trial Tr. at 163:17–165:21, 166:9–167:17, 168:23–169:13).

The District Court found that Tom Bergin's testimony regarding this editing error in Paragraph 6 of the Final Decision was corroborated and credible. Specifically, the District Court made the following findings:

> Bergin testified at the trial that the approval of the Application was an expedited process. This was confirmed by the fact that the time between the Board's first hearing on April 7, 2005, and the final plat hearing on June 14, 2005, was only a two-and-a-half-month period. *Tr. Vol. I* at 162:10-163:20. (R. at 957, ¶ 39).
>
> The audio tapes from the June 14, 2005, hearing corroborate Mr. Bergin's testimony that the Developer was in a hurry to get approval of the Application, based upon Mr. Phillips specifically requesting that the Board issue the Final Decision as soon as possible. Plf. Ex. 17 (June 14, 2005, 3 of 5B (Noise Reduced) at Minute 36:35-38:45). In response, Ms. Haavik stated that they would try to expedite the findings and that the Developer was welcome to assist in drafting them to speed up the process. (R. at 958, ¶ 41).
>
> Except for Condition No. 6, the Final Decision appears to have been edited from prior drafts to refer to both Parcels B and C as "public use," with no further designation or limitation. (R. at 958, ¶ 44).
>
> Mr. Bergin provided testimony that the failure to edit Condition No. 6 to refer to Parcels B and C as "public use," consistent with the other conditions in the Final Decision, was an editing error resulting from the rush to get the Final Decision drafted and signed. *Tr. Vol. I* at 173:12-22. The Court found Mr. Bergin credible. (R. at 959, ¶ 46) (*emphasis added*).
>
> What was memorialized on the Final Plat and the Warranty Deed are consistent with Mr. Bergin's testimony that the "open space or future recreational use" designation in condition No. 6 of the Final Decision was an editing error. *Tr. Vol. I* at 171:4-172:17; 178:1-8; *Plf. Ex. 10* (May 19, 2005, Hearing 3 of 3B (Noise Reduced) at Minute 7:58-8:20). (R. at 959, ¶ 47) (*emphasis added*).

[26] This lack of any contemplated appeal made the Final Decision largely irrelevant as the primary purpose of a written decision is for judicial review. *See* I.C. § 67-6535. In addition, the Board's Final Decision is not recorded, as is the case with the Final Plat and Warranty Deed. (Nov. 12, 2020 Trial Tr. at 129:22).

The above Findings are buttressed by the fact that Bergin's testimony was uncontroverted, and was further corroborated by the audio tape from the May 19, 2005 hearing, wherein Commissioner Bowman specifically requested that Condition No. 6 be revised to refer to Parcels B and C as "Public Use" parcels in the Final Decision. (R. Pls.' Ex. 10 (5-19-05 Hearing 3 of 3B (Noise Reduced) at Minute 7:58-8:20). In addition, other sections of the Final Decision contemplate far more potential uses for the "Public Use" Parcels. Section III paragraph 17, 18 and 19 of the Final Decision specifically states that residual rights were relinquished for Parcel A, the Community Housing Parcel and the Village Green Parcel, but there was no relinquishment of any residual development rights on either Parcel B or C. (R. Defs.' Ex. P). Certainly, if the parties had intended to prohibit structural and residential development on Parcel C, they would have included a relinquishment of such rights. Section III paragraphs 26 and 46 require the Developer to construct lines to deliver water to the "Public Use" Parcels to satisfy domestic and irrigation needs, which further demonstrates that future development of the "Public Use" Parcels was contemplated. (*Id.*)

Despite the overwhelming and uncontroverted evidence establishing that the "open space and recreational use" references in the Board's final decision was an editing error and remnant from prior drafts, the District Court determined as follows,

> Mr. Bergin testified that the Final Decision's statement that Parcel C be transferred to the County "for public open space or future recreational use as determined by the County and the Rec. District…" was "wrong and in error." *Tr. Vol.* at p. 171, ll. 4-18. The Court finds that Mr. Bergin's testimony is contradicted by the overwhelming weight of the written record and testimony from the decision makers of the respective parties. (R. at 963, ¶ 61) (*emphasis added*).

Contrary to the Court's ruling, Bergin's candid testimony provided a clear, practical reason for why the documentary record lagged as the discussions in the hearing room and preparation of plats sped towards approval. In spite of this uncontroverted evidence and the District Court's own

determination that it was credible and corroborated, the District Court elevated the editing error into a binding restriction that prohibits nearly all public uses on the "Public Use" Parcels. This determination was clearly erroneous.

d. The District Court Mischaracterized Tom Bowman's Trial Testimony

At trial, former County Commissioner Tom Bowman testified about his participation during the Valley Club West 9 PUD proceedings. Despite having difficulty recalling fifteen-year-old proceedings with precision, Bowman testified at length that the final plat reflected the Board of County Commissioners true intent with regard to the dedication of Parcels B and C as well as the developer's intent. (Dec. 9, 2020 Trial Tr. at 75:1–78:19). He further testified that he did not believe the reference in the findings to Parcel C as being for future "open space or recreational use" expressed the County's true intent. (Dec. 9, 2020 Trial Tr. at 49:4–50:3; 56:8-20). Finally, he testified that the broad "Public Use" designation was agreed to because the Board did not have a clear idea of what to use Parcel C for, which is why the Board deferred the question to future Boards. (Dec. 9, 2020 Trial Tr. at 26:2–28:9). In terms of what would be an appropriate "Public Use" of both Parcels B and C, Bowman testified that the development of affordable housing could be an appropriate use. (Dec. 9, 2020 Trial Tr. at 29:1-16). Lastly, Bowman testified that if Parcel C was meant to be open space in the traditional sense, that there would then be a restriction from future development as was placed upon the golf course parcel. (Dec. 9, 2020 Trial Tr. at 71:1–72:7).

In spite of this testimony, the District Court made the following Findings:

> Tom Bowman was on the BOCC while the Valley Club's application was considered and he testified the Final Plat Decision's limitation that Parcel C be deeded to the County "for public open space or future recreational use as determined by the County and the Rec. District…" (Final Plat Decision at 4, ¶ 6) reflected the County's intent that Parcel C be limited to open space recreational use. Tr. Vol. III at pp 7-8, 22; p. 44, ll. 4-7. (R. at 961, ¶ 53).

> Specifically, Commissioner Bowman was asked whether the statement in the Final Plat Decision in Paragraph 6, about the limitation on Parcel C, "reflects the County's intent that Parcel C would be restricted to open space and recreational use[.]" Commissioner Bowman replied "It appears to do that, yes." Tr. Vol. III at p. 44, ll 4-7. (R. at 961, ¶ 54).
>
> Commissioner Bowman's testimony that Paragraph 6 of the Final Plat Decision reflects the County's intent that Parcel C be restricted to open space and recreational use was unrebutted and the Court finds Commissioner Bowman's testimony credible with regard to the intent of the parties as to the meaning of "public use" as used on Parcel C on the Final Plat. (R. at 961, ¶ 55).

Thus, the District Court focused solely on one response Bowman made to a single question upon cross-examination, and used that lone statement to elevate it into a binding admission that somehow re-wrote the plain language of the Final Plat and Warranty Deed.

Bowman's trial testimony did no such thing, and was far more detailed and contextual than one answer elicited on cross examination. In giving this single response "[i]t appears to do that, yes," Bowman is merely recognizing that there is an editing error in the Final Decision that appears to indicate that Parcel C was labeled as "open space and recreational use." This by no means expresses a binding intent on behalf of the Board and Developer. While certainly convenient for the District Court and Tidwell, the District Court's finding on Bowman's testimony failed to consider the entirety of his testimony and infers an intent that is not accurate or supported by Bowman's testimony as a whole or the full record. For this reason, the District Court's determination was clearly erroneous.

VII. ATTORNEY FEES AND COSTS ON APPEAL

County Defendants request their reasonable attorneys' fees and costs as allowed under Idaho Code Sections 12-117 and 12-121 and Idaho Appellate Rules 40(a) and 41. Idaho Code Section 12-117 authorizes the Court to award attorney fees in proceedings between persons and state agencies or political subdivisions, when a non-prevailing party acts without a reasonable legal or factual basis. I.C. § 12-117. "The dual purpose of I.C. § 12-117 is to (1) deter groundless or arbitrary agency action; and (2) to provide 'a remedy for persons who have borne an unfair and unjustified

financial burden attempting to correct mistakes agencies should never have made.'" *Id.* (*quoting Fuchs v. Idaho State Police, Alcohol Beverage Control,* 153 Idaho 114, 117, 279 P.3d 100, 103 (2012)). An award of attorney fees may also be granted under Idaho Code Section 12-121 to the prevailing party and such an award is appropriate "when the court, in its discretion, is left with the abiding belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation." *Michalk v. Michalk,* 148 Idaho 224, 235, 220 P.3d 580, 591 (2009). Additionally, Idaho Appellate Rule 41 provides recovery of attorneys' fees on appeal while Idaho Appellate Rule 40 provides for recovery of the prevailing party's costs on appeal.

Although Tidwell lacked standing to bring any of their claims against County Defendants, she vigorously pursued this litigation. As such, each of the County Defendants was forced to spend considerable time, money and resources to defend themselves not only against Tidwell's claims but to bring this appeal to correct the District Court's errors. Even though Tidwell never had a valid legal claim against any of the County Defendants, that did not stop her from pursuing her goal of obstructing the construction of an affordable housing duplex. Such disdain for affordable housing does not equate to a valid legal or factual basis for pursuing legal action. As such, County Defendants respectfully seek their attorneys' fees and costs on appeal pursuant to Idaho Code Sections 12-117 and 12-121 and Idaho Appellate Rules 40(a) and 41.

VIII. CONCLUSION

The District Court erred in finding that Tidwell had standing, in refusing to apply the merger doctrine to a clear and unambiguous Final Plat and Warranty Deed, and in re-writing the term "Public Use" to mean "open space and recreational use." For the foregoing reasons, the Appellants respectfully request that this Court dismiss this case due to a lack of subject matter jurisdiction, or in the alternative, reverse the decision of the District Court in its entirety so that judgment may be entered in favor of Appellants.

DATED this 5th day of October, 2021.

LAWSON LASKI CLARK, PLLC

By: /s/ James R. Laski
James R. Laski
Attorneys for Defendants ARCH Community Housing Trust, Inc., and Blaine County Housing Authority

DATED this 5th day of October, 2021.

BLAINE COUNTY

By: /s/ Timothy K. Graves
Timothy K. Graves
Attorneys for Defendant Blaine County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of October, 2021, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

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