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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' REPLY 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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This Reply brief is intended to narrow what the issues actually are in a clear and concise way, something that Tidwell failed to do in her Response. For the reasons set forth below, Appellants urge the reversal of the decision of the District Court.

IV. ARGUMENT

1. Tidwell Still Lacks Standing

In her Response Brief ("Response"), Tidwell has essentially admitted that she failed to present sufficient evidence of her standing because the District Court ruled that she had standing at the preliminary injunction. (Response at 19-20, n. 4). Similarly, her assertions that the District Court's ultimate decision somehow confers standing upon her is false as this Court has previously stated, "[t]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *See Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). Despite these glaring flaws, Tidwell asserts that she has standing because she has an "identifiable trifle" of aggregate interests that are sufficient to confer standing upon her.[1] (Response at 17). Tidwell's desperate arguments lack merit.

This Court has never recognized that an "identifiable trifle" is all that is required to establish a litigant's standing. Despite that, Tidwell is asking the Court to reverse and discard decades of established precedent and adopt a new, more lenient standard. Even so, Tidwell's complete inability to present evidence of either an injury in fact or a causal connection to the duplex demonstrate that she lacks even the "trifle" she so desperately clings to. Consequently, Tidwell is forced to rely upon inadmissible property value assertions, and her own vague assertions about general aesthetics, environmental issues, rural character, and her Valley Club "experience"

[1] Tidwell relies upon *Martin v. Camas County ex rel. Bd. Com'rs*, 150 Idaho 508, 514, 248 P.3d 1243, 1249 (2011) to argue that stacking perceived "injuries" can confer standing. *Martin* does not support this contention. In *Martin*, the court found that increased competition alone is not sufficient to confer standing, and that Martin's purported injuries were speculative. *Id*.

being impacted by the construction of a small duplex on vacant land with no environmental or open space value. (Response at 17). These ephemeral and unsubstantiated "injuries" are insufficient. There is simply no injury here, let alone any that is legally cognizable. Therefore, there is no standing despite Tidwell's weak assertions to the contrary.

a. Tidwell and the Trust Sold Their Property

Despite forming the cornerstones for her standing claim, the Court has been presented with a Notification Pursuant to *Martin v. Camas County Ex Rel. Board of Commissioners* ("Notification"), that Tidwell sold her residence on June 30, 2021, and sold the Trust Property on October 8, 2021. Besides the extreme delay in disclosing these critical facts,[2] County Defendants object to the additional factual assertions and legal argument set forth in the Notification, which reads more like a detailed brief than a disclosure as contemplated by *Martin's "*best practices". *See Martin*, 150 Idaho at 510–11. Regardless, the sale of all of the Tidwell and the Trust's property destroys their primary standing arguments in this appeal.

Since standing is a jurisdictional matter that concerns justiciability, it is completely appropriate for the Court to consider these developments in weighing whether Tidwell has standing. *See Koch v. Canyon Cty.*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008) ("standing is jurisdictional and may be raised at any time, including on appeal"); *Beach Lateral Water Users Ass'n v. Harrison*, 142 Idaho 600, 603, 130 P.3d 1138, 1141 (2006) (explaining that because the issue of standing is jurisdictional, standing may be raised at any time). These new factual disclosures, neither of which was even mentioned in the Response Brief, dispel any notion that Tidwell or the Trust have a property interest at stake, that their property values are at risk, that Tidwell drives, bikes, or walks by the property regularly, or that her lifestyle will be impacted by

[2] The District Court issued its *Order on Plaintiffs Request for Costs and Fees* on July 9, 2021, ***ten days after*** Tidwell sold her primary residence.

a duplex on Parcel C. Regardless, the County Defendants will reply to the *Response Brief*, and the somewhat moot contentions therein, to show that the District Court erred when it determined that Tidwell had standing.

b. There is No Evidence Regarding an Impact on Tidwell's Property Values

Tidwell continues to allege that the proximity of her properties to the proposed duplex, coupled with the potential harm of diminished property values, is sufficient to confer standing. There is absolutely no factual evidence to support Tidwell's assertion that her property values will be diminished as a result of the proposed duplex, and, in fact, the only admissible evidence in this case supports the opposite conclusion. (*See* R. at 110-113, 164-167). Tidwell completely disregarded Idaho precedent that evidence of compromised property values is required in order to confer standing. *See In re Jerome County Bd. of Com'rs*, 153 Idaho 298, 309, 281 P.3d 1076, 1087 (2012) (finding 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.) (*emphasis added*). Instead of presenting admissible evidence showing that an affordable housing duplex will impact property values in the area[3], Tidwell wants this Court to take her vague allegations of financial harm as proof. *See State v. Philip Morris, Inc*., 158 Idaho 874, 882, 354 P.3d 187, 195 (2015) (explaining that "when standing is challenged, mere allegations are not sufficient, and the party invoking the court's jurisdiction must demonstrate facts supporting this allegation") (*emphasis added*).

In fact, Tidwell has essentially admitted in her Response that no actual evidence or causal connection exits. Specifically, Tidwell stated: "[b]ecause of the early dismissal of this objection, Plaintiffs had little need to invest any further time, effort, or expense in developing evidence or

[3] Tidwell continues to assert that she has evidence from a real estate broker who stated that the value of all surrounding property owners would be affected. (Response at 9). Tidwell's alleged "evidence", however, was stricken and deemed inadmissible by the District Court. (*See* Oral Ruling on Pls.' Mot. Prelim. Inj. Tr. 8:9-14, Oct. 30, 2018).

expert testimony to establish how a nonconforming duplex would impact the property values in the area." (Response at 19-20, n.4). Tidwell's claim that there was no need to present evidence of standing because it was dealt with early on in this case is seriously flawed and misleading. While it is true that standing was raised early on in the proceedings at the preliminary injunction hearing, it was also raised as a separate motion for summary judgment one year later. (R. at 446). Tidwell had full opportunity and reason to present the District Court with detailed evidence supporting her alleged standing during this case, but she did not. She then ignored her obligation to inform the District Court and this Court that she sold both her residence and the Trust Parcel. *See Martin*, 150 Idaho at 511, 248 P.3d at 1246 (stating that "[b]est practice is to notify this Court in writing, in a timely fashion, when changes that may affect justiciability occur in the factual circumstances of a case"). Standing and justiciability are ongoing requirements, and Tidwell cannot claim her obligation to present evidence of her standing disappeared once the District Court mistakenly ruled in her favor. This lack of admissible evidence remains a fatal flaw in Tidwell's standing argument.

c. Tidwell's Recreational and Aesthetic Claims Lack Merit

Tidwell also asserts that the aesthetic and recreational value of Parcel C as open space would be lost if a duplex were to be built on the parcel. She claims, once again without evidence, that her use and enjoyment of the areas on and around Parcel C would be diminished. (*See* Response at 22). Besides the fact that Tidwell has not established that Parcel C has ***any*** open space value, she also cannot recreate or use Parcel C in any way. Instead, Tidwell relies upon three U.S. Supreme Court cases that involve plaintiffs' impaired use of federal lands, national forests, and environmental/health concerns caused by the pollution of those areas. *See Summers v. Earth Island Institute*, 555 U.S. 488, 129 S.Ct. 1142 (2009); *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361 (1972); *U.S. v. Students Challenging Regulatory Agency Procedures...*, 412 U.S. 669, 93 S.Ct. 2405 (1973).

In this case, Parcel C is a .6-acre parcel bordered by Buttercup Road, the Hiawatha Canal, the Bike Path, the Valley Club Golf Course, vacant land owned by the Valley Club to the south, and residential development to the north. (*See* R. Pls.' Ex. 22). Parcel C is not part of a national forest and does not have a stream, mountains, or other resources that make it desirable for camping, hiking, fishing or sightseeing. There is no viable interest in viewing the flora and fauna on Parcel C, as was the case in *Summers*. *See Summers*, 555 U.S. at 494. Tidwell has failed to allege how riding her bike on the bike path and golfing at the Valley Club for four months out of the year will be affected by the development of a duplex in any tangible or meaningful way. *See Sierra Club*, 405 U.S. at 735 (Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development). There has been no showing that the duplex will result in pollution, impinge upon endangered species or wildlife, destroy environmentally sensitive lands or areas of historical significance, or hinder movement on the bike path or Buttercup Road. Her arguments, boiled down to their essence, are that she will occasionally have to look at a small duplex. That perceived visual intrusion is insufficient to establish an injury in fact.

Finally, Tidwell has failed to show how her personal "injury" in having to look at a duplex will be any different from hundreds, perhaps thousands of others in the community. *Boundary Backpackers* demonstrates that such generalized claims of harm are insufficient to confer standing, as are Tidwell's generalized claims of "aesthetic", "rural", and "environmental" injuries. *See Boundary Backpackers v. Boundary County*, 128 Idaho 371, 374-75, 913 P.2d 1141, 1144-45 (1996) (allegations of threats to collective environmental, aesthetic, and recreational interests in the state and federal lands, waters, and resources was not enough to demonstrate an injury in fact that was not suffered alike by all citizens of the county.) Pursuant to *Boundary Backpackers*, Tidwell has not demonstrated a sufficient injury in fact.

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

Tidwell has also failed to show any evidence of a causal connection between the presence of a duplex and any negative impact to her Valley Club membership. In her *Response*, Tidwell completely ignored her membership agreement, by which she clearly and unambiguously acknowledged that she has no expectation of a profit or financial gain as a result of the purchase of the membership.[4] Thus, even if she could miraculously establish some diminished membership value resulting from a peripheral and heavily obstructed view of a small duplex as she golfs on one of The Valley Club's 27 holes, she has already disavowed any entitlement to that diminished value. Similarly, although Tidwell has had every opportunity to provide evidence that shows how a duplex located across a canal and behind a stand of mature trees will diminish her golfing "experience", she has failed to do so and instead relies upon baseless allegations of harm which are not enough to confer standing under established Idaho law. *See Philip Morris*, 158 Idaho at 882 (mere allegations are insufficient to confer standing). The District Court erred when it found that Tidwell had standing.

Because Tidwell lacks standing, the District Court lacked jurisdiction to consider her claims regarding the meaning of "Public Use" in the Final Plat and Warranty Deed. Consequently, the District Court's decision finding that "Public Use" is ambiguous, as well as its Judgment concluding that "Public Use" actually means "open space and recreational use" must be reversed. *See Beach Lateral Water Users*, 142 Idaho at 604, 130 P.3d at 1142 (reversing District Court decision that quieted title in ditch easement because plaintiff lacked standing).

2. The Term "Public Use" is Not Ambiguous and the Merger Doctrine Applies

Ignoring Tidwell's lack of standing, the core legal issue in this appeal is whether the term "Public Use", on the face of the Final Plat and Deed, is ambiguous. Contrary to Tidwell's

[4] Notably, the Valley Club's Bylaws, which directly address sales prices for memberships, do not even suggest that the proposed development would be considered as a factor in determining a membership's value. (R. at 572).

rambling, and at times incoherent arguments in her Response Brief, this case is not about exactions[5], illegal contracts, takings[6], or deciphering legislative or Constitutional intent. *See Hewson v. Asker's Thrift Shop*, 120 Idaho 164, 166-67, 814 P.2d 424, 426-27 (1991) (*expressio unius est exclusio alterius* is used to determine legislative intent.); *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 643, 132 P.3d 397, 400 (2006) (*expressio unius est exclusio alterius* applies to provisions of the Idaho Constitution that expressly limit power). The required analysis is simple and direct.

Plats and deeds are complete instruments and when a 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 v. Fremont County*, 152 Idaho 207, 211, 268 P.3d 1159, 1163 (2012). 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).[7]

In *Camp Easton Forever, Inc. v. Inland Northwest Council Boy Scouts of America*, 156 Idaho 893, 900, 332 P.3d 805, 812 (2014), the Idaho Supreme Court provided a helpful analysis as to what "for use of the Boy Scouts of America" meant within a deed:

> Here, "for use of the Boy Scouts of America" is the phrase in dispute. The word "use" means "the privilege or benefit of using something." *Merriam–Webster Dictionary* 2523 (3d ed.1971). Thus, "for use of the Boy Scouts" means that scouts have the benefit of using the property. The deed never states that the land is "for use of the Boy Scouts of America as a camp for boy scouts." The deed does not otherwise indicate that the property must be held and used as a camp. The deed also

[5] To the extent the dedication of Parcels B and C can be viewed as an exaction as a condition of PUD approval, that approval was never appealed or challenged.

[6] The dedication of "Public Use" Parcels B and C was completely voluntary. *See KMST, LLC v. County of Ada*, 138 Idaho 577, 582, 67 P.3d 56, 61 (2003) (KMST's property was not taken as KMST voluntarily decided to dedicate the road to the public in order to speed the approval of its development.)

[7] This language in *McKay* clearly dispels Tidwell's ridiculous efforts to impose a "heavy burden" that County Defendants must somehow disprove Tidwell's interpretation of the term "Public Use" as being "wholly without reason". (*See Response* at 27).

> does not include limiting language to impose a condition on land use, like "so long as the Boy Scouts of America use the property as a camp" or that the property be used "only as a camp." The deed has no provision for reversion and reentry if the Boy Scouts stop using the property. The deed never states that the land could not be sold. Thus, the deed does not state any limit on the Boy Scouts' use.

The Court ultimately held that the phrase "for use of the Boy Scouts" was unambiguous and lacked any limitation as to how the Boy Scouts could use the property, and that the District Court properly viewed the deed as a fee simple conveyance. *Id*. at 902. The limitation that the property was intended "for use of the Boy Scouts of America", the Court reasoned, was very broad and even included the right of alienation. *Id*.

In this case, just as in *Camp Easton Forever*, real property was granted to the County for "Public Use" by deed, which is identical to the Final Plat. There is no contradictory language in either document. The term "public use" is a broadly defined term that encompasses any use that is for the benefit of the public. *See Cohen v. Larson*, 215 Idaho 82, 84, 867 P.2d 956, 958 (1993) ("public use" is meant to be flexible so as to comport to the needs and wants of the community and benefit of the public welfare or economy). As was the case in *Camp Easton Forever,* there was no limiting language in the Final Plat or Deed that restricted uses. (*See* Defendant's Ex. Q). The phrase "Public Use" further lacked any specificity as to particular uses for Parcels B and C, supporting the assertion that "Public Use" was meant to be broad, and without restriction. The Final Plat and Deed also lack any condition on the use of the land, and there is no reversionary or re-entry clause in the event Parcels B and C were not put to "Public Use".[8] There is nothing prohibiting the sale or transfer of Parcels B and/or C, and while it is arguable whether the County could sell Parcel C to a private buyer, it was clearly authorized to transfer Parcels B and C to the

[8] In the Response Brief, Tidwell trots out a parade of horribles to emphasize the objectionable uses to which Parcels B, which has already been developed as affordable housing, and C could be put if "public use" means what it actually says. Besides the impracticality of constructing a stadium, sewer plant, road, or wind turbine on a 0.6 acre lot, Blaine County's zoning laws would act as a prohibition against these uses. Grounding this case back in reality, a residential duplex is a permitted use within the R-2 zoning district. (R. at 100-102, 666).

BCHA, which is a political subdivision engaged in public uses. *See* I.C. § 31-808(9); I.C. § 31-4202(c).[9] Blaine County was granted fee simple title to Parcels B and C with the only restriction being that they be used for "Public Use". In keeping with *Camp Easton Forever*, the term "Public Use", as delineated and dedicated on the Final Plat and Warranty Deed, is clearly unambiguous and was intended to allow a broad range of potential uses.

Tidwell and the District Court mischaracterized the central issue in this case as whether **affordable housing** was a "Public Use" under the Final Plat. That specific use, which was first considered more than ten years after the Final Plat and Deed were signed, does not somehow make the term "Public Use" ambiguous. *See Dunham v. Hackney Airpark, Inc.*, 133 Idaho 613, 618, 990 P.2d 1224, 1229 (Ct. App. 1999) (Plaintiff who purchased property eight years after dedication could not establish "present intent" to dedicate airstrip for unfettered use when dedication stated otherwise at the time it was made). The proposal to develop affordable housing is irrelevant in considering whether the term "Public Use" is ambiguous. Specific uses of the "Public Use" parcels were not listed in the Final Plat and Warranty Deed, and thus, those specific uses are irrelevant. Finally, the fact that the "Public Use" Parcels could ultimately be developed for affordable housing and would sit adjacent to the "Community Housing" Parcel is equally irrelevant.[10] The issue here is simply whether the term "Public Use", as expressed within the Final Plat and Deed, is ambiguous or not.[11]

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[9] In repeatedly mischaracterizing the duplex as a private use, Tidwell conveniently ignores the plain fact that Parcels B and C are currently owned by the BCHA, and that any future owners of the affordable units will do so under deed restrictions held and managed by the BCHA. (*See* R. at 26, ¶ 39; R. at 96-97); I.C. § 31-4202.

[10] Furthermore, the mere presence of the Community Housing Parcel does not magically create ambiguity or negate affordable housing on the "Public Use" Parcels as Tidwell and the District Court suggest. The Community Housing Parcel was to be developed, constructed, and sold by the developer, which did not prohibit the County from developing the "Public Use" Parcels as affordable housing on its own. There is also no limitation on the amount of affordable housing allowed within the Plat, or imposed by the Deed, or the County and State Codes.

[11] Tidwell argued heavily that statutory definitions cannot be used to interpret the Final Plat, and relied on *Ida Therm, LLC v. Bedrock Geothermal, LLC*, 154 Idaho 6, 293 P.3d 630 (2012) in support of that assertion. (Response at 33-35). Tidwell's assertion, however, is a deceptive misrepresentation of the holding in that case. In that case, the Court recognized that there were contradictory statutory definitions of the term "mineral," some of which expressly included

As explained above, the term "Public Use", as delineated on the Final Plat and Deed, is clearly unambiguous. Once that determination is made, the doctrine of merger prevents the Court from considering extrinsic evidence, which makes all of the trial evidence and testimony developed in this case irrelevant. *See Porter v. Bassett,* 146 Idaho 399, 404, 195 P.3d 1212, 1217 (2008) ("[w]hen an instrument conveying land is unambiguous, the intention of the parties can be settled as a matter of law using the plain language of the document and without using extrinsic evidence"). Only after a determination is made that the plain language of the Final Plat and Deed is unambiguous can the discussion shift to whether affordable housing qualifies as a "Public Use", and under Idaho law, the answer to that question is plainly "YES". *See* I.C. § 31-4202(c) ("the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions"). That ends the inquiry. County Defendants urge this Court to reverse the decision of the District Court.

3. The District's Court Findings Were Clearly Erroneous

Once the District Court inferred ambiguity from one of countless public uses (affordable housing), Tidwell and the District Court proceeded to deconstruct the Final Plat and Deed and redefine the intent of the parties. Relying exclusively upon editing errors made within a sloppy documentary record, the District Court ultimately concluded that "Public Use", as depicted without restriction or reservation in both the Final Plat and Warranty Deed, actually means "open space and recreational use". This restriction limits the use of Parcels B and C to next to nothing as the

geothermal resources and others that expressly excluded them. *Id*. at 10-12. Here, Tidwell has not identified any statutes that set forth contradictory definitions of the term "Public Use."

record is clear that all of the proposed "open space and recreational uses" for Parcels B and C were expressly rejected in the meeting room.[12] The District Court's decision was clearly erroneous.

This case involves a dedication of land to Blaine County as part of the development approval process. In *Worley Highway Dist. v. Yacht Club of Coeur D'Alene, Ltd.*, 116 Idaho 219, 224, 775 P.2d 111, 116 (1989), this Court set forth the essential elements of a common law dedication as follows: "(1) an offer by the owner, clearly and unequivocally indicated by his words or acts evidencing his intention to dedicate the land to a public use, and (2) an acceptance of the offer by the public." (*emphasis added*). The District Court's re-writing of the clear and unambiguous Final Plat and Deed does not reflect the intent of the parties.

Because there was no meeting of the minds on specific uses, and the developer was in a hurry to secure approval, the developer and the Board agreed that Parcels B and C would be dedicated to the County with the broad "Public Use" restriction. This rejection of specified uses in favor of a broad "Public Use" restriction was first expressed and agreed to in the meeting room during the entitlement process.[13] After originally being labeled for specified uses and following this meeting of the minds, the owner/developer submitted a series of draft plats to the County depicting Parcels B and C as "Public Use" parcels. (*See* R. Defs.' Ex. K; R. Defs.' Ex. M; R. Pls.' Ex. 22; R. Defs.' Ex. Q). These new draft plats reflected the owner/developer's clear and unequivocal intention to dedicate the land to a public use.[14] The Final Plat and Deed were then executed and recorded with the "Public Use" description for both Parcel B and C, without restriction or reservation, and those documents establish conclusive proof of the owner/developer's

[12] *See* R. Pls.' Ex. 6 (May 3, 2005 3 of 4A (Noise Reduced) at Min. 34:05-36:10; Min. 36:30-42:53; Min. 44:14-46:43; R. Pls.' Ex. 14 at 11); R. Pls.' Ex. 6 (May 3, 2005 3 of 4B (Noise Reduced) at Min. 6:48-7:30; Min. 8:28-9:21); See R. Pls.' Ex. 10 (May 19, 2005 3 of 3A (Noise Reduced) at Min. 11:15-12:35).

[13] *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).

[14] Use of the words "Public Use" in depicting Parcels B and C surely provides compelling and obvious evidence of the developer's intention to dedicate land to a public use.

intent. The golf course, community housing, and infrastructure were all constructed and lots were sold and developed without any suggestion or claim challenging this dedication. These acts made the dedication irrevocable and, along with its signatures on the Final Plat, demonstrates the County's acceptance of the "Public Use" dedication. *See Smylie v. Pearsall*, 93 Idaho 188, 191, 457 P.2d 427, 430 (1969) ("When an owner of land plats the land, files the plat for record, and sells lots by reference to the recorded plat, a dedication of public areas indicated by the plat is accomplished. This dedication is irrevocable except by statutory process.") The acceptance of this clear and unambiguous dedication has been relied upon by the public since it was made. *See Hanson v. Proffer*, 23 Idaho 705, 132 P. 573, 575 (1913) (*quoting City of Denver v. Clements*, 3 Colo. 484, 486 (1877)):

> If there exist an actual intent to reserve any portion of the lands so platted into streets, otherwise than by express reservation on the plat, certainly it should be made manifest in some manner not only of equal certainty, but of equal publicity as the plat, otherwise an actual intent cannot be permitted to avail against an intent on which the law will and must insist, as being shown by unequivocal acts upon which the public had a right to rely.

After more than ten years had passed, Parcels B and C were transferred to BCHA for the development of affordable housing, which the Board of County Commissioners determined was an appropriate "Public Use". *See* I.C. § 31-4202(c). Parcel B was developed into affordable housing. A building permit was then approved to construct a duplex on Parcel C. This act of approving the building permit, in the District Court's view, unraveled the affordable housing on Parcel B, the ten years of acceptance of the "Public Use" limitation, the signed and recorded Final Plat and Deed with the "Public Use" restriction, the submitted plats, and the verbatim record from the meeting room, and rendered it all meaningless. The District Court's decision essentially rendered the "Public Use" Parcels useless.[15]

[15] It is unknown how the District Court's Judgment affects title to Parcel B, which has already been developed as affordable housing. It is similarly unknown what "open space" uses exist and whether "recreational uses" must be active (skate park, playground, bike track) or passive (bathrooms, parking, storage).

At the time the dedication was made, the parties intended that Parcels B and C would be dedicated to the County for "Public Use". This is clear and obvious in the Final Plat and Warranty Deed, as well as the events that led up to the approval of the Valley Club West 9 PUD. The dedication was intentionally broad and had no limitation, restriction, or reservation of any kind, and it remained unchallenged for more than a decade as lots were sold, and rounds of golf played. The County Defendants are entitled to their end of the bargain and the District Count erred in determining that the "Public Use" Parcels were useless. The District Court's decision was clearly erroneous and must be reversed.

V. CONCLUSION

For the foregoing reasons, the County Defendants respectfully request that this Court determine that because Tidwell lacks standing, the District Court lacked subject matter jurisdiction to consider her claims. Consequently, and because the District Court erred in interpreting the term "Public Use" within the Final Plat and Warranty Deed, this Court must reverse the decision of the District Court in its entirety so that judgment may be entered in favor of County Defendants.

DATED this 30th day of November, 2021.

LAWSON LASKI CLARK, PLLC

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

DATED this 30th day of November, 2021.

BLAINE COUNTY

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November, 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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