

10-30-2013

Ashton Urban Renewal Agency v Ashton Memorial Clerk's Record Dckt. 40348

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Ashton Urban Renewal Agency
Plaintiff(s)/Respondent(s),

Supreme Court No: 40348

Case No: CV-2012-0000058

VS

CLERK'S RECORD ON APPEAL

Ashton Memorial, Inc.
Defendant(s)/Appellant(s).

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,
in and for
THE
COUNTY OF FREMONT

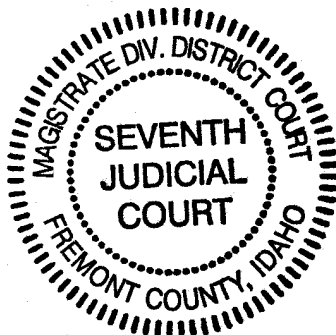
Gregory W. Moeller
DISTRICT JUDGE

Attorney
For Appellant

Ryan P. Armbruster
251 East Front Street, Ste. 300
P.O Box 1539
Boise, ID, 83701

Attorney
For Respondent

G. Rich Andrus
Rigby, Andrus & Rigby
25 North Second East
Rexburg, ID 83440



Abbie Mace

Abbie Mace

Clerk of the District Court

Becky Harrigfeld

Becky Harrigfeld
Deputy Clerk

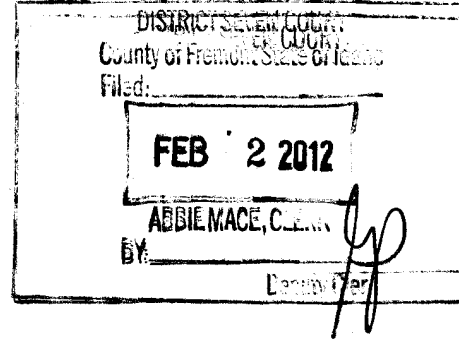
Ashton Urban Renewal Agency vs. Idaho Board of Tax Appeals, Ashton Memorial, Inc., dba Ashton Memorial Nursing

Date	Code	User	Judge
2/2/2012	NCOC	PARKER	New Case Filed - Other Claims Gregory W. Moeller
		PARKER	Filing: L3 - Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or body to district court Paid by: Ashton Urban Renewal Agency Receipt number: 0000536 Dated: 2/2/2012 Amount: \$88.00 (Check) For: Ashton Memorial, Inc., dba Ashton Memorial Nursing (defendant) Gregory W. Moeller
	PETN	PARKER	Petition for Judicial Review Gregory W. Moeller
	NOTC	PARKER	Notice of Petition for Judicial Review Gregory W. Moeller
			Document sealed
2/16/2012		MACE	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Rich Andrus Receipt number: 0000822 Dated: 2/17/2012 Amount: \$58.00 (Check) For: Ashton Memorial, Inc., dba Ashton Memorial Nursing (defendant) Gregory W. Moeller
	NOAP	MACE	Defendant: Ashton Memorial, Inc., dba Ashton Memorial Nursing Notice Of Appearance Rich Andrus Gregory W. Moeller
2/28/2012	NOTC	MACE	Notice Of Special Appearance-Katherine Takasugi Gregory W. Moeller
	NOAP	MACE	Defendant: Idaho Board of Tax Appeals Notice Of Appearance Katherine Takasugi Gregory W. Moeller
3/8/2012	NOTC	MACE	Notice Of Filing Of Agency Record Gregory W. Moeller
3/20/2012	STIP	MACE	Stipulation To Dismiss Respondent Idaho Board Of Tax Appeals And To Amend Caption Gregory W. Moeller
3/27/2012	ORDR	MACE	Order To Dismiss Respondant Idaho Board Of Tax Appeals And To Amend Caption Gregory W. Moeller
4/2/2012	ORDR	MACE	Order Governing Procedure On Review. Petitioner Shall File Brief Within 35 Days Of This Order-March 30th. Respond. Within 28 days. Petitioners Reply Brief 21 days after Respond. Brief. Gregory W. Moeller
4/9/2012	MISC	HARRIGFELD	Appellant's Brief Gregory W. Moeller
5/7/2012	MISC	MACE	Respondants Reply Brief Gregory W. Moeller
5/23/2012	HRSC	MACE	Hearing Scheduled (Hearing 06/26/2012 03:00 PM) Oral Argument On The Appeal. Gregory W. Moeller
	MISC	MACE	Appellants Reply Brief Gregory W. Moeller
6/4/2012	NOTC	MACE	Notice Of Hearing Gregory W. Moeller
6/26/2012	HRHD	MACE	Hearing result for Hearing scheduled on 06/26/2012 03:00 PM: Hearing Held Oral Argument On The Appeal.-1 hour Gregory W. Moeller
	MINE	MACE	Minute Entry Gregory W. Moeller
	MISC	MACE	Will Take Under Advisement. Counsel Will Have 7 Days To File Arguement. Gregory W. Moeller

Ashton Urban Renewal Agency vs. Idaho Board of Tax Appeals, Ashton Memorial, Inc., dba Ashton Memorial Nursing

Date	Code	User		Judge
7/2/2012	MEMO	MACE	Memorandum Of Authority	Gregory W. Moeller
7/3/2012	MEMO	MACE	Memorandum Of Authority-Rich Andrus	Gregory W. Moeller
8/10/2012	DEOP	MACE	Decision Or Opinion Filed In Chambers.	Gregory W. Moeller
9/18/2012	NOTC	HARRIGFELD	Notice of Appeal	Gregory W. Moeller
		HARRIGFELD	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Rigby, Andrus & Rigby Receipt number: 0004944 Dated: 9/18/2012 Amount: \$109.00 (Check) For: Ashton Memorial, Inc., dba Ashton Memorial Nursing (defendant)	Gregory W. Moeller
	APLS	HARRIGFELD	Appeal to Supreme Court	Gregory W. Moeller
9/20/2012	NOTC	HARRIGFELD	Notice of Appeal Filed - CLERKS RECORD DUE 11/26/12	Gregory W. Moeller
10/2/2012		HARRIGFELD	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Rigby, Andrus & Rigby Receipt number: 0005152 Dated: 10/2/2012 Amount: \$74.75 (Check)	Gregory W. Moeller
10/23/2012	TRAN	HARRIGFELD	Transcript Filed	Gregory W. Moeller
	NOTC	HARRIGFELD	Notice of Lodging - Clerk's Record and Transcript	Gregory W. Moeller

Ryan P. Armbruster, ISB #1878
 Meghan Sullivan Conrad, ISB #7038
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 Post Office Box 1539
 Boise, Idaho 83701
 Telephone: (208) 343-5454
 Facsimile: (208) 384-5844



Attorneys for Petitioner Ashton Urban Renewal Agency

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an independent public body corporate and politic,

Petitioner,

v.

IDAHO BOARD OF TAX APPEALS and ASHTON MEMORIAL, INC., an Idaho corporation, doing business as ASHTON LIVING CENTER,

Respondents.

Case No. CV12-58

PETITION FOR JUDICIAL REVIEW

Fee Category: L-3
 Filing Fee: \$88.00

COMES NOW Petitioner Ashton Urban Renewal Agency ("Agency"), by and through its attorneys of record, Elam & Burke, P.A., and petitions this Court for judicial review of the Idaho Board of Tax Appeals' ("BTA") Final Order Dismissing Appeals entered November 29, 2011, and the Order Denying Reconsideration entered January 5, 2012, in BTA Appeal Nos. 11-A-1400 and 11-A-1401.¹ This appeal is filed pursuant to Idaho Code § 63-3812 and Rule 84 of the Idaho Rules of Civil Procedure.

Petitioner submits the following information by way of background. The Agency is a duly created urban renewal agency authorized to transact business and exercise the powers granted by the Idaho Urban Renewal Law of 1965, title 50, chapter 20, Idaho Code, as amended

¹ The BTA has referenced this matter as follows: In the Matter of the Appeal of Ashton Urban Renewal Agency (Ashton Memorial, Inc. – Nursing Home) from the decision of the Fremont County Board of Equalization for the tax year 2011, Appeal Nos. 11-A-1400 and 11-A-1401.

(the "Law") and the Local Economic Development Act, title 50, chapter 29, Idaho Code, as amended (the "Act"). Pursuant to the requirements and procedures set forth in the Law and Act, the City Council of the city of Ashton determined a certain geographic area to be a deteriorated area or deteriorating area and adopted Ordinance No. 376 on December 21, 1996, approving the Ashton Urban Renewal Plan (the "Plan"), which included a revenue allocation provision as authorized by the Act.

Revenue allocation provides an income stream to the Agency and allows the Agency to fund improvements in the Plan area as authorized by the Plan. Essentially, once the geographic boundary of the Plan area is established, the County Assessor freezes the assessed value of the real property within that area, which is referred to as the base assessment roll. *See*, I.C. § 50-2903(4). As the Agency and others invest in the area, the property values rise. The increase in value over the base is referred to as the increment. *See*, I.C. § 50-2903(10). The property taxes collected on the increment go to the Agency in the manner set forth in Idaho Code § 50-2908. Any significant decrease of the assessed values of any properties within the urban renewal/revenue allocation Plan area directly impacts the Agency's revenue stream, and, potentially, the Agency's outstanding obligations.

The decision of the Fremont County Board of Equalization granting Ashton Memorial, Inc., doing business as the Ashton Living Center ("Ashton Memorial"), property tax exemption for its properties located in Fremont County, directly injures the Agency's pecuniary rights. The real and personal property at issue, parcel numbers PPA00090254050 (the "Personal Property") and RPA00090254050 (the "Real Property"), are located within the urban renewal/revenue allocation Plan area and most of the property taxes collected on that property would go to the Agency. The granting of the exemption on this property directly and immediately impacts the Agency's statutory revenue stream.

PETITION FOR JUDICIAL REVIEW - 2

Ashton Memorial filed a Tax Exemption Short Form Application for the Real Property and the Personal Property on January 19, 2011. On July 11, 2011, the Fremont County Board of Commissioners sitting as the Board of Equalization voted in favor of granting Ashton Memorial's applications for exemption on the property at issue. The Agency timely appealed the decisions by the Board of Equalization to the BTA.

Without a hearing, on or about November 29, 2011, the BTA issued its Final Order Dismissing Appeals on the ground and for the reason that the Agency was not a person aggrieved, and therefore lacked standing to pursue its appeal. The Agency timely filed its Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, supported by a memorandum and the Affidavit of Harlan W. Mann on December 8, 2011. On or about December 26, 2011, Ashton Memorial filed its Response to Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011. On January 3, 2012, the Agency filed its Reply Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011. Without a hearing, the BTA issued its Order Denying Reconsideration on January 5, 2012.

As this matter was decided without hearing, there is no recording of any proceedings.²

The Agency contends the issues for judicial review are as follows: (1) a determination of whether the Agency has standing to appeal the Fremont County Board of Equalization's decision granting tax exempt status to the Ashton Memorial property; and (2) if so, a determination as to whether Ashton Memorial's property qualifies for an exemption under title 63, chapter 6, Idaho Code.

Petitioner does not request a transcript at this time.

² There are recordings of the proceedings before the Board of Equalization in addition to evidence submitted to the Board, which should be included in the record on appeal. See, I.C. § 63-3812(b) and IDAPA 36.01.01.151.

Counsel for Petitioner certifies that (A) service of the Petition for Judicial Review has been made upon the BTA as evidenced by the Certificate of Service attached hereto; and (B) the Clerk of the BTA represented there is no fee for the preparation of the record, and therefore, no estimated fee for preparation of the record has been paid at this time. As noted above, a transcript has not been requested

WHEREFORE, the Agency contends it has standing to appeal the Fremont County Board of Equalization's decision granting tax exempt status to the Ashton Memorial Property as a person aggrieved. The Agency further contends the grant of exemption was improper and should be revoked. The Agency respectfully requests the BTA's Final Order Dismissing Appeals entered November 29, 2011, and the Order Denying Reconsideration entered January 5, 2012, be reversed, and that the underlying issues be addressed on their merits, and for such other and further relief as the Court may deem just and proper.

DATED this 2nd day of February 2012.

ELAM & BURKE, P.A.

By: 
Meghan Sullivan Conrad
Attorneys for Petitioner Ashton Urban Renewal
Agency

CERTIFICATE OF SERVICE

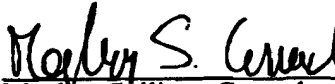
I HEREBY CERTIFY that on the 2nd day of February 2012, I caused a true and correct copy of the foregoing document to be served as follows:

Idaho Board of Tax Appeals
3380 Americana Terrace Suite 110
Boise, Idaho 83706

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

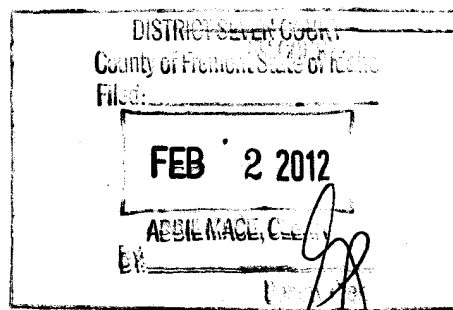
G. Rich Andrus
Robert H. Wood
Rigby, Andrus & Rigby
Attorneys at Law
P.O. Box 250
Rexburg, Idaho 83440

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile



Meghan Sullivan Conrad

Ryan P. Armbruster, ISB #1878
 Meghan Sullivan Conrad, ISB #7038
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 Post Office Box 1539
 Boise, Idaho 83701
 Telephone: (208) 343-5454
 Facsimile: (208) 384-5844



Attorneys for Petitioner Ashton Urban Renewal Agency

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an independent public body corporate and politic,

Petitioner,

v.

IDAHO BOARD OF TAX APPEALS and ASHTON MEMORIAL, INC., an Idaho corporation, doing business as ASHTON LIVING CENTER,

Respondents.

Case No. CV12-58

NOTICE OF PETITION FOR JUDICIAL REVIEW

NOTICE REQUIRED BY RULE 84(b) OF THE IDAHO RULES OF CIVIL

PROCEDURE:

A PETITION FOR JUDICIAL REVIEW HAS BEEN FILED AGAINST YOU IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT AND WAS SERVED UPON YOU ON FEBRUARY 2, 2012. PURSUANT TO IDAHO CODE § 63-3812(b), "THE APPEAL SHALL BE TAKEN AND PERFECTED IN ACCORDANCE WITH RULE 84 OF THE IDAHO RULES OF CIVIL PROCEDURE."

A copy of the Petition for Judicial Review is served with this Notice of Petition for Judicial Review. If you wish to seek the advice or representation by an attorney in this matter,

you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

To determine whether you must pay a filing fee with any response, contact the Clerk of the above-named court (the District Court of the Seventh Judicial District of the state of Idaho, in and for the County of Fremont).

DATED this 2nd day of February 2012.

ELAM & BURKE, P.A.

By: Meghan S. Conrad
Meghan Sullivan Conrad
Attorneys for Petitioner Ashton Urban Renewal Agency

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February 2012, I caused a true and correct copy of the foregoing document to be served as follows:

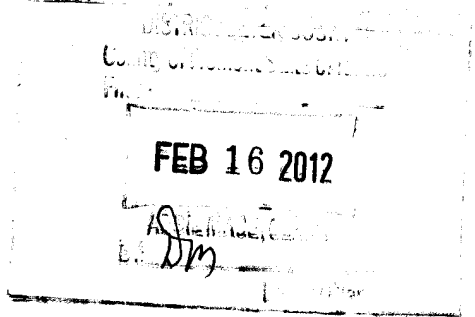
Idaho Board of Tax Appeals
3380 Americana Terrace Suite 110
Boise, Idaho 83706

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

G. Rich Andrus
Robert H. Wood
Rigby, Andrus & Rigby
Attorneys at Law
P.O. Box 250
Rexburg, Idaho 83440

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

Meghan S. Conrad
Meghan Sullivan Conrad



G. Rich Andrus, ISBN 1347
Robert H. Wood, ISBN 8229
RIGBY, ANDRUS & RIGBY, *Chartered*
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208-356-3633

Attorneys for Respondent, Ashton Memorial, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL)
AGENCY, an independent public body)
corporate and politic,)
)
Petitioner,)
)
v.)
)
IDAHO FOARD OF TAX APPEALS)
and ASHTON MEMORIAL, INC., an)
Idaho corporation, doing business as)
ASHTON LIVING CENTER,)
)
Respondents.)
)
)
_____)

Case No. 2012-58

OBJECTION

FEE CATEGORY: I.1.

FEE: \$58.00

The RESPONDENT, Ashton Memorial, Inc., hereby objects to the Petitioner's Petition
for Judicial Review on the following grounds:

The Petitioner contends the issues for judicial review are: (1) a determination of whether

the Agency has standing to appeal the Fremont County Board of Equalization's decision granting tax exempt status to the Ashton Memorial property; and (2) if so, a determination as to whether Ashton Memorial's property qualifies for an exemption under Title 63, Chapter 6, Idaho Code.

The issue of whether or not Ashton Memorial's property qualifies for an exemption is not ripe for judicial review because the Petitioner has not exhausted all administrative remedies in regards to that issue.

On July 11, 2011, the Fremont County Board of Commissioners, in their role as Board of Equalization, voted in favor of granting Ashton Memorial an exemption for property. The Petitioner appealed that decision, and on November 29, 2011, the Board of Tax Appeals (BTA) dismissed that appeal on the grounds that the Petitioner was not a person aggrieved, and therefore lacked standing to appeal. The Petitioner filed a Motion to Reconsider, accompanied with a memorandum and affidavit on December 8th. The Respondent filed a Response to Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals on December 26th. The Petitioner then filed a Reply to the Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeal Entered November 29, 2011. The BTA denied Reconsideration on January 5, 2012.

The issue that was asked to be reconsidered with the BTA was the issue of standing. The BTA never made a decision regarding the merits of the Petitioner's original contention, which contention is that the Respondent does not qualify for an exemption under title 63, chapter 6, Idaho Code. Idaho Code § 67-5271, of the Idaho Administrative Procedures Act, states that "a person is not entitled to judicial review of an agency action until that person has exhausted all

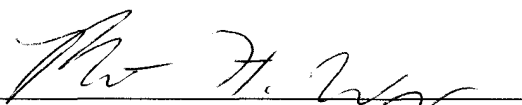
OBJECTION - Page 2

RW\AshtonMemorial.OBJ

administrative remedies required in this chapter.”

While the Respondent does not contest whether the Petitioner has exhausted all administrative remedies in regards to issue of standing, the Petitioner has clearly not exhausted all administrative remedies in regards to the merits of the case. Therefore, issue 2 as presented by the Petitioner cannot properly be before the Court at this time, even if the Petitioner does have standing. If the Court finds that the Petitioner does have standing, this case should be remanded to the Idaho Board of Tax Appeals for further review on the merits. Only upon exhausting any remedies available through the BTA should the Petitioner bring the issue on the merits before the Court.

DATED this 15th day of February, 2012.

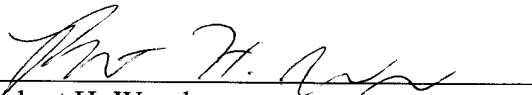

Robert H. Wood

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 15th day of February, 2011.

RIGBY ANDRUS & RIGBY, Chartered


Robert H. Wood

Ryan P. Armbruster, Esq.
Meghan Sullivan Conrad, Esq.
Elam & Burke, P.A.
P. O. Box 1539
Boise, Idaho 83701

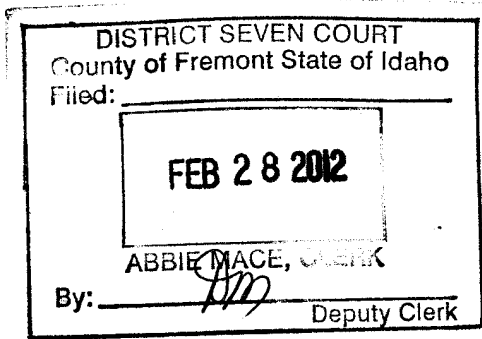
[X] Mail
[] Hand Delivery
[] Facsimile

OBJECTION - Page 4

RW\AshtonMemorial.OBJ

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB No. 3586
Chief, Civil Litigation Division
KATHERINE TAKASUGI, ISB NO. 5208
Deputy Attorneys General
Statehouse, Room 210
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
kathy.takasugi@ag.idaho.gov



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

ASHTON URBAN RENEWAL AGENCY, an)
independent public body corporate and politic,)
)
Petitioner,)
)
vs.)
)
BOARD OF TAX APPEALS and ASHTON)
MEMORIAL, INC., an Idaho corporation,)
doing business as ASHTON LIVING CENTER,)
)
Respondents.)
)

Case No. CV 2012-58

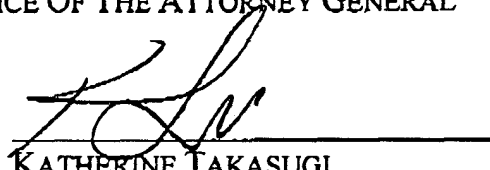
NOTICE OF SPECIAL APPEARANCE

COMES NOW the State of Idaho Board of Tax Appeals ("State"), by and through its attorney, KATHERINE TAKASUGI, Deputy Attorney General, and hereby enters a special appearance in these proceedings solely for the purpose of executing a stipulation for dismissing the State as a Respondent in this case and correcting the caption.

DATED this 24 day of February, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By:



KATHERINE TAKASUGI
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of February, 2012, I caused to be served a true and correct copy of the foregoing, postage prepaid, to the following:

Meghan Sullivan
ELAM & BURKE, P.A.
P.O. Box 1539
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

Robert H. Wood
Rigby, Andrus & Rigby
P.O. Box 250
Rexburg, Idaho 83440

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:



KATHERINE TAKASUGI
Deputy Attorney General

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed:
 MAR - 8 2012
 By: ASBIE MAJES, CLERK
 Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an independent public body corporate and politic,)	Case No. CV12-58
)	
Petitioner,)	NOTICE OF FILING OF
)	AGENCY RECORD
)	
vs.)	
)	
IDAHO BOARD OF TAX APPEALS and)	
ASHTON MEMORIAL, INC., an Idaho)	
corporation, doing business as ASHTON)	
LIVING CENTER,)	
)	
Respondents.)	

Attached is the file from the Idaho State Board of Tax Appeals for Appeal Nos. 11-A-1400 and 11-A-1401, appealed to the Seventh Judicial District Court of Fremont County.

CERTIFICATE OF MAILING

I hereby certify that I have on this 6th day of March, 2012, mailed a copy of the within and foregoing document by sending the same by United States mail, postage prepaid, in an envelope addressed to Clerk of the Seventh Judicial District Court, 151 West 1st North, Room 12, St. Anthony, ID 83445, and mailed a copy of the Notice of Filing of Agency Record to Ryan P. Armbruster, Elam and Burke, P. A., P.O. Box 1539, Boise, ID 83701, G. Rich Andrus and Robert H. Wood, Rigby, Andrus and Rigby, P.O. Box 250, Rexburg, ID 83440 and Joette Lookabaugh, Fremont County Prosecutor's Office, 22 West 1st North, St. Anthony, ID 83445.

Susan Benfro
 Clerk to the Board

Appeal of Ashton Urban Renewal Agency, from the
Idaho State Board of Tax Appeals Order Denying Reconsideration

Judicial District Court Case No. CV12-58
Idaho State Board of Tax Appeal Nos. 11-A-1400 and 11-A-1401

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:

MAR - 8 2012

ABBIE MACE, CLERK

Deputy Clerk

CONTENTS OF RECORD OF PROCEEDINGS

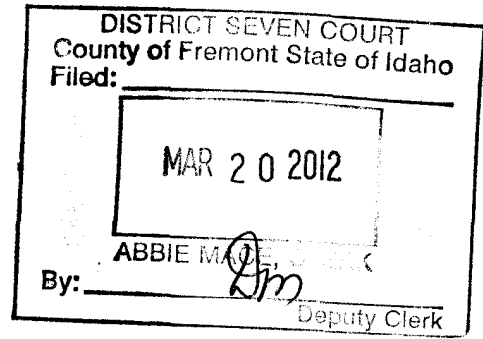
List of documents prepared for Court:

Appeals 11-A-1400 and 11-A-1401

1. Petitioner's appeal forms and Attachment #1; Ashton Memorial, Inc.'s (taxpayer) - 1) County Parcel Masters, 2) Notification Letters, and 3) Tax Exemption Short Form Applications and the Petitioner's County appeal forms received on September 14, 2011.
2. Acknowledgment letter mailed September 21, 2011.
3. Taxpayer Ashton Memorial, Inc.'s - Answer and Notice of Appearance received October 5, 2011.
4. Final Order Dismissing Appeals mailed November 29, 2011.
5. Petitioner's Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, Affidavit of Harlan W. Mann in Support of the Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, and Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, received December 8, 2011.
6. Taxpayer Ashton Memorial, Inc.'s - Response to Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, received December 28, 2011.
7. Petitioner's Reply Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011.
8. Order Denying Reconsideration mailed January 5, 2012.
9. Petitioner's Notice of Petition for Judicial Review and Petition for Judicial Review received February 2, 2012.
10. Petitioner's Petition for Judicial Review with case number received by facsimile on February 14, 2012.

11. On February 17, 2012, the Agency Record and the Notice of Lodging of Transcript were sent to Ryan P. Armbruster, Esq., P.O. Box 1539, Boise, ID 83701, G. Rich Andrus and Robert H. Wood, Rigby, Andrus and Rigby, P.O. Box 250, Rexburg, ID 83440 and Joette Lookabaugh, Fremont County Prosecutor's Office, 22 West 1st North, St. Anthony, ID 83445.
12. No transcripts were sent as no hearings were conducted.

Ryan P. Armbruster, ISB #1878
Meghan Sullivan Conrad, ISB #7038
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
Post Office Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844



Attorneys for Petitioner Ashton Urban Renewal Agency

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
independent public body corporate and politic,

Petitioner,

v.

IDAHO BOARD OF TAX APPEALS and
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Case No. CV2012-58

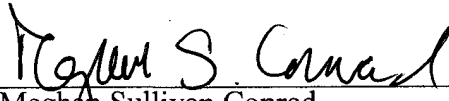
STIPULATION TO DISMISS RESPONDENT
IDAHO BOARD OF TAX APPEALS AND
TO AMEND THE CAPTION

Petitioner Ashton Urban Renewal Agency ("Petitioner"), by and through its counsel of record, Meghan S. Conrad, of Elam and Burke, P.A.; Respondent Idaho Board of Tax Appeals, by an through its counsel of record, Katherine Takasugi, Office of the Attorney General, state of Idaho; and Respondent Ashton Living Center, by and through its counsel of record G. Rich Andrus, of Rigby, Andrus & Rigby, Chtd., pursuant to Idaho Rules of Civil Procedure 84(r) and 41(a)(1), hereby stipulate and agree that Respondent Idaho Board of Tax Appeals be dismissed on the grounds that it is not a proper party to this action. The parties further stipulate and agree that the caption should be amended to delete Respondent Idaho Board of Tax Appeals. Each party has agreed to bear their own attorney fees and costs.

STIPULATION TO DISMISS RESPONDENT IDAHO BOARD OF TAX APPEALS AND TO
AMEND THE CAPTION- 1

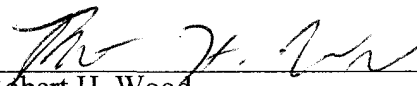
DATED this 15th day of ~~February~~ ^{March} 2012.

ELAM & BURKE, P.A.

By: 
Meghan Sullivan Conrad
Attorneys for Ashton Urban Renewal Agency

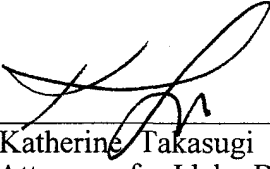
DATED this 9th day of ~~February~~ ^{March} 2012.

RIGBY, ANDRUS & RIGBY

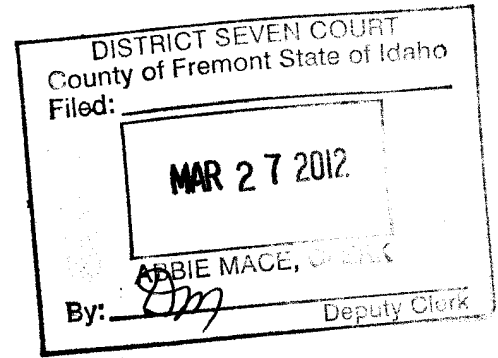
By: 
Robert H. Wood
Attorneys for Ashton Memorial, Inc.

DATED this 28th day of February 2012.

IDAHO ATTORNEY GENERAL

By: 
Katherine Takasugi
Attorneys for Idaho Board of Tax Appeals

STIPULATION TO DISMISS RESPONDENT IDAHO BOARD OF TAX APPEALS AND TO AMEND THE CAPTION- 2



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
independent public body corporate and politic,

Petitioner,

v.

IDAHO BOARD OF TAX APPEALS and
ASHTON MEMORIAL, INC., an Idaho
corporation, doing business as ASHTON
LIVING CENTER,

Respondents.

Case No. CV2012-58

ORDER TO DISMISS RESPONDENT
IDAHO BOARD OF TAX APPEALS AND
TO AMEND THE CAPTION

Based upon the Stipulation to Dismiss Respondent Idaho Board of Tax Appeals and To
Amend the Caption, and good cause appearing therefor,

IT IS HEREBY ORDERED AND THIS DOES ORDER that Respondent Idaho Board of
Tax Appeals be dismissed from this action and that the caption be amended to delete Respondent
Idaho Board of Tax Appeals, with each party to bear their own costs and attorney fees.

IT IS SO ORDERED THIS 27th day of March 2012.



Gregory W. Moeller

The Honorable Gregory W. Moeller

ORDER TO DISMISS RESPONDENT IDAHO BOARD OF TAX APPEALS AND TO
AMEND THE CAPTION- 1

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of March 2012, I caused a true and correct copy of the foregoing document to be served as follows:

Ryan P. Armbruster
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ELAM & BURKE, P.A.
251 East Front Street, Suite 300
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*Attorneys for Petitioner Ashton Urban
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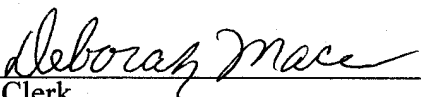
- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

G. Rich Andrus
Robert H. Wood
Rigby, Andrus & Rigby
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*Attorneys for Respondent Ashton
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- Via Facsimile

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*Attorneys for Respondent Idaho Board of
Tax Appeals*

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- Federal Express
- Via Facsimile



Deputy Clerk

DISTRICT COURT
 County of Fremont, State of Idaho
 Filed
APR -2 2012
 ASHTON MEMORIAL, INC.
 By: *DM*

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR FREMONT COUNTY**

ASHTON URBAN RENEWAL AGENCY,)
 an independent public body corporate and)
 politic,)

Case No. CV-12-58

Petitioner,)

v.)

ORDER GOVERNING
 PROCEDURE ON REVIEW

IDAHO BOARD OF TAX APPEALS and)
 ASHTON MEMORIAL, INC., an Idaho)
 Corporation, doing business as ASHTON)
 LIVING CENTER,)

Respondents.)

The Court has before it Petitioner's February 2, 2012 *Petition for Judicial Review* of the Idaho Board of Tax Appeals' *Final Order Dismissing Appeals*, dated November 29, 2011 and the *Order Denying Reconsideration*, entered January 5, 2012

Accordingly, it is hereby ordered that:

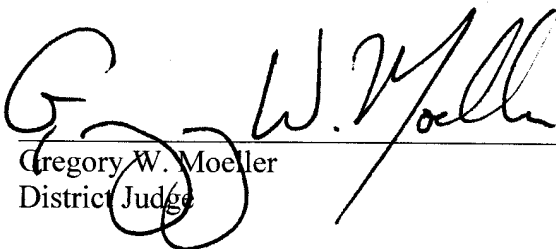
1. This appeal shall be determined on the record.
2. The above-named governmental entity shall prepare the record and lodge it with the District Court. Upon such lodging, the Clerk of the Court shall mail to counsel for both parties' a notice that the updated record has been lodged. The fee for preparing the updated agency record shall be paid according to statute;
3. An updated transcript of the proceedings before the agency shall be prepared at the petitioner's expense;
4. Briefing shall occur according to the following schedule:
 - a. Petitioner's brief shall be filed with this Court **within 35 days** of the date on which notice that the transcript and record have been filed with this Court is served;

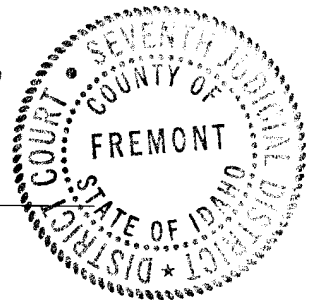
ORDER GOVERNING
 PROCEDURE ON REVIEW -- 1

- b. Respondents' brief shall be filed **within 28 days** after service of Petitioner's brief;
- c. Petitioner's reply brief, if any, shall be filed **within 21 days** after service of Respondents' brief.
5. A courtesy copy of any pleading filed in this matter, including the briefs, shall be lodged with the District Court for Madison County, Idaho, 134 E. Main, Rexburg, Idaho 83440.
6. When all the foregoing conditions have been complied with, Petitioner shall schedule a hearing for oral argument in Fremont County on the next convenient law and motion day following the expiration of the time limit for Petitioner's reply brief. Notice of the hearing date shall be served upon this Court and counsel for Respondents. In the event that no hearing is scheduled, this Court will assume that the matter has been submitted for resolution without oral argument.

So ordered.

Dated this 30th day of March, 2012.


Gregory W. Moeller
District Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER GOVERNING PROCEDURE ON REVIEW was this 30th day of March, 2012, sent via US mail to the following individuals:

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By:


Law Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
independent public body corporate and politic,

Petitioner/Appellant,

v.

ASHTON MEMORIAL, INC., an Idaho
corporation, doing business as ASHTON
LIVING CENTER,

Respondent/Respondent.

Case No. CV2012-58

DISTRICT SEVEN COURT County of Fremont State of Idaho Filed: APR - 9 2012 By: <i>AM</i> ABBIE MACE, CLERK Deputy Clerk

APPELLANT'S BRIEF

Appealed from the Idaho Board of Tax Appeals
Appeal Nos. 11-A-1400 and 11-A-1401
David E. Kinghorn and Linda S. Pike, Presiding

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
independent public body corporate and politic,

Petitioner/Appellant,

v.

ASHTON MEMORIAL, INC., an Idaho
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Respondent/Respondent.

Case No. CV2012-58

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Appeal Nos. 11-A-1400 and 11-A-1401
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Inc.)*

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STATEMENT OF THE CASE

A. Nature of the Case

Appellant Ashton Urban Renewal Agency (the "Agency") appeals from the Idaho Board of Tax Appeals' (the "BTA") Final Order Dismissing Appeals entered on November 29, 2011, and the BTA's denial of the Agency's Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011 (the "Motion to Reconsider"). Respondent Ashton Memorial, Inc., doing business as Ashton Living Center (the "Ashton Living Center"), owns real and personal property in Fremont County, which is located within an urban renewal/revenue allocation area. In 2011, the Ashton Living Center applied for a property tax exemption for the 2011 tax year pursuant to Idaho Code § 63-602C. The Agency protested the exemption application by appealing to the Fremont County Board of Equalization ("BOE") on the grounds and for the reasons that the Ashton Living Center did not qualify for property tax exemption. The BOE voted to approve a full tax exemption. The Agency timely appealed to the BTA. Without a hearing, on November 29, 2011, the BTA issued its Final Order Dismissing Appeals concluding the Agency did not have standing to pursue the appeals. The BTA then denied the Agency's Motion to Reconsider in the Order Denying Reconsideration entered on January 5, 2012. The BTA's Final Order Dismissing Appeals and denial of the Motion to Reconsider, should be reversed, and the matter remanded.

B. Statement of Facts

The Agency is a duly created urban renewal agency authorized to transact

business and exercise the powers granted by the Idaho Urban Renewal Law of 1965, title 50, chapter 20, Idaho Code, as amended (the "Law") and the Local Economic Development Act, title 50, chapter 29, Idaho Code, as amended (the "Act"). Pursuant to the requirements and procedures set forth in the Law and Act, the City Council of the city of Ashton determined a certain geographic area to be a deteriorated area or deteriorating area and adopted Ordinance No. 376 on December 21, 1996, approving the Ashton Urban Renewal Plan (the "Plan"), which included a revenue allocation provision as authorized by the Act.

Revenue allocation provides an income stream to the Agency and allows the Agency to fund improvements in the urban renewal/revenue allocation area as authorized by the Plan, the Law and the Act. Once the geographic boundary of the urban renewal/revenue allocation area is established, the County Assessor freezes the assessed value of the real property within that area, which is referred to as the base assessment roll. *See*, I.C. § 50-2903(4). As the Agency and others invest in the area, the property values rise. The increase in value over the base is referred to as the increment. *See*, I.C. § 50-2903(10). The property taxes collected on the increment go to the Agency in the manner set forth in Idaho Code § 50-2908.¹ Unlike a city or highway district, the Agency does not have the authority to levy property taxes. Any significant decrease of the assessed values of any properties within an urban renewal/revenue allocation area directly impacts the Agency's revenue stream, and, potentially, the Agency's outstanding obligations.

¹ The property taxes collected on the base go the overlapping taxing districts based on the individual taxing district's levy rate.

The property at issue, specifically parcel numbers PPA00090254050 (the “Personal Property”) and RPA00090254050 (the “Real Property”) are located within the urban renewal/revenue allocation area. (Affidavit of Harlan W. Mann (“Mann Aff.”), R. Tab 5, ¶3.) As a function of how revenue allocation is allocated to the Agency under the Act, most of the property taxes collected on the Real Property and Personal Property would go to the Agency as opposed to the overlapping taxing districts (e.g. city, county, school district, highway district).² (*Id.*) Property tax exemption on the Real Property and Personal Property directly and immediately impacts the Agency’s statutory revenue stream, which is shown as follows:

The 2009 assessed values for the Ashton Living Center property were \$132,937 for the Personal Property and \$2,653,350 for the Real Property. (Mann Aff., R. Tab 5, ¶4.) There were no 2010 and 2011 assessments on the Real Property and Personal Property due to exemptions; therefore, a 2011 estimate of property value is projected based on the 2009 property values. (*Id.*) Assuming the Personal Property depreciates at a rate of 2% per year, the 2011 projected value for the Personal Property is \$127,673. (*Id.*) Assuming no change in value for the Real Property, the 2011 projected value for the Real Property remains \$2,653,350. (*Id.*) The total projected 2011 value of the Real Property and Personal Property is \$2,781,023. (*Id.*) The 2011 net levy rate for the revenue allocation area, which includes the Real Property and Personal Property, is

² This is due to the fact a great majority of the assessed value of the Real Property and all of the Personal Property is allocated to the increment, not the base. (Mann Aff., R. Tab 5, ¶3.) The Plan stated the base assessment value of the entire revenue allocation area as \$12,000. (*Id.*)

0.015633479. (*Id.*) As a result, the estimated Agency revenue, from the 2011 estimated assessment of the Real Property and Personal Property, is \$43,477.06.³ (*Id.*)

Due to the allowance of the exemption on the Real Property and Personal Property, the Agency has lost revenue for the 2012 fiscal year in the amount of \$43,477. (*Id.* at ¶5.)

Incremental value for 2011, as reported by Fremont County and the Idaho State Tax Commission, for the entire Ashton Urban Renewal Plan area, valuing the exempt property at zero, is \$2,270,027. (*Id.* at ¶6.) The 2011 revenue that will be generated from the taxable properties, and will be received by the Agency in its 2012 fiscal year, is \$35,488 [$\$2,270,027 \times 0.015633479$]. (*Id.*)

If the Real Property and Personal Property were not exempt from taxation, the 2012 projected revenue to the Agency from revenue allocation would be \$78,965 [$\$35,488 + \$43,477$]. (*Id.* at ¶7.) Therefore, revenue from the Real Property and Personal Property would be approximately 55% of the Agency's projected revenue, or stated differently, the BOE's decision to approve Ashton Living Center's request for an exemption has resulted in a 55% decrease in revenue for the Agency. (*Id.* at ¶8.)

Based on the foregoing, the Agency is a person aggrieved and has statutory standing to appeal as contemplated by Idaho Code § 63-511.

C. Course of Proceedings

On or about January 19, 2011, the Ashton Living Center filed two Fremont County Tax Exemption Short Form Applications with the Fremont County Board of Commissioners seeking

³ The total projected 2011 value of \$2,781,023 multiplied by the net levy rate of 0.015633479 equals \$43,477.06.

property tax exemption for tax year 2011 on the Personal Property and the Real Property. (Fremont County Tax Exemption Short Form Applications, R. Tab 1.) On June 27, 2011, the Agency filed two Board of Equalization Appeal Form Owner's Statements protesting the grant of a property tax exemption on the Real Property and the Personal Property. (Board of Equalization Appeal Form Owner's Statements, R. Tab 1.) On July 8, 2011, the Fremont County Commissioners, sitting as the BOE approved a full tax exemption for the tax year 2011, for the Personal Property and the Real Property pursuant to Idaho Code § 63-602C. (Fremont County Notification Letters, R. Tab 1.) On August 9, 2011, the Agency timely filed its BTA Property Tax Appeal Forms with the Fremont County Auditor asserting the Real Property and Personal Property do not qualify for property tax exemption pursuant to Idaho Code § 63-602C. (Board of Tax Appeals Property Tax Appeal Forms, R. Tab. 1.)

On or about September 21, 2011, the BTA sent the Agency's counsel a letter acknowledging receipt of the Notices of Appeal and further indicating hearings would be scheduled within the next 90 days. (Letter from Susan Renfro to Ryan Armbruster, dated September 21, 2006, R. Tab 2.) On October 5, 2011, Ashton Living Center filed an Answer and Notice of Appearance asserting the Agency lacked standing to pursue the appeal. (Answer and Notice of Appearance, R. Tab 3.)⁴ Without a hearing, on November 29, 2011, the BTA entered its Final Order Dismissing Appeals, concluding the Agency did not have standing to pursue the appeals. (Final Order Dismissing Appeals, R. Tab 4.) The Agency filed its Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011, supported by a

⁴ The Answer and Notice of Service was not served on Agency's counsel.

memorandum and the Affidavit of Harlan W. Mann (Motion to Reconsider, Memorandum in Support and Affidavit of Harlan W. Mann, R. Tab 5.) On December 28, 2011, the Ashton Living Center filed its Response to Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011. (Response to Memorandum in Support of Motion to Reconsider, R. Tab 6.) The Agency filed its reply memorandum on January 3, 2012. (Reply Memorandum in Support of Motion to Reconsider, R. Tab 7.) Without a hearing, the BTA issued its Order Denying Reconsideration on January 5, 2012. (Order Denying Reconsideration, R. Tab 8.)

ISSUES PRESENTED ON APPEAL

Whether the BTA erred in dismissing the Agency's appeals for lack of standing and denying the Agency's Motion to Reconsider.

ARGUMENT

A. Standards of Review

Rule 84(e)(1) of the Idaho Rules of Civil Procedure sets forth the method of review of agency action and provides "[w]hen the statute provides that review is de novo, the appeal shall be tried in the district court on any and all issues, on a new record."⁵

Idaho Code § 63-3812 authorizes judicial review of BTA decisions and provides that review is *de novo*:

(c) Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the

⁵ The Order Governing Procedure on Review dated March 30, 2012, indicates this matter will be determined by the record and does not specifically state whether this matter will be reviewed de novo.

issues in the same manner as though it were an original proceeding in that court. The burden of proof shall fall upon the party seeking affirmative relief to establish that the decision made by the board of tax appeals is erroneous. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The court shall render its decision in writing, including therein a concise statement of the facts found by the court and conclusions of law reached by the court. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

I.C. § 63-3812 (c).

Trial de novo is construed by the Supreme Court of Idaho to mean “a trying of the matter anew—the same as if it had never been heard before.” *Canyon County Board of Equalization v. Amalgamated Sugar Co.*, 143 Idaho 58, 61, 137 P.3d 445, 448 (2006), *citing Gilbert v. Moore*, 108 Idaho 165, 168, 697 P.2d 1179, 1182 (1985). As a result, no deference should be given to the BTA’s decisions, and the issues should be heard and determined by the Court as though it were an original proceeding. *See*, I.C. § 63-3812.

To facilitate review so the underlying issue of whether the exemption was properly granted may be considered, the Agency is willing to consider the BTA record “a new record” for purposes of determining standing on de novo review. This concession is solely for the purpose of allowing the issues addressed in this brief to be decided on the briefing, and upon any oral argument, if necessary.

B. The BTA erred in dismissing the Agency's appeals for lack of standing, and denying the Agency's Motion to Reconsider, because the Agency has statutory standing to file an appeal as a "person aggrieved" pursuant to Idaho Code § 63-511.

1. The Agency is a "person aggrieved."

Idaho Code § 63-511(1) provides an appeal from a decision of the County board of equalization "may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest."

(Emphasis added.) "Person aggrieved" is not a defined term under title 63, Idaho Code, and the use of this term in this statutory provision has not been further explained and/or interpreted by case law. Under title 63, Idaho Code, "person" is broadly defined and means "any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho." I.C. § 63-201(18). The Agency, as an entity of statutory creation, is an "independent public body corporate and politic" and is, therefore, a person within the meaning of the statute. *See*, I.C. § 50-2006(a).

In interpreting a statute similar to Idaho Code § 63-511, the Idaho Supreme Court analyzed the meaning of "aggrieved," stating:

Broadly speaking, a party or person is aggrieved by a decision when, and only when, it operates directly and injuriously upon his personal, pecuniary, or property rights...To render a party aggrieved by an order, so as to entitle him to appeal therefrom, the right invaded must be immediate, not merely some possible, remote consequence, or mere possibility arising from some unknown and future contingency; although it has been held that an immediate pecuniary damage is not always prerequisite to the right of appeal.

Application of Fernan Lake Village, 80 Idaho 412, 415, 331 P.2d 278, 279 (1958), citing 4 C.J.S. Appeal and Error § 183 b, pp. 559 and 561.⁶ Further, the Court in *Fernan Lake* cited to a long-standing test for determining whether a party is aggrieved: “Would the party have had the thing if the erroneous judgment had not been entered? If the answer be yea, he is a party aggrieved.” *Id.* at 415, 331 P.2d at 279-280, citing *State v. Eves*, 6 Idaho 144, 148, 53 P. 543, 544 (1898). The answer to this question is undoubtedly yes: had the BOE properly denied the request for property tax exemption, the Agency would have been statutorily entitled to revenue allocation funds in the estimated amount of \$43,477 pursuant to Idaho Code § 50-2908. (Mann Aff., R. Tab 5, ¶¶ 4, 5.) As set forth in great detail in the Statement of Facts, the immediate consequence of the exemption on the Agency could not be more direct or immediate; but for the exemption, the Agency would receive approximately \$43,477.06 in revenue allocation funds. (*Id.*) As a function of how revenue allocation works, the Agency has an express statutory entitlement to such funds.

As the BOE’s decision granting property tax exemption to Ashton Living Center directly and immediately financially impacts the Agency, the Agency is an aggrieved party and has statutory standing to appeal the decision of the BOE.

⁶ The meaning of “aggrieved” as described in *Fernan Lake* is also consistent with the definition of “aggrieved party,” which means “[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. — Also termed *party aggrieved*; *person aggrieved*.” Black’s Law Dictionary (9th ed. 2009), party.

2. Failure to fully consider what constitutes a charitable corporation under Idaho Code § 63-602C as defined by case law is “prejudicial to the public interest.”

An improperly granted property tax exemption is “prejudicial to the public interest” as exemptions are not favored under the law. I.C. § 63-511. “Idaho case law requires that all tax exemption statutes be strictly and narrowly construed against the taxpayer, who must show a clear entitlement, and in favor of the state. Courts may not presume exemptions, nor may they extend an exemption by judicial construction where not specifically authorized.” *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). Further, “[t]ax exemptions exist as a matter of legislative grace, epitomizing the antithesis of traditional democratic notions of fairness, equality, and uniformity.” *Id.* at 429, 849 P.2d at 102. It is in the interests of the public to make sure the proper process is used in analyzing a request for property tax exemption.

The Agency contends the BOE erroneously granted the exemption to Ashton Living Center, which ultimately resulted in the Agency’s loss of revenue. The Agency further contends Ashton Living Center failed to clearly establish a right of exemption.

Statutes granting tax exemptions must be strictly construed against the taxpayer and in favor of the state. *Community Action Agency, Inc. v. Board of Equalization of Nez Perce County*, 138 Idaho 82, 85, 87, 57 P.3d 793, 796, 798 (2002) (additional citations omitted). The burden is on the claimant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. *Appeal of Evangelical Lutheran Good Samaritan Soc. (Good Samaritan Village)*, 119 Idaho 126, 129, 804 P.2d 299, 302 (1990) (additional citation omitted).

Idaho Code § 63-602C exempts property from taxation “belonging to any fraternal, benevolent, or charitable . . . corporation . . . used exclusively for the purposes for which such . . . corporation . . . is organized.” I.C. § 63-602C.

The statute does not provide any guidance as to what constitutes a charitable corporation. This definition has largely evolved through case law. The Idaho Supreme Court has identified a list of non-exclusive factors to be considered in determining an entity’s charitable status: (1) the stated purposes of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the “charity” provided is based on need. *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984) (additional citation omitted). Determination of an institution’s charitable status is to be decided on a case-by-case basis. *Id.*

Under Idaho case law, it appears an entity may be less likely to meet the requirements of a charitable corporation if the fees charged to its residents are sufficient to cover all of the operating expenses of the entity. *See Appeal of Sunny Ridge Manor*, 106 Idaho at 101-102.

Idaho courts have provided additional guidance in considering whether a nonprofit corporation provides a general public benefit. A nonprofit corporation may benefit only a limited number of people and still be considered “charitable” if that entity is providing a general benefit to the community by relieving a potential obligation of government. *Id.* at 102. If there is no assistance to individuals which might normally require governmental funds, then the

institution must meet a stricter test and must provide benefits to the community at large. *Id.* Furthermore, the fact an entity is largely funded by the public with taxpayer money weighs in favor of a finding the entity does not provide a general public benefit. *Community Action Agency, Inc.*, 138 Idaho at 87, 57 P.3d at 798, citing *Housing Southwest, Inc. v. Washington County*, 128 Idaho 335, 339, 913 P.2d 68, 72 (1996).

It is clear from Idaho case law whether an entity has obtained federal tax exemption pursuant to section 501(c)(3) of the Internal Revenue Code as a charitable corporation is not determinative as to the entity's charitable status under the state property tax exemption statutes.

The Agency contends the BOE failed to consider the above-mentioned factors in determining whether the Ashton Living Center met the requirements for property tax exemption as a charitable corporation for purposes of the Ashton Living Center, and if the BOE had done so, the BOE would have denied the exemption request.

By challenging the BOE's decision granting Ashton Living Center's request for property tax exemption on the subject property, the Agency is not commenting on the importance of the facility or its services to the community. In fact, the Agency recognizes the value of this facility to the community; however, this is not the criterion for determining whether the entity is entitled to property tax exemption. The BOE's failure to consider the above-mentioned factors resulted in an erroneous decision which directly and immediately impacts the Agency. Based on the foregoing, such action is prejudicial to the public interest.

3. The Agency's interests are unique and are not adequately protected by others.

Idaho Code § 63-511 states an “appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest.” I.C. 63-511. The Agency’s interests are not protected by the county assessor and the State Tax Commission. In fact, the County Assessor and the State Tax Commission do not have any incentive to act on behalf of the Agency. There is no statutory or common law obligation imposed on the County Assessor or the State Tax Commission to protect the interests of the Agency. Furthermore, “[i]n determining the ordinary meaning of a statute “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.”” *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006), citing *In re Winton Lumber Company*, 57 Idaho 131, 136, 63 P.2d 664, 666 (1936) (emphasis added). If the Agency does not meet the requirements of a person aggrieved, then it is unclear who would fall into that standing category.

The Agency has independently met the standing requirements of a person aggrieved and, therefore, has standing to appeal. Furthermore, it is reasonable and logical an entity or taxing district impacted by an exemption should have the ability to challenge whether the allowance of an exemption was properly made. Under the facts and circumstances of this case, the Agency is primarily impacted by the exemption. The overlapping taxing districts are impacted minimally, and in any event are likely able to raise levy rates to eliminate harm from the reduction in value. As the Agency is unable to levy taxes, it is unable to minimize the reduction to its revenue stream.

4. An urban renewal agency was recently granted permission to intervene in a property tax assessment appeal.

In *Idaho Milk Products, Inc. v. Jerome County Assessor and Jerome County Board of County Commissioners*, Case No. CV 11-895, pending before the district court in the Fifth Judicial District in Jerome County, Petitioner Idaho Milk Products, Inc. ("IMP") appealed its property tax assessment for tax year 2011. The property at issue was located within the geographic boundaries of the Jerome Urban Renewal Agency's urban renewal/revenue allocation area. Due to the direct impact any change in the assessed value of the property at issue would have on the Agency's revenue stream, the Court allowed the Agency to intervene.

CONCLUSION

For the reasons set forth in the briefing, the Agency has statutory standing to appeal the Fremont County Board of Equalization's decision granting tax exempt status to the Ashton Living Center property as the Agency is a person aggrieved by the decision. For good cause shown, the Agency respectfully requests the Court reverse the BTA's Final Order Dismissing Appeals and the denial of the Agency's Motion to Reconsider and remand the matter to the BTA to consider the underlying appeals on their merits.

DATED this 6th day of April 2012.

ELAM & BURKE, P.A.

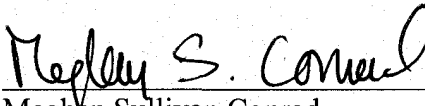
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of April 2012, I caused a true and correct copy of the foregoing document to be served as follows:

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Meghan Sullivan Conrad

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 MAY - 7 2012
 ABBIE MACE, CLERK
 By: *dm* Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an)
 independent public body corporate and politic,)

Petitioner/Appellant,)

v.)

IDAHO BOARD OF TAX APPEALS and)
 ASHTON MEMORIAL, INC., an Idaho)
 corporation, doing business as ASHTON)
 LIVING CENTER,)

Respondent/Respondent.)

Case No. 2012-58

RESPONDENT'S REPLY BRIEF

RESPONDENT'S REPLY BRIEF

Appealed from the Idaho Board of Tax Appeals
 Appeal Nos. 11-A-1400 and 11-A-1401
 David E. Kinghorn and Linda S. Pike, Presiding

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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the Idaho Board of Tax Appeals' (BTA) Final Order Dismissing Appeals entered on November 29, 2011. Ashton Memorial, Inc (Ashton Memorial), owns real and personal property located within the geographic boundaries of the Ashton Urban Renewal Agency's (the Agency) revenue allocation area. Ashton Memorial was granted a full tax exemption by the Fremont County Board of Equalization pursuant to I.C. § 63-602C. The Agency appealed to the BTA, who in turn ruled that the Agency lacks standing. The Agency filed a motion to reconsider which was denied by the BTA.

B. Statement of Facts

Ashton Memorial Inc. is an Idaho Corporation doing business as Ashton Living Center in Ashton, Idaho. Ashton Memorial provides assisted living services, medical care and nursing care. Ashton Memorial applied for a property tax exemption for the 2011 tax year pursuant to I.C. § 63-602C and was granted a full exemption.

The Ashton Urban Renewal Center is an agency pursuant to the Idaho Urban Renewal Law of 1965, title 50, chapter 20, Idaho Code, as amended and the Local Economic Development Act, title 50, chapter 29, Idaho Code, as amended. Ashton Memorial has certain real and personal property located within the revenue allocation area of the Agency. The Agency receives funds from levied taxes pursuant to I.C. § 50-2908.

C. Course of Proceedings

On August 9, 2011 Ashton Urban Renewal Agency (Hereinafter the Renewal Agency)

appealed 3 decisions of the Fremont County Board of Equalization to the Idaho Board of Tax Appeals (Hereinafter BTA) in regards to the decision granting exempt status to Ashton Memorial Hospital. The BTA dismissed these appeals on November 29, 2011, and based its decision on the fact that the Renewal Agency had failed to show that they were a “person aggrieved.” *Final Order Dismissing Appeals*, p. 4, (2011). Ashton Memorial agrees with the BTA that the Renewal Agency is not a person aggrieved under I.C. § 63-511(1), and therefore lacks standing to appeal the Board of Equalization’s decision.

The Renewal Agency filed a Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011. The Motion was supported by Memorandum and an Affidavit of Harlan W. Mann. Ashton Memorial filed a Response to Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011. An reply to that Memorandum was filed by the Agency on January 3, 2012. The BTA issued an Order Denying Reconsideration on January 5, 2012.

ISSUES PRESENTED ON APPEAL

Ashton Memorial agrees with the Agency that the issue on appeal is whether the BTA erred in dismissing the Agency’s appeals for lack of standing and denying the Agency’s Motion to Reconsider.

ARGUMENT

A. Standard of Review

This appeal is brought pursuant to I.C. § 63-3812, which in section (c) states that “appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be

heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding with the Court.” The standard of proof is a preponderance of the evidence, and the burden is upon the petitioner.

B. The BTA was correct to dismiss the Agency’s appeals for lack of standing, and was correct to deny the Agency’s Motion to Reconsider, because the Agency lacks statutory standing to file an appeal as a “person aggrieved” pursuant to Idaho Code § 63-511.

1. The Agency is not a “person aggrieved.”

Idaho Code § 63-511(1) allows for an appeal of a decision of the County board of equalization. The statute also limits who may file the appeal to only “the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest.”

To define a person aggrieved, the Renewal Agency cites two cases also cited by the BTA in its dismissal of the Appeals, *Application of Fernan Lake Village*, and *State v. Eves*. 80 Idaho 412, (1958), 6 Idaho 144 (1898).

In *Application of Fernan Lake Village*, the Court held that a party is aggrieved only when a decision injures his personal pecuniary, or property rights. 80 Idaho 412, 415 (1958). Further, for a party to be aggrieved by an order which gives rise to the right to appeal, the aggrieved party must be able to show that his rights will be invaded immediately, not “merely some possible remote consequences, or mere possibility arising from some unknown and future contingency.”

Id. Both the Renewal Agency and the BTA cite to the party aggrieved test provided by the Supreme Court in *State v. Eves*. The test is simply, “Would the party have had the thing if the

erroneous judgment had not been entered? If the answer be yea, he is a party aggrieved.” 6 Idaho 144, at 148 (1898).

Ashton Memorial believes that the appellants have failed to demonstrate that the alleged injury is more than “some possible, remote consequence, or mere possibility arising from some unknown and future contingency.” The appellants have attempted to show that they were somehow shorted \$43,477.06 because of the exemptions granted to Ashton Memorial, yet they fail to establish how they were actually entitled to that money since they are not the taxpayer, and the property in question did not belong to them. Appellants state that the exemption “directly injures the Agency’s pecuniary rights.” *Memorandum in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011*, p. 4. However, the Renewal Agency fails to establish that they are entitled to that money. The Renewal Agency provides a description of the statute that provides for their existence, and they describe revenue allocation and how they obtain their funding. However, neither of these points provide that they are entitled to the money for which they claim they are aggrieved for not receiving. The Renewal Agency in no way establishes that any money they are entitled to has been withheld from them.

The Renewal Agency states on page 9 of their brief that “the property taxes collected on the increment go the Agency in the manner set forth in I.C. § 50-2908.” However, the plain language of I.C. § 50-2908 would preclude the Agency from arguing that they have standing. I.C. § 50-2908(2)(b) clearly states that urban renewal agencies shall “be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.” For the Agency to receive funds, or to have even an expectation of receiving funds, taxes must have

been levied on taxable property. This statute raises an extremely important issue that the Agency has failed to address. The issue being that the Agency is only entitled to a **remaining balance of levied taxes**. (Bold emphasis added.)

Where the language of a statute is plain and unambiguous, the Court must give effect to the statute as written, without engaging in statutory construction. *State v. McCoy*, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). Unless the result is palpably absurd, the Court assumes that the legislature meant what is clearly stated in the statute. *Miller v. State*, 110 Idaho 298, 299, 715 P.2d 968, 969 (1986). The word “levy” or “levied” is not defined in I.C. § 50-2908. Blacks Law Dictionary defines “levy” as “1. The imposition of a fine or tax; the fine or tax so imposed.” *Black’s Law Dictionary*, Thompson West, Third Pocket Edition. It is important to note the past tense of the word “levied” in the statute. This establishes that in order for the Agency to receive funds, the taxes must have already been levied or imposed. If the taxes have not been levied, there is no source of revenue allocation for the Agency. If a property is granted tax-exempt status, and no taxes are collected on it, the Agency, contrary to their assertions of entitlement, is not entitled to any revenue from that property as there is no statutory authority for the Agency to receive the funds.

As the plain language of the statute clearly states that the Agency is only entitled to a remaining balance of levied taxes, the Agency can have no realistic expectation of receiving money when there is a zero remaining balance on taxes that were not levied in the first place. Thus, the Agency can not realistically claim any immediate injury to a pecuniary interest as required by the Court in *Application of Ferhnan Lake Village* because their interest only arises

when there is a remaining balance on taxes levied. If there was in fact a remaining balance of taxes levied on taxable property within the revenue allocation area, and the Agency did not receive those funds, the Agency might be injured and they might have an immediate pecuniary interest in those funds. However, it is clear from the statute that they are only entitled to funds when there is a remaining balance of taxes levied. Therefore, the Agency cannot show an immediate injury as *Ferhnan* requires, and the Agency is limited to only being able to show an injury which is a mere possibility which is deemed inadequate in *Ferhnan*.

Further, the fact that the Agency is only entitled to a remaining balance of levied taxes precludes them from claiming status as a person aggrieved under *State v. Eves*. Similar to the *Ferhnan* test, the *Eves* test could only possibly apply if taxes have already been levied as the Agency has no statutory claim on funds until the taxes have been levied. If taxes had been levied, there was a remaining balance, and the Agency was refused funds, the *Eves* test might apply. However, per the plain language of the I.C. § 50-2908, *Eves* would only apply (if it did at all) after the taxes were levied and a balance remained after other revenue allocations because the erroneous judgement in regards to the Agency's interest can only arise after taxes have been levied. A judgment from a county board of equalization granting a tax exemption precludes the Agency's interest from arising. Because the Agency is only entitled to tax funds which have already been levied, and because taxes were not levied upon Ashton Memorial, the answer to the question of whether the Agency would have had the funds absent an erroneous judgment must be "no."

Ashton Memorial believes that the Agency further fails the *Eve's* test because they are not

the entity subject to a different valuation or lower taxes. *Final Order* at p. 2. Further, the Renewal Agency fails to address the “erroneous” requirement of Eves. In order for the party to be aggrieved, the judgment or decision must be erroneous. The Renewal Agency has only asserted that they are aggrieved by lower tax revenues, but they have failed to establish how the ruling was erroneous. Ashton Memorial is unaware of any precedent establishing that a judgment or ruling is erroneous simply because another party is deprived of tax revenue. The mere fact that a party does not receive what they feel they are entitled to from a government agency does not mean that the agency decision was erroneous.

2. The Tax Exemption Granted to Ashton Memorial was Not Prejudicial to the Public Interest

In an appeal to public policy, the Renewal Agency cites to *Ada County Assessor v. Roman Catholic Diocese of Boise*, and states that an “improperly granted property tax exemption is ‘prejudicial to the public interest’ as exemptions are not favored under the law.” *Memorandum in Support* at p. 6, citing to 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). Again, the Renewal Agency fails to establish how the tax exemptions granted to Ashton Memorial are “improperly granted.” The Agency seems to infer again that the exemption was inappropriate simply because the Agency might receive less tax revenue. The Renewal Agency fails to mention the public policy reasons for allowing the exemptions, which include the fact that Ashton Memorial provides medical care, elder care, and other vital services as a public function to upper Fremont County, often doing so while accepting the lower rates of Medicare and Medicaid or never receiving payment for providing indigent care.

The Agency cites to *Appeal of Sunny Ridge Manor, Inc.* in which the Supreme Court identified seven non-exclusive factors to consider when determining an entity's charitable status. 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). The Agency lists the factors, and they conclude that had the BOE would have denied Ashton Memorial's exemption request if BOE would have reviewed the factors. While the Agency makes this claim, they never provide any facts that would support their conclusion that Ashton Memorial is not a charitable entity.

The seven factors to be reviewed to be considered in determining tax exempt status are listed by the Court as : (1) The stated purposes of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution for the corporation, and (8) whether the "charity" provided is based on need. *Id.*

1. Stated purpose of Ashton Memorial's Inc. undertaking as a charitable and benevolent entity.

The charitable and benevolent purposes of Ashton Memorial, Inc. is known widely and generally to the inhabitants of the Ashton area and the members of the Board of Equalization and they are stated clearly in its current articles of incorporation. The Fourth and Fifth Articles of its Third Amended and Restated Articles of Incorporation state:

"This corporation is a nonprofit benevolent corporation pursuant to Chapter I, Title 30, of the Idaho Code". (Paragraph Fourth of Third Amended and Restated Articles of Incorporation of Ashton

Memorial, Inc.)

“This corporation shall have as its objects and purposes the following specific and general purposes:

- (a) To establish and maintain a facility or facilities for the care of persons suffering from illnesses or disabilities, including but not limited to nursing home care, chemical dependency treatment, rural health care, mental and behavioral health care and treatment and any other health care needs.
- (b) To carry on any educational activities to rendering care to the sick and injuries or the promotion of health, which in the opinion of the Board of Directors may be justified by the facilities, personnel, funds or other requirements that are, or can be made, available. . . .
- (d) To participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community. .

This corporation is organized exclusively for charitable, scientific and education purposes as a nonprofit corporation and its activities shall be conducted for the aforesaid proposed in such a manner that no part of its net earnings will inure to the benefit of any member, director, officer or individual. . . .” (Paragraph Fifth of Third Amended and Restated Articles of Incorporation of Ashton Memorial, Inc. (emphasis added))

The stated purpose of Ashton Memorial, Inc. as a charitable and benevolent entity is

indisputable as above shown.

2. Whether its functions are charitable.

Ashton Memorial functions and carries on the benevolent and charitable purposes authorized in its articles of incorporation establishing it as a nonprofit corporation.

As noted in No. 1 above, the stated purposes of Ashton Memorial, Inc., are charitable in the traditional sense of the word. Its articles of incorporation specifically provide that “this corporation is organized exclusively for charitable, scientific and educational purposes as a nonprofit corporation”.

Its articles also further provide that the corporation’s activities shall be conducted for the aforesaid purposes (charitable, scientific and education purposes as a nonprofit corporation) in such a manner that no part of its net earnings will inure to the benefit of any member, director, officer or individual.

In short, no one can or does make a profit from the many community and charitable services that Ashton Memorial, Inc. performs for the area of Ashton and the surrounding area.

That Ashton Memorial, Inc. does in fact function in these charitable purposes is indisputable. At its Ashton nursing facility Ashton Memorial, Inc. provides quality nursing, medical care and support to residents. In the year 2010 alone, which is a typical year, Ashton Memorial, Inc. provided such quality nursing, medical care and support to a total of 73 residents, an average of 27 per day per year. Residents face all kinds of physical, behavioral and/or mental health challenges and deficiencies and Ashton Memorial, Inc. makes available trained nursing and physician care for such. The individuals served are a cross section of the general population

and absolutely no discrimination is practiced. Each person needing the care is granted the care. Part of the overall care includes not only making physicians available in-house to residents, but transporting residents to physicians and medical care off premises.

The facility provides care at a reduced rate for the general population of from \$20.00 to \$30.00 per day per resident when cost of care is compared with cost of nursing care in facilities available in the Rexburg and Idaho Falls area. In addition, the facility makes the care available to residents of the taxing district at an additional reduced rate of \$30.00 per day per resident. This represents a benefit to the residents who live in the taxing district of \$60.00 per day. If it were assumed that the facility was full for a full year servicing only residents of the local taxing district, the total savings and charitable benefits would be a sum of \$832,200.00. The value of these benefits, of course, vary depending on the rate of occupancy of the facility.

In addition to the above savings, the facility provides care to all those who apply for care. Because the facility is contracted with Medicaid/Medicare, the facility must charge the amounts required by the facility's contract with Medicaid/Medicare in order to qualify for the Medicaid/Medicare payments. There are many incidences when a resident does not qualify for Medicaid/ Medicare and in those cases, Ashton Memorial, Inc. writes off the charged services. This represents a significant charitable function. For the year 2011 to date, Ashton Memorial, Inc. has written off approximately \$70,000.00 in such charitable benefits.

Residents are treated at the facility for acute medical problems part in the form of professional nursing care and physician care in an institutional environment. For many residents if the need for the acute care had arisen while they were at home and not being cared for at

Ashton Memorial's facility there is a higher likelihood that they would have been treated at a public hospital such as Madison Memorial with the attendant cost to government. Additionally, care at Ashton Memorial, Inc. of such acute medical cases alleviates the need for ambulance and the transportation services that those people would otherwise have which represents a significant alleviation of the need for public services. The in-institution care for acute medical problems alleviates possible payment from the public funds for indigent people who may require hospitalization for acute care needs when a person does not reside at the nursing facility.

At its two medical clinics located in Ashton and Island Park, Ashton Memorial, Inc. provides general family medical care by professional medical staff who treat all manner of infirmities and illnesses including but not limited to broken bones, infections, lacerations, allergic reactions and other medical and problems requiring preventative family medical care. These clinics have joined with a local pharmacist, home health agency and massage therapist to be able to provide a wider array of medical services to the community. The acute medical care provided by the medical clinics operated by Ashton Memorial, Inc. result in the same kind of savings to government as discussed in B. above. Patients who receive acute care in Ashton Memorial medical clinics may not be going to the emergency rooms of the public hospitals. All patients are served at the medical clinic, none are turned away and there is substantial write-off of charges representing a charitable benefit.

The services of Ashton Memorial include a 38 bed facility which offers quality nursing home care to residents of the community. Ashton Memorial provides physical, occupational, speech and mental health therapy and podiatry for those transitioning to home from

the hospital. Ashton Memorial, Inc. accepts and treats everyone that needs nursing services and nursing home assistance as long as Ashton Memorial can meet their needs with professional staff.

The Ashton and Island Park medical clinics provide local medical care to inhabitants in close proximity to those clinics to anyone who comes through the door. In 2010 alone, there were a total of 5,076 visits in these facilities. Treatment at these facilities may have saved ambulance costs and costs of treatment at public hospitals and other public health facilities. An example of just one charitable aspect of the medical clinics was that during the winter of 2010-2011, business was brutally slow in Island Park and Ashton Memorial, Inc. kept the doors open, providing services to anyone who walked through the door – this is care that otherwise might not have been available and if available at all would have put financial pressure on public facilities and public hospitals.

Ashton Memorial, Inc. hires professionals from many medical disciplines and pays a very reasonable compensation that probably would not be available to residents of the area otherwise. These wages are paid to provide the quality services such that acute care can be given in-house.

Ashton Memorial, Inc. has been and is classified as a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code.

3. Whether it is supported by donations.

The information previously supplied to the Board of Equalization establish that Ashton Memorial, Inc., on an annual basis receives grants and donations. Donations (not to mention

grants, and the input of Funds from the North Fremont Hospital Taxing District) in 2010 alone totaled a sum of \$32,442.00. These donations are received on an annual basis generally in greater amounts than for the year 2010. In addition to donations, Ashton Memorial, Inc. receives, on an ongoing basis, grants from various foundations because of Ashton Memorial, Inc.'s charitable status. A very significant part of the new physical facility was funded by grant money. The facility can not fund its operations from fees alone and it relies heavily on grants, charitable donations and tax revenues. In 2009, Ashton Memorial, Inc. sustained a loss of approximately \$263,000.00. In 2010 the Fremont County facilities combined sustained a loss of \$91,943.00. Ashton Memorial, Inc. is not self-sufficient and could not function without its donations, grants and tax revenues. Ashton Memorial, Inc. would not be able to continue functioning without the infusion of funds from donations, tax revenues and grants. Because of the availability of the donations, grants and tax revenue, Ashton Memorial, Inc. is able to provide its charitable services to the community.

4. Whether the recipients of its services are required to pay for the assistance they receive.

As most any nonprofit corporation, Ashton Memorial, Inc. charges for services, but this is on a nonprofit basis. Its contract with Medicaid and Medicare requires that it charge everyone. However, Ashton Memorial, Inc. makes the services available to those who are not able to pay and who do not have the means or have insufficient means to pay on a pro bono basis. These donative benefits are made available by write-offs for those unable to pay

5. Whether there is general public benefit.

Ashton Memorial, Inc. provides a vital general public benefit to the area of Ashton and provides close-to-home quality nursing care, medical care and related services on a reasonable basis at a cost less than could be provided by a profit making entity. In addition to the provision of these services at a low cost based on its nonprofit status as noted above, Ashton Memorial, Inc. provides local employment opportunity and lessens the expense to public entities in addition to making low cost local health care, nursing and nursing care facilities available, cost of public transportation and other costs that the public would incur by having to have local citizens travel elsewhere and sometimes long distances for travel costs, ambulance costs and related costs for such services.

6. Whether the income received produces a profit.

The income received does not produce a profit privately for anyone. Ashton Memorial, Inc., by its articles of incorporation is declared to be a nonprofit entity and provides that no profit will inure to the benefit of any member, director, officer, or individual. Without its donations, grants and tax support from the North Fremont Hospital District, Ashton Memorial could not pay its bills. There is no profit.

7. To whom the assets would go upon dissolution of the corporation.

The current articles of incorporation of Ashton Memorial, Inc., make it indisputably clear that the assets of Ashton Memorial, Inc. in the event of the liquidation or dissolution would be paid to nonprofit entities.

The current articles of incorporation provide as follows:

This corporation is organized exclusively for charitable, scientific and educational purposes as a nonprofit corporation and its activities shall be conducted for the aforesaid purposes in such a manner that no part of its net earnings will inure to the benefit of any member, director, officer or individual. It shall not be its purpose to engage in carrying on propaganda or otherwise attempting to influence legislation. In the event of the liquidation or dissolution of the corporation, whether voluntary or involuntary, no member shall be entitled to any distribution or division of its remaining property or proceeds, and the balance of all money and other property received by the corporation from any source, after the payment of all debts and obligations of the corporation, shall be distributed to the North Fremont Hospital Taxing District if such is allowable by law, otherwise, to a non-profit entity or entities carrying on, if possible, non-profit services similar to the non-profit services that were being carried on by Ashton Memorial, Inc., at the time of liquidation and/or dissolution, and which qualify for distribution upon liquidation and/or dissolution of a non-profit corporation of the nature of Ashton Memorial, Inc., or in lieu thereof, then to some qualifying exempt organization to be established by court order, to be used or distributed, subject to appropriate court order as provided by law, exclusively for the purposes for which Ashton Memorial, Inc. is organized on the date of liquidation and/or dissolution. (Paragraph Fifth of Third Amended and Restated Articles of Incorporation of Ashton Memorial, Inc.)

This corporation is a nonprofit benevolent corporation pursuant to Chapter I, Title 30, of the Idaho Code.

8. Whether the "charity" provided is based on need.

As stated in the information supplied by Ashton Memorial, Inc. to the Board of Equalization and as discussed above, all people are served with the services available at the various facility and those that are unable to pay are served despite their inability to pay and receive the same quality of care based on need. See discussion above.

The BOE was provided the information given above as it relates to the seven

nonexclusive factors listed by the Court in *Sunny Ridge Manor*. The Agency seems to contend that the BOE did not consider these factors simply because the BOE granted the tax exemption, yet the Agency provides no facts to support their own contention that as a matter of public policy, Ashton Memorial does not qualify as a charitable organization or that the tax exemption was prejudicial to the public interest.

3. The Agency's Interest are Not Unique and are Protected by the County Assessor and the State Tax Commission .

Idaho Code § 63-511(1) states that an appeal from the a decision of a county board of equalization "may only be filed by the property owner, the assessor, the state tax commission, or by a person aggrieved." Not only is the Renewal Agency not a person aggrieved under the statute, the assessor is specifically listed in the statute as the party with the ability to appeal the decision. Because the assessor is the government entity responsible for assessing values for purposes of revenue, the county's revenue interest as it relates to decisions made by the board of equalization are protected by the statute. The county assessors and the state tax commission stand in the public stead to represent the public's interest in these matters. If the Idaho Legislature intended for every agency of government to have the ability to appeal board of equalization decisions, it would have likely used language to indicate that intention. Instead, they narrowed the ability of government entities, (nearly all of whom would meet the person aggrieved test as described by the Renewal Agency) to the assessor and state tax commission. The fact that the Legislature listed only two government entities further strongly suggests that the Legislature intended that any government entities not listed would be represented by the county assessors and state tax

commission. As such, the Renewal Agency's interest is represented by the county assessor and the state tax commission, and if the county assessor and state tax commission do not appeal the decision, the Renewal Agency lacks standing to do so on its own.

It is important to realize the implications of the Agency's standard for an aggrieved person in regards to I.C. § 63-511(1). Under the Agency's standard, any agency or department of government which receives public funds could appeal an exemption granted by a county board of equalization simply because their agency may not receive the same funding that it would have had an exemption not been granted. It is highly doubtful the Idaho Legislature intended for I.C. § 63-511(1) to be interpreted as such, and much more likely that the county assessors and state tax commission were intended to represent other government interests in appeals to the BTA.

The Agency contends that the Agency's interests are not protected by the State Tax Commission. *Appellant's Brief*, pg 13. However, the State Tax Commission is charged with the duty to "require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly." I.C. § 63-105A(4). Further, the State Tax Commission is required to "carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing law are defective or are improperly or negligently administered." I.C. § 63-150A(11). The State Tax Commission has a statutory duty to correct erroneous assessments and to correct where existing laws are improperly or negligently administered. An inappropriate tax exemption would fall under the "improperly or negligently

administered” language of the statute. Therefore, an urban renewal agency’s interest is protected by State Tax Commission.

Even if I.C. § 63-511(1) does not preclude agencies other than the State Tax Commission or the county assessor from having standing in a case such as this, the Agency in this case still lacks standing to the fact that they cannot demonstrate any injury beyond a mere possibility as required by *Ferhnan*.

4. Idaho Milk Products, Inc v. Jerome County Assessor and Jerome County Board of County Commissioners is Distinguishable from the Case Before the Court.

The Agency has cited to *Idaho Milk Products, Inc., v. Jerome County Assessor and Jerome County Board of County Commissioners*, Case No. CV 11-895 as a case where the Jerome Urban Renewal Agency was allowed to intervene because the impact the assessment would have on their revenue stream. This case is inapplicable to the case before the Court because the *Idaho Milk Products* case deals with an assessment value, and not a tax exemption. While both an assessment and an exemption may affect the revenue stream of an urban renewal agency, the two present different legal issues. Ashton Memorial has stated in this brief that an urban renewal agency might possibly have standing to challenge the amount of funds they received if taxes had been levied, but that is a different question from whether an entity is granted a tax exemption. A county board of equalization has the discretion to grant an exemption, which would preclude any funds being paid to an urban renewal agency under I.C. § 50-2908.

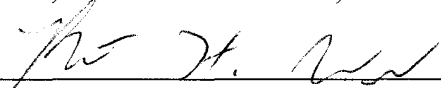
CONCLUSION

For the reasons set forth in this brief, particularly that the Agency cannot prove beyond a

preponderance of the evidence that they have suffered any immediate injury beyond a mere possibility, Ashton Memorial respectfully requests that this Court uphold the BTA's final Order Dismissing Appeals and the denial of the Agency's Motion to Consider.

DATED this 4th day of May, 2012.

RIGBY, ANDRUS & RIGBY, Chartered



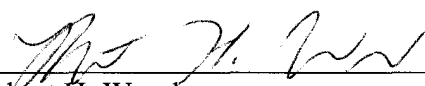
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CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 4th day of May, 2012.

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
independent public body corporate and politic,

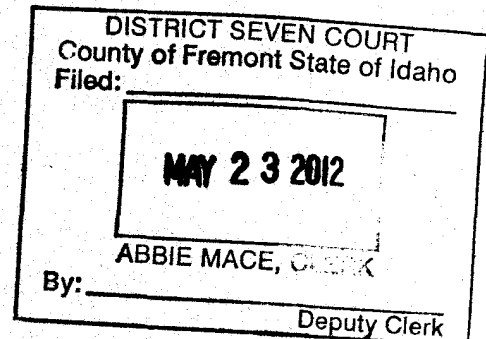
Petitioner/Appellant,

v.

ASHTON MEMORIAL, INC., an Idaho
corporation, doing business as ASHTON
LIVING CENTER,

Respondent/Respondent.

Case No. CV2012-58



APPELLANT'S REPLY BRIEF

Appealed from the Idaho Board of Tax Appeals
Appeal Nos. 11-A-1400 and 11-A-1401
David E. Kinghorn and Linda S. Pike, Presiding

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ASHTON URBAN RENEWAL AGENCY, an
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INTRODUCTION

Appellant Ashton Urban Renewal Agency (the "Agency") asserts the Idaho Board of Tax Appeals (the "BTA") erred in dismissing the Agency's appeals for lack of standing and denying the Agency's motion to reconsider. The Agency has statutory standing to file an appeal as a person aggrieved pursuant to Idaho Code § 63-511 for purposes of challenging whether Respondent Ashton Memorial, Inc., doing business as Ashton Living Center (the "Ashton Living Center") was properly granted property tax exemption on parcel numbers PPA00090254050 (the "Personal Property") and RPA00090254050 (the "Real Property") as a charitable corporation pursuant to Idaho Code § 63-602C. The Real Property and Personal Property are located within the Agency's urban renewal/revenue allocation area. Further, the Agency has shown the pecuniary impact the property tax exemption has had on the Agency's funding.

The BTA's Final Order Dismissing Appeals entered on November 29, 2011, and the BTA's denial of the Agency's Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011 (the "Motion to Reconsider"), should be reversed, and the matter remanded for determination on the merits. The Fremont County Board of Equalization (the "BOE") primarily based its decision to grant property tax exemption on the finding that Ashton Memorial, Inc. has been granted federal tax exemption pursuant to § 501(c)(3) of the Internal Revenue Code as a charitable corporation. This fact is not determinative on the issue on whether the Ashton Living Center has met the requirements of a charitable corporation subject to property tax exemption under Idaho law. Determination on the merits on remand would be

considered *de novo* with the opportunity for discovery, which is not part of the appeals process before the BOE.

It is important to note, the Agency received property taxes collected on the increment from the Real Property and Personal Property from approximately calendar years 2003 through 2010¹, and relied on and budgeted for the receipt of those funds.

ARGUMENT

A. **The Agency is a “person aggrieved” and has standing to appeal the decision granting property tax exemption to the Ashton Living Center property.**

The Agency has shown it has suffered pecuniary injury by the decision granting Ashton Living Center property tax exemption. (Affidavit of Harlan W. Mann (“Mann Aff.”), R. Tab 5.) Further, it is undisputed that but for the exemption, the Agency would receive the property taxes collected on the increment from the Ashton Living Center property pursuant to Idaho Code § 50-2908. The impact of the exemption on the Agency could not be more immediate. As a result, the Agency has met the standing requirements to appeal the decision granting property tax exemption to the Ashton Living Center property.

Ashton Living Center’s argument that the granting of the exemption cuts off the Agency’s entitlement to the property taxes on the increment only weighs in favor of a finding that the Agency is a “person aggrieved.” It was the granting of the exemption that caused the pecuniary harm to the Agency. Ashton Living Center cannot argue that even without the granting of the exemption, the Agency would not be entitled to funds. It is uncontested that if the Ashton

¹ The BOE granted property tax exemption to the Ashton Living Center for calendar years 2010 and 2011.

Living Center is found to be a taxable property, then the Agency would receive the property taxes on the increment from that property.

Ashton Living Center's argument that an urban renewal agency will never have standing to contest the improper granting of property tax exemption on a property within a revenue allocation area pursuant to certain language in Idaho Code § 50-2908 is without merit and is not the standard. Idaho Code § 63-511(1) provides an appeal from a decision of the County board of equalization may be filed by a "person aggrieved when he deems such action illegal or prejudicial to the public interest." It cannot be that injured urban renewal agencies do not have a remedy. The impact of exemptions, especially those that might not be proper, is devastating. To assert an agency lacks standing to oppose the granting of a property tax exemption is simply inaccurate and is contrary to the language in Idaho Code § 63-511(1). The Ashton Living Center fails to identify who would constitute a "person aggrieved" and essentially requests this language be read out of the statute, which is contrary to the principles of statutory construction. *See State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006) ("In determining the ordinary meaning of a statute 'effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.'").

It is important to consider the Agency established the revenue allocation area in 1996. The new Ashton Living Center facility was built in the revenue allocation area in 2002. The Ashton Living Center was aware it was building in the revenue allocation area. The Ashton Living Center was not exempt and paid property taxes for calendar years 2002 through 2009.

The Agency relied on and budgeted for receipt of those funds. The Agency had a realistic expectation of continued receipt of those funds.

The Agency meets the requirements of a “person aggrieved” as that term is further defined in *Application of Fernan Lake Village* and *State v. Eves*. *Application of Fernan Lake Village*, 80 Idaho 412, 415, 331 P.2d 278, 279 (1958) and *State v. Eves*, 6 Idaho 144, 148, 53 P. 543, 544 (1898). The Agency has suffered immediate pecuniary harm due to the improper granting of the property tax exemption, which is sufficient to provide the Agency with standing to contest the granting of the property tax exemption.

B. The tax exemption granted on the Ashton Living Center property was “prejudicial to the public interest.”

The Ashton Living Center property does not meet the requirements of a charitable corporation; therefore, the improper grant of property tax exemption was “prejudicial to the public interest” as exemptions are not favored under the law.

“Idaho case law requires that all tax exemption statutes be strictly and narrowly construed against the taxpayer, who must show a clear entitlement, and in favor of the state. Courts may not presume exemptions, nor may they extend an exemption by judicial construction where not specifically authorized.” *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). Further, “[t]ax exemptions exist as a matter of legislative grace, epitomizing the antithesis of traditional democratic notions of fairness, equality, and uniformity.” *Id.* at 429, 849 P.2d at 102. It is in the interests of the public to make sure the proper process is used in analyzing a request for property tax exemption.

Idaho Code § 63-602C exempts property from taxation “belonging to any fraternal, benevolent, or charitable . . . corporation . . . used exclusively for the purposes for which such . . . corporation . . . is organized.” I.C. § 63-602C.

The statute does not provide any guidance as to what constitutes a charitable corporation. This definition has largely evolved through case law. The Idaho Supreme Court has identified a list of non-exclusive factors to be considered in determining an entity’s charitable status: (1) the stated purposes of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the “charity” provided is based on need. *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984) (additional citation omitted). Determination of an institution’s charitable status is to be decided on a case-by-case basis. *Id.*

The BOE primarily based its decision to grant property tax exemption on the Ashton Living Center property on the finding that Ashton Memorial, Inc. has been granted federal tax exemption pursuant to § 501(c)(3) of the Internal Revenue Code as a charitable corporation. This fact alone is not determinative on the issue on whether the Ashton Living Center has met the requirements of a charitable corporation subject to property tax exemption under Idaho law.

It is important to note the statutory process allowing a party to appeal the grant of property tax exemption to the BOE does not allow for any discovery. An appeal of a decision of the BOE to the BTA or the district court provides the matter shall be heard *de novo* and allows

the parties to engage in discovery.² Further, the BOE record was insufficient to analyze the list of non-exclusive factors as set forth in the *Appeal of Sunny Ridge Manor, Inc.* and the BTA record on appeal does not contain any facts applying to the merits of whether the property tax exemption was properly granted. The unsupported factual assertions in Respondent's Reply Brief attempting to show the Ashton Living Center property meets the requirements of a charitable corporation under Idaho law should not be considered in analyzing the standing argument. While both parties agree the only issue on appeal is the BTA's denial of standing, it is necessary to reply to Ashton Living Center's arguments on the merits.

1. Stated purpose of Ashton Memorial's undertaking as a charitable and benevolent entity

The Third Amended and Restated Articles of Incorporation (the "Articles of Incorporation") are not part of the record on appeal. The cited portions of the Articles of Incorporation contain language required to comply with Ashton Memorial's federal tax exemption pursuant to § 501(c)(3) of the Internal Revenue Code as a charitable corporation. Sections of the Articles of Incorporation, cited as (a), (b), and (d), on their face do not necessarily meet the definition of "charitable activity." Providing healthcare services alone is not a charitable function. Further, the asserted purposes of carrying on educational activities and promoting the general health of the community depend on whether such activity is warranted, or is based on board approval. Finally, Ashton Memorial owns and operates several properties. At issue here is the property tax exemption granted on the Ashton Living Center property. It is not

² In actions pending before the BTA, parties must obtain permission before proceeding with discovery.

clear what sections of the Articles of Incorporation might apply to the functions of the Ashton Living Center. Therefore, at best, the language in the Articles of Incorporation is a neutral factor.

2. Whether its functions are charitable

There are no facts in the record supporting Ashton Living Center's claim that its functions are benevolent and charitable. Ashton Living Center's claim that it has incurred periodic loss is unsupported and there is no evidence in the record as to whether the fees charged to residents cover the operating expenses. Ashton Living Center asserts it provides care at reduced rates. This could be a business decision and not a decision based on providing a charitable function. Further, there is no information in the record setting forth Ashton Living Center's financial records. Ashton Living Center asserts it charges the amounts required by the facility's contract with Medicaid/Medicare, but does not set forth the range of amounts charged. The operating costs of the Ashton Living Center are unknown. If the fees charged to the facility's residents in combination with payments from Medicaid/Medicare are sufficient to cover the operating expenses that is a factor that weighs against a finding of charitable function. *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 102, 675 P.2d 813, 817 (1984). The fact Ashton Living Center is not operating at full capacity does not mean that it is functioning as a charitable corporation.

Ashton Memorial claims it has written-off charged services in the amount of \$70,000, claiming that amount as a charitable benefit. It is unclear whether this write-off is solely attributable to the services provided at the Ashton Living Center, as Ashton Memorial also operates other facilities. The write-offs could be for non-charitable purposes and wholly

unrelated to the provision of care for indigent individuals. Further, the amount of the write-off does not mean anything if it is not compared to the total revenues and expenses of the facility. This amount could be de minimus.

Based on the information provided in Respondent's Reply Brief, it appears the Ashton Living Center's source of revenue is tax dollars, including contracts with Medicare/Medicaid and money received from the North Fremont Hospital Taxing District. As the facility is largely funded by the public, it does not provide a general public benefit and the limited amount of donations do not appear to lessen the burden on government. *See Community Action Agency v. Board of Equalization of Nez Perce County*, 138 Idaho 82, 87, 57 P.3d 793, 798 (2002).

There is no information in the record regarding the qualifications for residency. If patients do not qualify for Medicaid/Medicare are those individuals ultimately moved to a different facility?

Finally, information regarding the Island Park medical facility is unrelated to the function of the Ashton Living Center facility.

3. Whether Ashton Living Center is supported by donations

Ashton Memorial asserts without support in the record that it receives grants and donations on an annual basis in the amount of \$32,442.00. It is unclear how these funds might be applied to Ashton Living Center, or whether they are applied to cover the costs at other facilities. As set forth above, it appears Ashton Living Center is largely funded by the public, which weighs against a finding of a general public benefit. Further, some of the donations are from a

local taxing district. Again, depending on the total Ashton Living Center revenues and expenses, which are unknown, the amount of donations appears de minimus.

The amount of loss attributed to the Ashton Living Center is unknown. Based on the claimed amount of loss in the Respondent's Reply Brief, it does not appear the donations are covering the gap.

4. Whether the recipients of Ashton Living Center's services are required to pay for the assistance they receive

The amount or range of charges for services as required by Ashton Living Center's contract with Medicaid and Medicare is unknown. Further, it is unknown what the operating costs are for the facility. Finally, there is no information in the record supporting that any write-offs are attributable to services rendered at Ashton Living Center and/or that those write-offs represent more than a de minimus amount of the overall operating costs of the facility. Finally, if residents are found to not qualify for Medicaid and Medicare, it is unknown whether those residents are allowed to remain at the facility.

5. Whether there is a general public benefit

As set forth above, the fact the Ashton Living Center is primarily supported by the public weighs against a finding the Ashton Living Center provides a general public benefit. The benefits set forth in Respondent's Reply Brief generally benefit the limited number of residents at the facility and not the general community as a whole.

6. Whether the income received produces a profit

There is no evidence in the record whether Ashton Living Center's revenues exceed its expenses. Further, there is no evidence whether this facility has ever operated at a profit. It does not seem the limited donations (\$32,442.00) are sufficient to cover or lessen the facility's operating expenses.

7. To whom the assets would go upon dissolution of the corporation

Again, the Articles of Incorporation are not in the record. This is typically language required to maintain its status as a federally exempt charitable corporation under § 501(c)(3) of the Internal Revenue Code. This factor is neutral at best.

8. Whether the "charity" provided is based on need

There is no evidence in the record as to whether services are provided at less than full value. There is no evidence in the record as to whether Ashton Living Center offers any financial assistance to its residents. While Ashton Living Center claims without support in the record to treat individuals despite ability to pay, it is unclear whether those individuals are allowed to be residents of the facility.

C. The Agency's interests are unique and are not adequately protected by others.

The Agency's interests are not protected by the county assessor and the State Tax Commission. In fact, the County Assessor and the State Tax Commission do not have any incentive to act on behalf of the Agency. There is no statutory or common law obligation

imposed on the County Assessor or the State Tax Commission to protect the interests of the Agency. Furthermore, “[i]n determining the ordinary meaning of a statute ‘effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.’” *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006), citing *In re Winton Lumber Company*, 57 Idaho 131, 136, 63 P.2d 664, 666 (1936) (emphasis added). Ashton Living Center’s interpretation of Idaho Code § 63-511 attempts to read the “person aggrieved” language out of the statute. The statute does not state only the property owner, the assessor or state tax commission has standing to appeal.

It is unrealistic to assume the state tax commission monitors every exemption filing in each county. Further, to require the Agency to go through the County Assessor or state tax commission is not required or anticipated by Idaho Code § 63-511, and the Assessor and state tax commission have no obligation to pursue the Agency’s claims.

The Agency has independently met the standing requirements of a person aggrieved and, therefore, has standing to appeal.

The implication of Ashton Living Center’s argument is that an agency impacted by an improper decision of a county board of equalization has no remedy, which is not supported by Idaho Code § 63-511, or Idaho case law.

CONCLUSION

For the reasons set forth in the briefing, the Agency has statutory standing to appeal the Fremont County Board of Equalization’s decision granting tax exempt status to the Ashton Living Center property as the Agency is a person aggrieved by the decision. For good cause

shown, the Agency respectfully requests the Court reverse the BTA's Final Order Dismissing Appeals and the denial of the Agency's Motion to Reconsider and remand the matter to the BTA to consider the underlying appeals on their merits.

DATED this 22nd day of May 2012.

ELAM & BURKE, P.A.

By: Meghan S. Conrad
Meghan Sullivan Conrad
Attorneys for Ashton Urban Renewal Agency

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of May 2012, I caused a true and correct copy of the foregoing document to be served as follows:

G. Rich Andrus
Robert H. Wood
Rigby, Andrus & Rigby
Attorneys at Law
P.O. Box 250
Rexburg, ID 83440
*Attorneys for Respondent Ashton
Memorial, Inc.*

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Meghan S. Conrad
Meghan Sullivan Conrad

Ryan P. Armbruster, ISB #1878
 Meghan Sullivan Conrad, ISB #7038
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
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DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 JUN - 4 2012
 ABBIE MACE, CLERK
 By: _____ Deputy Clerk

Attorneys for Petitioner Ashton Urban Renewal Agency

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
 independent public body corporate and politic,

Petitioner,

v.

ASHTON MEMORIAL, INC., an Idaho
 corporation, doing business as ASHTON
 LIVING CENTER,

Respondents.

Case No. CV2012-58

NOTICE OF HEARING

TO: ALL PARTIES ABOVE NAMED AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the undersigned Petitioner has scheduled a hearing for oral argument before the Honorable Gregory W. Moeller, District Judge, at the Fremont County Courthouse, St. Anthony, Idaho, on the 26th day of June 2012, at the hour of 3:00 p.m., or as soon thereafter as counsel can be heard.

DATED this 31st day of May 2012.

ELAM & BURKE, P.A.

By: Meghan S. Conrad
 Meghan Sullivan Conrad
 Attorneys for Ashton Urban Renewal Agency

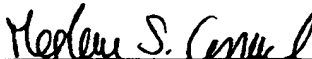
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May 2012, I caused a true and correct copy of the foregoing document to be served as follows:

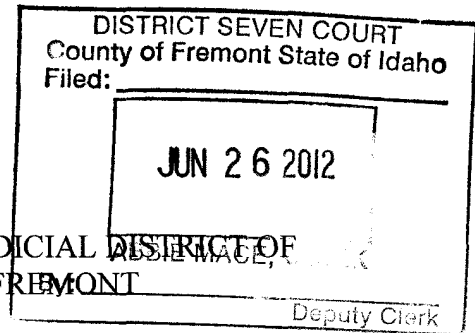
G. Rich Andrus
Robert H. Wood
Rigby, Andrus & Rigby
Attorneys at Law
P.O. Box 250
Rexburg, ID 83440

*Attorneys for Respondent Ashton
Memorial, Inc.*

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile



Meghan Sullivan Conrad



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO COUNTY OF FREMONT
DISTRICT COURT

TYPE OF HEARING: LAW AND MOTION
PRESIDING JUDGE: GREGORY W. MOELLER
DATE: JUNE 26, 2012
ATTORNEYS PRESENT:
COURT REPORTER: DAVE MARLOW
CLERK: DEBORAH MACE

354 **ASHTON URBAN RENWAL AGENCY VS IDAHO BOARD OF TAX
COMMISSION**

APPEARING FOR PLAINTIFF IS MR RYAN ARMBUSTER
APPEARING FOR RESPONDANT IS RICH ANDRUS AND MR WOOD.
MR ARMBUSTER COMMENTS ON OPENING ARGUMENT.
WILL TAKE 30 MIN.

356 IS PRESENT SEEKING A REVERSAL. COMMENTS ON IDAHO CODE.
IS NOT PRESENT TO ARGUE IF ASHTON URBAN RENEWAL IS
ENTITLED TO TAX EXEMPTION. WOULD LIKE REVERSAL OF
THE COURT ASKS AS TO WHAT DISTINGUISHES BETWEEN OTHER
BOARDS. MR ARMBUSTER RESPONDS.

THE COURT ASKS IF RESPONDANTS WERE NON EXEMPT.
URGES THE COURT TO REVERSE AND DEMAND. FEELS STRONGLY
THE AGENCY WAS ENTITLED TO A DAY IN COURT.

403 THE COURT ASKS AS TO LANGUAGE CHANGING. MR ARMBUSTER
COMMENTS. IS A TAX EXEMPT ENTITY.

406 ROBERT WOOD WILL PRESENT ARGUMENT ON BEHALF OF
RESPONDANTS.

THE COURT CONTINUES TO INQUIRE OF MR WOODS AS TO DUE
PROCESS OF LAW.

427 MR RICH ANDRUS ASKS FOR A FEW MOMENTS. COMMENTS ON
STANDING AND ELABORATES. ISSUE BEFORE THE COURT IS IF
THE RENEWAL DISTRICT HAS STANDING.
FEELS STATUTE IS CLEAR.

432 THE COURT COMMENTS ON MISSOURI DECISION

433 MR ARMBUSTER ON THE LAST WORD
COMMENTS ON CHAPTER 50 TITLE 12.

THE COURT ASKS AS TO IDAHO CODE 63-11- ASKS WHICH MR
ARMBRUSTER IS CLAIMING. OBJECTION IS AGREIVED PERSON AND
IS PREJ.

THE COURT COMMENTS ON THE WORD DEEMS.

442 MR ANDRUS HAS ONE COMMENT. WILL TAKE ISSUE IF ASHTON
RENEWAL IS NOT A POLITICAL SUB. OF THE STATE OF IDAHO.
THE COURT RESPONDS. MR ANDRUS DOES NOT SEE HOW THAT IS
RELEVANT IF THAT IS THE CASE.

443 THE COURT WILL TAKE THIS UNDER ADVISEMENT.
WILL ALLOW BOTH PARTIES 7 DAYS IF THEY CAN FIND ANY
AUTHORITY IF THEY WISH TO FILE. WILL BE DUE NEXT TUES.
AT 500PM.

Ryan P. Armbruster, ISB #1878
 Meghan Sullivan Conrad, ISB #7038
 ELAM & BURKE, P.A.
 251 East Front Street, Suite 300
 Post Office Box 1539
 Boise, Idaho 83701
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DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 JUL - 2 2012
 ABBIE MACE, CLERK
 By: _____ Deputy Clerk

Attorneys for Petitioner Ashton Urban Renewal Agency

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL AGENCY, an
 independent public body corporate and politic,

Petitioner,

v.

ASHTON MEMORIAL, INC., an Idaho
 corporation, doing business as ASHTON
 LIVING CENTER,

Respondents.

Case No. CV2012-58

MEMORANDUM OF AUTHORITY

COMES NOW Petitioner Ashton Urban Renewal Agency ("Agency"), by and through its attorneys of record, Elam & Burke, P.A., and submits its Memorandum of Authority as requested by the Court during oral argument on June 26, 2012.

A. **Missouri line of cases have held political subdivisions do not have standing to obtain judicial review based on lack of express statutory authority. Cases are distinguishable from proceeding before this Court.**

1. *State ex rel. St. Francois County School District R - III v. Lalumondier*, 518 S.W.2d 638 (Mo. 1975). Court held school districts do not have standing to obtain a review of alleged underassessment of property by the county board of equalization. Decision based on finding there was no statutory provision for an appeal by a school district. Important to note that statute providing for an appeal to the state tax commission from the county board of equalization

expressly granted the right of appeal to property owners, merchants and manufacturers only; no “person aggrieved” analysis was undertaken by the court. *See* V.A.M.S. § 138.430(2) (1973).

2. *City of Richmond Heights v. Board of Equalization of St. Louis County*, 586 S.W.2d 338 (Mo. 1979). Relying on the statutory construction in *State ex rel. St. Francois County School District R-III v. Lalumondier*, Court held there was no express statutory authorization for a city or school district to obtain review of a decision of the county board of equalization reducing a taxpayer’s assessment.

3. *O’Flaherty v. State Tax Commission of Missouri*, 680 S.W.2d 153 (Mo. 1984). Again relying on the statutory construction in *State ex rel. St. Francois County School District R-III v. Lalumondier*, Court held county tax assessor did not have express statutory authorization to appeal the decision of the county board of equalization.

4. *Alexian Brothers Sherbrooke Village v. St. Louis County*, 884 S.W.2d 727 (Mo. Ct. App. 1994). Court held school district did not have standing to intervene as a party-defendant in taxpayer’s suit for declaratory judgment seeking property tax exemption based in part on analysis that school district did not have statutory authority to initiate an action, and therefore, Court refused to expand procedural intervention rules to provide the school district with standing.

B. Cases finding standing for taxpayer or political subdivision based on express statutory authority and/or analysis of “aggrieved.”

1. *R.K. Richards v. Iowa Department of Revenue and Finance*, 454 N.W.2d 573 (Iowa 1990). Court held taxpayer adversely affected by agency action upholding tax exemption was entitled to judicial review.

2. *Salt Lake City Corp. v. Property Tax Division of the Utah State Tax Commission*, 979 P.2d 346 (Utah 1999). While not directly on point, Court held city and school district had

standing to challenge state tax commission's method of apportioning aircraft value among taxing districts in Utah. Court analyzed "aggrieved" party language.

3. *Atascosa County v. Atascosa County Appraisal District*, 990 S.W.2d 255 (Tx. 1999). Statute expressly allows a taxing unit to challenge appraisal district decisions that affect appraisal records.

4. *Wilmington City School District Board of Education v. Board of Commissioners of Clinton County*, 750 N.E.2d 1141 (Ohio Ct. App. 2000). Board of Education had a state statutory right to provide input concerning the granting of certain tax exemptions within a community reinvestment area.

5. *Independent School Dist. No. 1 v. Common School Dist. No. 1*, 56 Idaho 426 (1936). Funds *misapportioned* among school districts. Court held districts that did not receive their proportionate share of funds could maintain an action against the district which received more than its share, in part concluding that if a district cannot prosecute such an action, then there would be no way to correct the wrong or misapplication of funds.

C. Miscellaneous

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428 (2012). Primarily discusses cases focusing on whether a taxpayer has standing; however, the report may provide the Court with additional guidance.

DATED this 2nd day of July 2012.

ELAM & BURKE, P.A.

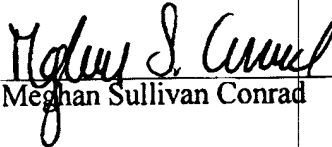
By: Meghan S. Conrad
Meghan Sullivan Conrad
Attorneys for Ashton Urban Renewal Agency

CERTIFICATE OF SERVICE

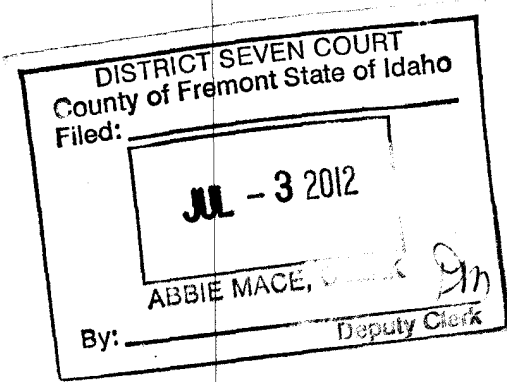
I HEREBY CERTIFY that on the 2nd day of July 2012, I caused a true and correct copy of the foregoing document to be served as follows:

G. Rich Andrus
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Attorneys at Law
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*Attorneys for Respondent Ashton
Memorial, Inc.*

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Meghan Sullivan Conrad

G. Rich Andrus, ISBN 1347
 Robert H. Wood, ISBN 8229
 RIGBY, ANDRUS & RIGBY, *Chartered*
 Attorneys at Law
 25 North Second East
 Rexburg, Idaho 83440
 Telephone: 208-356-3633



Attorneys for Respondent, Ashton Memorial, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL)
 AGENCY, an independent public body)
 corporate and politic,)
)
 Petitioner,)
 v.)
 ASHTON MEMORIAL, INC., an Idaho)
 corporation, doing business as ASHTON)
 LIVING CENTER,)
)
 Respondents.)
)
)

Case No. 2012-58

MEMORANDUM OF AUTHORITY

Ashton Memorial, Inc. , by and through its attorneys of record, Rigby, Andrus & Rigby, Chtd, hereby submits its Memorandum of Authority per the Court's instructions given at oral argument.

The Appellant/Petitioner has identified four Missouri cases, each with similar holdings that establish, at least in Missouri, that political subdivisions which lack express statutory authority to appeal lack standing. *State ex rel. St. Francois County School District R - III v. Lalumondier*, is the first case in Missouri to establish this precedent. 518 S.W.2d 638 (Mo.

1975). It was followed by *City of Richmond heights v. Board of Equalization of St. Louis County*, and *O'Flaherty v. State Tax Commission of Missouri*, 586 S.W.2d 338 (Mo. 1979), 680 S.W.2d 153 (Mo. 1984). Both cases rely on the decision in *St. Francois* in reaching their conclusions. Finally, the Court held in *Alexian Brothers Sherrooke Village v. St. Louis County*, 884 S.W.2d 727 (Mo. Ct. App. 1994) that statutory authority was necessary for a school district to initiate an action, and thus it was also required to intervene in a property tax exemption case.

The Appellant/Petitioner properly notes that these cases do not contain a "person aggrieved analysis," and as such distinguish the current case from the Missouri line of cases. However, these cases are very similar to the case before the Court in that no express statutory authority existed for the agencies in question to appeal. Similarly, no express authority exists for an Urban Renewal Agency to appeal a decision of the Board of Equalization. The Appellant therefore must lean on the language in 63*** allowing for a "person aggrieved" to appeal. Where the statute in question provides that two other governmental entities have standing, (the county Assessor and the BTA) the Missouri policy of requiring express statutory authority to appeal is wise as it limits the otherwise broad class of government entities who can appeal such decisions. The Appellants standard of a person aggrieved is so broad that any agency or person who received less of a government benefit would have standing to appeal a board of equalization decision granting a tax exemption. However, the Respondents believe that upholding the BTA's decision that the Appellant lacks standing would be narrowly limited only to Urban Renewal Districts in cases where tax exemptions were granted, as IC 50-2908, (the statute granting allocations to URAs) clearly precludes URA's from having an absolute right to allocated funds, thereby precluding them from claiming they are a person aggrieved.

Memorandum of Authority - Page - 2

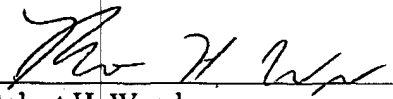
rw/ashtonmemorial1.mem

The Appellants list several other out of state cases in which statutory authority to appeal is given or in which a person/entity is considered "aggrieved." These cases are distinguishable from the case at hand as no express statutory authority exists and the Appellant is not a "person aggrieved."

The Appellants cite *Independent School Dist. No 1 v. Common Shcool Dist. No. 1*, 56 Idaho 426 (1936), in which the Court held that school districts could maintain an action when funds had been misapportioned among school districts. The Appellant notes that the Court in that case held that it might be necessary for a school district to prosecute such an action to correct the wrong or misapplication of funds. It is important to distinguish that the case currently before the Court in no way deals with a misapplication of funds. Also, it is important to note that unlike a misapportionment of funds amongst school districts, in the current case, a public hearing was held in which the Appellant was able to provide evidence and argument in support of their position.

DATED this 3rd day of July, 2012.

Rigby, Andrus & Rigby

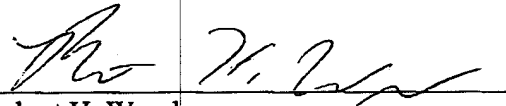

Robert H. Wood

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 3rd day of July, 2012.

RIGBY ANDRUS & RIGBY, Chartered


Robert H. Wood

Ryan P. Armbruster
Meghan Sullivan
Elam & Burke
P.O. Box 1539
Boise, ID 83701
208-384-5844

Mail
 Hand Delivery
 Facsimile

Honorable Gregory W. Moeller
(Courtesy Copy)
Madison County Courthouse
Rexburg, ID 83440

Mail
 Hand Delivery
 Facsimile

Date: August 10, 2012

Time: 4:20 p.m.

By: Gary W. Powell
DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR FREMONT COUNTY**

ASHTON URBAN RENEWAL AGENCY,)
an independent public body corporate and)
politic,)

Case No. CV-12-58

Petitioner,)

v.)

DECISION ON REVIEW

IDAHO BOARD OF TAX APPEALS and)
ASHTON MEMORIAL, INC., an Idaho)
Corporation, doing business as ASHTON)
LIVING CENTER,)

Respondents.)

I. NATURE OF THE CASE

This matter comes before the Court on a *Petition for Judicial Review*. Petitioner seeks review of a decision by the Idaho Board of Tax Appeals that held Petitioner lacked standing to appeal a decision of the Board of Equalization for Fremont County. Following briefing, the Court heard oral argument on June 26, 2012. The parties were granted seven days to file supplemental briefs, after which the Court took the matter under advisement on July 3, 2012.

II. STATEMENT OF FACTS

Petitioner Ashton Urban Renewal Agency ("AURA" or "the Agency") is an urban renewal agency organized pursuant to the Idaho Urban Renewal Law of 1965, I.C. §§ 50-2001, *et seq.* and the Local Economic Development Act, I.C. §§ 50-2901, *et seq.*¹

¹ *Appellant's Brief*, p. 2 (April 6, 2012).

Urban renewal agencies are funded through revenue allocation, which allows them to pay for projects and improvements within designated areas. After a geographic boundary is set for the revenue allocation area, the County Assessor freezes the assessed value of the real property within the area, with the “frozen value” called the base. *See* I.C. § 50-2903(4). The actions of the urban renewal agency and the investments of other parties increase the property values in the area. The increase over the base is called the increment value. *See* I.C. § 2903(10). The property taxes then collected on the increment go to the agency in the manner set forth in I.C. § 50-2908. This is the primary revenue stream for an urban renewal agency since it does not have the authority to independently levy property taxes.

On December 21, 1996, the City Council of Ashton found certain locations within the City of Ashton to be deteriorating and adopted Ordinance No. 376, which approved the Ashton Renewal Plan and provided for revenue allocation pursuant to I.C. § 50-2904.² The properties at issue in this matter (Parcel Nos. PPA00090254050 and #RPA00090254050) are located within the specified urban renewal area and are owned by Respondent Ashton Memorial, Inc. (“Ashton Memorial”).³ Ashton Memorial is an Idaho Corporation doing business as the “Ashton Living Center.” It provides assisted living, nursing, and medical care in the city of Ashton.⁴

On January 19, 2011, Ashton Memorial filed for tax exemptions on both parcels with the Fremont County Board of Equalization (“BOE”).⁵ AURA opposed the requests for exemptions.⁶ On July 8, 2011, the Fremont County Commissioners sitting as the BOE voted to approve a full 100% tax exemption for Ashton Memorial’s real and personal property pursuant to I.C. 63-602(c).⁷

The 2011 estimated assessment of Ashton Memorial’s property was \$2,781,023. The 2011 net levy rate for AURA’s revenue allocation area is 0.015633479. Therefore, by granting the exemption, AURA’s anticipated property tax revenue decreased by

² *Id.*

³ *Id.* at p. 4; *Respondent’s Reply Brief*, p. 1 (May 4, 2012).

⁴ *Respondent’s Reply Brief*, p. 1.

⁵ Agency Record, *Fremont County Tax Exemption Short Form Application* (January 19, 2011).

⁶ Agency Record, *Board of Equalization Appeal Form* (June 27, 2011).

⁷ Agency Record, *Notification Letter* (July 13, 2011).

\$43,477. This will result in an approximately 55% reduction in AURA's projected revenue for 2012.⁸ Ashton Memorial has not disputed these figures.

On August 9, 2011 AURA filed a timely appeal challenging the grant of exemption on the grounds that the "property [did] not qualify for [the] property tax exemption."⁹ The Board of Tax Appeals ("BTA") notified AURA that its appeal had been received and that "hearings will be scheduled within the next 90 days."¹⁰ On October 5, 2011, Ashton Memorial filed an answer and notice of appearance contending that AURA lacked standing to challenge the exemption.¹¹

The BTA, without conducting the hearings mentioned in its earlier letter, entered its *Final Order Dismissing Appeals* on November 29, 2011. The BTA held that AURA lacked standing to appeal the grant of exemption because AURA "failed to demonstrate the alleged injury is more than some possible, remote consequence, or mere possibility arising from some unknown and future contingency."¹² While acknowledging the lack of "statutory [or] appellate court guidance" on this question, BTA concluded that AURA did not qualify as an aggrieved person under I.C. § 63-511.¹³

AURA filed a motion to reconsider on December 8, 2011, accompanied by a supporting memorandum and affidavit. Ashton Memorial filed a responsive brief on December 28, 2011 and AURA submitted a reply brief on January 3, 2012. The BTA denied the motion for reconsideration, again without a hearing, on January 5, 2012. The BTA concluded:

The Board believes it understands the facts of record and pertinent law.
We find no compelling reason to grant reconsideration.¹⁴

AURA then filed its petition for review with the district court on February 2, 2012.

⁸ Agency Record, *Affidavit of Harlan W. Mann in Support of Motion to Reconsider the Final Order Dismissing Appeals Entered November 29, 2011*, ¶¶ 4-8 (December 8, 2011).

⁹ Agency Record, *Property Tax Appeal Form* (August 9, 2011).

¹⁰ Agency Record, *Letter to Ryan P. Armbruster from Board of Tax Appeals* (September 21, 2011).

¹¹ Agency Record, *Answer and Notice of Appearance* (October 5, 2011)

¹² Agency Record, *Final Order Dismissing Appeals*, p. 2 (November 29, 2011).

¹³ *Id.*, p. 1.

¹⁴ Agency Record, *Order Denying Reconsideration*, p. 2 (January 5, 2012).

III. STANDARD OF REVIEW

Judicial review is governed by Idaho Rule of Civil Procedure 84. This case concerns an appeal from a decision of the BTA. Therefore, it is also governed by the procedures set forth in I.C. § 63-3812, which allows a party “aggrieved by a decision of the board of tax appeals or a decision on a motion for rehearing” to appeal to the district court.

The Idaho Supreme Court noted in *Kimbrough v. Idaho Bd. of Tax Appeals*, 150 Idaho 417, 419, 247 P.3d 644, 647, fn. 2 (2011), that “[u]nlike appeals from most state agencies, the Idaho Code does not require the district court to rely on the record generated before the Board of Tax Appeal.” In fact, I.C. § 63–3812(c) provides that appeals “shall be heard and determined by the court without a jury in a trial *de novo* on the issues in the same manner as though it were an original proceeding in that court.” Here, apparently because this matter is primarily an issue of statutory interpretation, neither party sought to present additional evidence and based their arguments entirely on the agency record.

The burden of proof in a tax appeal review “fall[s] upon the party seeking affirmative relief to establish that the decision made by the board of tax appeals is erroneous.” *Id.* “The interpretation and application of a statute are pure questions of law over which [a reviewing] Court exercises free review.” *Callies v. O'Neal*, 147 Idaho 841, 216 P.3d 130 (2009).

IV. ISSUE PRESENTED ON REVIEW

Whether the BTA erred in dismissing the AURA’s appeals for lack of standing and denying its motion for reconsideration.

V. DISCUSSION

A. Standing is a Jurisdictional Requirement in Every Case.

The Court notes that this case begins and ends with the issue of standing. Standing is jurisdictional, meaning that if there is no standing, the case cannot proceed. “It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court’s jurisdiction must have standing. 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, 44 P.3d 1157, 1159 (2002) (citations omitted). The Idaho Supreme Court has also held that “[w]here a plaintiff does not have standing it cannot be said that the case or controversy requirement has been satisfied; therefore the judiciary lacks jurisdiction to hear the case.” *Martin v. Camas Count ex rel. Bd. Com’rs*, 150 Idaho 508, 512, 248 P.3d 1243, 1247 (2011).

To satisfy the case or controversy requirement of standing, litigants generally 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). In a case such as this, where the standing requirement is governed by the provisions of a specific statute (I.C. § 63-511), the statutory language is controlling.

B. AURA has standing as a “person aggrieved” under I.C. § 63-511(1).

Whether an urban renewal agency has standing to contest a property tax exemption appears to be an issue of first impression in Idaho. Idaho Code § 63-511(1) sets forth the standing requirement for appealing a decision of a county board of equalization:

Such appeal may only be filed by the property owner, the assessor, the state tax commission or *by a person aggrieved* when he deems such action illegal or prejudicial to the public interest...”

(Emphasis added). The Court notes that the term “person aggrieved” is not specifically defined within the statute. However, a related portion of Title 63 of the Idaho Code dealing with property taxes defines “person” as meaning “any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership, or other such entities as recognized by the state of Idaho.” I.C. § 63-201(13).¹⁵

¹⁵ The definitions contained I.C. § 63-201 are expressly applicable to I.C. § 63-511: “As used for property tax purposes in chapters 1 through 23, title 63, Idaho Code, the terms defined in this section shall have the following meanings . . .” I.C. § 63-201.

AURA argues that as an entity created by statute, it meets the definition of “person” inasmuch as it is an “independent public body corporate and politic.”¹⁶ It appears from the Respondent’s brief that this issue is not contested—neither the BTA nor Ashton memorial have disputed that AURA qualifies as a “person.”

The disputed issue before the Court is whether AURA can claim to be a “person aggrieved” for purposes of I.C. § 63-511. The Court notes that the broad language of the statute appears to define an aggrieved person subjectively, as one who “*deems* such action illegal or prejudicial to the public interest.” This broad language notwithstanding, the Legislature surely did not intend to make the threshold so broad as to allow an appeal based on remote or *de minimis* impact to the person allegedly aggrieved.

Both parties rely on *Application of Fernan Lake Village*, 80 Idaho 412, 331 P.2d 278 (1958) and *State v. Eves*, 6 Idaho 144, 53 P. 543 (1898), in determining whether AURA was as person aggrieved. In *Fernan Lake*, the city of Coeur d’Alene appealed the application of Fernan Lake Village for incorporation. The City argued that the land on which the village resided had never been considered a “village” and that the boundaries were “irregular, bizarre, and fantastic”. After notice and a hearing, incorporation was ordered. The city appealed. Kootenai County and the village moved to dismiss the appeal on the grounds that the city is not a “person aggrieved”. *Fernan Lake*, 80 Idaho at 414, 331 P.2d at 279. The Idaho Supreme Court outlined the process for determination of “aggrieved” status:

The sole question presented is whether or not the city is aggrieved by the order incorporating the village. ‘Broadly speaking, a party or person is aggrieved by a decision when, and only when, it operates directly and injuriously upon his personal, *pecuniary*, or property rights.’

Id. (emphasis added). In so ruling, the Supreme Court also utilized a test from *State v. Eves*, 6 Idaho 144, 148, 53 P. 543, 544 (1898): “the test as to whether a party is aggrieved or not is: ‘Would the party have had the thing if the erroneous judgment had not been entered? If the answer be yea, he is a party aggrieved.’”

Applying these standards, the BTA concluded that “Appellant has not demonstrated an injury to its property rights; for Appellant has no property rights to the alleged lost revenue

¹⁶ *Appellant's Brief*, p. 8. See also I.C. § 50-2006(a).

because it is not a taxing authority.”¹⁷ The BTA further observed that accepting AURA’s position “would allow any agency to appeal any decision, particularly in the case of property tax exemptions, of a taxing authority under the umbrella of ‘lost revenue.’”¹⁸

AURA argues that they are an aggrieved party because the exemption granted to Ashton Memorial directly denied them use of the property taxes that would normally have been collected on the two parcels. AURA asserts, without refutation, that they effectively lost over \$44,000 from its annual revenue stream as a result of the decision of the BOE to grant the tax exemption to Ashton Memorial. This loss, almost 55% of its projected revenue, is neither hypothetical nor *de minimis* for an urban renewal agency in a community the size of Ashton.¹⁹ Even if AURA had no “property right” to these funds, as BTA concluded, it did have a “pecuniary” interest. *See Fernan Lake*, 80 Idaho at 414, 331 P.2d at 279.

The unique characteristics of an urban renewal agency must play a role in this Court’s analysis. Unlike most governmental entities with independent sources of revenue, an urban renewal agency cannot generate its own funding through taxation. With the exception of grants, it is almost entirely dependent on the property taxes collected by the county to fund its projects. Arguably, any significant disruption of this stream of revenue could have a real and devastating impact on the agency.

The Idaho Legislature, in adopting the Idaho Urban Renewal Law of 1965, I.C. § 50-2001, *et seq.*, made specific findings about the important public policy considerations behind the creation of urban renewal districts. After finding that deterioration of Idaho cities “constitutes a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; . . .” the Legislature declared:

[T]he prevention and elimination of these conditions is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenue because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

...

It is further found and declared that the powers conferred by this act are for *public uses and purposes* for which public money may be expended as herein provided

¹⁷ Agency Record, *Order Denying Reconsideration*, p. 1.

¹⁸ *Id.*

¹⁹ The Court takes judicial notice that at the time of the most recent United State Census, the population of Ashton was only 1,127. *US Bureau of the Census, April 2010 Data*, as cited in 2011/2012 IDAHO BLUE BOOK, p. 368.

and the power of eminent domain and police power exercised; and that the necessity in the *public interest* for the provisions herein enacted is hereby declared as a matter of legislative determination.

I.C. § 50-2002 (emphasis added). Based on the clearly expressed legislative intent, it requires no great leap of logic for the Court to conclude that a serious decrease to an urban renewal district's primary source of revenue might be "prejudicial to the public interest." I.C. § 63-511(1).

The Court notes that the BTA's decision was influenced, at least in part, by the holding in *State of Missouri ex rel. St. Francois County School District R-III v. Lalumondier*, 518 S.W. 2d 638 (Mo. 1975). This case concerned a school district seeking review of the actions of the board of equalization for failing to increase the assessed valuation of certain real property. The local board of equalization moved to dismiss the appeal, citing a lack of standing. The Missouri Supreme Court noted "the precise question presented on this appeal is whether in a suit of this nature a school district may obtain a review of a decision of the county board of equalization which failed to increase an alleged underassessment of the real estate of a taxpayer." *Id.*, at 640. After observing that there was no statutory provision in Missouri law allowing a school district to appeal such a decision, it held:

We have the view that if the general assembly had intended to provide a review of alleged underassessment at the request of a governmental subdivision it would have so provided in Section 138.430(2) which provides for an appeal by property owners. No doubt such was originally omitted on the theory that public officials would adequately protect the interest of the state and its subdivisions and hence it was only necessary to provide an appeal for property owners who considered the valuation of their property to be excessive.

Id., at 643.

There are several distinctions between *St. Francois School District* and the present case. First, the Court notes that the school district in *St. Francois School District* was attempting to appeal an "underassessment" of real property within the county. Here, AURA is attempting to appeal a total exemption from property taxes. The Court sees a significant distinction between a desired increase in revenue and the loss of anticipated revenue. More importantly, the Missouri Supreme Court specifically referenced a statute in another state that would have provided a basis for granting standing to the school district:

An example of a statute granting the right [the party] seeks is the following South Dakota statute: ‘Any person, firm or corporation, public or private, or any taxing district or governmental subdivision or agency interested, feeling aggrieved by the action of the county board of equalization relative to the assessment of its property may, within thirty days after receiving notice of the decision of such board, appeal to the state board of equalization for a determination of such grievance.’

Id., at 642, citing *City of Sioux Falls v. State Board of Equalization*. 203 N.W.2d 419, 420 (S.D. 1973). It is clear that the Missouri court noted that there was a distinction between the lack of statutory authority in Missouri and other states whose laws allowed a party “*feeling aggrieved*” to appeal the decision of the board of equalization. The Court notes that I.C. § 63-511 is very similar in its use of the language “person *aggrieved* when he *deems* . . .”²⁰

Additionally, the court in *St. Francois School District* noted that the Missouri legislature might not have wanted such a broad right to appeal because it likely anticipated that public officials would adequately protect the interests of the political subdivision. Ashton Memorial makes the same argument here, suggesting that AURA’s interests are adequately protected by the Fremont County Assessor.

The duties of a county assessor in Idaho are outlined in I.C. § 63-314(1) as follows:

It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all taxable properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor’s jurisdiction are assessed at current market value.

While it is the duty of the county assessor to *assess* the value of all *taxable* properties in the county, nothing in his or her duties obligates the assessor to contest or appeal the granting of a tax exemption granted by the BOE. The statute places no responsibility on the Fremont County Assessor to look after, support, or defend the interests of AURA. Even if the county assessor had a duty to contest improper tax exemptions, this is no reason to deny AURA the same opportunity to defend itself in administrative or judicial proceedings that other Fremont County citizens enjoy. At oral argument, Respondent correctly pointed out that the county assessor is a

²⁰ As this case illustrates, the drafters’ use of subjective terms like “feels” and “deems” in legislation can be highly problematic for reviewing courts.

democratically elected position, ultimately accountable to the voters. However, so are the members of the BOE. Waiting for the next election is hardly a satisfactory substitute for due process to an aggrieved party.

C. The Denial of Standing to AURA Violates Constitutional Principles of Due Process and Equal Protection.

The Idaho Code describes an urban renewal district as an “independent public body corporate and politic.” I.C. § 50-2006(a). One of the founding principles of our republic is the notion that all persons are entitled to due process and equal protection. These guarantees, contained within the Fourteenth Amendment to the U.S. Constitution, apply not only to individuals, but also to corporations. The U.S. Supreme Court has long recognized this concept:

It is well settled that corporations are persons within the provisions of the fourteenth amendment of the constitution of the United States. The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called ‘corporations’ any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A state has no more power to deny to corporations the equal protection of the law than it has to individual citizens.

Gulf, C. & S.F. Ry. Co. v. Ellis, 165 U.S. 150, 154, 17 S.Ct. 255, 256 (1897) (citations omitted).

The Idaho Supreme Court also recognized that the Fourteenth Amendment applies to corporate entities for over 100 years:

It is suggested that a corporation is not a “person” within the meaning of that word as used in said fourteenth amendment to the Constitution, and that, as corporations are organized under the laws of a state, the state may enact such laws as it may deem best for the control of such corporations and has full authority to deprive them of the right to employ aliens. Those contentions are fully met by the decision of the Supreme Court of the United States in *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666, in which case it is held that corporations are “persons” within the provisions of said fourteenth amendment, and that a state has no more power to deny to them the equal protection of the law than it has to deny it to individual citizens.

That being the law, the state courts must conform their decisions in the interpretation of the federal Constitution and statutes to the construction placed upon them by the federal courts, and a corporation is a “person” within the provisions of said fourteenth amendment to the federal Constitution.

Ex parte Case, 20 Idaho 128, 132-133, 116 P. 1037, 1038 (1911).

The BTA's decisions in this matter have effectively denied AURA any right to appeal the BOE's granting of a tax exemption to Ashton Memorial, even though it is uncontested that the decision will cause AURA to suffer a significant loss of revenue. By so holding, the BTA has given the Fremont County BOE the last and final word on this issue. This Court cannot presume, as the BTA has apparently done in its decision, that the Idaho Legislature intended to allow the BOE for Fremont County to become the ultimate and final tribunal on all such issues contested by an urban renewal agency. If the Court were to accept the BTA's rationale, AURA would be denied any form of due process, even if the BOE exempted every property within the district.

The Court agrees in principle with the BTA that it would be undesirable for "any agency to appeal any decision, particularly in the case of property tax exemptions, of a taxing authority under the umbrella of 'lost revenue.'"²¹ The Court understands the potential for abuse that the BTA intended to avoid. However, it is no more desirable to hold that an agency dependent on a specific revenue source cannot have access to administrative or judicial review when its revenue source is significantly diminished. Given the unique and vulnerable funding status of an urban renewal agency, due process and equal protection demand that it have a means to appeal the granting of a tax exemption where the direct impact would be more than a *de minimis* reduction of revenue. The undisputed record currently before the Court establishes that the BOE's decision to grant Aston Memorial a complete tax exemption will directly result in an almost 55% decrease in AURA's anticipated revenues for 2012.²² Therefore, in the absence of any statutory prohibitions, the Court concludes that fundamental fairness and constitutional principles demand that AURA be granted standing as an aggrieved party under I.C. § 63-511(1) and receive a hearing on the merits of its appeal.

²¹ *Id.*

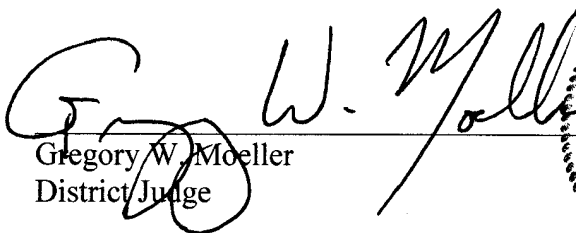
²² Agency Record, *Affidavit of Harlan W. Mann*, ¶ 8.

VI. CONCLUSION

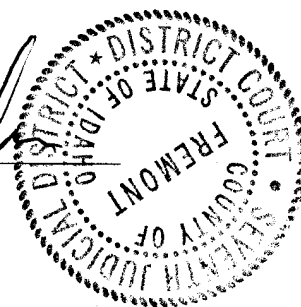
For the reasons set forth above, the Court concludes as a matter of law that AURA has standing to appeal the tax exemption the Fremont County BOE granted to Ashton Memorial. Accordingly, the BTA's *Final Order Dismissing Appeals* and *Order Denying Reconsideration* are hereby REVERSED and REMANDED for further consideration on the merits.

The Court notes that this matter presented an issue of first impression in Idaho. Such cases are always challenging for the Court and counsel. The Court appreciates the high level of advocacy and legal analysis demonstrated by counsel that greatly aided its review of this matter. Although both sides attempted to discuss the merits of the underlying exemption issue in this case, the Court has carefully avoided rising to that bait. As currently postured, this case was not about the wisdom or legality of the BOE's decision to grant Ashton Memorial a property tax exemption; that issue must be heard and decided on the merits another day.

SO ORDERED this 10th day of August, 2012.



Gregory W. Moeller
District Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was this 10th day of August, 2012, sent via US mail to the following individuals:

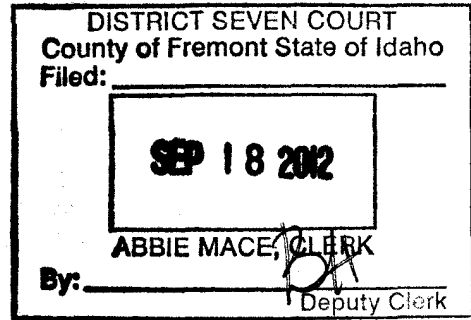
Ryan P. Armbruster
Meghan Sullivan Conrad
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701
Attorneys for Petitioner

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Robert H. Wood
Rigby, Andrus, & Rigby
Attorneys at Law
P.O. Box 250
Rexburg, Idaho 83440
Attorneys for Respondent

Idaho Board of Tax Appeals
3380 Americana Terrace Suite 110
Boise, Idaho 83706

By:


Law Clerk



G Rich Andrus, ISBN 1347
 Hyrum Erickson, ISBN 7688
 Robert H. Wood, ISBN 8229
 RIGBY, ANDRUS & RIGBY, *Chartered*
 Attorneys at Law
 25 North Second East
 Rexburg, Idaho 83440
 Telephone: 208-356-3633

Attorneys for Ashton Memorial, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

ASHTON URBAN RENEWAL)
 AGENCY, an independent public body)
 corporate and politic,)
)
 Petitioner/Respondent,)
)
 v.)
)
 ASHTON MEMORIAL, INC., an Idaho)
 Corporation, doing business as ASHTON)
 LIVING CENTERSTMENTS, LLC,)
)
 Respondent/Appellant.)
 _____)

Case No. CV-12-58

NOTICE OF APPEAL

FEE CATEGORY: L.4.

FEE: \$109.00

TO: THE ABOVE NAMED RESPONDENT, ASHTON URBAN RENEWAL AGENCY,
 AND THE PARTY'S ATTORNEYS, RYAN P. ARMBRUSTER, AND MEGHAN
 SULLIVAN CONRAD, OF ELAM & BURKE, P.A., P. O. BOX 1539, BOISE, IDAHO
 83701-1539 AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

NOTICE OF APPEAL - Page 1

HE\AshtonMem.noa.wpd

1. The above named appellant, Ashton Memorial, Inc., appeals against the above named respondent to the Idaho Supreme Court from the Decision on Review, entered in the above entitled action on August 10, 2012.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment and/or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2), I.A.R.
3. Preliminary Statement of Issues on Appeal:
(A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.)

Did the district court err in reversing the ruling of the Idaho Board of Tax Appeals that an urban renewal district lacks standing under I.C. § 63-511 to appeal a decision of the Fremont County Board of Equalization.

Did the district court have jurisdiction to hear the petition for judicial review when the urban renewal agency failed to provide notice of the petition to Fremont County as required by I.R.C.P. 84(b)(1) and consequently Fremont County did not participate in the matter before the district court?

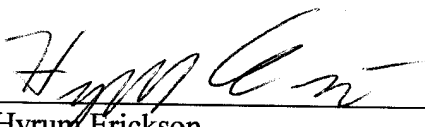
4. Has an order been entered sealing all or any portion of the record? No.
5. (a) A reporters transcript is requested.
(b) The appellant requests the preparation of the following portions of the reporter's transcript in both hard copy and electronic format:
Oral Argument on the Appeal, held June 26, 2012.
6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.
 1. Notice of Special Appearance – Katherine Takasugi – 2/28/2012
 2. Agency Record – 3/8/2012
 3. Stipulation to Dismiss Respondent Idaho Board of Tax Appeals and to Amend Caption – 3/20/2012
 4. Order to Dismiss Respondent Idaho Board of Tax Appeals and to Amend Caption – 3/27/2012
 5. Order Governing Procedure on Review – 4/2/2012
 6. Respondents Reply Brief – 5/7/2012
 7. Appellants Reply Brief – 5/23/2012
 8. Minute Entry – 6/26/2012

9. Memorandum of Authority – 7/2/2012
 10. Memorandum of Authority – Rich Andrus – 7/3/2012
7. I certify:
- (a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow
P. O. Box 1671
Idaho Falls, Idaho 83403
 - (b) That the Reporter has been paid the estimated fee for preparation of the reporter's transcript, by payment to the Clerk of the District Court therefore.
 - (c) The estimated fee for preparation of the clerk's or agency's record has been paid.
 - (d) The appellate filing fee has been paid.
 - (e) Service has been made upon all parties required to be served pursuant to Rule 20,
I.A.R.

Dated this 17th day of September, 2012.

RIGBY ANDRUS & RIGBY, Chartered




Hyrum Erickson
Rigby, Andrus & Rigby, Chtd.
Attorneys for Appellant

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 17th day of September, 2012.

RIGBY ANDRUS & RIGBY, Chartered



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Meghan Sullivan Conrad, Esq.
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P. O. Box 1671
Idaho Falls, Idaho 83403

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 Facsimile

NOTICE OF APPEAL - Page 4

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IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS
DISTRICT SEVEN
of Fremont State of Idaho

P.O. Box 83720
Boise, Idaho 83720-0101

SEP 20 2012

ABBIE MACE, CLERK

By: *[Signature]* Deputy Clerk

NOTICE OF APPEAL FILED (T)

Docket No. 40348-2012 ASHTON URBAN Fremont County District Court
 RENEWAL AGENCY v. #2012-58
 ASHTON MEMORIAL, INC.

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on SEPTEMBER 20, 2012. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD and REPORTER'S TRANSCRIPT(S) must be filed in this office on or before NOVEMBER 26, 2012.

The REPORTER'S TRANSCRIPT(S) MUST BE LODGED with the District Court Clerk or Agency ****35 DAYS PRIOR**** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

THE FOLLOWING TRANSCRIPTS (PURSUANT TO I.A.R. 25) SHALL BE LODGED:

ORAL ARGUMENT 6-26-12

For the Court:
Stephen W. Kenyon
Clerk of the Courts

09/20/2012 DB

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR FREMONT COUNTY

Ashton Urban Renewal Agency
Plaintiff(s)/Respondent(s),

VS

Ashton Memorial, Inc., an Idaho
Corporation, doing business as Ashton
Living Centerstments, LLC
Defendant(s)/Appellant(s).

Case No. CV-2012-0000058

CLERK'S CERTIFICATE OF APPEAL

Supreme Court No. 40348

APPEAL FROM THE SEVENTH JUDICIAL DISTRICT, FREMONT COUNTY.
HONORABLE JUDGE GREGORY W. MOELLER PRESIDING

CASE NUMBER FROM COURT:	CV-2012-0000058
ORDER OR JUDGMENT APPEALED FROM:	Decision on Review
ATTORNEY FOR APPELLANT:	G. Rich Andrus
ATTORNEY FOR RESPONDENT:	Ryan P. Armbruster
APPEALED BY:	Ashton Urban Renewal Agency
APPEALED AGAINST:	Ashton Memorial, Inc.
NOTICE OF APPEAL FILED:	September 18, 2012
AMENDED NOTICE OF APPEAL FILED:	N/A
NOTICE OF CROSS-APPEAL FILED:	N/A
AMENDED NOTICE OF CROSS-APPEAL FILED:	N/A
APPELLATE FEE PAID:	YES
RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:	N/A

TRANSCRIPT FILED:
WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED? YES
DISTRICT COURT REPORTER: DAVID MARLOW

Dated this 18th day of September, 2012

ABBIE MACE
Clerk of the District Court


Becky Harrigfeld
Deputy Clerk



RECEIVED
IDAHO SUPREME COURT
2012 SEP 20 P 1:17

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS
DISTRICT SEVEN
of Fremont State of Idaho

P.O. Box 83720
Boise, Idaho 83720-0101

SEP 20 2012

ABBIE MACE, CLERK

By: *[Signature]* Deputy Clerk

NOTICE OF APPEAL FILED (T)

Docket No. 40348-2012 ASHTON URBAN Fremont County District Court
 RENEWAL AGENCY v. #2012-58
 ASHTON MEMORIAL, INC.

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The CLERK'S RECORD and REPORTER'S TRANSCRIPT(S) must be filed in this office on or before NOVEMBER 26, 2012.

The REPORTER'S TRANSCRIPT(S) MUST BE LODGED with the District Court Clerk or Agency ****35 DAYS PRIOR**** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

THE FOLLOWING TRANSCRIPTS (PURSUANT TO I.A.R. 25) SHALL BE LODGED:

ORAL ARGUMENT 6-26-12

For the Court:
Stephen W. Kenyon
Clerk of the Courts

09/20/2012 DB

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
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Supreme Court No. 40348

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HONORABLE JUDGE GREGORY W. MOELLER PRESIDING

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ATTORNEY FOR APPELLANT:	G. Rich Andrus
ATTORNEY FOR RESPONDENT:	Ryan P. Armbruster
APPEALED BY:	Ashton Urban Renewal Agency
APPEALED AGAINST:	Ashton Memorial, Inc.
NOTICE OF APPEAL FILED:	September 18, 2012
AMENDED NOTICE OF APPEAL FILED:	N/A
NOTICE OF CROSS-APPEAL FILED:	N/A
AMENDED NOTICE OF CROSS-APPEAL FILED:	N/A
APPELLATE FEE PAID:	YES
RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:	N/A

TRANSCRIPT FILED:
WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED? YES
DISTRICT COURT REPORTER: DAVID MARLOW

Dated this 18th day of September, 2012

ABBIE MACE
Clerk of the District Court


Becky Harrigfeld
Deputy Clerk



RECEIVED
IDAHO SUPREME COURT
2012 SEP 20 P 1:17

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed: **OCT 23 2012**
By: **ABBIE MACE, CLERK**
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

Ashton Urban Renewal Agency
Plaintiff(s)/Respondent(s),

Supreme Court No: 40348

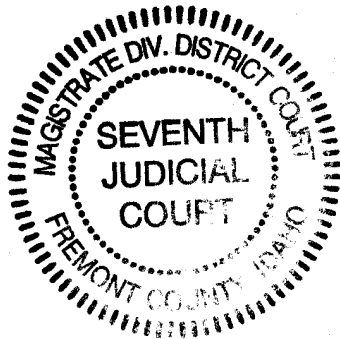
Case No: CV-2012-0000058

VS

NOTICE OF LODGING – CLERK’S
RECORD AND TRANSCRIPT

Ashton Memorial, Inc.
Defendant(s)/Appellant(s).

Notice is hereby given that on 10/23/2012, the Clerk’s Record (), Reporter’s
Transcript (X) in the above referenced appeal was Lodged with the District Court Clerk.



Abbie Mace

Abbie Mace
Clerk of the District Court

Buffy Harrington

Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR FREMONT COUNTY

Ashton Urban Renewal Agency
Plaintiff(s)/Respondent(s),

VS

Ashton Memorial, Inc.
Defendant(s)/Appellant(s).

Supreme Court No: 40348

Case No. CV-2012-0000058

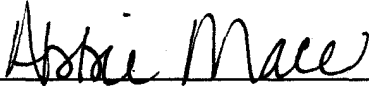
Appeal Record Certificate of Service

I, Abbie Mace, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Fremont, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, x-rays, charts and pictures offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at St. Anthony, Fremont, Idaho, this 24th day of October, 2012.




Abbie Mace
District Court Clerk


Becky Harrigfeld
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR FREMONT COUNTY

Ashton Urban Renewal Agency
Plaintiff(s)/Respondent(s),

VS

Ashton Memorial, Inc.
Defendant(s)/Appellant(s).

Supreme Court No: 40348

Case No: CV-2012-0000058

CERTIFICATE OF SERVICE

I, Abbie Mace, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Fremont County, do hereby certify that I have personally served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record and any reporter's Transcript to each of the parties or their Attorney of Record as follows:

Ryan P. Armbruster
251 East Front Street, Ste. 300
P.O Box 1539
Boise, ID 83701

G. Rich Andrus
Rigby, Andrus & Rigby
25 North Second East
Rexburg, ID 83440

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 24th day October of, 2012.



Abbie Mace
Clerk of the District Court


Becky J. Harrigfeld, Deputy Clerk