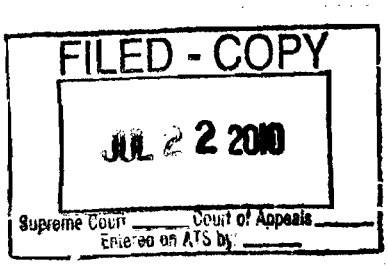
7-22-2010

Wylie v. State, Idaho Transp. Bd. Respondent's Brief Dckt. 37279

IN THE SUPREME COURT OF THE STATE OF IDAHO

JAMES R. WYLIE, Plaintiff-Appellant; v. STATE OF IDAHO, IDAHO TRANSPORTATION BOARD, and THE CITY OF MERIDIAN, Defendants-Respondents.	)	Supreme Court Case No. 37279



RESPONDENT CITY OF MERIDIAN'S BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Timothy Hansen, District Judge presiding.

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I. STATEMENT OF THE CASE

A. Nature of the Case

This case is before the Idaho Supreme Court on Plaintiff-Appellant James R. Wylie ("Mr. Wylie")'s appeal of the district court's dismissal of Mr. Wylie's petition for declaratory judgment. The district court did not reach the merits of the petition for declaratory judgment; rather, the court dismissed it on the sole grounds that it asked for an advisory opinion on a hypothetical set of facts and was therefore nonjusticiable.

Mr. Wylie owns a parcel of real property in the City of Meridian. The northern border of the property abuts Chinden Boulevard, which is also known as State Highway 20-26 ("SH 20-26"). The property was annexed into the City of Meridian in 2006 under the terms and conditions set forth in a development agreement between the City and Mr. Wylie's predecessor-in-interest. In the development agreement, the parties agreed that there would be no direct traffic ingress or egress between the property and SH 20-26.

This case originated as Mr. Wylie's petition for a declaratory judgment regarding the authority of Defendant-Appellant City of Meridian ("City") to enact Meridian City Code § 11-3H-4(B)(2), which, *inter alia*, prohibits the construction of new traffic ingress/egress points on real property within the City's land use jurisdiction where it abuts SH 20-26. The district court ultimately deemed Mr. Wylie's petition to be nonjusticiable for lack of a controversy that could be resolved by the entry of the requested declaratory judgment. Judge Hansen found that even if the general terms of Meridian City Code § 11-3H-4(B)(2) were set aside as Mr. Wylie's petition

for declaratory judgment requested, the specific terms of the development agreement would still bar direct traffic access between Mr. Wylie's property and SH 20-26, leaving Mr. Wylie without relief regardless of any ruling on the petition. For these reasons, Mr. Wylie's motion for summary judgment was denied and City's motions to dismiss and for summary judgment were granted.

B. Course of the Proceedings

Mr. Wylie filed a Complaint with the Fourth Judicial District Court on May 6, 2009 (R. Vol. I, p. 6), an Amended Complaint on May 11, 2009 (R. Vol. I, p. 13), and a Second Amended Complaint on May 15, 2009 (R. Vol. I, p. 17). The City filed a Motion to Dismiss on June 8, 2009, and Mr. Wylie filed a Motion for Summary Judgment and supporting Memorandum on June 22, 2009 (R. Vol. I, p. 25). On July 20, 2009, the City filed a Cross-Motion for Summary Judgment (R. Vol. I, p. 124). Oral arguments on all motions were heard on September 28, 2009 (R. Vol. III) and Judge Hansen issued a Memorandum Decision and Order on December 1, 2009 (R. Vol. III, pp. 467-472). Mr. Wylie filed his Notice of Appeal with this Court on January 6, 2010 (R. Vol. III, pp.476-480), and his Brief on June 8, 2010.

C. Statement of Facts

Mr. Wylie took title of the real property that is the subject of the development agreement with the City on July 17, 2007. R. Vol. II, pp. 235-236. The property is located on the southwest corner of the intersection of Linder Road and SH 20-26, and the entire north frontage of the property is directly adjacent to SH 20-26. SH 20-26 is classified by ITD as a Type III

urban principal arterial roadway; construction of a traffic ingress point onto SH 20-26 requires an Encroachment Permit from ITD. Idaho Administrative Code ("IDAPA") 39.03.42.200.01.

Necessarily, a traffic access point between private property annexed into the City of Meridian and an abutting state highway is an invisible line between the City's land use jurisdiction and ITD's roadway jurisdiction. On the City side of the line, all applicable Meridian City Code provisions, Comprehensive Plan objectives, and development agreements apply. On the ITD side of the line, state statutes and ITD policies and regulations apply. City and ITD have historically worked together to minimize conflict between the City's land use jurisdiction on the City side of SH 20-26, and ITD's roadway authority jurisdiction on the ITD side of SH 20-26. *E.g.*, R. Vol. I, pp. 126-128.

To that end, Meridian City Code § 11-3H-4(B)(2) describes the City's policy with regard to the line where the two jurisdictions meet along SH 20-26. That provision reads:

> B. Access to and/or from . . . State Highway 20-26:
> * * *
> 2. If an applicant proposes a change or increase in intensity of use, the owner shall develop or otherwise acquire access to a street other than the state highway. The use of the existing approach shall cease and the approach shall be abandoned and removed.
>
> a. No new approaches directly accessing a state highway shall be allowed.
> b. Public street connections to the state highway shall only be allowed at:
> (1) The section line road; and
> (2) The half mile mark between section line roads. These half mile connecting streets shall be collector roads.

The ordinance containing this provision, City of Meridian Ordinance no. 05-1171 (R. Vol. I, pp. 131-134), was written in a collaborative drafting process that lasted from approximately August 2004 to August 2005 (R. Vol. I, p. 127 (¶ 5)). During this process, the

Director of the City Planning Department, Anna Canning, worked closely with Idaho Transportation Department Planner Sue Sullivan to craft the language of the ordinance. R. Vol. I, p. 127 (¶¶ 3-5). The purpose of this collaborative approach was to ensure that, where properties in the City's jurisdiction abut state highways in ITD's jurisdiction, the City's policies as the land use authority complement ITD's policies as the roadway authority (R. Vol. I, p. 127 (¶ 5)), a purpose that is supported by the intent of Idaho Code § 67-6528 as interpreted by ITD. IDAPA §§ 39.03.48.001; 39.03.48.200 (R. Vol. I, pp. 33, 37).

The respective agencies' policies regarding SH 20-26 were specifically considered in the ordinance drafting process. *Id.* Both the City and ITD were, and are, committed to the mutually-held objectives of preserving public safety, promoting traffic flow, and accommodating large volumes of high-speed vehicles traveling on SH 20-26, and the ordinance was drafted expressly to meet these objectives. R. Vol. I, pp. 127-128 (¶¶ 4-5). In this way, the City acknowledged and planned for the co-existence of ITD's jurisdiction over state highways and the City's regulatory authority over local land uses. Ordinance no. 05-1171 was adopted by Meridian City Council on September 15, 2005, and its codification included Meridian City Code § 11-3H-4(B)(2). R. Vol. I, p. 134.

In addition to Meridian City Code § 11-3H-4(B)(2), the City's policy regarding traffic ingress onto and egress from City-annexed land along SH 20-26 is set forth in the City's Comprehensive Plan, which states, in relevant part, that the City's policy is to "[r]estrict curb cuts and access points on collectors and arterial streets." City of Meridian Comprehensive Plan, Chapter VII(D), p. 114 (R. Vol. I, p. 172). This Comprehensive Plan provision reflects ITD's

policy to allow location of access points along principal arterials like SH 20-26 only at intersections and only on the half-mile. R. Vol. I, p. 172.

Both Meridian City Code § 11-3H-4(B)(2) and the City's Comprehensive Plan were in place when, on January 11, 2006, developer Sea 2 Sea, LLC, on behalf of property owner Foothill Knights, LLC, Mr. Wylie's predecessor-in-interest as to the subject property, filed with the City Planning Department applications for annexation and zoning and preliminary plat approval of Knighthill Center Subdivision. R. Vol. I, pp. 154-162. The applicant did not request direct traffic access to SH 20-26, but requested access to and from the property at W. Everest Lane to the west, N. Gertie Place to the south, and Linder Road to the east. *Id.* In reviewing the applications, the City Planning Department staff specifically found "that the proposal of no access point to Chinden Boulevard (SH 20-26) meets the location requirements of ITD." R. Vol. II, p. 211.

The applications were approved by the Meridian City Council on May 23, 2006. R. Vol. I, pp. 163-189. Sea 2 Sea then negotiated and executed a development agreement with the City, which agreement sets forth all mutually negotiated and agreed-upon terms and conditions of the zoning and annexation into Meridian. The development agreement incorporates the Meridian City Council's Findings of Fact, Conclusions of Law and Decision & Order (R. Vol. I, p. 192 (Development Agreement § 1.7)), which, in turn, incorporate the City of Meridian Planning Department Staff Report for the Hearing Date of May 9, 2006 ("Planning Staff Report") (R. Vol. II, p. 203 (Findings of Fact, Conclusions of Law and Decision & Order § A(1-4)). The Planning Staff Report accepts and recommends that the Meridian City Council effectuate the landowner's

proposal that the property host no access points onto SH 20-26 (R. Vol. I, p. 162), noting that this proposal comports with both the Meridian Comprehensive Plan and ITD regulations (R. Vol. II, pp. 210-211).

The development agreement was executed by the parties on July 18, 2006, and recorded against the subject property on July 31, 2006. R. Vol. I-II, pp. 190-228. In keeping with the landowner's proposal and with City and ITD regulations, the development agreement establishes that the owner of such land will not construct any direct traffic access points between the property and SH 20-26. R. Vol. I, pp. 192, 194 (Development Agreement §§ 1.7; 5.1.2; 5.1.6; 5.1.9); R. Vol. II, p. 210 (Planning Department Staff Report § 6(i)).

The development agreement was recorded against the property when, on July 17, 2007, Mr. Wylie took title to the property. R. Vol. II, pp. 235-236. The development agreement remained in full effect notwithstanding the change in ownership. R. Vol. I, p. 198 (Development Agreement § 18); Idaho Code § 67-6511A.

On April 17, 2008, Mr. Wylie filed with the Planning Department an application to revise the preliminary plat and modify the development agreement to increase the number of subdivided lots. R. Vol. II, pp. 230-270. Mr. Wylie did not request direct traffic access to SH 20-26 at that time. In fact, he stated in the application materials: "We agree with, and do not intent to change the access points . . . that were approved on the previous preliminary plat." R. Vol. II, p. 232. Meridian City Council approved these applications on August 26, 2008. R. Vol. II, pp. 272-304. The City Clerk's Office mailed a proposed modified development agreement,

but Mr. Wylie did not return it to the City with his signature; the original development agreement remains in effect. R. Vol. I, pp. 135-149.

On February 24, 2009, Mr. Wylie filed with the Planning Department an application for a variance from Meridian City Code § 11-3H-4(B)(2) in order to construct a direct traffic access point between his property and SH 20-26. R. Vol. II, pp. 306-326. Meridian City Council reviewed Mr. Wylie's variance application in a public hearing on April 7, 2009 and denied the application, entering Findings of Fact and Conclusions of Law on May 5, 2009. R. Vol. II, pp. 327-345. Mr. Wylie filed his Complaint, ultimately a petition for declaratory judgment, with the district court the next day. R. Vol. I, p. 6. Mr. Wylie's petition asked the court to find that the City was not empowered to adopt and enforce Meridian City Code § 11-3H-4(B)(2).

II. ADDITIONAL ISSUES PRESENTED ON APPEAL

A. Is the development agreement valid and binding on Mr. Wylie?

B. Does the validity of the development agreement render Mr. Wylie's petition for declaratory judgment nonjusticiable?

III. ATTORNEY FEES ON APPEAL

Mr. Wylie has not requested attorney fees on appeal. Accordingly, City does not request attorney fees on appeal.

IV. STANDARD OF REVIEW

Justiciability was the sole ground for the district court's entry of summary judgment for City and dismissal of Mr. Wylie's petition for declaratory judgment. This Court must therefore limit the scope of its review to the justiciability of Mr. Wylie's petition for declaratory judgment.

If this Court finds that Mr. Wylie's petition for declaratory judgment was justiciable, the proper course of action would be to remand to the district court for reinstatement of Mr. Wylie's petition for declaratory judgment and consideration of that petition on the merits. *Idaho Schools for Equal Educational Opportunity v. Idaho State Board of Education*, 128 Idaho 276, 284, 912 P.2d 644, 650 (1996) (reversal of decision finding mootness remanded for consideration on the merits); *Young v. City of Ketchum*, 137 Idaho 102, 104, 4 P.3d 1157, 1159 (2002) (justiciability is a preliminary question that must be determined before reaching the merits of the case).

Justiciability is a jurisdictional issue, and is therefore a question of law over which this court exercises free review. *Webb v. Webb*, 143 Idaho 521, 524, 148 P.3d 1267, 1270 (2006); *Watkins v. Peacock*, 145 Idaho 704, 707, 184 P.3d 210, 213 (2008).

V. ARGUMENT

Mr. Wylie asks this Court to reverse the district court's finding that the development agreement is valid. Mr. Wylie's theory is that, upon such reversal, his petition for declaratory judgment will present a justiciable question regarding the application of Meridian City Code § 11-3H-4(B)(2) to his property. Mr. Wylie's reasoning is that if the development agreement is invalid, the City's refusal to allow a direct access point onto SH 20-26 would be based on the general applicability of Meridian City Code § 11-3H-4(B)(2), rather than on the specific terms of the development agreement. With this hypothetical factual landscape in place, under Mr. Wylie's theory, his petition for declaratory judgment regarding the enforceability of Meridian City Code § 11-3H-4(B)(2) could be revived and remanded for review on its merits.

Mr. Wylie presents several arguments in support of this model. He argues that the City acted *ultra vires* in negotiating and executing the development agreement (Appellant's Brief, pp. 23-28; 33-37); that the authority over state highways granted to ITD expressly or impliedly preempts the City's authority to enter into the development agreement (Appellant's Brief, pp. 16-20; 22; 31-32); and that Mr. Wylie's predecessor-in-interest had a right to direct traffic access onto SH 20-26 and did not waive that right (Appellant's Brief, pp. 28-31; 37-39). None of these arguments is supported by law, and none are persuasive to show that the development agreement provision regarding access to SH 20-26 should be nullified. City will address each of Mr. Wylie's arguments in turn.

A. The development agreement is valid and binding on Mr. Wylie.

For the following reasons, this Court should affirm the district court's finding that the development agreement is valid and binding on Mr. Wylie in precluding the construction of a direct traffic access point onto SH 20-26, and uphold the district court's decision that a declaratory judgment on the applicability of Meridian City Code § 11-3H-4(B)(2) to Mr. Wylie's property is therefore nonjusticiable as a matter of law.

1. Idaho Code §§ 50-301 and 67-6511A authorize the development agreement between City and Mr. Wylie as a legal, binding contract.

This Court has stated that "[t]he defense of *ultra vires* can be interposed only where the act complained of was wholly beyond the powers of the municipality. If the wrongful act in question is one which the municipality had the right to do under some circumstances or in some manner, then it is not *ultra vires*." *Boise Development Company, Ltd. v. Boise City*, 30 Idaho

675, 686, 167 P. 1032, 1034 (1917). The negotiation, execution, and enforcement of a development agreement are plainly within the City's statutorily-conveyed powers.

The City is generally authorized by Idaho Code § 50-301 to "contract and be contracted with." Where the City rezones land, it is specifically authorized by Idaho Code § 67-6511A to enter into development agreements to describe the terms and conditions under which the land is rezoned. The annexation of land into a municipality necessarily requires rezoning, so in the context of annexation, the development agreement effectively describes the terms and conditions under which the land is annexed into the City. Idaho Code § 67-6511A reads, in relevant part:

> 67-6511A.DEVELOPMENT AGREEMENTS. Each governing board may . . . require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel. . . . Unless modified or terminated by the governing board after a public hearing, ***a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.***

Idaho Code § 67-6511A (emphasis added). Under this provision, development agreements run with the land to which they pertain, and are binding on the landowner entering into the agreement as well as all subsequent landowners.

The provisions of the development agreement recorded against Mr. Wylie's property that relate to access are the result of voluntary negotiations between two parties to a valid contract. It cannot be said that the City's execution of a development agreement containing a provision effectuating a developer's plan not to construct an access point to SH 20-26 is in any way an *ultra vires* act. Contrary to Mr. Wylie's assertion, the City is indeed empowered by statute both

to enter into development agreements, and to regulate the construction of access onto SH 20-26. The development agreement is therefore not void as an *ultra vires* act.

Pursuant to Idaho Code § 67-6511A, the commitment not to construct direct access between City-annexed land and SH 20-26 at this location is binding on Mr. Wylie. This commitment is supported by the statutes under which it was created, and should be affirmed by this Court as a matter of law.

2. The legislature's conveyance of authority to ITD to regulate state highway access does not preempt the City's authority to regulate access from annexed land.

The City disagrees with Mr. Wylie's arguments that "the Idaho Legislature has expressly determined that ITD exclusively has the duty and responsibility of regulating access to the state highway system" (Appellant's Brief, p. 20); that the City's land use authority with regard to access points abutting state highways has been impliedly preempted (Appellant's Brief, p. 22); and that "ITD's expressly granted authority over state highways supersedes the legislative grant of authority to municipalities and counties to regulate local land use planning" (Appellant's Brief, p. 26).

The legislative mandates issued to ITD with regard to state highways, though extensive, may not be read to preempt the City's authority to condition annexation on the landowner's agreement not to access an adjacent state highway. The legislature has not evinced an intent to fully occupy the field of state highway access; contrarily, the legislature has deliberately carved out a role for local land use authorities in the regulation of access to state highways.

Under the Local Land Use Planning Act (Idaho Code §§ 67-6501 *et seq.*), the City is authorized to consult with ITD regarding site plans and design where the two agency's jurisdictions intersect (Idaho Code § 67-6528) and to establish policies and plans for access to state highways within its comprehensive plan (Idaho Code § 67-6508). Likewise, ITD has established rules and practices that acknowledge the role of agencies whose jurisdiction state highways abut or traverse. *E*.g. IDAPA §§ 39.03.48.001; 39.03.48.200. Preemption may not be implied where, as here, local entities have been specifically included in the statutory scheme.

a. Idaho Code § 67-6528 demonstrates that the legislature did not intend for ITD to fully occupy the area of law regarding state highway access.

Idaho Code § 67-6528 acknowledges the respective roles of ITD and the City in locating access points from City-annexed land to state highways. That statute reads, in relevant part:

> The provisions of plans and ordinances enacted pursuant to this chapter [the Local Land Use Planning Act] shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation board. The Idaho transportation board shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions.

Idaho Code § 67-6528.

Idaho Code § 67-6528 informs ITD's regulation of state highways that traverse or abut local jurisdictions. The statute directs ITD to work in consultation with the local land use authority to, *inter alia*, craft local land use policies that will complement ITD's objectives and mandates for state highways. ITD, too, interprets Idaho Code § 67-6528 to mandate a collaborative approach: "The Idaho Transportation Board supports a continued cooperative relationship with cities and counties concerning local ordinances pursuant to Section 67-6511

through Section 67-6519, Idaho Code, where such ordinances are beneficial to the state highway system." IDAPA § 39.03.48.200.

Further, IDAPA § 39.03.48.001, the second sentence of which was omitted by Mr. Wylie in his citation of that rule (Appellant's Brief, p. 27), states, *in toto*:

> The purpose of this rule is to follow-up [*sic*] on a provision contained within Idaho's Local Planning Act [*sic*] concerning the designation of transportation systems of statewide importance which are exempt from local plans and ordinances [Idaho Code § 67-6528]. The intent of this legislative provision is to prevent local control over improvements to transportation systems of statewide importance. ***However, it is recognized by the Idaho Transportation Board that local regulations are necessary to achieve the future location, relocation, realignment and other improvements to the state highway system in accord with the Idaho Transportation Board's plans.***

IDAPA § 39.03.48.001 (emphasis added.)

These expressions of ITD policy are entitled to deference by this Court. This Court has established a four-pronged test ("*Simplot* test") to determine the appropriate level of deference to which an agency's construction of a statute is entitled. *J.R. Simplot Co. v. Idaho State Tax Commission*, 120 Idaho 849, 862, 820 P.2d 1206, 1219 (1991). Under the *Simplot* test, the Court must determine: 1) whether the agency has been entrusted with the responsibility to administer the statute at issue; 2) whether the agency's statutory construction is reasonable; 3) whether the statutory language expressly treats the precise question at issue; and 4) whether any established rationale underlying the rule of deference are present – and if not, whether this absence justifies a divergent holding. *Id.* If all four prongs are met, Courts must give considerable weight to the agency's interpretation of the statute. *Preston v. Idaho State Tax Commission,* 131 Idaho 502,

504, 960 P.2d 185, 187 (1998), citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

ITD's interpretation of Idaho Code § 67-6528 as set forth in IDAPA § 39.03.48 satisfies all four prongs of the *Simplot* test. First, ITD has been expressly vested with the responsibility to administer Idaho Code § 67-6528; the legislature has empowered ITD generally to "prescribe rules and regulations affecting state highways" (Idaho Code § 40-312), and specifically to determine whether and how to work with local land use authorities in planning and designing state highways (Idaho Code § 67-6528).

As to the second prong, ITD's construction of Idaho Code § 67-6528 to encourage cooperation and agreement between local jurisdictions hosting state highways is reasonable. Absent interagency cooperation, among other potential problems, ingress and egress access points granted by a local land use authority and those granted by ITD in the encroachment permitting process would not necessarily coalesce, setting the stage for both an unreasonable, absurd result and an interagency turf war. ITD has reasonably interpreted Idaho Code § 67-6528 to indicate that the legislature sought to prevent this problem by establishing a system of proactive consultation, rather than reactive conflict.

The third *Simplot* test prong is satisfied because the plain language of Idaho Code § 67-6528 does not expressly answer the ultimate question of whether the local land use authority may regulate access between the local jurisdiction and a state highway. Finally, regarding the fourth prong of the test, at least two rationales of deference apply. The rationale of repose is one; IDAPA § 39.03.48 has been in place for twenty years, since November 1989. *See, e.g.,*

Pocatello v. Ross, 51 Idaho 395, 408, 6 P.2d 481, 485 (1931) (applying rational of repose after eighteen years: "Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so").

The rationale of practicality also applies, as it is more practical to interpret Idaho Code § 67-6528 to mandate ITD's consultation with, rather than potential conflict with, local land use authorities, which further commends deference to ITD's interpretation in IDAPA § 39.03.48. *J.R. Simplot Co. v. Idaho State Tax Commission*, 120 Idaho at 864.

As all four prongs of the *Simplot* test are met, this Court should give considerable weight to ITD's finding that in Idaho Code § 67-6528, the legislature directs ITD to work with local land use authorities symbiotically, *i.e.*, to consult with local boards to establish plans, designs, ordinances, and agreements that are "beneficial to the state highway system." IDAPA § 39.03.48.200. Further, properly promulgated administrative rules have the force and effect of statutory law. *Higginson v. Westergard*, 100 Idaho 687, 690, 604 P.2d 51, 54 (1979).

As envisioned by Idaho Code § 67-6528 and the corollary ITD rules interpreting that provision, the City and ITD have indeed worked together to ensure that the City's consideration of proposed access points between its land use jurisdiction and state highways in ITD's jurisdiction generally comport with ITD's rules for the placement of access points along SH 20-26. *See* R. Vol. I, pp. 127-128, ¶¶ 3-5.

In accordance with Idaho Code § 67-6528 and IDAPA § 39.03.48, ITD and City did follow this mandate of interagency cooperation as to Mr. Wylie's property specifically. As the

application for annexation and the development agreement reflect, ITD consulted with the landowner and the City, and the parties determined that an absence of direct access points between SH 20-26 and the property would further the jointly-held objective of facilitating traffic flow and safety on that highway. R. Vol. II, pp. 210-211 (Planning Department Staff Report §§ 6(i), 8); R. Vol. I, p. 192 (Development Agreement § 1.7).

As set forth above, by its very nature, the invisible line between private property annexed to the City and a state highway represents a point at which one leaves the City's land use jurisdiction and enters ITD's. The legislature recognized the unique nature of this line and established mechanisms by which the agencies could work in cooperation instead of conflict. The legislature did not intend for Idaho Code § 67-6528 to preempt local regulation of access on the local agency's side of the line; rather, the legislature deliberately mandated interagency consultation.

Thus, while the City may not dictate to ITD where ITD may locate access points to state highways, the City may – and does – cooperate with ITD to ensure that the City's plans, land use ordinances, and decisions on one side of the line benefit of ITD's plans, policies, and decisions on the other side of the line. The operation of the development agreement to forestall direct access onto SH 20-26 does meet this mutually-held objective.

For these reasons, Idaho Code § 67-6528 can not be read to preempt the implementation of local land use plans and ordinances in the development agreement, as Mr. Wylie asserts. Rather, Idaho Code § 67-6528 should be interpreted to be a legislative acknowledgment of the need for a customized, interagency evaluation of each proposed access from private property

onto a state highway. The development agreement, which accomplishes this statutorily-mandated cooperative evaluation as to Mr. Wylie's property, should not be found to be preempted, but should be upheld as a matter of law.

b. <u>Idaho Code § 67-6508 demonstrates that the legislature did not intend for ITD to fully occupy the field of law regarding state highway access.</u>

Under Idaho Code § 67-6508, the City is authorized to formalize its policy regarding access to public highways and streets within its borders, including access to state highways, in the course of implementing its comprehensive plan. Idaho Code § 67-6508 reads, in relevant part:

> It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.
> * * *
> (i) Transportation -- An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on . . . ***control of access***.
> * * *
> (n) Implementation -- An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

Idaho Code §§ 67-6508(i) and (n) (emphasis added).

Pursuant to the authority conveyed to the City under Idaho Code § 67-6508, the City has adopted the City of Meridian Comprehensive Plan,[1] including, *inter alia*, the following sections thereof which reflect the legislature's direction in Idaho Code § 67-6508(i):

> • Arterial Planning in North Meridian
> There are three state highways in the North Meridian Area that have a significant influence on the arterial system and therefore deserve special attention:
> 1. U.S. 20-26/Chinden Boulevard.
> This highway serves as the north boundary of the City's Area of Impact east of Linder Road and bisects the Area of Impact west of Linder Road. It is expected to be five to seven lanes wide at build-out of the city. It separates Meridian's distinctly urban growth patterns from the City of Eagle, with its low-density, semi-rural character. The City of Meridian will establish ordinances and development standards that preserve the highway as a major regional transportation facility, connecting the cities of Caldwell, Nampa, Star, Meridian, Eagle and Boise. ***The City believes this roadway needs to be protected from multiple access points and preserved as a high capacity connector.*** The City supports beautification and appropriate sound mitigation measures along the US 20-26 corridor.

City of Meridian Comprehensive Plan, Chapter VI(A)(2), p. 52 (emphasis added).

> 3. Transportation Planning in the North Meridian Area
> a. Regional Transportation Planning & Cooperation
> - The City of Meridian will work together with local transportation authorities, specifically ACHD, COMPASS, and ITD, to protect the US 20-26 and SH 69 corridors as regional transportation routes and gateways to not only Meridian, but also to Boise, Eagle, Star, Kuna, Nampa, and Caldwell.
>
> * * *
>
> b. Key Transportation Assumptions
> The City of Meridian will conduct long range transportation planning in the North Meridian Area based on the following assumptions:
> - ***US 20-26 will be a limited access highway*** that retains a speed of at least 45 miles per hour.

Id., Chapter VI(C)(3), p. 73 (emphasis added).

[1] The Comprehensive Plan is available *in toto* online at: http://www.meridiancity.org/planning.aspx?id=232.

> **Goal IV:** Encourage compatible uses to minimize conflicts and maximize use of land.
> **Objective D:** Encourage appropriate land uses along transportation corridors.
> **Actions:**
> * * *
> 2. Restrict curb cuts and access points on collectors and arterial streets.
> * * *
> 8. Coordinate with ITD . . . to determine future infrastructure plans, transportation corridors, highway alignments, etc. and allow only compatible adjacent land uses and appropriate timelines for development.

Id., Chapter VII(D), p. 114 (emphases in original).

As specifically authorized by Idaho Code § 67-6508(n), the development agreement represents one method by which the City implements the goals of the Comprehensive Plan to preserve traffic flow and capacity on SH 20-26. These goals and their implementation in the form of the development agreement epitomize the legislative intent of Idaho Code § 67-6508 to provide both a specific role to the City in planning for access to state highways within its jurisdiction, and a mechanism for implementation of this plan. Against the statutory backdrop of Idaho Code § 67-6508, then, preemption of the development agreement may not be implied, as Mr. Wylie suggests.

3. <u>There is not, and was not, a vested property right to access SH 20-26; had there been, the development agreement would have waived it.</u>

Mr. Wylie argues that his predecessor-in-interest: 1) had a right to direct traffic access onto SH 20-26, 2) tried to contractually waive that right under the development agreement, but 3) did not succeed in doing so (Appellant's Brief, pp. 28-31; 37-39). This argument starts with a faulty premise.

As set forth above, by law, an Encroachment Permit from ITD is a prerequisite to the construction of any traffic ingress point onto SH 20-26. IDAPA § 39.03.42.200.01. Where municipal and roadway jurisdictions abut, an ITD Encroachment Permit represents only half of a right to access between the city-annexed land and the state highway. The other half of the right to access must necessarily be obtained from the land use authority.

Both halves are absent in the case at bar. There is no ITD Encroachment Permit in the record for access to SH 20-26 from this property. Accordingly, Mr. Wylie's predecessor held no vested right that could have been waived by the development agreement. Further, that the development agreement was mutually negotiated and voluntarily executed negates any claim that the agreement somehow represents a government action effecting a compensable impairment to a vested right.

Mr. Wylie cites *Mabe v. State*, 83 Idaho 222, 360 P.2d 799 (1961) ("*Mabe*") in support of his argument that the construction of a new access point from private land onto a state highway is a vested right. The *Mabe* Court is clear in its opinion that any constitutional protection afforded to an access point is based on the fact that the right to access predates an involuntary surrender thereof. The record of the case at bar contains neither evidence that there was a pre-existing right to access at this location (or even a pre-existing access point), nor that there was an involuntary surrender of such access, as the development agreement was voluntarily entered.

Other cases that Mr. Wylie cites in support of the premise that there was at one point a vested right to an access point between his property and SH 20-26 are also factually distinguishable, in that they address scenarios where *all* access to private property is destroyed

by a governmental action or regulation. *Sandpoint v. Doyle*, 14 Idaho 749, 95 P. 945 (1908), (bridge severed *all* access to business); *Farris v. Twin Falls*, 81 Idaho 583, 347 P.2d 996 (1959) (raised street level severed *all* access to house); *Hadfield v. State*, 86 Idaho 561, 388 P.2d 1018 (1963) (roadway improvement project severed *all* access to business for fourteen months); *Continental Oil Co. v. Twin Falls*, 49 Idaho 89, 286 P. 353 (1930) (ordinance severed *all* vehicular access to gas stations across a sidewalk within 500 feet of a school); *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958) (raised frontage road and closure of intersection destroyed *all* business access for corner business, notwithstanding one remaining ingress/egress point). By contrast, the development agreement does not disallow all access to Mr. Wylie's property. The property has access points on W. Everest Lane to the west, N. Gertie Place to the south, and Linder Road to the east. R. Vol. II, p. 210.

It should further be noted that, with one exception (*Killinger v. Twin Falls Highway Dist.*, 135 Idaho 322, 17 P.3d 266 (2000), in which the Court declined to address the specific access issue), the cases cited by Mr. Wylie predate both the Local Land Use Planning Act, which was originally adopted in 1975, as well as the Idaho Transportation Board itself, which was created in 1985 by the passage of Idaho Code § 40-301. These cases are therefore unpersuasive as to the argument that under current law, a voluntarily-entered development agreement recorded against Mr. Wylie's property is insufficient to bar construction of a new access point onto a state highway.

Even if Mr. Wylie's predecessors did have an existing access point onto SH 20-26 and/or an ITD Encroachment Permit, and sought in the development agreement to waive all future use

of that access point or Permit, the development agreement would have been effective to do so. Mr. Wylie argues that the fact that the developer of the property agreed not to construct a direct access point to SH 20-26 at the time the development agreement was signed does not indicate a permanent intent not to construct such access (Appellant's Brief, p. 29), but in fact that is exactly how the development agreement operates. The word "commitment" is used repeatedly throughout Idaho Code § 67-6511A; the development agreement is a permanent commitment to the agreed-upon plan for development of the property. The commitment is binding unless and until it is modified.

Further, as set forth above, Mr. Wylie himself declined the opportunity to seek an access-related modification to the development agreement, stating in his application for an unrelated modification: "We agree with, and do not intent to change the access points . . . that were approved on the previous preliminary plat." R. Vol. II, p. 232. He did not assert that he wished to modify the development agreement to allow him to exercise an ITD Encroachment Permit for access to SH 20-26; rather, he specifically expressed concurrence with the planned, agreed-upon access points, none of which include access to SH 20-26.

In sum, Mr. Wylie's attack on the development agreement as an insufficient waiver of a constitutionally protected, vested right is misplaced, as there is no record that he, or his predecessor, ever had such a right. Alternatively, if that right did accrue to Mr. Wylie or his predecessor, or does accrue to Mr. Wylie or his successor in the future, the development agreement was, is, and will be sufficient to effectuate a waiver of that right.

B. <u>The validity of the development agreement rendered Mr. Wylie's petition for declaratory judgment nonjusticiable.</u>

The development agreement's provisions regarding access from Mr. Wylie's property to SH 20-26 are valid and binding on Mr. Wylie. This validity renders academic any examination of the validity of a duplicative general provision of Meridian City Code regarding access from city-annexed property to SH 20-26. For this reason, the relief sought by Mr. Wylie cannot accrue to him under his petition for declaratory judgment. Courts may not grant a declaratory judgment where it would merely answer an academic or abstract question; a petition for declaratory judgment must have a direct or collateral effect on the petitioner. *Idaho Schools for Equal Educational Opportunity v. Idaho State Board of Education*, 128 Idaho at 282. For this reason, the district court was correct in finding Mr. Wylie's petition for declaratory judgment to be nonjusticiable.

An issue is nonjusticiable if it does not present "a real and substantial controversy that is capable of being concluded through judicial decree of specific relief." *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 851, 119 P.3d 624, 626 (2005). Because a ruling on Meridian City Code § 11-3H-4(B)(2) would only be of any potential effect on Mr. Wylie in the absence of the development agreement, Mr. Wylie's petition requests a judgment necessarily based on "actual and existing facts," but on a hypothetical set of facts, which negates its justiciability. *State ex rel. Miller v. State Board of Education*, 56 Idaho 210, 217, 52 P.2d 141, 144 (1935).

An actual or justiciable controversy is a prerequisite to a declaratory judgment action. *Harris v. Cassia County*, 106 Idaho 513, 681 P.2d 988 (1984). In the absence of a justiciable petition, dismissal of Mr. Wylie's petition for declaratory judgment was appropriate.

VI. CONCLUSION

The development agreement is valid and binding on Mr. Wylie. Its execution was not an *ultra vires* act by the City, as Idaho Code § 67-6511A empowers the City to enter into development agreements. The City's authority to enter into the agreement is not expressly or impliedly preempted, as Idaho Code §§ 67-6528 and 67-6508 and IDAPA § 39.03.48 direct the City and ITD to work together to ensure that specific development agreement terms regarding traffic access points constructed between a state highway and City-annexed land will benefit the state highway. And absent an ITD Encroachment Permit, there is no right of access to be waived, but the development agreement as executed would be effective to waive any such right.

For these reasons, this Court should uphold the development agreement as valid and binding on Mr. Wylie, and affirm the district court's dismissal of Mr. Wylie's petition for declaratory judgment on the grounds that the development agreement renders its question nonjusticiable as a matter of law.

DATED this 22nd day of July, 2010.

Emily Kane

Emily Kane, Deputy City Attorney
CITY OF MERIDIAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2010, I caused a true and correct copy of the foregoing **RESPONDENT CITY OF MERIDIAN'S BRIEF** to be served by the method(s) indicated below, and addressed to the following:

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