

4-7-2010

# County of Twin Falls v. Hettinga Clerk's Record Dckt. 37047

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LAW CLERK Vol. 1 of 2

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

THE COUNTY OF TWIN FALLS, IDAHO

Plaintiff/Respondent

and

ERIC HETTINGER.

Defendant/Appellant

and

**FIFTH**

Appealed from the District Court of the TWIN FALLS  
Judicial District for the State of Idaho, in and

G. / RICHARD BEVAN County

Hon. \_\_\_\_\_ District Judge

**TIM WILLIAM**

X

Attorney for Appellant

**FRITZ WONDERLICH**

X

Attorney for Respondent

<b>FILED - COPY</b>	
Filed this _____ day of _____, 20____	
<b>APR - 7 2010</b>	
By _____ Supreme Court / Court of Appeals	_____ Clerk
Entered on ATS by _____	_____ Deputy

CAXTON PRINTERS, CALDWELL, IDAHO 83405

**37047**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO,	)	SUPREME COURT NO. 37047-2009
Political subdivisions of the State of Idaho,	)	DISTRICT CASE NO. CV 08-79
	)	
Plaintiff/Respondent,	)	
	)	
vs	)	
	)	
ERIC HETTINGA,	)	
	)	
<u>Defendant/Appellant</u>	)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for the County of Twin Falls

HONORABLE G. RICHARD BEVAN  
District Judge

Tim Williams  
Williams Law Office  
P. O. Box 282  
Twin Falls, ID 83303-0282

Fritz Wonderlich  
Twin Falls City Attorney  
P. O. Box 1812  
Twin Falls, ID 83303-1812

ATTORNEY FOR APPELLANT/  
DEFENDANT

ATTORNEY FOR RESPONDENT/  
PLAINTIFF

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The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User	Description	Judge
'8/2008	NCOC	AGUIRRE	New Case Filed-Other Claims	G. Richard Bevan
	APER	AGUIRRE	Plaintiff: The City Of Filer, Idaho Appearance Fritz A. Wonderlich	G. Richard Bevan
	APER	AGUIRRE	Plaintiff: The County Of Twin Falls, Idaho Appearance Fritz A. Wonderlich	G. Richard Bevan
		AGUIRRE	Filing: G3 - All Other Actions Or Petitions, Not Demanding \$ Amounts Paid by: Wonderlich, Fritz A. (attorney for The City Of Filer, Idaho) Receipt number: 8000587 Dated: 1/8/2008 Amount: \$.00 (Cash) For: The City Of Filer, Idaho (plaintiff)	G. Richard Bevan
	COMP	AGUIRRE	Complaint Filed	G. Richard Bevan
	SMIS	AGUIRRE	Summons Issued	G. Richard Bevan
'30/2008		QUAM	Filing: I7A - Civil Answer Or Appear. All Other Actions No Prior Appearance Paid by: Coleman, Ritchie, Robertson Receipt number: 8002487 Dated: 1/30/2008 Amount: \$58.00 (Check) For: Hettinga, Eric (defendant)	G. Richard Bevan
	ANSW	QUAM	Answer	G. Richard Bevan
'7/2008	HRSC	COOPE	Hearing Scheduled (Scheduling Conference 04/28/2008 09:03 AM)	G. Richard Bevan
	OSCO	COOPE	Order for Scheduling Conference and Order RE: Motion Practice	G. Richard Bevan
'25/2008	NTSD	NIELSEN	Notice Of Service Of Discovery Documents	G. Richard Bevan
'11/2008	STIP	NIELSEN	Stipulation for Scheduling and Planning	G. Richard Bevan
	NOSV	NIELSEN	Notice Of Service of Discovery Documents	G. Richard Bevan
'15/2008	HRVC	COOPE	Hearing result for Scheduling Conference held on 04/28/2008 09:03 AM: Hearing Vacated	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Court Trial 08/20/2008 09:00 AM)	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Civil Pretrial Conference 07/21/2008 10:30 AM)	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Status/ADR 06/23/2008 09:02 AM)	G. Richard Bevan
	NOCT	COOPE	Notice Of Court Trial Setting, Pretrial Conference And Order Governing Further Proceedings	G. Richard Bevan
23/2008	CMIN	BARTLETT	Court Minutes Hearing type: Status/ADR Hearing date: 6/23/2008 Time: 9:46 am Court reporter: Virginia Bailey	G. Richard Bevan
	HRHD	BARTLETT	Hearing result for Status/ADR held on 06/23/2008 09:02 AM: Hearing Held	G. Richard Bevan
	DCHH	BARTLETT	District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:	G. Richard Bevan



The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User		Judge
7/1/2008	NOTC	NIELSEN	Notice Duces Tecum of Taking Deposition Upon Oral Examination	G. Richard Bevan
	NOTC	NIELSEN	Notice Duces Tecum of Taking Deposition Upon Oral Examination	G. Richard Bevan
	NOTC	NIELSEN	Notice Duces Tecum of Taking Deposition Upon Oral Examination	G. Richard Bevan
	NODT	QUAM	Amended Notice Of Taking Deposition Duces Tecum Upon Oral Examniation	G. Richard Bevan
	NODT	QUAM	Amended Notice Of Taking Deposition Duces Tecum Upon Oral Examniation	G. Richard Bevan
7/21/2008	CMIN	COOPE	Court Minutes Hearing type: Civil Pretrial Conference Hearing date: 7/21/2008 Time: 10:30 am Court reporter: Virginia Bailey Audio tape number: ct rm 1	G. Richard Bevan
	DCHH	COOPE	Hearing result for Civil Pretrial Conference held on 07/21/2008 10:30 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:	G. Richard Bevan
	CONT	COOPE	Continued (Court Trial 09/18/2008 09:00 AM)	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Civil Pretrial Conference 09/03/2008 10:30 AM)	G. Richard Bevan
	NOCT	COOPE	Notice Of Court Trial Setting, Pretrial Conference And Order Governing Further Proceedings	G. Richard Bevan
7/4/2008	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing	G. Richard Bevan
	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing	G. Richard Bevan
7/19/2008	HRSC	COOPE	Hearing Scheduled (Motion 09/03/2008 10:30 AM) for view of premises	G. Richard Bevan
	MOTN	NIELSEN	Motion for View of Premises	G. Richard Bevan
		NIELSEN	Defendant's Disclosure of Lay Witnesses	G. Richard Bevan
	NOHG	NIELSEN	Notice Of Hearing	G. Richard Bevan
7/26/2008		NIELSEN	Defendant's Pretrial Statement	G. Richard Bevan
7/27/2008	MEMO	NIELSEN	Plaintiffs' Pretrial Memorandum	G. Richard Bevan
		NIELSEN	Plaintiffs' Disclosure of Lay Witnesses	G. Richard Bevan
7/3/2008	CMIN	COOPE	Court Minutes Hearing type: Motion Hearing date: 9/3/2008 Time: 10:30 am Court reporter: Sue Israel Audio tape number: ct rm 1	G. Richard Bevan
	DCHH	COOPE	Hearing result for Motion held on 09/03/2008 10:30 AM: District Court Hearing Held Court Reporter: Sue Israel Number of Transcript Pages for this hearing estimated: for view of premises	G. Richard Bevan

The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User		Judge
09/03/2008	DCHH	COOPE	Hearing result for Civil Pretrial Conference held on 09/03/2008 10:30 AM: District Court Hearing Held Court Reporter: Sue Israel Number of Transcript Pages for this hearing estimated:	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Motion 09/17/2008 02:00 PM) meet Counsel to view premises	G. Richard Bevan
09/18/2008	ORDR	COOPE	Order to View Premises	G. Richard Bevan
09/16/2008		NIELSEN	Defendant's Proposed Findings of Fact and Conclusions of Law	G. Richard Bevan
09/17/2008	ORDR	COOPE	Minute Entry and Order	G. Richard Bevan
09/18/2008	HRHD	COOPE	Hearing result for Motion held on 09/17/2008 02:00 PM: Hearing Held meet Counsel to view premises at 2319 East 4000 North, Filer	G. Richard Bevan
	HRVC	COOPE	Hearing result for Court Trial held on 09/18/2008 09:00 AM: Hearing Vacated	G. Richard Bevan
09/24/2008		NIELSEN	Defendant's Response to Minute Entry and Order	G. Richard Bevan
09/30/2008	MISC	COOPE	Unavailable Dates for Fritz Wonderlich	G. Richard Bevan
10/16/2008	MOTN	MCMULLEN	Motion to Amend Complaint	G. Richard Bevan
	AMCO	MCMULLEN	Amended Complaint Filed	G. Richard Bevan
10/28/2008	HRSC	COOPE	Hearing Scheduled (Status 11/24/2008 09:01 AM)	G. Richard Bevan
		COOPE	Notice Of Hearing	G. Richard Bevan
11/24/2008	CMIN	COOPE	Court Minutes Hearing type: Status Hearing date: 11/24/2008 Time: 9:01 am Court reporter: Virginia Bailey Audio tape number: ct rm 1	G. Richard Bevan
	DCHH	COOPE	Hearing result for Status held on 11/24/2008 09:01 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:	G. Richard Bevan
	AMCO	AGUIRRE	Amended Complaint Filed- No Summons Issued	G. Richard Bevan
11/22/2008	LETT	AGUIRRE	Letter to Judge -- Unavailable Dates for Fritz Wonderlich	G. Richard Bevan
	ANSW	NIELSEN	Answer to Amended Complaint	G. Richard Bevan
11/23/2008	ORDR	COOPE	Order to Amend Complaint	G. Richard Bevan
11/24/2008	HRSC	COOPE	Hearing Scheduled (Court Trial 05/19/2009 09:00 AM)	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Civil Pretrial Conference 05/04/2009 10:30 AM)	G. Richard Bevan
	HRSC	COOPE	Hearing Scheduled (Status/ADR 04/06/2009 09:02 AM)	G. Richard Bevan
	NOCT	COOPE	Amended Notice Of Court Trial Setting, Pretrial Conference And Order Governing Further Proceedings	G. Richard Bevan

The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User		Judge
1/29/2009	NODT	NIELSEN	Notice Duces Tecum of Taking Deposition Upon Oral Examination	G. Richard Bevan
	NODT	NIELSEN	Notice Duces Tecum of Taking Deposition Upon Oral Examination	G. Richard Bevan
1/10/2009	NOTR	NIELSEN	Notice Of Preparation Of Transcript & Filing	G. Richard Bevan
1/19/2009	CONT	COOPE	Continued (Court Trial 05/21/2009 09:00 AM)	G. Richard Bevan
		COOPE	Notice Of Hearing	G. Richard Bevan
1/16/2009	CMIN	COOPE	Court Minutes Hearing type: Status/ADR Hearing date: 4/6/2009 Time: 9:02 am Court reporter: Virginia Bailey Audio tape number: ct rm 1	G. Richard Bevan
	DCHH	COOPE	Hearing result for Status/ADR held on 04/06/2009 09:02 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:	G. Richard Bevan
1/21/2009		NIELSEN	Defendant's Disclosure of Lay Witnesses	G. Richard Bevan
1/27/2009		NIELSEN	Defendant's Pretrial Statement	G. Richard Bevan
1/14/2009	ORDR	COOPE	Pretrial Conference Order Pursuant to I.R.C.P. 16(d)	G. Richard Bevan
1/16/2009	SUBR	NIELSEN	Subpoena Returned	G. Richard Bevan
	AFSV	NIELSEN	Affidavit Of Service of Subpoena (Jennifer Gos-Eells)	G. Richard Bevan
	SUBR	NIELSEN	Subpoena Returned	G. Richard Bevan
	AFSV	NIELSEN	Affidavit Of Service of Subpoena (Shari Hart)	G. Richard Bevan
1/18/2009	HRHD	COOPE	Hearing result for Civil Pretrial Conference held on 05/04/2009 10:30 AM: Hearing Held in chambers	G. Richard Bevan
1/14/2009	FFCL	COOPE	Plaintiff's Proposed Findings Of Fact And Conclusions Of Law	G. Richard Bevan
1/18/2009		NIELSEN	Exhibit List	G. Richard Bevan
		NIELSEN	Defendant's Proposed Findings of Fact and Conclusions of Law	G. Richard Bevan
1/21/2009	CMIN	COOPE	Court Minutes Hearing type: Court Trial Hearing date: 5/21/2009 Time: 9:00 am Court reporter: Virginia Bailey Audio tape number: ct rm 1	G. Richard Bevan
	WITN	COOPE	Plaintiff's Disclosure of Lay Witnesses	G. Richard Bevan
1/22/2009	CTST	COOPE	Hearing result for Court Trial held on 05/21/2009 09:00 AM: Court Trial Started	G. Richard Bevan
	DCHH	COOPE	Hearing result for Court Trial held on 05/21/2009 09:00 AM: District Court Hearing Held Court Reporter: Virginia Bailey Number of Transcript Pages for this hearing estimated:	G. Richard Bevan
1/28/2009	BREF	NIELSEN	Plaintiff's Trial Brief	G. Richard Bevan

The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User	Description	Judge
12/2009		NIELSEN	Defendant's Post Trial Brief	G. Richard Bevan
1/18/2009	BREF	NIELSEN	Plaintiff's Response Brief	G. Richard Bevan
2/2009	ADVS	COOPE	Case Taken Under Advisement	G. Richard Bevan
2/21/2009	FFCL	COOPE	Findings Of Fact And Conclusions Of Law	G. Richard Bevan
	CDIS	COOPE	Civil Disposition/Judgment entered: entered for: Hettinga, Eric, Defendant; The County Of Twin Falls, Idaho, Plaintiff. Filing date: 8/21/2009	G. Richard Bevan
3/2/2009	APSC	COOPE	Appealed To The Supreme Court	G. Richard Bevan
	NTOA	COOPE	Notice Of Appeal	G. Richard Bevan
3/14/2009		COOPE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Coleman, David A. (attorney for Hettinga, Eric) Receipt number: 9027478 Dated: 10/14/2009 Amount: \$101.00 (Check) For: Hettinga, Eric (defendant)	G. Richard Bevan
	CCOA	COOPE	Clerk's Certificate Of Appeal	G. Richard Bevan
10/19/2009		MMILLER	Miscellaneous Payment: Copy Cd Paid by: Hettinga, Eric Receipt number: 9027865 Dated: 10/19/2009 Amount: \$12.00 (Cash)	G. Richard Bevan
	NAAR	JOLLEY	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.	G. Richard Bevan
10/28/2009	SCDF	COOPE	Supreme Court Document Filed- Clerk's Certificate Filed	G. Richard Bevan
	SCDF	COOPE	Supreme Court Document Filed- Notice of Appeal Filed (T)	G. Richard Bevan
11/5/2009	SCDF	COOPE	Supreme Court Document Filed- Document(s) Filed -- Due Dates Suspended	G. Richard Bevan
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Coleman, Ritchie & Robertson Receipt number: 9029629 Dated: 11/5/2009 Amount: \$70.00 (Check)	G. Richard Bevan
		COOPE	Miscellaneous Payment: Record Covers For Appeals Paid by: Coleman, Ritchie & Robertson Receipt number: 9029629 Dated: 11/5/2009 Amount: \$30.00 (Check)	G. Richard Bevan
	CCOA	COOPE	Amended Clerk's Certificate Of Appeal	G. Richard Bevan
11/24/2009	SCDF	COOPE	Supreme Court Document Filed- Order Granting Motion for Withdrawal of Attorney	G. Richard Bevan
	SCDF	COOPE	Supreme Court Document Filed- Clerk's Record/Reporter's Transcript Suspended	G. Richard Bevan
12/15/2009	SCDF	COOPE	Supreme Court Document Filed- Proof of Service Filed -- Appeal Suspended	G. Richard Bevan
12/28/2009		JOLLEY	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mr Tim Williams Receipt number: 9034135 Dated: 12/28/2009 Amount: \$13.00 (Check)	G. Richard Bevan

Date: 1/27/2010

Time: 11:07 AM

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Fifth Judicial District Court - Twin Falls County

User: COOPE

ROA Report

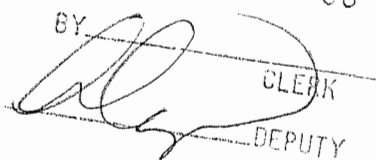
Case: CV-2008-0000079 Current Judge: G. Richard Bevan

The City Of Filer, Idaho, etal. vs. Eric Hettinga

The City Of Filer, Idaho, The County Of Twin Falls, Idaho vs. Eric Hettinga

Date	Code	User		Judge
2/28/2009	NOAP	PIERCE	Notice Of Appearance of Appeal	G. Richard Bevan
	APER	PIERCE	Defendant: Hettinga, Eric Appearance Timothy J Williams	G. Richard Bevan
2/30/2009	CCOA	COOPE	Second Amended Clerk's Certificate Of Appeal	G. Richard Bevan
1/22/2010	NOTC	COOPE	Notice of Transcript Lodged	G. Richard Bevan
	LODG	COOPE	Lodged Transcript Virginia Bailey May 21, 2009 Court Trial	G. Richard Bevan

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
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Fax (208) 732-8822  
Attorneys for Plaintiff  
ISB#2591

CLERK OF DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
2008 JAN -8 PM 2:00  
BY:  CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE CITY OF FILER, IDAHO, and THE	)	
COUNTY OF TWIN FALLS, IDAHO,	)	
political subdivisions of the state of Idaho,	)	
	)	Case No. CV-2008- <u>79</u>
Plaintiffs,	)	<b>Filing Fee: Exempt</b>
vs.	)	<b>COMPLAINT</b>
ERIC HETTINGA,	)	
	)	
Defendant.	)	

\* \* \* \* \*

Plaintiffs, the City of Filer, Idaho and the County of Twin Falls, Idaho, complain and allege as follows:

1. Plaintiffs, CITY OF FILER (“City”) and COUNTY OF TWIN FALLS (“County”) are political subdivisions of the state of Idaho.
2. Defendant, Eric Hettinga, is a resident of Twin Falls County, Idaho and the owner of real property located at 2319 East 4000 North, Filer, Idaho.

3. Defendant's real property is located in Twin Falls County. However, the real property is located within the Area of City Impact. The Area of City Impact is governed by the City of Filer Zoning and Subdivision Regulations contained in Title 10 of the Filer City Code, and the City Master Zoning Map, as adopted by the City of Filer and the County of Twin Falls. The City Master Zoning Map designates Defendant's real property as within an R-A Residential Agricultural Zone, in the Area of City Impact.

4. Defendant is operating a trucking and hay hauling operation from the above-described premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and Twin Falls County.

5. Defendant has been notified of the zoning regulations, and the violations. Defendant has ignored the notice and has continued to operate the trucking and hay hauling operation on the subject premises.

6. The Twin Falls County has authorized the City of Filer to enforce compliance with the provisions of the zoning ordinance and the regulations adopted therein, and to institute a civil action in the district court on behalf of Twin Falls County.

7. Plaintiffs seek an order permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.

8. Plaintiff has been required to retain an attorney to represent it in this action and should be awarded all reasonable costs and attorney fees incurred in prosecuting this action. Plaintiff seeks attorney fees pursuant to I.C. § 12-121. If this matter should proceed by way of a default judgment, a reasonable attorney fee would be \$1,000.00.

WHEREFORE, the Plaintiff prays for relief as follows:

1. For a judgment finding that the Defendant has violated the Filer Zoning Ordinance, as adopted by Twin Falls County.
2. For an ordering permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.
4. For attorney fees and costs incurred herein; and,
5. For such other and further relief as the Court deems just.

DATED this 8<sup>th</sup> day of January, 2008.

WONDERLICH & WAKEFIELD

By   
\_\_\_\_\_  
Fritz Wonderlich



DISTRICT COURT  
TWIN FALLS CO. IDAHO

2008 JUN 30 PM 12:14

BY \_\_\_\_\_ CLERK  
*Suena* DEPUTY

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE CITY OF FILER, IDAHO and THE )  
COUNTY OF TWIN FALLS, IDAHO, )  
political subdivisions of the State of Idaho, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**ANSWER**

Fee Category: I. 7. a.

Filing Fee: \$ 58.00

COMES NOW the defendant, Eric Hettinga, and answers the plaintiff's Complaint as follows:

**I.**

Defendant denies each and every allegation contained in the Complaint which is not hereinafter specifically admitted.

**II.**

Defendant admits the allegations of paragraphs 1 and 2.

**III.**

With respect to paragraph 3, defendant admits his real property is located in Twin Falls County. As to the remaining allegations of paragraph 3, the defendant has no knowledge or information sufficient to form a belief as to the truth of those allegations.

**IV.**

Defendant denies the allegations of paragraphs 4, 5, 6, 7 and 8.

**FIRST AFFIRMATIVE DEFENSE**

The defendant's use of his property is not for the operation of a trucking and hay hauling operation. The defendant's use does not rise to the level of an operation of a business from his home.

**SECOND AFFIRMATIVE DEFENSE**

The defendant asserts that the City of Filer has not been properly authorized by the County of Twin Falls to enforce its zoning regulations in the area of city impact as provided by the Idaho Constitution.

**REQUEST FOR ATTORNEYS FEES**

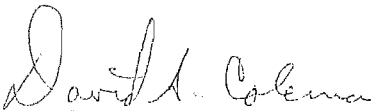
The defendant has been required to retain an attorney to represent him in this action and should be awarded all reasonable costs and attorneys fees incurred in defending this action. Defendant seeks attorneys fees pursuant to I.C. § 12-121.

WHEREFORE the defendant prays for relief as follows:

1. That the plaintiffs take nothing by their Complaint; and
2. For attorneys fees and costs incurred herein; and
3. For such other and further relief as the Court deems proper.

DATED this 30<sup>th</sup> day of January, 2008.

COLEMAN, RITCHIE & ROBERTSON

By 

DAVID A. COLEMAN  
Attorney for Defendant

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> day of January, 2008, I served the foregoing **Answer** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812



DAVID A. COLEMAN

DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
FILED

2008 AUG 26 PM 4: 54

BY \_\_\_\_\_  
CLERK

\_\_\_\_\_  
DEPUTY

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE CITY OF FILER, IDAHO and THE )  
COUNTY OF TWIN FALLS, IDAHO, )  
political subdivisions of the State of Idaho, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**DEFENDANT'S PRETRIAL  
STATEMENT**

COMES NOW David A. Coleman of the firm of Coleman, Ritchie & Robertson,  
attorney for Defendant, Eric Hettinga, and advises the Court as follows:

1) Nature of the Action. This is a zoning ordinance enforcement case. The City of  
Filer, represented by Fritz Wonderlich, asserts that the defendant, Eric Hettinga, is operating a  
trucking business from his property which violates the Filer City Zoning Ordinance.

The defendant, Eric Hettinga, represented by David A. Coleman, asserts that the

defendant does not operate a trucking business from his property but only parks his trucks on it. The defendant also asserts that the City of Filer lacks constitutional authority to enforce its ordinances outside of the city limits of Filer.

2) Statement of all Claims. The City of Filer asserts that the defendant is operating a trucking business in contravention to the Filer City Zoning Ordinance. The defendant asserts that he is merely parking his vehicles on his own property and does not violate the Filer City Zoning Ordinance. Furthermore, the defendant asserts that the City of Filer lacks the constitutional authority to enforce its ordinances outside of the city limits.

3) Admissions or Stipulations of the Parties. None.

4) Amendments to the Pleadings and Abandoned Issues of Law. None.

5) Status of Discovery. The defendant propounded Interrogatories and Requests for Production of Documents upon the City of Filer which have all been responded to. The Defendant also took depositions of the City's witnesses which are complete. No other discovery has been propounded in this case.

6) Issues of Fact and Law which Remain to be Litigated. Whether the defendant's parking of trucks upon his real property violates the File City Zoning Ordinance. Whether the City of Filer may enforce its zoning ordinance upon real property outside the city limits of Filer under the Constitution of the State of Idaho.

7) Orders which will Expedite Trial. None.

8) List of all Exhibits.

The City of Filer Zoning Ordinance  
Plaintiff's exhibit disclosed in discovery  
Defendant's photographs


9) List of all Witnesses.

Eric Hettinga  
Shari Hart  
Ken Nielsen  
Kathy Nielsen

10) Possibility of Settlement. Unlikely.

DATED this 26<sup>th</sup> day of August, 2008.

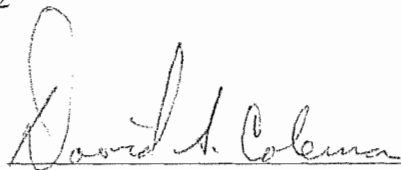
COLEMAN, RITCHIE & ROBERTSON

By   
\_\_\_\_\_  
DAVID A. COLEMAN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of August, 2008, I served the foregoing **DEFENDANT'S PRETRIAL STATEMENT** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812



\_\_\_\_\_  
DAVID A. COLEMAN

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
P.O. Box 1812  
Twin Falls, ID 83303-1812  
Telephone (208) 732-8811  
Fax (208) 732-8822  
Attorneys for Plaintiff  
ISB#2591

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 AUG 27 AM 11:53

BY \_\_\_\_\_

*[Signature]*  
CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE CITY OF FILER, IDAHO, and THE )  
COUNTY OF TWIN FALLS, IDAHO, )  
political subdivisions of the state of Idaho, )

Plaintiffs, )

vs. )

ERIC HETTINGA, )  
↓ )

Defendant. )

Case No. CV-2008-79

**PLAINTIFFS' PRETRIAL  
MEMORANDUM**

\* \* \*

Come now the Plaintiffs, the City of Filer, Idaho, and the County of Twin Falls, Idaho, by and through their attorney of record, Wonderlich & Wakefield, pursuant to the Court's Order and the parties' Stipulation for Scheduling and Planning, and Rule 16(d) and 16(e) of the Idaho Rules of Civil Procedure and hereby submit this Pretrial Memorandum.

1. Counsel for Plaintiffs has produced for examination all exhibits, including:

Filer City and Area of Impact Zoning Map.

Filer City Zoning Ordinances.

Twin Falls County Zoning Ordinance (and more particularly, TFCC 8-9-19(C) providing for the Filer Area of City Impact.

Photographs of the Defendant's Trucking Operation.

Digital Video of the Defendant's Trucking Operation.

2. Counsel have in good faith discussed settlement unsuccessfully.



3. Pretrial discovery has been completed.
4. All discovery responses reflect the facts known at the time of this memorandum.
5. A one day court trial, scheduled for September 18, 2008, will be sufficient to try the cause of action.
6. (A) The Complaint alleges that the Defendant is in violation of applicable zoning regulations, and seeks an order permanently enjoining the violation.  
(B) The Complaint alleges the Defendant's violation of applicable zoning ordinances by operation of a trucking and hay hauling operation on his property within the R-A Residential Agricultural Zone, which use is not permitted by the applicable zoning regulations.  
(C) The Defendant admits that the Plaintiffs are political subdivisions in the State of Idaho, and that he owns and resides at property located at 2319 E 4000 N, Filer, Idaho, in Twin Falls County.  
(D) No amendments of the pleadings are required, no issues abandoned.  
(E) The only real factual issue is whether the Defendant's activities in using his property as the base for his trucking and hay hauling operation rises to the level of an illegal operation of a business at the property.  
(F) The Defendant asserts, by affirmative defense, that the City of Filer is not authorized to enforce its zoning regulations in the area of city impact.  
(G) Plaintiff's are unaware of other orders that will expedite the trial  
(H) The Plaintiff's list of exhibits is set forth in paragraph 1. above.  
(I) Plaintiff's do not intend to offer exhibits other than those listed in paragraph 1. above.

(J) Plaintiff's witnesses include:

Ken and Kathy Nielson, 2317 E 4000 N, Filer, Idaho.  
Shari Hart, P.O. Box 140, Filer, Idaho.  
Jody Galan, P.O. Box 126, Twin Falls, Idaho.


(K) N/A

(L) Court Trial is presently scheduled for September 18, 2008 at 9:00 AM.

DATED this 27 day of August, 2008.

WONDERLICH & WAKEFIELD

By



\_\_\_\_\_  
Fritz Wonderlich  
Attorneys for Plaintiffs'

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27 day of April, 2008, I served the foregoing **PLAINTIFFS'**

**DISCLOSURE OF LAY WITNESSES** by causing a copy thereof to be faxed:

David A. Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525  
208-734-3983



\_\_\_\_\_  
FRITZ WONDERLICH

FILED  
 2008 SEP 15 PM 3:16  
 BY \_\_\_\_\_  
 \_\_\_\_\_

David A. Coleman  
 COLEMAN, RITCHIE & ROBERTSON  
 Attorneys at Law  
 156 2nd Avenue West  
 P.O. Box 525  
 Twin Falls, ID 83303-0525  
 Telephone: 208-734-1224  
 Fax: 208-734-3983  
 Idaho State Bar No. 5742

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE CITY OF FILER, IDAHO and THE )  
 COUNTY OF TWIN FALLS, IDAHO, )  
 political subdivisions of the State of Idaho, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 ERIC HETTINGA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. CV 2008-79

**DEFENDANT'S PROPOSED  
 FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW**

The defendant hereby submits the following proposed Findings of Fact  
 and Conclusions of Law:

FINDINGS OF FACT

1. The city of Filer and the county of Twin Falls Idaho are political  
 subdivisions of the state of Idaho.

2. Defendant Eric Hettinga is an individual who resides at 2319 East 4000

North, Filer, Idaho 83328 (hereinafter the “real property”).

3. The real property lies outside the city limits of Filer, Idaho, and in the county of Twin Falls, Idaho.

4. The real property consists of approximately 1.1 acres.

5. The real property lies within the area of impact of the city of Filer Idaho, as designated by Twin Falls County Ordinance § 8-9-19.

6. Twin Falls County Ordinance § 8-9-19 adopts by reference the city of Filer zoning regulations as being applicable to the area of impact of the city of Filer.

7. Filer city ordinance § 9-5-2 does not specifically prohibit the parking of vehicles on the real property of residents living in the Residential Agricultural District.

8. The city council for the city of Filer unilaterally decided to pursue legal action against Eric Hettinga in this case for operating a trucking and hay hauling operation from his residence.

9. The city council for the city of Filer did not seek authority from the Twin Falls County Commissioners or the Twin Falls County Prosecutor’s office to enforce the County’s zoning ordinance in this particular action.

10. Eric Hettinga owns three semi trucks and several semi trailers which he uses to haul hay.

11. Eric Hettinga buys hay from farmers and sells it to a dairy or feedlot which purchases the hay from him.

12. Eric Hettinga picks up the hay he buys from the farmer and hauls it to

his buyer using his semi trucks and trailers.

13. Eric Hettinga does not store hay for sale to his customers at his residence.

14. Eric Hettinga does not have buyers come to the real property to inspect hay or to purchase hay from him.

15. Eric Hettinga uses the real property to park and store his semi trucks and trailers when he is not using them.

16. Eric Hettinga transacts no business with his customers from the real property.

17. Eric Hettinga does not deduct any of his expenses for parking his trucks and trailers on the real property as business expenses.

18. Eric Hettinga does not perform any major repair work on his semi trucks or semi trailers on the real property.

19. Eric Hettinga does perform some minor maintenance and repair work on his semi trucks and semi trailers on the real property.

20. Eric Hettinga is a sole proprietor and does not have any employees.

#### CONCLUSIONS OF LAW

1. Twin Falls County Ordinance § 8-9-19 violates the Idaho Constitution Article XII, §2, to the extent that it allows the City of Filer to enforce its zoning regulations outside its city limits. *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000); *Clyde Hess Distributing Co. v. Bonneville County*,

69 Idaho 505, 210 P.2d 798 (1949); *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

2. Article XII, § 2 of the Idaho Constitution prohibits the County from delegating to the city of Filer its authority to enforce compliance of county ordinances outside the Filer municipal boundaries. *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000); *Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949); *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

3. Twin Falls County Ordinance § 8-9-19 does not delegate to the city of Filer any authority to enforce Twin Falls County zoning ordinances in city of Filer area of impact.

4. Twin Falls County Ordinance § 8-9-19(c) does not authorize the city of Filer to enforce county zoning ordinances in the city of Filer area of impact.

5. Twin Falls County, neither through its commissioners nor its prosecutor, authorized the city of Filer to bring this action to enforce Twin Falls County zoning regulations in the area of city impact.

6. The city of Filer has not been authorized by the county of Twin Falls to enforce compliance with the zoning ordinances in the area of impact.

7. Eric Hettinga is a sole proprietor engaged in the business of hauling hay with his semi trucks who parks his semi trucks and semi trailers on the real property.

8. Eric Hettinga does not operate his hauling and trucking business on the

real property.

9. The city of Filer Ordinance § 9-5-2 is in derogation of the common-law right to use private property and shall be strictly construed in favor of the property owner. 83 AmJur2d *Zoning and Planning* § 629.

10. The city of Filer zoning ordinance as adopted by Twin Falls County does not specifically prohibit the parking of semi trucks and semi trailers on one's real property where no business transactions are carried on. 83 AmJur2d *Zoning and Planning* § 631.

11. Eric Hettinga has not violated City of Filer Ordinance § 9-5-2 merely by parking vehicles used in his business on the real property.

12. The city of Filer is not a real party in interest in this action. IRCP 17(a).

DATED this 16<sup>th</sup> day of September, 2008.

COLEMAN, RITCHIE & ROBERTSON

  
\_\_\_\_\_  
DAVID A. COLEMAN

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of September, 2008, I served the foregoing DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon the following persons in the following manner:

Fritz A. Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, ID 83303-1812

U.S. Mail  
 Fax (208) 732-8822  
 Hand Deliver

  
\_\_\_\_\_  
DAVID A. COLEMAN



Fritz Wonderlich  
 WONDERLICH & WAKEFIELD  
 P.O. Box 1812  
 Twin Falls, ID 83303-1812  
 Telephone (208) 732-8811  
 Fax (208) 732-8822  
 Attorneys for Plaintiff  
 ISB#2591

DISTRICT COURT  
 TWIN FALLS CO., IDAHO  
 FILED

2008 OCT 16 AM 9:29

BY \_\_\_\_\_  
 \_\_\_\_\_ CLERK  
 \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*


THE CITY OF FILER, IDAHO, and THE	)	
COUNTY OF TWIN FALLS, IDAHO,	)	
political subdivisions of the state of Idaho,	)	
	)	Case No. CV-2008-79
Plaintiffs,	)	
vs.	)	<b>MOTION TO AMEND COMPLAINT</b>
	)	
ERIC HETTINGA,	)	
	)	
Defendant.	)	

\* \* \* \* \*

COME NOW, The Plaintiffs City of Filer and County of Twin Falls, by and through their attorneys, and submit the Motion to Amend Complaint. This Motion is made pursuant to the discussion that occurred between the parties and the Court at the view of the premises on September 17, 2008.

DATED this 18 day of September, 2008.

WONDERLICH & WAKEFIELD

By   
 Fritz Wonderlich

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18 day of September, 2008, I served the foregoing

**MOTION TO AMEND COMPLAINT** by causing a copy thereof to be faxed:

David A. Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525  
208-734-3983



---

FRITZ WONDERLICH

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
P.O. Box 1812  
Twin Falls, ID 83303-1812  
Telephone (208) 732-8811  
Fax (208) 732-8822  
Attorneys for Plaintiff  
ISB#2591

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 OCT 16 AM 9:29

BY \_\_\_\_\_  
CLERK

\_\_\_\_\_  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE COUNTY OF TWIN FALLS, IDAHO, )  
a political subdivision of the state of Idaho, )  
 )  
Plaintiff, )  
vs. )  
ERIC HETTINGA, )  
 )  
Defendant. )

Case No. CV-2008-79

**AMENDED COMPLAINT**

\* \* \* \* \*

Plaintiff, the County of Twin Falls, Idaho, complains and allege as follows:

1. Plaintiff, COUNTY OF TWIN FALLS ("County") is a political subdivision of the state of Idaho.
2. Defendant, Eric Hettinga, is a resident of Twin Falls County, Idaho and the owner of real property located at 2319 East 4000 North, Filer, Idaho.
3. Defendant's real property is located in Twin Falls County. However, the real property is located within the Area of City Impact. The Area of City Impact is governed by the City of Filer Zoning and Subdivision Regulations contained in Title 10 of the Filer City Code, and the City Master Zoning Map, as adopted by the City of Filer

and the County of Twin Falls. The Master Zoning Map designates Defendant's real property as within an R-A Residential Agricultural Zone, in the Area of City Impact.

4. Defendant is operating a trucking and hay hauling operation from the above-described premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and the County of Twin Falls.

5. Plaintiff seeks an order permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.


6. Plaintiff has been required to retain an attorney to represent it in this action and should be awarded all reasonable costs and attorney fees incurred in prosecuting this action. Plaintiff seeks attorney fees pursuant to I.C. § 12-121. If this matter should proceed by way of a default judgment, a reasonable attorney fee would be \$1,000.00.

WHEREFORE, the Plaintiff prays for relief as follows:

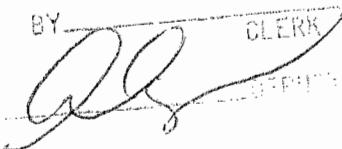
1. For a Judgment finding that the Defendant has violated the applicable zoning regulations.
2. For an Order ordering permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.
4. For attorney fees and costs incurred herein; and,
5. For such other and further relief as the Court deems just.

DATED this 18 day of September, 2008.

WONDERLICH & WAKEFIELD

By   
Fritz Wonderlich

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
P.O. Box 1812  
Twin Falls, ID 83303-1812  
Telephone (208) 732-8811  
Fax (208) 732-8822  
Attorneys for Plaintiff  
ISB#2591

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
**ORIGINAL**  
2008 NOV 24 AM 9:05  
BY  CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE COUNTY OF TWIN FALLS, IDAHO, ) a political subdivision of the state of Idaho, ) ) Plaintiff, ) ) vs. ) ERIC HETTINGA, ) ) Defendant. )	Case No.CV-2008-79  <b>AMENDED COMPLAINT</b>
---	--

\* \* \* \* \*

Plaintiff, the County of Twin Falls, Idaho, complains and allege as follows:

1. Plaintiff, COUNTY OF TWIN FALLS ("County") is a political subdivision of the state of Idaho.
2. Defendant, Eric Hettinga, is a resident of Twin Falls County, Idaho and the owner of real property located at 2319 East 4000 North, Filer, Idaho.
3. Defendant's real property is located in Twin Falls County. However, the real property is located within the Area of City Impact. The Area of City Impact is governed by the City of Filer Zoning and Subdivision Regulations contained in Title 10 of the Filer City Code, and the City Master Zoning Map, as adopted by the City of Filer

and the County of Twin Falls. The Master Zoning Map designates Defendant's real property as within an R-A Residential Agricultural Zone, in the Area of City Impact.

4. Defendant is operating a trucking and hay hauling operation from the above-described premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and the County of Twin Falls.

5. Plaintiff seeks an order permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.

6. Plaintiff has been required to retain an attorney to represent it in this action and should be awarded all reasonable costs and attorney fees incurred in prosecuting this action. Plaintiff seeks attorney fees pursuant to I.C. § 12-121. If this matter should proceed by way of a default judgment, a reasonable attorney fee would be \$1,000.00.

WHEREFORE, the Plaintiff prays for relief as follows:

1. For a Judgment finding that the Defendant has violated the applicable zoning regulations.


2. For an Order ordering permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises.

4. For attorney fees and costs incurred herein; and,

5. For such other and further relief as the Court deems just.

DATED this 24 day of November, 2008.

WONDERLICH & WAKEFIELD

By   
Fritz Wonderlich

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2008 DEC -2 PM 4:49

BY \_\_\_\_\_  
CLERK  
DEPUTY

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, a )  
political subdivision of the State of Idaho, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**ANSWER TO AMENDED  
COMPLAINT**

COMES NOW the defendant, Eric Hettinga, and answers the plaintiff's Amended  
Complaint as follows:

**I.**

Defendant denies each and every allegation contained in the Amended Complaint  
which is not hereinafter specifically admitted.

**II.**

Defendant admits the allegations of paragraphs 1 and 2.

**III.**

With respect to paragraph 3, defendant admits his real property is located in Twin Falls County. As to the remaining allegations of paragraph 3, the defendant has no knowledge or information sufficient to form a belief as to the truth of those allegations.

**IV.**

Defendant denies the allegations of paragraphs 4, 5, and 6.

**FIRST AFFIRMATIVE DEFENSE**

The defendant's use of his property is residential and not for the operation of a trucking and hay hauling operation. The defendant's use is consistent with the R-A Residential Agricultural District.

**SECOND AFFIRMATIVE DEFENSE**

The defendant asserts that the County of Twin Falls has improperly delegated its authority to the City of Filer and its attorney to enforce its zoning regulations in the area of city impact in violation of the Idaho Constitution.

**REQUEST FOR ATTORNEYS FEES**

The defendant has been required to retain an attorney to represent him in this action and should be awarded all reasonable costs and attorneys fees incurred in defending this action. Defendant seeks attorneys fees pursuant to I.C. § 12-117 and § 12-121.



WHEREFORE the defendant prays for relief as follows:

1. That the plaintiffs take nothing by their Amended Complaint; and
2. For attorneys fees and costs incurred herein; and
3. For such other and further relief as the Court deems proper.

DATED this 2<sup>nd</sup> day of December, 2008.

COLEMAN, RITCHIE & ROBERTSON

By David A. Coleman  
DAVID A. COLEMAN  
Attorney for Defendant

#### CERTIFICATE OF SERVICE

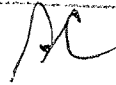
I HEREBY CERTIFY that on the 2<sup>nd</sup> day of December, 2008, I served the foregoing **Answer to Amended Complaint** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812

David A. Coleman  
DAVID A. COLEMAN

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2008 DEC -3 PM **ORIGINAL**

BY  CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

COUNTY OF TWIN FALLS, IDAHO, a	)	
political subdivision of the state of Idaho,	)	
	)	Case No. CV-2008-79
Plaintiffs,	)	
vs.	)	<b>ORDER TO AMEND COMPLAINT</b>
ERIC HETTINGA,	)	
	)	
Defendant.	)	

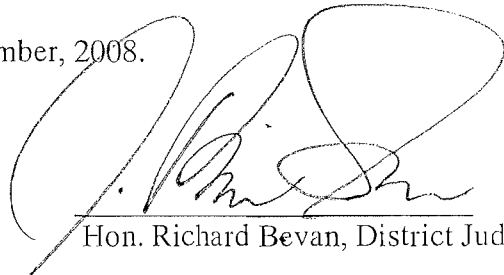
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\* \* \* \* \*

The Plaintiffs having filed their Motion to Amend Complaint, and the Defendant not objecting thereto.

IT IS HEREBY ORDERED, that the Plaintiffs' Motion to Amend Complaint is granted.

DATED this 3 day of December, 2008.

  
Hon. Richard Bevan, District Judge

C: Fritz, Wonderlich  
David Anderson - Court box  
3. Cooper  
ORDER TO AMEND COMPLAINT -1 12-4-08

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of December, 2008, I served the foregoing

**ORDER TO AMEND COMPLAINT** by causing a copy thereof to be faxed to:

David A. Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525  
208-734-3983



---

FRITZ WONDERLICH

ORIGINAL

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

FILED

2008 APR 27 PM 4:35

BY \_\_\_\_\_ CLERK

\_\_\_\_\_

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, a )  
political subdivision of the State of Idaho, )

Plaintiff, )

vs. )

ERIC HETTINGA, )

Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**DEFENDANT'S PRETRIAL  
STATEMENT**

COMES NOW David A. Coleman of the firm of Coleman, Ritchie & Robertson,  
attorney for Defendant, Eric Hettinga, and advises the Court as follows:

1) Nature of the Action. This is a zoning ordinance enforcement case. The County  
of Twin Falls, represented by Fritz Wonderlich, asserts that the defendant, Eric Hettinga, is operating  
a trucking business from his property which violates the Filer City Zoning Ordinance.

The defendant, Eric Hettinga, represented by David A. Coleman, asserts that the  
defendant does not operate a trucking business from his property but only parks his trucks on it. The

defendant also asserts that the County of Twin Falls has improperly delegated its authority to the City of Filer and its attorney to enforce its zoning regulations in the area of city impact in violation of the Idaho Constitution.

2) Statement of all Claims. The County of Twin Falls asserts that the defendant is operating a trucking business in contravention to the Filer City Zoning Ordinance. The defendant asserts that he is merely parking his vehicles on his own property and does not violate the Filer City Zoning Ordinance. Furthermore, the defendant asserts that the County of Twin Falls has improperly delegated its authority to the City of Filer and its attorney to enforce its zoning regulations in the area of city impact in violation of the Idaho Constitution.

3) Admissions or Stipulations of the Parties. None.

4) Amendments to the Pleadings and Abandoned Issues of Law. None.

5) Status of Discovery. The defendant propounded Interrogatories and Requests for Production of Documents upon the County of Twin Falls which have all been responded to. The Defendant also took depositions of the plaintiff's witnesses which are complete. No other discovery has been propounded in this case.

6) Issues of Fact and Law which Remain to be Litigated. Whether the defendant's parking of trucks upon his real property violates the File City Zoning Ordinance. Whether the County of Twin Falls may delegate its authority to the City of Filer to enforce its zoning regulations in the area of city impact pursuant to the Idaho Constitution.

7) Orders which will Expedite Trial. None.

8) List of all Exhibits.

The City of Filer Zoning Ordinance  
Plaintiff's exhibit disclosed in discovery  
Defendant's photographs  
Defendant's tax returns

9) List of all Witnesses.

Eric Hettinga  
Shari Hart  
Ken Nielsen  
Kathy Nielsen  
Jennifer Gose-Eells

10) Possibility of Settlement. Unlikely.

DATED this 27<sup>th</sup> day of April, 2009.


COLEMAN, RITCHIE & ROBERTSON

By David A. Coleman  
DAVID A. COLEMAN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27<sup>th</sup> day of April, 2009, I served the foregoing **DEFENDANT'S PRETRIAL STATEMENT** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812



\_\_\_\_\_  
DAVID A. COLEMAN

Fritz Wonderlich  
 WONDERLICH & WAKEFIELD  
 P.O. Box 1812  
 Twin Falls, ID 83303-1812  
 Telephone (208) 732-8811  
 Fax (208) 732-8822  
 Attorneys for Plaintiff  
 ISB#2591

DISTRICT COURT  
 TWIN FALLS COUNTY  
 IDAHO  
 2008 MAY 14 PM 4:30  
 ORIGINAL  
 BY \_\_\_\_\_  
 CLERK  
 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE COUNTY OF TWIN FALLS, IDAHO,	)	
a political subdivision of the state of Idaho,	)	
	)	
Plaintiff,	)	Case No. CV-2008-79
vs.	)	
	)	
ERIC HETTINGA,	)	<b>PLAINTIFF'S PROPOSED FINDINGS OF</b>
	)	<b>FACT AND CONCLUSIONS OF LAW</b>
Defendant.	)	
	)	

\* \* \* \* \*

Plaintiff, the County of Twin Falls, Idaho, submits proposed Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. Plaintiff, the County of Twin Falls, Idaho ("County") is a political subdivision of the state of Idaho.
2. Defendant, Eric Hettinga, is a resident of Twin Falls County, Idaho and resides at real property located at 2319 East 4000 North, Filer, Idaho.



3. The subject real property is located in Twin Falls County. However, the subject real property is located within the Filer Area of City Impact. The Filer Area of City Impact is governed by the City of Filer Zoning and Subdivision Regulations and the Filer City and Area of Impact Zoning Map, as adopted by the City of Filer and the County of Twin Falls. The Filer City and Area of Impact Zoning Map designates the subject real property as within an R-A Residential Agricultural Zone, in the Filer Area of City Impact.

4. Defendant is operating a trucking and hay hauling operation from the above-described premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and Twin Falls County.

5. Defendant has been notified of the zoning regulations, and the violations. Defendant has ignored the notice and has continued to operate the trucking and hay hauling operation on the subject premises.

#### CONCLUSIONS OF LAW

1. The Defendant has violated the Filer Zoning Ordinance, as adopted by Twin Falls County.

2. The Defendant shall be permanently enjoined from conducting trucking and/or hay hauling operations on the subject premises. This permanent injunction includes, but is not limited, to driving, parking or conducting any maintenance on any semi-trucks, trucks, or trailers, or any other activity related to the operation of a trucking and hay hauling operation, on the real property located at 2319 East 4000 North, Filer, Idaho.

DATED this 14 day of May, 2009.

WONDERLICH & WAKEFIELD

By   
Fritz Wonderlich

ORIGINAL

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2008 JUL 18 PM 3:41

2008 JUL 18 PM 3:41

BY \_\_\_\_\_  
\_\_\_\_\_

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE CITY OF FILER, IDAHO and THE )  
COUNTY OF TWIN FALLS, IDAHO, )  
political subdivisions of the State of Idaho, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**DEFENDANT'S PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The defendant hereby submits the following proposed Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The county of Twin Falls Idaho is a political subdivision of the state of Idaho.
2. Defendant Eric Hettinga is an individual who resides on the premises

located at 2319 East 4000 North, Filer, Idaho 83328 (hereinafter the "Real Property").

3. The Real Property lies outside the city limits of Filer, Idaho, and is in the county of Twin Falls, Idaho.

4. The Real Property consists of approximately 1.1 acres.

5. Eric Hettinga maintains his personal residence on the Real Property.

6. The Real Property lies within the area of impact of the city of Filer Idaho, as designated by Twin Falls County Ordinance § 8-9-19.

7. Twin Falls County Ordinance § 8-9-19 adopts by reference the city of Filer zoning regulations as being applicable to the area of impact of the city of Filer.

8. The Real Property is zoned Residential Agricultural.

9. Included in the Filer city zoning ordinance is Filer city ordinance § 9-5-2. Filer City Ordinance § 9-5-2 does not specifically prohibit the parking of vehicles on the Real Property of residents living in the Residential Agricultural District.

10. The city council for the city of Filer investigated and decided to pursue legal action against Eric Hettinga in this case for operating a trucking and hay hauling operation from the Real Property.

11. Prior to filing its Complaint in this matter, the county of Twin Falls did not investigate through its own Planning and Zoning Administration and legal department the alleged zoning violations by the defendant Eric Hettinga.

12. The county of Twin Falls has never conducted an investigation of the alleged zoning violations by the defendant.

13. Eric Hettinga operates three semi trucks and several semi trailers which he uses to haul hay for hire.

14. Eric Hettinga buys hay from farmers and sells it to a dairy or feedlot which purchases the hay from him.

15. Eric Hettinga picks up the hay he buys from the farmer and hauls it to his buyer using the semi trucks and trailers.

16. Eric Hettinga does not store hay for sale to his customers on the Real Property.

17. Eric Hettinga does not have buyers come to the Real Property to inspect hay or to purchase hay from him.

18. Eric Hettinga uses the Real Property to park and store his semi trucks and trailers when he is not using them.

19. Eric Hettinga transacts no business with his customers from the Real Property.

20. Eric Hettinga does not deduct any of his expenses for parking his trucks and trailers on the Real Property as business expenses.

21. Eric Hettinga does not perform any major repair work on his semi trucks or semi trailers on the Real Property.

22. Eric Hettinga does perform some minor maintenance and repair work on his semi trucks and semi trailers on the Real Property.

23. Eric Hettinga operates his hay hauling business as a sole proprietor and does not have any employees.

#### CONCLUSIONS OF LAW

1. Twin Falls County Ordinance § 8-9-19 violates the Idaho Constitution Article XII, §2, to the extent that it authorizes the City of Filer to administer and investigate violations of its zoning regulations with respect to property located outside its city limits. *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000); *Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949); *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

2. Article XII, § 2 of the Idaho Constitution prohibits the County from delegating to the city of Filer the County's authority to enforce compliance with county ordinances with respect to property outside the Filer municipal boundaries. *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000); *Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949); *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

3. Twin Falls County's delegation to the city of Filer of the administration and investigation of the alleged zoning violations of defendant Eric Hettinga in the area of Filer city impact was in violation of Article XII, § 2 of the Idaho Constitution. *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000); *Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949); *Boise*

*City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

4. Eric Hettinga is a sole proprietor engaged in the business of hauling hay with semi trucks and semi trailers which he parks on the Real Property when they are not in use.

5. Eric Hettinga does not operate a hauling and trucking business on the Real Property.

6. The city of Filer Ordinance § 9-5-2 is in derogation of the common-law right to use private property and shall be strictly construed in favor of the property owner. 83 AmJur2d *Zoning and Planning* § 629.

7. Maintaining a one family dwelling as a personal residence is a permitted use under the city of Filer Ordinance § 9-5-2(a).

8. Parking, at a residence, semi trucks and trailers used in a business which is not conducted at the residence is a use incidental to residential use. *City of Boise City v. Gabica*, 675 P.2d 354, 106 Idaho 94 (Ct.App.1984).

9. Eric Hettinga has not violated City of Filer Ordinance § 9-5-2 merely by parking on the Real Property vehicles used in his business when the vehicles are not being used for business purposes.

10. Parking semi trucks and trailers used in a business which is not conducted at a residence and which are used exclusively for hauling agricultural products

purchased directly from the farmer is a farming activity and permitted under the city of  
Filer Ordinance § 9-5-2(a).

DATED this 18<sup>th</sup> day of May, 2009.

COLEMAN, RITCHIE & ROBERTSON

By David A. Coleman  
DAVID A. COLEMAN

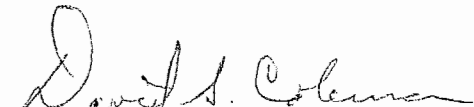


CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of May, 2009, I served the foregoing  
DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
upon the following persons in the following manner:

Fritz A. Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, ID 83303-1812

U.S. Mail  
 Fax (208) 732-8822  
 Hand Deliver

  
\_\_\_\_\_  
DAVID A. COLEMAN

Fritz Wonderlich  
 WONDERLICH & WAKEFIELD  
 P.O. Box 1812  
 Twin Falls, ID 83303-1812  
 Telephone (208) 732-8811  
 Fax (208) 732-8822  
 Attorneys for Plaintiff  
 ISB#2591

DISTRICT COURT  
 TWIN FALLS CO., IDAHO  
 FILED

2009 MAY 28 AM 9:34

BY \_\_\_\_\_ CLERK  
 \_\_\_\_\_ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE COUNTY OF TWIN FALLS, IDAHO,	)	
a political subdivision of the state of Idaho,	)	
	)	
Plaintiff,	)	Case No. CV-2008-79
vs.	)	
	)	
ERIC HETTINGA,	)	<b>PLAINTIFF'S TRIAL BRIEF</b>
	)	
Defendant.	)	
_____	)	

\* \* \* \* \*

Plaintiff, the County of Twin Falls, Idaho, submits its Trial Brief as follows:

FACTS

Court Trial in this matter was held on Thursday, May 21, 2009, at 9:00 o'clock a.m. Witnesses for the Plaintiff included Shari Hart, Filer City Clerk, Ken Nielson and Kathy Nielson. Witnesses for the Defendant included Jennifer Gose-Eells and Eric Hettinga.

The evidence established that Eric Hettinga resides at 2319 East 4000 North, Filer, Idaho. This property is outside the City of Filer, but inside the area of city impact

as established by ordinances adopted by the City of Filer and the County of Twin Falls. The property is zoned R-A Residential Agricultural District.

The Defendant has developed the front (northerly) portion of the property as his residence. His residence occupies approximately one quarter to one third of the 1.11 acres of property. The remaining two-thirds to three-quarters of the property is developed as a parking lot for the Defendant's semi-trucks and trailers and equipment used for his trucking business. The parking lot has been completely paved with recycled asphalt paving material, is surrounded by a six foot high chain link fence topped by two strands of barbed wire, is lighted with a yard light, and is monitored with cameras. In addition to three semi-trucks, the Defendant parks three sets of hay trailers (total of six trailers), plus a belly dump trailer, and a front loader used for loading large bales of hay. The Defendant periodically does maintenance on the trucks and trailers, as shown on the photos and digital video admitted in evidence. The Defendant also hires seasonal employees to operate his trucks during the haying season.

The next door neighbors, the Nielsons, have complained to the City of Filer and Twin Falls County Planning and Zoning about the problems associated with the trucking operation. They testified that the noise, vibration, and diesel smoke coming from the Defendant's property, especially during the early morning hours, is extremely disturbing to the residential use of their own property.

The surrounding subdivision consists of small (one to two and a half acres) lots used for residential purposes, consistent with the R-A Residential Agricultural Zoning District.

LAW

Twin Falls County Code §8-9-19(C) adopts the Filer city zoning and subdivision ordinances for application within the area of city impact. Similarly, the City of Filer has adopted the same provisions in Filer City Code §9-13-3. These enactments were made pursuant to the requirements of the Idaho Local Land Use Planning Act, as contained in Chapter 65 of Title 67 of the Idaho Code. Idaho Code §67-6526 requires area of impact regulations as follows:

67-6526.AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The governing board of each county and each city therein shall adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted. Subject to the provisions of section 50-222, Idaho Code, an area of city impact must be established before a city may annex adjacent territory. This separate ordinance shall provide for one (1) of the following:

(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact ...

The zoning regulations for the R-A Residential Agricultural District are set forth in Chapter 5 of Title 9 of the Filer City Code. Permitted uses include cemeteries, churches, home occupations, one- and two- family dwellings and growing of soil crops, including all farming, livestock and poultry raising activities. Trucking operations are not listed as either permitted or special uses. Filer City Code §9-5-2(C) provides that uses not specified as permitted or special uses are prohibited unless there is an administrative determination that the use is similar to permitted or special uses. The Filer City Clerk testified specifically that trucking operations were not permitted in the R-A Residential Agricultural District. Although the Defendant has not argued that the operation of his trucking and hay hauling business from his residence would qualify as a

home occupation, it clearly does not, based upon the definition of "Home Occupation" contained in Filer City Code §9-2-1:

A service, excluding daycare, offered by the resident of a household unit or the sale of items handcrafted on the premises by the resident of a household unit providing the service, sale of handcrafting is performed only by the resident therein and providing the area used in performing the home occupation does not exceed four hundred (400) square feet in area and providing there is no exterior indication of the home occupation. Services which generate no traffic to the premises or which use no vehicles which would not normally be found incidental to a residential use shall be exempt from this definition.

The truck parking facility located in the back two-thirds to three-quarters of the 1.11 acre property takes up far more than 400 square feet (.667 x 1.11 x 43,560 = 32,250 sq. ft.). The three semi-trucks, six flatbed trailers, and front loader are vehicles which would not normally be found incidental to a residential use.

#### CONCLUSIONS

The Defendant is operating a trucking and hay hauling operation from his premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and Twin Falls County. The Defendant should be permanently enjoined from conducting trucking and/or hay hauling operations on the subject premises. This permanent injunction should include, but not be limited, to driving, parking or conducting any maintenance on any semi-trucks, trucks, or trailers, or any other activity related to the operation of a trucking and hay hauling operation, on the real property located at 2319 East 4000 North, Filer, Idaho.

DATED this 27 day of May, 2009.

WONDERLICH & WAKEFIELD

By



Fritz Wonderlich

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27 day of May, 2009, I served the foregoing  
PLAINTIFF'S TRIAL BRIEF by causing a copy thereof to be faxed:

David A. Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525  
208-734-3983



---

FRITZ WONDERLICH

ORIGINAL

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
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156 2nd Avenue West  
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Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Defendant

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

2009 JUN 12 PM 12:02

BY JK  
CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, )  
a political subdivision of the State of Idaho, )

Plaintiff, )

vs. )

ERIC HETTINGA, )

Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-79

**DEFENDANT'S POST TRIAL BRIEF**

COMES NOW the defendant, Eric Hettinga, and submits this Post Trial Brief.

**SUBSTANTIVE ISSUES BEFORE THE COURT**

There are two issues to be decided in this case. The first threshold issue is whether this action which concerns an alleged zoning violation in the City of Filer area of impact has in substance been prosecuted by the City of Filer in violation of the jurisdictional constraints imposed by Article XII, § 2 of the Idaho Constitution. The second issue, is whether the defendant's activities are in violation of the applicable land use regulations to which the

defendant's property is subject.

No evidentiary or procedural issues are before the Court.

### **FACTS WHICH ARE NOT IN DISPUTE**

This is a land use regulation violation case involving property located in the area of city impact of the city of Filer, Idaho (the "Premises"). With minor exceptions, the facts in this case which are the basis for the alleged violation are not in dispute. Testimony at trial established the following pertinent facts with respect to the issue of whether the defendant is conducting a non-permitted use on the Premises:

1. The defendant maintains his personal residence on the Premises which are located at 2319 East, 4000 North, Filer, Idaho.
2. The Premises is 1.1 acres in size.
3. The Premises is in the city impact area of the city of Filer.
4. The Premises is zoned residential-ag.
5. The defendant is self-employed in the transportation business of hauling alfalfa, hay and straw from farms to dairies.
6. The defendant has three trucks and three sets of trailers which are available for use in his business.
7. When these vehicles are not in actual use or in a repair shop, the defendant parks these vehicles on the Premises.
8. The defendant does not license or operate more than one of his trucks at a time.
9. The defendant does not store alfalfa, hay or straw on the Premises.
10. The defendant does not perform or have others perform maintenance on the



vehicles he parks on the Premises, with the exception of minor items such as replacing light bulbs. Otherwise, all maintenance and repairs are done off the Premises.

11. The defendant does not keep any business records on the Premises.

12. No payments from the defendant's customers are mailed to or received at the Premises.

13. The defendant does not have a landline telephone on the Premises which he uses for business purposes.

14. The defendant has no signs for his business on the Premises.

15. No customers of the defendant ever come to the Premises.

16. The defendant has no employees in his business. Approximately two years ago he once hired a man for 15 to 18 days. He has had no other employees.

The facts which relate to the constitutional issue in this case will be discussed in the context of argument below.

## ARGUMENT

### I. THIS ACTION IS BEING PROSECUTED IN VIOLATION OF ARTICLE XII, SECTION 2 OF THE IDAHO CONSTITUTION.

Article XII, § 2 of the Idaho Constitution states as follows:

**§ 2. Local police regulations authorized.** -- Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

This provision applies to land use and zoning matters. It applies with respect to both the making of regulations and ordinances, as well as enforcement. In *Boise City v. Blaser*, 98 Idaho 789, 791, 572 P.2d 892, 894 (1977), the Idaho Supreme Court stated:

Generally speaking, to give effect to a county permit within city limits

would be to violate the separate sovereignty provisions of Idaho Const., art. 12, s 2, and the careful avoidance of any county/city jurisdictional conflict or overlap which is safeguarded therein.

In *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236 (2000) the Idaho Supreme Court held that Article XII, § 2 of the Idaho Constitution prohibits co-equal jurisdiction by both a city and county within the area of city impact:

For the City of Eagle to be allowed to exercise co-equal jurisdiction with Ada County in the impact area lying beyond the city limits would not only be in conflict with the statute but also inconsistent with constitutional limitations placed on a city's powers. Article XII, § 2 of the Idaho Constitution provides that any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws. This Court has held that the power of cities and counties only exists within the sovereign boundaries of the cities and counties respectively. [citations omitted].

In that case it was held that “the power to approve a subdivision application in the impact area resides exclusively with the County.” *Blaha* at p. 777. Likewise in *Reardon v. Magic Valley Sand and Gravel*, 140 Idaho 115, 90 P.3d 340 (2003) the Idaho Supreme Court citing *Blaha* and the line of cases preceding it back to 1949, held that where the city attempted to enact and enforce a zoning ordinance applicable to the area of city impact, “the County did not act with a reasonable basis in fact or law” and the Court accordingly awarded attorney fees to the plaintiff pursuant to Idaho Code § 12-117. *Reardon*, p. 120.

It is thus settled law that a city has no jurisdiction to enact or enforce land use regulations beyond the boundaries of the city and, in particular, it has no jurisdiction to enforce zoning regulations in the area of city impact. It is the defendant’s argument in this case that the enforcement of the county zoning ordinance in the area of impact of the City of Filer was initiated by the City of Filer, and that although the City of Filer is no longer a party plaintiff to

the Amended Complaint, the zoning enforcement action against the defendant originated with and has been in substance prosecuted by the City of Filer. Twin Falls County's presence in the case has been in name and form only.

The testimony at trial establishes that the events leading to this action began with the defendant's neighbor complaining to the Filer City Council about the presence of trucks and trailers on the defendant's property. Kenneth Nielson testified that the City Council told him they did not have jurisdiction over the impact zone and he should talk to the County. He then went to the Twin Falls County office of Planning and Zoning where he was told the County was not authorized to act in the area of impact. After then going to the EPA which also asserted it had no jurisdiction, he went back to the City of Filer. This time the Filer City Council directed the attorney for the City of Filer to write a demand letter to the defendant, which he subsequently did. (defendant's Exhibit "E"). When the defendant failed to respond to the City's demand, the City of Filer instructed its attorney to file a complaint against the defendant (Exhibit "F").

On December 13, 2007, Fritz Wonderlich acting for the City of Filer emailed Jennifer Gose-Eells, the chief civil deputy for the Twin Falls County Prosecutor, (Plaintiff's Exhibit "7") stating that City of Filer had received a complaint concerning Eric Hettinga's trucks and trailers and, citing concerns that the City had no jurisdiction to bring the complaint, requested that the County either join in the complaint or allow Fritz to represent the County. Within 21 minutes from the time the email was sent, Jennifer Gose-Eells replied that she had talked to the prosecutor and that "we are good with your alternative of representing the county in this lawsuit." No input on this decision was made by either the Twin Falls County Zoning administrator or the county Commissioners.

The Complaint was filed on January 8, 2008, by the Filer City Attorney, Fritz

Wonderlich, with both the City and the County designated the plaintiffs. Paragraph 6 of the Complaint stated:

“6. The Twin Falls County has authorized the City of Filer to enforce compliance with the provisions of the zoning ordinance and the regulations adopted therein, and to institute a civil action in the district court on behalf of Twin Falls County.”

In response to allegations by the defendant that in fact the County had not authorized the City to enforce zoning regulations in the area of city impact, and that in any event such authorization would be contrary to Article XII, § 2 of the Idaho Constitution, the trial originally set for this matter was vacated three days before it was to be held in order to allow for an Amended Complaint to be filed that could address these jurisdictional concerns. Fritz Wonderlich again approached the Twin Falls County Chief Civil Deputy Prosecutor, Jennifer Gose-Eells, who addressed the Twin Falls County Commissioners at a regular session on September 25, 2008, (exhibit “I”). The minutes of that meeting show that Jennifer Gose-Eells told the Commissioners “since this [zoning violation case] falls under the City’s authority, it makes sense he [Fritz Wonderlich] be the one to enforce those actions”. A motion “to authorize Mr. Wonderlich to act on our [the County’s] behalf on the Filer Area of impact enforcement” was then passed.

It is clear, therefore, that the County was not really in this case until after the date this case was originally set for trial. Fritz Wonderlich thereafter filed an Amended Complaint in which the City of Filer was omitted as a party plaintiff, and the allegation that the City of Filer was authorized to enforce zoning matters in the area of city impact was dropped. As this matter finally came to trial, therefore, the Amended Complaint provides in form that it is an enforcement action being brought solely by the County. This does not change the fact that in substance this case has been prosecuted by the City of Filer.

Jennifer Gose-Eells testified that the alleged violation by the defendant was never investigated by the County zoning administrator. The County prosecutor authorized the Filer city attorney to represent the County in the lawsuit, but the County had no involvement whatsoever in processing the initial complaint by the defendant's neighbor, in deciding to make demand upon the defendant to cease the alleged trucking operation on his property, or in deciding whether a lawsuit should be filed. Those administrative actions and decisions were all taken by the City of Filer which had no jurisdiction to do so. The County's involvement did not commence until December 13, 2007, when Fritz Wonderlich emailed Jennifer Gose-Eells inviting the County's participation in the enforcement action. The County's decision to participate was at best a perfunctory formality. No investigation was done, no affidavit was required, the County did not even retain Fritz Wonderlich, but merely authorized him to represent the County. Jennifer Gose-Eells testified that he is not being paid by the County for his work on this case.

Jennifer Gose-Eells also testified that:

"The county typically does not become involved in a zoning violation until there is a complaint made to the planning and zoning department. When a complaint is made, then the planning and zoning department will investigate that. They may send somebody out. They may take pictures. They may document that. They will send the person, the land owner, letters saying...here's a violation, you need to do this specific thing to clear up this violation. They will try to work individually with those people to solve the problem."

This is a fair, sensible and admirable procedure. In this case, however, the county planning and zoning department did none of these things; in fact, it did nothing at all. This is not a "typical" case. There is no evidence that the county planning and zoning department was ever in any way involved in this case. This stage of the enforcement process was done entirely by the City of Filer with no county administrative involvement whatsoever.

The County's involvement commenced only upon the eve of the Complaint being filed in this action. The Complaint was filed by the Filer city attorney, as was the Amended Complaint, although nominally representing only the County from that point forward. *In substance what has happened is that the City of Filer has prosecuted this action in the name of the County. The City has exercised all prosecutorial discretion. The City has provided the services of its attorney to "represent" the County. The County has been in this case in name only. Under the guise of authorizing the Filer City attorney to represent the County, the County in effect has delegated its prosecutorial function to the City and the City has exercised that function in violation of the separate sovereignty provisions Article II, § 2 of the Idaho Constitution.* The County is generally at liberty to seek legal counsel wherever it may for handling county civil matters. However, in this case the County has simply turned the case over to the City of Filer without any meaningful involvement of its own. This arrangement perpetuates the continued involvement of the City of Filer as the prime mover in this case which it has been from the beginning. All the administrative and prosecutorial discretion in this case has been exercised by the City. The County has been brought in as a last minute stand-in for the plaintiff's role with no meaningful part to play. If this charade is allowed to satisfy the prohibition of Article XII, § 2 of the Idaho Constitution, then that provision is reduced to very little substance indeed.

## **II. THE DEFENDANT DOES NOT OPERATE A TRUCKING AND HAY HAULING OPERATION FROM HIS PREMISES.**

The Amended Complaint alleges that the defendant is "operating a trucking and hay hauling operation" on the Premises. The Amended Complaint prays for an order "enjoining the defendant from conducting trucking and hay hauling operations" on the Premises. The

defendant does not dispute that he operates a business of hauling hay, alfalfa and straw from farms to dairies. The evidence in this case establishes that the defendant does not operate or conduct this business on the Premises. The defendant parks the trucks and trailers he uses in connection with the business on the Premises. The defendant only keeps one truck licensed at any given time. However, all business operations – the taking of customer telephone calls, the storage of business records, the receipt of customer payments or other mail, maintenance of equipment, the use of the equipment for actual hauling - take place off the Premises. There are no business employees on the Premises, no customers frequent the premises, there is no advertising or signs on the Premises.

The defendant acknowledges that under the applicable zoning ordinance, if a use is not identified as a permitted use, it is prohibited. Residential use is a permitted use of the Premises. The defendant's primary use of the Premises is residential; it is where he lives. A use which is normally incidental to a residential use is a permitted use. The parking of trucks and trailers on the Premises when they are not in use in the business is incidental to the primary residential use of the property. The defendant testified that many other residential properties in the immediate neighborhood of the Premises also are used for the parking of heavy equipment including a dump truck (on two different properties), a back hoe, a large semi truck hauling a rock crusher or portable paver, and a portable commercial steam cleaner wash truck (Exhibit "J"). Even Kenneth Nielson, the person who has complained of the defendant's use of the Premises testified that he parks service vehicles and stores equipment which he uses in his business on his property which is adjacent to the defendant's Premises (see also Exhibit "J"). This evidence shows that defendant's use is the kind of use which is normally incidental to the residential use of properties in his neighborhood and is, therefore, a permitted use.

**CONCLUSION**

This zoning enforcement action has, in substance, been prosecuted by the City of Filer, which has no jurisdiction to enforce zoning ordinances beyond its city limits. The Premises, which is the subject of this lawsuit, is located outside the Filer city limits. Therefore, the plaintiff should take nothing by its Complaint and be denied the injunctive relief it demands.

Even if the Court determines that the prosecution of this action does not suffer from a jurisdictional defect, the plaintiff should be denied the relief requested for the reason that the defendant is not operating a trucking and hay hauling operation from the Premises as alleged in the Amended Complaint and that the defendant's use of the Premises is not otherwise in violation of applicable zoning regulations.

DATED this 12<sup>th</sup> day of June, 2009.

COLEMAN, RITCHIE & ROBERTSON

By David A. Coleman  
DAVID A. COLEMAN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of June, 2009, I served the foregoing **DEFENDANT'S POST TRIAL BRIEF** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812

David A. Coleman  
DAVID A. COLEMAN



Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
P.O. Box 1812  
Twin Falls, ID 83303-1812  
Telephone (208) 732-8811  
Fax (208) 732-8822  
Attorneys for Plaintiff  
ISB#2591

2009 JUN 18 AM 9:29

BY OK \_\_\_\_\_  
CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

\* \* \* \* \*

THE COUNTY OF TWIN FALLS, IDAHO, )  
a political subdivision of the state of Idaho, )  
 )  
Plaintiff, )  
vs. )  
ERIC HETTINGA, )  
 )  
Defendant. )

Case No. CV-2008-79

**PLAINTIFF'S RESPONSE BRIEF**

\* \* \* \* \*

Plaintiff, the County of Twin Falls, Idaho, submits its Response Brief as follows:

ARTICLE XII, SECTION 2 OF THE IDAHO CONSTITUTION

Defendant argues that, since the City of Filer participated in the attempt to resolve the zoning violation alleged in this case, that Twin Falls County's enforcement in this case is unconstitutional. It shouldn't be surprising that the City of Filer would be interested in the enforcement action, since it occurred within its area of impact. But the facts are uncontroverted that Twin Falls County was a plaintiff in the original complaint filed in this case, that counsel for the County of Twin Falls was authorized to represent

the Plaintiff from the outset of the lawsuit, and reauthorized by the County Commissioners to represent the County during the course of the litigation. The Twin Falls County Prosecutor's Office was informed of the facts surrounding the violation, was consulted, and determined that the enforcement action should go forward.

The Defendant's argument that the City of Filer should be completely uninterested in the zoning violations occurring within its area of impact makes no sense in view of the statutory requirements of Idaho Code §67-6526, and the fact that the violation is in an area "that can reasonably be expected to be annexed to the city in the future." The fact that the city is interested in violations within its area of impact does not nullify the fact that it was the County of Twin Falls that authorized the enforcement action.

DEFENDANT IS OPERATING A TRUCKING AND HAY HAULING  
OPERATION FROM HIS PREMISES

Although the Defendant argues that his use of the majority of his property for a truck parking depot is "incidental" to the residential use, it is clear that the residential use is really incidental to the trucking operation. The development of the vast majority of the subject property for a trucking operation, including paving the entire parking area with recycled asphalt paving material, surrounded by a six foot high chain link fence topped by two strands of barbed wire, lighted with a yard light, and monitored with cameras, is indistinguishable from any truck depot without maintenance facilities. The argument that parking three semi-trucks, three sets of hay trailers (total of six trailers), plus a belly dump trailer, and a front loader used for loading large bales of hay, is "incidental" to a residential defies all reason. The additional evidence that the Defendant periodically does maintenance on the trucks and trailers, as shown on the photos and digital video admitted

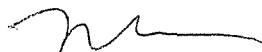
in evidence and hires seasonal employees to operate his trucks during the haying season is further evidence of this trucking operation being operated on the subject premises.

CONCLUSIONS

The Defendant is operating a trucking and hay hauling operation from his premises, which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and Twin Falls County. The Defendant should be permanently enjoined from conducting trucking and/or hay hauling operations on the subject premises. This permanent injunction should include, but not be limited, to driving, parking or conducting any maintenance on any semi-trucks, trucks, or trailers, or any other activity related to the operation of a trucking and hay hauling operation, on the real property located at 2319 East 4000 North, Filer, Idaho.

DATED this 17<sup>th</sup> day of June, 2009.

WONDERLICH & WAKEFIELD

By   
Fritz Wonderlich

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of June, 2009, I served the foregoing PLAINTIFF'S TRIAL BRIEF by causing a copy thereof to be mailed to:

David A. Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525  
208-734-3983

  
FRITZ WONDERLICH

DISTRICT COURT  
TWIN FALLS COUNTY, IDAHO  
FILED

2009 AUG 21 AM 9:45

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE ~~CLERK~~  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS ~~DEPUTY~~

THE COUNTY OF TWIN FALLS, )  
IDAHO, political subdivisions of the )  
State of Idaho, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. CV 2008-0079

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Mr. Fritz Wonderlich, Twin Falls, Idaho, for Plaintiff.

Mr. David Coleman, Twin Falls, Idaho, for Defendant.

**INTRODUCTION**

This is a land use/zoning dispute involving the County of Twin Falls and Eric Hettinga. A complaint was originally brought against Mr. Hettinga by both the City of Filer, Idaho and Twin Falls County; however, the complaint was subsequently amended naming Twin Falls County as the only plaintiff.

A court trial was held on May 21, 2009.<sup>1</sup> At trial, the parties introduced oral and documentary evidence. At the close of the evidence, the parties rested and agreed to submit closing arguments in writing. This matter was taken under advisement as of July 2, 2009.

The court enters the following Findings of Fact and Conclusions of Law pursuant to Rule 52(a), Idaho Rules of Civil Procedure. To the extent that any Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law.

#### FINDINGS OF FACT

1. Twin Falls County, Idaho ("Twin Falls County" or the "County") is a political subdivision of the state of Idaho.

2. The City of Filer (the "City" or "Filer") lies within Twin Falls County.

3. Defendant Eric Hettinga (Hettinga) is an individual who resides at 2319 East 4000 North, Filer, Idaho (hereinafter the "Real Property.")

4. The Real Property consists of approximately 1.1 or 1.2 acres.

5. The Real Property lies outside the Filer city limits, but is within the City's area of city impact ("area of impact") as designated by Twin Falls County Ordinance § 8-9-19C. Twin Falls County Ordinance § 8-9-19C2 adopts the City of

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<sup>1</sup> The court had previously conducted a view of the premises on September 17, 2008.

Filer's zoning regulations by reference and makes such regulations applicable to the area of impact.

6. Thus, Filer's zoning and subdivision regulations govern land use issues within the area of impact.

7. The area of impact zoning map, as adopted by Filer and the County defines the area of impact. *See* Exhibit 1.

8. The area of impact is to "be administered by the city's governing board." Twin Falls County Ordinance § 8-9-19C4.

9. The area of impact zoning map designates the Real Property as lying within an R-A Residential Agricultural District, within Filer's area of impact.

10. Filer's zoning ordinance, section 9-5-2 provides the use regulations for Residential-Agricultural districts. The Residential-Agricultural zone is "intended to provide areas for low density residential development and continuation of farm uses where compatible with each other." *Id.*

11. The following uses are permitted in the R-A Residential-Agricultural zone:

- a. Cemeteries.
- b. Churches and religious facilities.
- c. Home occupations, suburban, rural or external.
- d. Noncommercial public parks and recreation grounds and buildings.
- e. One- and two-family dwellings.
- f. The growing of soil crops, including all farming, livestock and poultry raising activities.

12. The ordinance prohibits any use not specified in the ordinance, “unless administrative determination is made that the use is similar enough to a use listed [in the ordinance] that [the] distinction between them is of little consequence.” Filer City Code §9-5-2C.

13. The ordinance clearly provides that one- and two-family dwellings are consistent with the uses identified in the R-A district.

14. Hettinga maintains his personal residence on the Real Property. The residence is a one-family home, approximately 2000 square feet, with the front (northerly) one-third of the Real Property containing the residence. The remaining two-thirds of the Real Property are covered by recycled asphalt. The witnesses generally called this area a “parking lot,” or a “lot” for parking, which is consistent with how it appears. The court will adopt this language and refer to the back two-thirds of the Real Property as the parking lot.

15. The parking lot is completely paved with recycled asphalt paving material. It is surrounded by a six-foot high chain-link fence topped by two strands of barbed wire. It is lighted with a yard light, and is monitored by security cameras. Overall, there is very little difference between the parking lot and any other secure storage yard.

16. Hettinga is self-employed and operates three semi-trucks and several semi-trailers, which he uses to haul hay for hire.

17. Hettinga operates his hay hauling business as a sole proprietor and does not have any employees.

18. On one occasion, Hettinga hired a man for 15 to 18 days to help Hettinga during an extremely busy period of business.

19. Hettinga buys hay from farmers and sells it to dairies and/or feedlots.

20. Hettinga picks up the hay he buys from the farmer and hauls it directly to his buyer using the semi-trucks and trailers.

21. Hettinga rarely stores hay for sale to his customers on the Real Property. On one occasion, Hettinga stored, overnight, a loaded hay trailer on the Real Property.

22. Hettinga does not have buyers come to the Real Property to inspect hay or to purchase hay from him.

23. Hettinga parks his semi-trucks and trailers and other equipment in the parking lot. Specifically, Hettinga has parked three sets of hay trailers (six trailers), a belly dump trailer, and a front loader, in addition to three semi-trucks.

24. Hettinga uses the parking lot to park and store his semi-trucks, trailers and equipment when he is not using them.

25. Hettinga does not license or operate more than one of his semi-trucks at a time.



26. Hettinga does not transact business with his customers at the Real Property.

27. Hettinga does not keep any business records on the Real Property.

28. Hettinga has no signs or advertising for his business on the Real Property, other than "Hettinga Trucking" found on the doors of at least one of his semi-trucks.

29. Hettinga does not perform any major repair work on his semi-trucks or semi-trailers on the Real Property; however, the court viewed the DVD (Exhibit 6) which shows a semi-truck operated on the Real Property. The DVD also shows that Mr. Hettinga drives his semi onto the Real Property, parks, lets the truck idle while cleaning it. The idling semi is very noisy and creates vibration that is noticeable on the recording. The DVD also shows a number of other items of personal property consistent with light maintenance, including a ladder, a garbage can, 5-gallon buckets and other containers and tarps consistent with light maintenance-storage.

30. The DVD also shows workers performing light maintenance on a truck while on the Real Property.

31. Hettinga has thus performed light maintenance and repair work on his semi-trucks and semi-trailers on the Real Property.

32. The DVD also records loud noise coming from a semi truck on the Real Property during nighttime hours. Based upon the testimony at trial, the court concludes that the loud noises occur in the middle of the night, at approximately 3:00-5:00 a.m.

33. Kenneth Nielson is Hettinga's neighbor on the western side of the Real Property.

34. On or about July 17, 2007, Kenneth Nielson complained to the Filer City Council that Hettinga was operating a trucking/hay-hauling business out of the Real Property. Nielson contended that the hay-hauling business adversely affected Nielson's use and enjoyment of his property. The court finds that the noise, smoke, hours of operation and vibration make both Mr. and Mrs. Nielson's testimony credible.

35. Hettinga has proposed findings of fact regarding the city's "investigation" of Nielson's complaints; however, the court finds that the record is insufficient to establish that any entity conducted an "investigation" of Nielson's complaints.

36. Mr. Nielson was originally told by the city counsel that they did not have jurisdiction over the impact zone and that he should talk to Twin Falls County. The Twin Falls County Office of Planning and Zoning told Mr. Nielson

that the County was not authorized to act in the area of impact. Mr. Nielson then went to the EPA, which also asserted that it had no jurisdiction over the matter.

37. Finally, Mr. Nielson went back to the City. This time the City Council directed the attorney for the City, Fritz Wonderlich, to write a demand letter to Hettinga, which he subsequently did, on or about August 21, 2007 (Exhibit E).

38. In December 2007, Mr. Wonderlich emailed Jennifer Gose-Eells, the Chief Civil Deputy Prosecutor for Twin Falls County, stating that the city had received a complaint concerning Hettinga's property. Mr. Wonderlich also expressed concern that the city had no jurisdiction to bring the complaint. He requested that the County join in the complaint or, in the alternative, allow Mr. Wonderlich to represent the county in the matter. (Exhibit 7).

39. Ms. Gose-Eells replied to the email indicating that she had spoken with the Twin Falls County Prosecutor and that "we are good with your alternative of representing the county in this lawsuit." (*Id.*).

40. Again, there has been no showing that any "investigation" took place by any governmental entity here. Rather, Mr. Wonderlich pursued this litigation after Hettinga failed to respond to the August 21, 2007 demand letter.

41. Mr. Wonderlich filed the Complaint on January 8, 2008 naming the City of Filer and Twin Falls County as the plaintiffs in the matter. Paragraph six of the Complaint stated:

Twin Falls County has authorized the City of Filer to enforce compliance with the provisions of the zoning ordinance and the regulations adopted therein, and to institute a civil action in the district court on behalf of Twin Falls County.

42. Hettinga raised a defense to the plaintiffs' claims based on jurisdiction. Shortly before trial was to begin, the court held a discussion with counsel during a view of the Real Property. The discussion included a passing reference to the jurisdictional issue. Based upon the discussion the court agreed to vacate the original trial setting. *See* Minute Entry and Order (September 17, 2008).

43. After the trial was vacated, Mr. Wonderlich again contacted Ms. Gose-Eells. Ms. Gose-Eells addressed the Twin Falls County Commissioners at a regular session on September 25, 2008. At the close of the meeting, the Board of Commissioners passed a motion "to authorize Mr. Wonderlich to act on [the County's] behalf on the Filer Area of impact enforcement." Exhibit I.

44. Mr. Wonderlich filed an amended complaint on November 24, 2008 listing Twin Falls County as the only plaintiff.

### CONCLUSIONS OF LAW

This case presents two primary questions for determination by this court. The first is whether the city of Filer acted in conformance with the Idaho State Constitution in authorizing Mr. Wonderlich to send a demand letter and pursue legal action against Hettinga in this case. If it did, then the second question is

what, if any, remedy is available to Twin Falls County for Hettinga's conduct as set forth above.

The court resolves the first issue in favor of the plaintiff, Twin Falls County. The court finds that the procedural matters undertaken in this case did not violate constitutional requirements. The court concludes that Mr. Wonderlich operated within the scope of the authority granted him by the Twin Falls County Commissioners and by the Twin Falls County zoning ordinance. As to the second issue, the court finds that Hettinga's parking and use of the Real Property is not an authorized use and violates the clear intent of the Filer ordinance, which governs the Residential-Agricultural area. Therefore, the court will enjoin Hettinga from parking, maintaining or driving commercial vehicles on the parking lot as is set out in detail at the conclusion of this opinion.

**I. This Case Is Properly Before The Court.**

In its Amended Complaint, Twin Falls County alleges that Hettinga is "operating a truck and hay hauling operation from the [Real Property], which is not a permitted use in the R-A Residential Agricultural Zone, as adopted by the City of Filer and the County of Twin Falls." *Amended Complaint*, p. 2. Twin Falls County seeks "an order permanently enjoining the Defendant from conducting trucking and hay hauling operations on the subject premises." *Id.*

In defense of the action, Hettinga asserts that Twin Falls County has improperly delegated its authority to the City of Filer and its attorney to enforce its zoning regulations in the Filer area of impact. Hettinga contends this violates the Idaho Constitution.

Article XII, section 2 of the Idaho Constitution provides that “[a]ny county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.” This provision applies to land use and zoning matters with respect to both the making of regulations and ordinances, as well as enforcement. *See Reardon v. Magic Valley Sand & Gravel, Inc.*, 140 Idaho 115, 119, 90 P.3d 340, 344 (2004) (Article XII, §2 applied to invalidate city zoning ordinances).

In interpreting Article XII, section 2, our Supreme Court has determined that a city or a county has no jurisdictional authority to enact or enforce land use regulations beyond the boundaries of the respective city or county. *See Boise City v. Blaser*, 98 Idaho 789, 791, 572 P.2d 892 (1977) (“Generally speaking, to give effect to a county permit within city limits would be to violate the separate sovereignty provisions of Idaho Const., art. 12, §2, and the careful avoidance of any county/city jurisdictional conflict or overlap which is safeguarded therein.”). Additionally, the Supreme Court has reasoned that Article XII, §2 of the Idaho

Constitution prohibits co-equal jurisdiction by both a city and county within the area of city impact. *See Blaha v. Board of Ada county Commissioners*, 134 Idaho 770, 777, 9 P.3d 1236, 1243 (2000) (“For the City of Eagle to be allowed to exercise co-equal jurisdiction with Ada County in the impact area lying beyond the city limits would not only be in conflict with the statute but also inconsistent with constitutional limitations placed on a city’s powers.”); *see generally Reardon v. Magic Valley Sand and Gravel*, 140 Idaho 115, 90 P.3d 340 (2003) (the Court determined that a city’s ordinance giving it the power to unilaterally enact, apply and control, without negotiating with the county, certain zoning issues within the city’s area of impact was inconsistent with the constitutional limitations placed on a city’s powers under Article XII, §2 of the Idaho Constitution.). Thus, it is well settled that a city has no jurisdiction to enact or enforce land use regulations beyond the boundaries of the city and, in particular, it has no jurisdiction to enforce zoning regulations in the area of city impact.

Hettinga argues that

the enforcement of the county zoning ordinance in the area of impact of the City of Filer was initiated by the City of Filer, and that although the city of Filer is no longer a party plaintiff to the Amended Complaint, the zoning enforcement action against the defendant originated with and has been in substance prosecuted by the City of Filer. Twin Falls County’s presence in the case has been in name and form only.

*Defendant's Post Trial Brief*, pp. 4-5. While it is true that this action was initially pursued by the City of Filer along with Twin Falls County, Hettinga's argument is without merit.

As noted in the court's Findings of Fact, while the City initially authorized Mr. Wonderlich to write a demand letter, the official enforcement action did not begin until Twin Falls County had been contacted by email, and the prosecuting attorney authorized Mr. Wonderlich to proceed. Filer did not conduct any investigation and it did nothing more than start the process of notifying Hettinga of the complaints. This conduct does not amount to exercising improper jurisdiction under Article XII, section 2.

It is also significant that Filer was removed as a plaintiff at the time Mr. Wonderlich filed the Amended Complaint. At that point, Mr. Wonderlich had full authorization of the Twin Falls County Commissioners to proceed and conduct the litigation, prosecuted in the name of the County only.

Once an amended complaint and answer thereto have been filed, the original complaint and answer cease to perform any function as pleadings and are rendered "functus officio." *Jenkins v. Donaldson*, 91 Idaho 711, 715, 429 P.2d 841, 845 (1967), *superseded in part* by the adoption of I.R.C.P. 54 (e)(4); *Wilson v. Wilson*, 81 Idaho 375, 341 P.2d 894 (1959); *Shirts v. Shultz*, 76 Idaho 463, 285 P.2d 479 (1955); *People ex rel. Huston v. Hunt*, 1 Idaho 433 (1872).



In the case at hand, the court granted the plaintiffs leave to amend the original complaint to address the jurisdictional issues raised by Hettinga. Prior to filing the amended complaint, the County Board of Commissioners passed a motion authorizing Mr. Wonderlich to act in the County's behalf in the present matter as permitted under Idaho Code § 31-813. The County has complete authority to direct Mr. Wonderlich to pursue litigation regarding alleged violations of the ordinances within the area of impact.

Idaho Code section 31-601 provides that "[e]very county is a body politic and corporate, and as such has the powers specified in this title or in other statutes, and such powers as are necessarily implied from those expressed." Idaho Code section 31-602 indicates that the powers of a county in Idaho "can only be exercised by the board of county commissioners, or by agents and officers acting under their authority, or authority of law." Idaho Code section 31-604(1) states that a county has the power to sue and be sued, while section 31-813 grants a county's board of commissioners the power to "direct and control the prosecution and defense of all suits to which the county is a party in interest, and *employ counsel to conduct the same, with or without the prosecuting attorney, as they may direct.*" (Emphasis added).

Thus, at the time Mr. Wonderlich filed the amended complaint naming Twin Falls County as the only plaintiff in the lawsuit, he acted with

constitutional and statutory authority from the County Commissioners. Twin Falls County, through Mr. Wonderlich, is acting within its jurisdictional powers enumerated in the Idaho Code and the Idaho Constitution.

Moreover, Filer did not overstep its bounds in this case by initiating the complaint process through a letter written by its city attorney. *Cf. Blaha v. Bd. of Ada County Commissioners*, 134 Idaho at 777, 9 P.3d at 1243 (the city of Eagle did not act unconstitutionally in recommending adoption of a subdivision ordinance, which the Ada County Commissioners later adopted.).

Hettinga argues that Mr. Wonderlich's status as Filer's City Attorney, and his conduct of this matter beginning with Mr. Nielson's appearances at Filer council meetings, means that Filer, not the County, is truly in charge here. However, there is nothing in the record which indicates that Mr. Wonderlich is not operating as *Twin Falls County's* counsel by enforcing the zoning ordinance. Any jurisdictional defects present in the original complaint have been cured and superseded by the filing of the amended complaint. Mr. Wonderlich is pursuing this action on the County's behalf, and the matter is therefore legally before this court for determination.

II. Hettinga's Parking And Maintaining Commercial Trucks And Trailers On The Real Property Violates The Residential-Agricultural District Use Regulations.

A. Standard of Review.

The merits of this case present the court with issues of statutory interpretation and application of the city's statute (Filer City Code §9-5-1 *et. seq.*) to the facts at bar. Statutory interpretation presents a legal question, which must be resolved beginning "with an examination of the statute's literal words." *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). In applying the ordinance to this case, the court seeks to carry out the intent of the legislative body that adopted the ordinance.

Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). "Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations. *Albee v. Judy*, 136 Idaho 226, 231, 31 P.3d 248, 253 (2001)." *Idaho Conservation League, Inc. v. Idaho State Dep't of Agriculture*, 143 Idaho 366, 368, 146 P.3d 632, 634 (2006).

Moreover, unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing a statute. . . . In construing a statute, this Court will not deal in any subtle

refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions. . . .

*Curlee v. Kootenai County Fire & Rescue*, 2008 WL 4595239, 6-7 (Oct. 16, 2008)

(citations omitted).

B. The Pertinent Ordinances.

“The comprehensive plan and subsequent amendments thereto together with the zoning and subdivision ordinances and subsequent amendments thereto, as officially adopted by the city and all national and state uniform codes so adopted, shall apply to the agreed upon area of city impact.” Twin Falls County Code §8-9-19C2. The Filer City ordinance, section 9-5-2 A and C, sets forth permissible uses within the Residential-Agricultural District where the Real Property is located.

C. Filer’s Ordinance is a “Permissive Zoning Ordinance.”

It should first be noted that the ordinance in question is a “permissive zoning ordinance.” A permissive zoning ordinance “is drawn to show those uses which are permitted for a particular district, and any use which is not expressly permitted in a given zone or district is thereby excluded from it.” *State ex rel. Barnett v. Sappington*, 266 S.W.2d 774, 777 (Mo. App. 1954). The Filer ordinance prohibits those uses not specified in the ordinance: “Uses not specified above are prohibited unless administrative determination is made that

the use is similar enough to a use listed above that distinction between them is of little consequence.” Filer City Code §9-5-2C.

D. The Applicable Sections of Filer’s Ordinance are Plain and Unequivocal; Some Vague Language is Inconsequential to this Court’s Determination.

The court finds that the definitions of permitted uses in 9-5-2A are plain and unambiguous, and that the statute readily provides notice of those uses that are allowed in the Residential-Agriculture District. Conspicuously absent from the permitted uses is any type of trucking operation.

The court also finds that the clause providing for potential other uses after an “administrative determination” (*see* section 9-5-2C) is vague in part, as will be discussed below, but that vagueness does not change the court’s determination. For purposes of the issues presented in this case, the “other uses” clause is unmistakable: *any use not specified is prohibited*. That pronouncement is straightforward on its face and not subject to multiple interpretations.

Therefore, the court finds that Hettinga has failed to establish that his use is either: 1) specified in the ordinance, or 2) an ancillary use of his residential property. Whether the required burden of proof on a particular issue has been met is a question for the trier of fact to decide in the first instance inasmuch as this court has the primary responsibility for weighing the evidence. *County of*

*Canyon v. Wilkerson*, 123 Idaho 377, 848 P.2d 435 (Ct. App. 1993) (citing *In re Estate of Bogert*, 96 Idaho 522, 526, 531 P.2d 1167, 1171 (1975)).

Hettinga agrees in his post-trial briefing that where a use is not identified as permitted, it is prohibited. The ordinance provides that a one-family dwelling, such as Hettinga's home, is clearly allowed in this zone. Moreover, the intent of the regulation is to provide for both "low density residential development and continuation of farm uses where compatible with each other." *Id.* §9-5-1.

Nothing that Hettinga is doing regarding his trucks is part of a farming operation. While his trucks haul hay from farmers to buyers, his business is trucking, not farming. It is beyond dispute that trucking is not a permitted use in the R-A zone under the city ordinance. Hettinga argues, however, that his parking of semi tractors, trailers and other equipment is incidental to his primary residential use of the property. The court disagrees.

The Idaho Supreme Court has discussed accessory uses of property under a zoning dispute. See *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Ashton*, 92 Idaho 571, 574, 448 P.2d 185, 188 (1968). The Court there noted that "[w]here use for [certain] purposes is allowed in a zone, uses customarily incidental or accessory to [those] uses may not be excluded or

unduly restricted. *But such incidental uses must be reasonably closely related, both in substance and in space, to the main [allowed] purpose.*" (Emphasis added).

The Idaho Court of Appeals also ruled upon this issue in *City of Boise City v. Gabica*, 106 Idaho 94, 675 P.2d 354, 356 (Ct.App. 1984). There the court interpreted a city ordinance's definition of "accessory uses" and held that it is clear as a matter of law that operating a business was not "incidental" to residential use of single-family dwelling.

Another court provides a similar definition, which this court finds persuasive on the facts in this case: "A valid accessory use to a single-family dwelling is one which actually furthers or enhances the use of the property as a residence and not one which merely helps finance the property." *Lerner v. Bloomfield Township*, 106 Mich.App. 809, 308 N.W.2d 701, 703 (1981). *See also Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 579, 524 S.E.2d 404, 410 (1999):

Accessory uses are those which are customarily incident to the principal use. "In order to qualify as a use incidental to the principal use of a nonconforming premises, such use must be clearly incidental to, and customarily found in connection with, the principal use to which it is allegedly related." . . . An accessory use must be one "so necessary or commonly to be expected that it cannot be supposed that the ordinance was intended to prevent it."

(Citations omitted).

Here the court does not accept Hettinga's argument that his trucking business is so necessary or commonly to be expected, or so closely related, both in substance and in space, to Hettinga's main purpose, which is to live on the Real Property, that the trucking activities can be called an incidental use to his residing there. To apply the Michigan definition, this court does not find that Hettinga's helping to finance his property through a trucking business does anything to further or enhance the use of his home.

There does not appear to be any Idaho case with significant factual similarity to this case to give guidance to this court on the issues before it. However, the court has looked for guidance to the persuasive, albeit not binding, authority from other jurisdictions, which have nearly uniformly determined that parking heavy trucks or equipment in a residential, or residential-agricultural zone, is not a use incidental to residential use. *See, e.g., Potts v. City of Hugo*, 416 N.W.2d 465 (Minn. App. 1988) (holding as a matter of law that parking a semi-truck and trailer is not customarily incidental to a residential use); *Galliford v. Commonwealth*, 60 Pa.Comm. 175, 179, 430 A.2d 1222, 1224 (1981) (14,500 pound, commercially registered truck is not accessory to a residential use; it is commercial in nature); *St. Louis County v. Taggart*, 866 S.W.2d 181 (Missouri App. 1993) (The parking of defendants' dump trucks used in their gravel hauling business can hardly be said to be an accessory use. The Court held, "as a matter



of law, that the parking of such trucks is not a use which 'serves only' to further the successful utilization of the primary residential use, and therefore is not an accessory use within the County's zoning ordinance."); *Taddeo v. Commonwealth*, 49 Pa.Cmwlth. 485, 412 A.2d 212 (1980), zoning violation upheld where a business owner parked heavy equipment on his residential property, concluding that:

The use of the equipment parked at Appellant's home and in the vacant lot adjacent to it is such an integral part of Appellant's business, which is certainly commercial in nature, as to be inseparable from that business. By parking the equipment at his residence, *Appellant has transferred that part of his commercial enterprise to a residential site, something the zoning ordinance will not permit him to do.*

*Id.* 412 A.2d at 213 (emphasis added). These cases are striking in their factual similarity to this case and they support this court's conclusion here.

E. The Vague Portion of the Ordinance Regarding an "Administrative Determination" is Inconsequential to this Court's decision.

The court does find that a part of the 9-5-2C clause is vague regarding the "administrative determination" that must be made when the distinction between a prohibited use and an authorized use "is of little consequence." The court is unclear first, how such an administrative determination is to be made, i.e., which party initiates the determination and who bears the burden of proof; second, the ordinance is unclear regarding the criteria the administrative body would use to

determine whether a distinction is of little consequence. Many ordinances from other cases and other states specifically define such procedures. Section 9-5-2C's failure to address such issues leaves the statute subject to statutory construction, to resolve such issues.

All the same, the record is clear that Hettinga never sought any type of administrative review before any governmental body, nor is he making a claim in this action that he should be given such a right. There was some testimony on the cross-examination of Shari Hart, the city clerk, that Hettinga had been to the city office to talk about zoning issues in the area of impact. Ms. Hart could not remember telling Hettinga that he could park his trucks on the real property. Hettinga testified that he spoke with Ms. Hart and that she gave him permission to park his trucks, but not to conduct business, on the Real Property.

The court does not find this evidence sufficient to hold that Hettinga has been given permission to park his trucks on the Real Property after an administrative determination. Black's Law Dictionary defines a "determination" as "[a] final decision by a court or administrative agency." *Black's Law Dictionary* (8<sup>th</sup> ed. 2004). Moreover, as will be set forth below, city clerks have no authority to provide a variance to a zoning ordinance.

Hettinga had the burden of proof on this issue in any event. It was his obligation to show that he either 1) sought, or 2) wanted an administrative

determination regarding his use. Hettinga was clearly on notice based upon the August 21, 2007 letter that he needed to cease keeping his trucks on the property, or pursue administrative relief from the City Council, or the County Commissioners. Having failed to do so, he cannot now claim that he is entitled to an administrative determination in lieu of the court's decision.

Beyond that, even if this section were to relate to this case, this court would apply principles of statutory construction to find, as set forth in more detail below, that Hettinga's trucking operation is clearly not "of little consequence." See analysis on Hettinga's defenses, *infra*, pp. 25-26, section G.

F. The Court Will Grant the Injunction Sought by the County.

The court recognizes that granting or refusing injunctive relief rests in the sound discretion of the court. *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 388, 405, 111 P.3d 73, 90 (2005). Granting an injunction is "an equitable result issued under established principles that guide courts of equity, and the court retains the power to modify the terms of its injunction in the event that changed circumstances require it. *Pacific Rivers Council v. Thomas*, 936 F.Supp. 738 (D. Idaho 1996). Certainly, the court recognizes that enforcing the ordinance against Mr. Hettinga after his expenditure of considerable sums upgrading his parking lot with pavement, fencing and security, is a harsh remedy; however, it is also clear that Hettinga proceeded with such expenditures after Mr. Nielson first

complained against him. Compare Exhibit 5, page 1, (showing bare-dirt parking area on 8-31-07 (ten days after the demand letter was sent)), with Exhibit 5, page 2, showing the improved parking lot in place in March or April 2008.

Mr. Wonderlich's demand letter from August 21, 2007, (Exhibit E) informed Hettinga that by operating a trucking business Hettinga was violating zoning regulations in place since 1994. The City and County demanded that Hettinga "immediately cease operating [his] trucks from [his] residence." *Id.* Finally, Hettinga was promised that legal action would be pursued if he failed to comply. At a minimum, such notice required Hettinga to do more than simply converse with Shari Hart about the zoning issues he faced; he was obligated to do something proactively to either challenge the determination through 9-5-2C and its "administrative determination," or he was to find another place to park his equipment and avoid the risk. Instead, Hettinga chose the imprudent step of proceeding forward with reckless disregard for the consequences. As such, as a matter of equity, the court has little empathy for his chosen course.

G. Hettinga's Defense Regarding Others in the Neighborhood is not a Defense for his Conduct.

The court also recognizes that parking a work vehicle in this zone, such as Mr. Nielson's handyman pickup or utility trailer, would seem to be at-odds with this decision; however, the court concludes that there is a significant difference

between parking a pickup truck and utility trailer adjacent to one's property and parking three semi trucks, seven trailers, and a loader. There is also substantial evidence of Hettinga's maintenance (although minimal) on his equipment, and his idling and driving his loud trucks in and out of the parking lot at all hours including middle of the night; no such evidence exists as to Mr. Nielson's pickup truck or equipment.

The court is also aware that others near the Real Property may also be in violation of the ordinance. Nevertheless, the court finds that the County is not estopped to enforce its ordinance here due to others in the R-A zone storing other large equipment on their property. There is no doubt a continuum of equipment and vehicles, from pickups and small trailers to semi-tractors and large trailers that may or may not be kept legally on one's property in the Residential-Agricultural zone.

Hettinga did not forcefully argue for estoppel in his briefing before the court, nor did he assert such an affirmative defense in his pleadings; but he did provide evidence of others' property<sup>2</sup> kept outside their residences in his subdivision. He cited this evidence to support his claim that his parking of equipment is "the kind of use normally incidental to the residential use in his neighborhood. . . ." Defendant's post-trial brief, p. 9.

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<sup>2</sup> I.e., a backhoe, a dump truck, rock crusher or portable spray-wash equipment.

As the court has set forth, incidental or accessory use is not established on the facts here. There are far too many unknowns regarding others' property and their circumstances to conclude that having a backhoe or dump truck parked in the driveway is consistent with having three semis and seven trailers parked outside one's home.

Beyond that, Hettinga has failed to establish selective enforcement or discriminatory enforcement practice on the part of the County or the City in this case. As such, the County's failure to enforce the ordinance against others in Hettinga's subdivision is not a defense regarding Hettinga's conduct in this case. *See City of Chicago v. Unit One Corp.*, 218 Ill.App.3d 242, 578 N.E.2d 194 (1991) (city was not estopped from enforcing ordinance even though it had issued permit for signs for over 15 years, and its failure to prosecute other obvious violators did not violate equal protection absent showing that selection of owner was based on some invidious classification); *Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 576-577, 524 S.E.2d 404, 408-409 (1999) (discriminatory enforcement not established where, even though trucker presented eleven photographs of "other large commercial vehicles in the immediate area that were not subjected to any enforcement action," he failed to establish any purposeful discrimination on the part of the planning and zoning officials.).

It is also the law in Idaho that city clerks, county commissioners or other government agents have no authority to authorize variances in the zoning code. See *Ada County, by Bd. of County Com'rs v. Walter*, 96 Idaho 630, 632, 533 P.2d 1199, 1201 (1975) (county commissioners may not allow a use that would violate a zoning ordinance); *Hubbard v. Canyon County Com'rs*, 106 Idaho 436, 437, 680 P.2d 537, 538 (1984) (county commissioners may not permit an implied variance violative of land use ordinances); *City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 846, 136 P.3d 310, 317 (2006) (city officials not allowed to grant discretionary variance of zoning ordinance).

Finally, the court recognizes, as did the Court in *City of Boise City v. Gabica*, 106 Idaho 94, 675 P.2d 354 (1984), that "a residential use may have many components." As the Court stated further:

Use by a family of a home under our customs includes more than simple use of a house and grounds for food and shelter. It also includes its use for private religious, educational, cultural and recreational advantages of the family. . . . Pursuit of a hobby is clearly customarily a part of recreational activities.

*Id.* (quoting *Borough of Chatham v. Donaldson*, 69 N.J.Super. 277, 174 A.2d 213, 216 (1961)).

However, Hettinga's business operation does not fit within any of these components of residential living. Hettinga's operation of his trucking business

starts and ends with parking and maintaining his<sup>3</sup> trucking assets. Thus, this court's

characterization of [Hettinga's] business is consistent with the general view that a commercial enterprise, conducted to make money, is a principal use, of itself, and is not occasioned by day-to-day living in a residential area. *See, e.g., Perron v. City of Concord*, 102 N.H. 32, 150 A.2d 403 (1959). It is also consistent with Idaho case law that an "accessory use" will be recognized where it is "sufficiently connected with," and an "integral part" of, the principal land use.

106 Idaho at 96, 675 P.2d at 356.

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<sup>3</sup> The court recognizes that Hettinga does not hold title to the semis in question; however, his name is emblazoned upon the semi's doors and he is the sole proprietor of the business.



## CONCLUSION

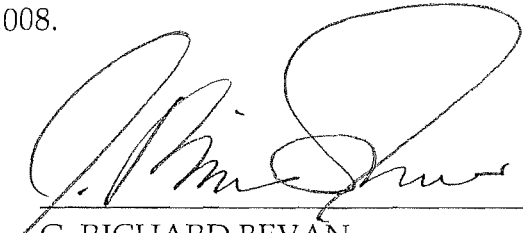
Based upon the foregoing analysis, and exercising the court's discretionary and equitable authority, it is hereby ORDERED and this does ORDER:

1. Effective August 31, 2009 at 11:59 p.m., Eric Hettinga is hereby ENJOINED from conducting trucking and/or hay hauling operations of any kind on the subject premises located at 2319 East 4000 North, Filer, Idaho.

2. "Trucking and/or hay hauling operations" includes, but is not limited to parking, storing, driving onto or from, maintaining in any manner, however slight, any and all equipment, trucks and trailers used in any trucking business on the Real Property located at 2319 East 4000 North, Filer, Idaho.

IT IS SO ORDERED.

Dated this 21<sup>st</sup> day of August, 2008.

  
\_\_\_\_\_  
G. RICHARD BEVAN  
District Judge

CERTIFICATE OF MAILING/DELIVERY

I, Shari Cooper, hereby certify that on the 21 day of August, 2009, a true and correct copy of the foregoing Minute Entry and Order was mailed, postage paid, and/or hand-delivered to the following persons:

Mr. Fritz Wonderlich  
Wonderlich & Wakefield  
P.O. Box 1812  
Twin Falls, ID 83303-1812

Mr. David Coleman  
Coleman, Ritchie & Robertson  
P.O. Box 525  
Twin Falls, ID 83303-0525

  
\_\_\_\_\_  
Sharie Cooper, Deputy Clerk

ORIGINAL

David A. Coleman  
COLEMAN, RITCHIE & ROBERTSON  
Attorneys at Law  
156 2nd Avenue West  
P.O. Box 525  
Twin Falls, ID 83303-0525  
Telephone: 208-734-1224  
Fax: 208-734-3983  
Idaho State Bar No. 5742

Attorneys for Eric Hettinga

2008 OCT 2 PM 1:51  
FILED

2008 OCT -2 PM 1:51

BY \_\_\_\_\_  
[Signature]

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, )  
political subdivisions of the State of Idaho, )  
 )  
Plaintiff/Respondent, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Defendant/Appellant. )  
\_\_\_\_\_)  
 )

Case No. CV 2008-79

**NOTICE OF APPEAL**

Filing Category: L.4  
Fee: \$101.00

**NOTICE OF APPEAL**

TO: THE ABOVE-NAMED RESPONDENT, THE COUNTY OF TWIN FALLS AND THE PARTY'S ATTORNEY, FRITZ WONDERLICH AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN that:

1. The above named Appellant, Eric Hettinga appeals against the above named

Respondent, The County of Twin Falls to the Idaho Supreme Court from the Findings of Fact and Conclusions of Law and Order entered in the above-entitled action on the 21<sup>st</sup> day of August, 2009, the Honorable G. Richard Bevan presiding.

2. The Appellant has the right of appeal to the Idaho Supreme Court, and the Order described in Paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issue on appeal shall not prevent the appellant from asserting other issues on appeal. Such issue are as follows:

a. The trial court erred in its findings that the City of Filer was in fact pursuing this enforcement and the County of Twin Falls was only pursuing it in form.

b. The trial court erred in its findings that the defendant operates a trucking and hay hauling operation from his residence by parking, storing, driving onto or from, maintaining in any manner, however slight any and all equipment, trucks and trailers used in any trucking business on the real property where he resides.

c. The trial court erred in admitting certain evidence over the objection of defendant, namely a DVD, and improperly considered its contents.

4. No order has been entered sealing all or any portion of the record.

5. A reporter's standard transcript is requested. The appellant requests the preparation of the transcript in both hard copy and electronic format.

6. The Appellant requests the following documents be included in the clerk's record,

in addition to those automatically included under Rule 28, I.A.R.:

Any written documents filed or lodged with the district court including, but not limited to, briefs, statements, or affidavits considered by the court, and memorandum opinions or decisions of the court.

7. The Appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court:

All documents and pictures admitted into evidence.

8. Appellant certifies that:

- (a) That a copy of this Notice of Appeal has been served on the reporter;
- (b) That the reporter of the District Court has not been paid the estimated fee for preparation of the transcript;
- (c) That the estimated fee for preparation of the clerk's record has not been paid;
- (d) That the Appellant filing fee has been paid;
- (e) That service has been made upon all parties required to be served pursuant to

Rule 20, I.A.R.

DATED this 2<sup>nd</sup> day of October, 2009.

COLEMAN, RITCHIE & ROBERTSON

By David A. Coleman

DAVID A. COLEMAN

Attorney for Defendant/Appellant

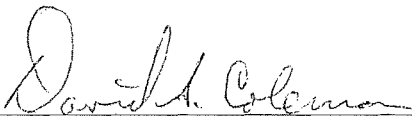
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of October, 2009, I served the foregoing **NOTICE OF APPEAL** by causing a copy thereof to be deposited in the U.S. Mail at Twin Falls, Idaho, enclosed in an envelope with first class postage prepaid, addressed to the following:

Fritz Wonderlich  
WONDERLICH & WAKEFIELD  
PO Box 1812  
Twin Falls, Idaho 83303-1812

Virginia M. Bailey  
Official Court Reporter  
PO Box 887  
Twin Falls, Idaho 83303-0887

Eric Hettinga  
2319 East 4000 North  
Filer, Idaho 83328

  
\_\_\_\_\_  
DAVID A. COLEMAN

TO: CLERK OF THE COURT  
IDAHO SUPREME COURT  
P. O. BOX 83720  
BOISE, IDAHO 83720-0101

FAX: 1-208-334-2616

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2010 JAN 22 PM 2: 22

BY \_\_\_\_\_  
CLERK  
*AC*  
DEPUTY

THE COUNTY OF TWIN FALLS, )  
IDAHO, Political Subdivisions )  
of the State of Idaho, )  
 )  
Respondent, )  
 )  
vs. )  
 )  
ERIC HETTINGA, )  
 )  
Appellant. )  
\_\_\_\_\_ )

DOCKET NO. 37047

NOTICE OF REPORTER'S TRANSCRIPT LODGED

NOTICE IS HEREBY GIVEN that on this date I lodged a  
Reporter's Transcript on Appeal of 166 pages in length for  
the above-entitled appeal, with the Clerk of the District  
Court, County of Twin Falls, in the Fifth Judicial District.

E-Mail Delivery to: Supreme Court Filings.

DATED this 22nd day of January, 2010.

*Virginia M. Bailey*

Virginia M. Bailey, RPR, CSR No. 262  
Official Court Reporter  
Fifth Judicial District  
State of Idaho

NOTICE OF REPORTER'S TRANSCRIPT LODGED

I N D E X

<u>DATE OF HEARING:</u>	<u>PAGE</u>
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PLAINTIFF'S EXHIBITS

	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>	<u>OFFERED</u>	<u>ADMITTED</u>
1	Map	13	13	14
2	TF County Area of Impact Ordinance	14	14	15
3	Filer City Area of Impact Ordinance	14	14	15
4	Chapter 5, Title 9 Filer City Code, Residential Agricultural District Regulations	15	15	16
5	5 Photographs of Defendant's Property	54	55	55



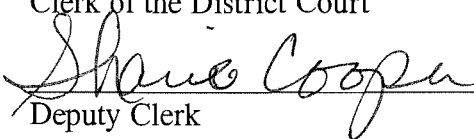
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, )	SUPREME COURT NO. 37047-2009
Political subdivisions of the State of Idaho, )	DISTRICT CASE NO. CV 08-79
)	
Plaintiff/Respondent, )	
)	CLERK'S CERTIFICATE
vs )	
)	
ERIC HETTINGA, )	
)	
<u>Defendant/Appellant</u> )	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22<sup>nd</sup> day of January, 2010.

KRISTINA GLASCOCK  
Clerk of the District Court  
  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, )	SUPREME COURT NO. 37047-2009
Political subdivisions of the State of Idaho, )	DISTRICT CASE NO. CV 08-79
)	
Plaintiff/Respondent, )	
)	CERTIFICATE OF EXHIBITS
vs )	
)	
ERIC HETTINGA, )	
)	
<u>Defendant/Appellant</u> )	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify:

That the following is a list of exhibits to the record that have been filed during the course of this case.

- Plaintiff's Exhibit 1 (Filer area of Impact Zoning Map)
- Plaintiff's Exhibit 2 (Twin Falls County code 8-9-18)
- Plaintiff's Exhibit 3 (Filer City Code, Title A Chapter 13)
- Plaintiff's Exhibit 4 (Filer City Code, Title A Chapter 5)
- Plaintiff's Exhibit 5 (photos of Mr. Hettinga's property)
- Plaintiff's Exhibit 6, (video of trucks and property)
- Plaintiff's Exhibit 7 (copy of email discussing violation in City of Filer impact area with response)
- Defendant's Exhibit A (Warranty Deed to property)
- Defendant's Exhibit B (Title to 70 Kenworth)
- Defendant's Exhibit C (Title to 80 Freightliner)
- Defendant's Exhibit D (Title to 85 Peterbuilt)
- Defendant's Exhibit E (Letter to Mr. Hettinga from Wonderlich and Wakefield)
- Defendant's Exhibit F (minutes from meeting of July 17, 2007)
- Defendant's Exhibit G (copy of City Council meeting from 8-7-2007)
- Defendant's Exhibit H (copy of City Council Meeting minutes from April 1, 2008)

Defendant's Exhibit I (copy of minutes from meeting with County Commissioners)  
Defendant's Exhibit J (photos of neighbors' property)  
Defendant's Exhibit K (7 photos of witnesses property)

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22<sup>nd</sup> day of January, 2010.

KRISTINA GLASCOCK  
Clerk of the District Court

  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

THE COUNTY OF TWIN FALLS, IDAHO, )  
Political subdivisions of the State of Idaho, )  
 )  
Plaintiff/Respondent, )  
 )  
vs )  
 )  
ERIC HETTINGA, )  
 )  
Defendant/Appellant )

SUPREME COURT NO. 37047-2009  
DISTRICT CASE NO. CV 08-79

CERTIFICATE OF SERVICE

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

Tim Williams  
Williams Law Office  
P. O. Box 282  
Twin Falls, ID 83303-0282

Fritz Wonderlich  
Twin Falls City Attorney  
P. O. Box 1812  
Twin Falls, ID 83303-1812

ATTORNEY FOR APPELLANT/  
DEFENDANT

ATTORNEY FOR RESPONDENT/  
PLAINTIFF

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 8  
day of January, 2010.

March

KRISTINA GLASCOCK  
Clerk of the District Court

Shane Cooper  
Deputy Clerk